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LAW, POPULISM AND COMMON SENSE: THE DEMOCRATIC THEORY TOWARDS THE AGE OF POPULISMS¹

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Abstract

What is exactly populism? Can we speak about a “juridical populism”? This essay aims to develop in the legal field the theories of Laclau and Mouffe, interpreting populism as a model of conflictual articulation of the political discourse in a liquid society. Thus, it may be considered as a political strategy which aims to rupture instead of continuity, but neutral with respect to the contents with which it can effectively be filled. The political struggle can be conceived as a struggle for hegemony. In a populist strategy, several social demands are deconstructed and reorganized around a major social demand, potentially able to evoke a new common sense and therefore a new hegemonic social order.

Keywords

Legal Populism, Constitutionalism, Common Sense, Class Struggle, Democracy.

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Resumen

¿Qué es exactamente el populismo? ¿Podemos hablar de un “populismo jurídico”? Este ensayo pretende desarrollar en el campo jurídico las teorías de Laclau y Mouffe, interpretando el populismo como un modelo de articulación conflictiva del discurso político en una sociedad líquida. Por lo tanto, puede considerarse como una estrategia política que pretende romper en lugar de continuidad, pero neutral con respecto a los contenidos con los que puede ser efectivamente llenado. La lucha política puede concebirse como una lucha por la hegemonía. En una estrategia populista, varias demandas sociales se deconstruyen y reorganizan en torno a una gran demanda social, potencialmente capaz de evocar un nuevo sentido común y, por lo tanto, un nuevo orden social hegemónico.

Palabras clave

Populismo Legal, Constitucionalismo, Sentido Común, Lucha de Clases, Democracia.

*Evermore – vengeance upon you: PRIVATION! ...
Globe's Stigma – penury:
How it hurts him! ... Fulfillment? ...
He – who prefers to begin
Forever to throw out before him – down payed!
– “Ear of Corn”? ... like a gold comet ripened,
Wind's breath barely stirs it,
A rain of wheat sprinkles down grains
Perfection alone sweeps away ...*

Cyprian Kamil Norwid, *Chopin's Piano* (VII)

*The fickle multitude!
Which turns with every wind. Unhappy he
Who leans upon this reed!*

Johann Cristoph Friedrich von Schiller, *Mary Stuart* (act IV, scene XI)

Populism: What is it? History, historians, commentators, today's politics²

We hear more and more about “populism”, and this word is often violently invoked in political debate as a synonym of “demagogy”, of “subversivism” or even of “neofascism”, depending on the context and on the target chosen by the accuser. This floating signifier was filled over time with several different signifieds, which complicate any attempt to fix it in a precise notion. We can nevertheless try to put some order into this confusion, before analyzing the implications of this phenomenon in the juridical field.

There was already talk about populism in the 19th century, mainly in Russia with the *narodničestvo* and in the USA with the People's Party. The *narodničestvo*, quite familiar to the readers of the entire world by the novels of Dostoevsky and Turgenev, was

2. This paper was presented at the Younger Scholars Forum of the 20th General Congress of the International Academy of Comparative Law, held in Fukuoka (Japan, July 2018). The author wishes to thank Professor Francesco Clementi for his valuable advice and suggestions. See also the working paper Zolea (2019).

actually a set of tendencies and ideologies quite variegated, from some of which the first nucleus of the Russian socialist movement developed. Widespread among Russian intellectuals of the second half of that century, the populism conceived the traditional rural community and the peasants' lifestyle —with whom the populists sought to establish a direct relationship— as paradigms of a development model in solidarity, alternative to the perspective of capitalistic modernization (Venturi, 1972). The People's Party is probably closer to the contemporary use of the word "populism". This political movement mainly represented a form of resistance against the emerging capitalism of the large corporations. It was mostly formed by small farmers ruined by changes in the global trade and in the internal mode of production, but also trying to direct their message to all productive classes, including the workers of the first large factories. Its ideology was founded on the American myth of a society of small farmers, a community of people freely working their own lands. Using a radical rhetoric, the populists criticized the centralization of the means of production and of the wealth in the hands of a small group of big factories and banks, while they proposed a democratization of the institutions and an active role of the State, which should have funded the farmers granting more favorable terms than the banks and which should have regulated the new communication networks (trains, telegraphs, etc.) and the market in the general interest (Foner, 2017, pp. 649-659; Pollack, 1962, *passim*). So, in their opinion, the State should actively defend economic opportunities of every citizen, contrasting the formation of economic and political elites, incompatible with a real, and not only formal, liberty of the people.

Populism became a hot topic of the American historiography, mainly after the mid 20th century: it is exactly from this debate that the current semantic shift arises, making this word ambiguous and polysemous. The school of thought of "consensus history", widespread in the 50s and in the 60s, tended in its analysis to minimize the importance of the conflicts, notably class struggle, in American national history, and to exalt the role of values shared among the whole society, such as competitiveness, economic individualism and property, beyond the differences between the factions. As populism had been the more important manifestation in the recent history of the USA of another ideological tradition, more aiming at rupture and social antagonism than at conciliation, both in the form and in the substance, these historians³ strongly attacked this movement, up to denigration⁴. Being a symbol of an American political radicalism, populism was

3. The most important work is Hofstadter (1955).

4. See Jäger (2016): "With the imaginative wit of the new urbanite, Hofstadter contrasted the Populist 'Agrarian Myth' with the 'Commercial Realities' of the late-nineteenth-century, accusing the Populist farmers of posing as an endangered yeomanry for the sake of winning over American public opinion, while being in reality mere crypto-capitalists, utterly

then strenuously criticized, not only as a certain political movement, historically circumscribed, but even as the ideological archetype of every “deviation” from the line of capitalistic liberalism. Such deviations were considered by these historians, under the influence of the events of their generation, as essentially ultra-reactionary, associating them to tendencies like nationalism, isolationism and anti-intellectualism, and identifying in them the roots of a wide range of more recent nefarious political experiences⁵, like pro-fascist American movements (Ferkiss, 1957, pp. 350 ff.) and McCarthyism (Shils, 1956; Hofstadter, 1965, pp. 3 ff.). It is in this way that in the USA the word *populism* has gradually diverted from the real historical phenomenon of the People’s Party and its own ideology to generically define several different ideologies accused of plebiscitarianism and demagoguery, sharing nothing else than a direct appeal to popular masses and a radical refusal of the political order of liberal pluralism, of its forms and mediations, of its delicate system of check and balance: mostly when they challenge the system from the “right”, but also when they challenge it from the “left”⁶. In this sense, the word has

enmeshed in the ‘business society’ which they themselves claimed to criticise so vocally. Their hatred of processes of financialisation and corporate capitalism could, in Hofstadter’s purview, better be explained out of a fear of losing status, rather than a steep decline in living standards. With the irony so characteristic of the post-war New York Intellectual, Hofstadter delivered a psychological portrait of the nineteenth-century ‘farmer-entrepreneur’ as divided between economic modernism and cultural traditionalism, perpetually schizophrenic in his defence of the market economy coupled with a plea for pastoral virtues, oscillating between two political poles which could only achieve institutional reconciliation in the ‘experimental pragmatism’ of the American New Deal” (p. 5).

5. See Hofstadter (1955) and Pollack (1960): “In presenting this critique it was necessary to confine the remarks to Hofstadter’s own evidence and in that way raise questions concerning the validity of his scholarship. It is suggested, however, that a re-searching of Populist manuscripts and newspapers shows even more effectively the weaknesses of his interpretation, for the evidence on each of his themes points to an entirely different conclusion. For example, the Populists were far from adopting a retrogressively utopian view towards society; many of them accepted the fact of industrialism and sought to democratize its impact through highly specific measures. They did not hold to outdated producers’ values but reasoned that farmers and workers were being placed in precisely the same economic position vis-à-vis the total society; hence, actual attempts at coalition between the two groups were made. Tens of thousands of Populist statements show that anti-Semitism was so infrequently mentioned that it might be contended that there was less, not more, anti-Semitism in the movement than in the rest of society” (pp. 499-500).

6. See Jäger (2016): “While previously only reserved for specific debates within American social and political history, and therefore pertaining to some rather strict temporal demarcations, the newly conjured tool of ‘populism’ proved to be a concept of high analytic elasticity, with a multitude of semantic dimensions now to be taken in account. Overseeing these multidimensional understandings of the word, five new distinct meanings can be highlighted:

- populism as a political style, comprising a rhetorical, rather than substantive conception of ‘paranoid politics’. In its invocation of the ‘people’ as the sole source of political legitimacy, it is akin to ‘anti-elitism’, although more ideologically articulated than merely contrarian politics. Equivocally synonymous with ‘demagoguery’ (Hofstadter, Ferkiss, Bell).
- populism as plebiscitarianism, signifying a demand for direct democracy and anti-constitutionalist rule, hostile to representative liberal democracy and pluralist interest-group politics. A variant of Rousseauian ‘monism’ in the Berlinian sense, meaning ‘democracy without the rule of law’ (Shils, Lipset).
- populism as status politics or cultural politics, representing a political ideology in which status-concerns and non-class based, subjective motivations for social action were seen as prevailing over rational decision-making (Shils, Lipset, Parsons).
- populism as a mass political movement, exemplifying a pathology of unconsummated processes of political modernization, pointing to an ‘asynchronism’ between economic, social, political and cultural trends in developing societies (Kornhauser, Shils, Lipset).
- populism as a political tradition, characterised by rural romanticism and anti-intellectualism, exemplified by the ‘yeo-

been transferred in the language of the political science and, above all, of the American political debate as a kind of epithet used by the defenders of the *status quo* to criticize every form of political radicalism.

With this same meaning, the word was also received in Europe, firstly in France (Lévy, 1994) (but also in Italy⁷), in conjunction with the rise of the *Front National* (Taguieff, 1984, pp. 113 ff., as well as more recent works of the same author), where its use soon spread from political analysts, to political commentators, to journalists and politicians, with the result that even the *Front National* got to use it to define itself, in order to divert the focus of public debate from more specific accusations of racism and fascism and to renew the image of the party, benefiting from a phase of social insecurity and political crisis⁸. Claims of populism did not even spare, in French political debate, some experiences of leftist political radicalism⁹. From the 90s, all over Europe the concept of populism has been used, frequently regardless to its origins, to define mostly, but not only (Hermet, 2001; Pappas, 2014; Tarchi, 2015), the new strategies of far right and neo-fascist movements and ideologies (*ex ceteris*, Betz, 1994; Ignazi, 2003)¹⁰: it is a concept that these movements, in turn, have been able to skillfully utilize in order to provide a camouflage acceptable, in current political debate, for less extremist voters, while they developed their theoretical discourse about a third way possible between right and left and between capitalism and socialism¹¹.

So, the idea of populism has got in the juridical debate only after this long path. In this way, it happened that populism was even qualified as the more insidious and lethal enemy of constitutional democracy, a kind of pathology and of corruption of the democratic process, wielding seditious techniques of manipulation of consent. From this perspective, some authors even do reject the notion of popular sovereignty, identifying

man myth' and other nostalgic forms of politics. Hostile to cosmopolitanism and wary of financial and intellectual elites (Hofstadter, Bell)" (pp. 9-10).

About the change in the general perception of populism, see also Kazin (1995).

7. Inspired to the movement of radical contestation of the system that developed (also) in Italy in 1968, see Matteucci (1972), Matteucci, (1976a) and Matteucci (1976b).

8. Jäger (2016): "In 1994, the word 'populism' established itself as the solid synonym for political irrealism, demagoguery, antielitism and chauvinism, constituting a political passepartout unlike any other term in the French political vocabulary. The features which the American pluralists had first ascribed to the term – plebiscitarianism, irrationalism, romanticism – were now recycled into the jargon of postmodern media analyses. Simultaneously, a militant 'anti-populism' was on the rise on behalf of politicians purportedly still adhering to a 'reasonable' form of politics not based on denunciation and rhetorical absolutism" (pp. 14 ff.; see also p. 17).

9. For a transversal generalization of the notion of populism, with respect to several radical political movements, see the number about "Les populismes" (1997) of *Vingtième siècle: revue d'histoire*, (56).

10. Cf. Martinelli, 2013, p. 76, who asserts the existence of a deep link between nationalism and contemporary populism, considered as an ideology.

11. For the debate about populism among the circles of the 'new right', see De Benoist, 2017.

in it the seed of a new populism, deadly threatening constitutionalism (Spadaro, 2009, pp. 2007 ff.¹²).

The populist theory of Laclau

This premise has been necessary as a first glance to the evolution of the concept of populism over time. May we stop here our research about this notion, considering it as a sufficient basis and so confining ourselves to analyze its implications in the juridical world? There are well-founded doubts on it. Most of the mentioned reflections about populism tend more to denigrate and ridicule this concept —or, more generally, even the idea of an active role of the masses in public life and of popular sovereignty (Riker, 1982)— than to try to deeply understand such a phenomenon and its mechanisms. It is sufficient to observe the difficulty of many works of political theory to define populism, to call in question the mainstream thinking about it. Several authors determine it into details but they have to admit that, in fact, concrete historical experiences radically split off from the constructed model (MacRae, 1969, pp. 153-165; Wiles, 1969, pp. 166-179); some others identify it only in negative terms with its rhetorical attitude hiding an ideological vacuum¹³, or limit themselves to detect the uncertainty of its contents and decide to focus their analysis on its different manifestations (Canovan, 1981). Furthermore, some legal academics who wrote about this matter (Spadaro, 2009, pp. 2007 ff.; Pinelli, 2019, pp. 29 ff.) seem to tend to make populism a kind of black hole beyond the event horizon whose they try to enclose the set of threatens to constitutional democracy that they discern. It may be wondered if there is really a shared matrix of this threatens and if their lowest common denominator, if any, cannot meaningfully be found elsewhere. Far from being satisfied, our research is just at the beginning.

Some elements of alternative analysis of populism can be found in some authors, for example in the hunch that populism is mostly an approach, a style or a dimension of the political culture in general than a specific kind of ideology or political organization

12. *Contra*, Somma (2018), Galli (2019); about the tense relationship between constitutionalism and populism, see also Mény & Surel (2000) and Pombeni (2004).

13. Cf. Minogue (1969, pp. 197-211); interpreting populism as a thin or weak ideology, see, with different nuances, Mudde, 2004: “I define populism as an ideology that considers society to be ultimately separated into two homogeneous and antagonistic groups, ‘the pure people’ versus ‘the corrupt elite’, and which argues that politics should be an expression of the *volonté générale* (general will) of the people. Populism, so defined, has two opposites: elitism and pluralism. [...] Though populism is a distinct ideology, it does not possess ‘the same level of intellectual refinement and consistency’ as, for example, socialism or liberalism. Populism is only a ‘thin-centred ideology’, exhibiting ‘a restricted core attached to a narrower range of political concepts” (pp. 543-544); Taggart (2000), Mény & Surel, (2000, pp. 177 ff.), Zanatta (2002, pp. 263 ff).

(Worsley, 1969, p. 245; Knight, 1998, pp. 223 ff.; Capozzi, 2010, p. 115; see also Müller, 2016), or in the reflection that recognizes in populism something always accompanying democracy (Mény & Surel, 2000, pp. 32-35), whose component of pragmatic system cannot do without a component of redemptive system, in a perennial tension between these two poles¹⁴, or in the interpretation of the concept of *people* as a phenomenon having a relational, dynamic nature (Saward, 2006, 297 ss.). The time is right to introduce in this exposition Laclau's populist theory, which has shown to be able to provide a substantive and coherent vision. This scholar's study departed from a feeling of dissatisfaction for the state of the art in this matter. Laclau, directly influenced by populist experiences in South America, in particular from Peronism in Argentina (*ex ceteris*, see Sigal & Verón, 1986), where the author had been an activist in the Peronist left, was a revolutionary and militant intellectual: post-Marxist, he combined his effort of analysis of the reality with the effort to provide political activists of his time with the conceptual tools necessary to transform the reality. This should be considered in order to better understand the meaning and the mission of all his work, which base his original point of view about populism. In fact, today, political movements as *Podemos* in Spain and *France insoumise* are explicitly inspired to his theories in the choice of their political strategies (Iglesias, 2014; Mélenchon, 2014).

Laclau's most known works are *Hegemony and Socialist Strategy*, written with Chantal Mouffe, and *On Populist Reason*. In the first one, breaking away from a traditional Marxist interpretation, Laclau and Mouffe question the structure/superstructure relationship and the economist conception of social class, developing the Gramscian idea of cultural hegemony in the direction of a movable, and not stationary (especially in a phase of organic crisis), notion of social identity (especially of the revolutionary subject), which takes shape in an open system of relationships. So, such an identity would not have an objective prius in the relations of production and would find its meaning only in a blurred network of fluid relationships. It is a point of view which exalts the discursive dimension of the political sphere —which always exists in a delicate balance between the two antagonist dimensions of the positivist pragmatism of the probable

14. See Canovan (1999): "[...] some democratic theorists explicitly seek to strip democracy of all redemptive features and to emphasize its non-messianic side. This is democracy without foundations, democracy as open-ended political practice, democracy of which we should not expect too much. But the implication of the analysis presented above is that any attempt to banish the redemptive aspect of democracy is likely to be self-defeating. As a way of interpreting democracy it is rather like trying to keep a church going without faith. In politics as in religion, loss of faith tends to lead to corruption and surrenders the ground to revivalism [...]. [A]ttempts to escape into a purely pragmatic interpretation of democracy are illusory, for the power and legitimacy of democracy as a pragmatic system continues to depend at least partly on its redemptive elements. That always leaves room for the populism that accompanies democracy like a shadow" (pp. 15-16).

and of the redemptive hope of the possible— within which (and not somewhere else) a new historical bloc takes shape in a continuous process of formation and dissolution of the social agents (Laclau & Mouffe, 2001¹⁵).

In the second cited work (Laclau, 2005), developing several reflections of the first one, the populist theory is exhaustively exposed. Laclau's reasoning moves from the observations of the denigration of populism and of the general tendency to define it only negatively and to circumscribe it in the sectors of marginality, of uncertainty, of rhetoric, of manipulation, of irrationality, opposing it to the sphere of the "normal", legitimate politics. In all these behaviors, the author tried to uncover manifestations of a deeper attitude of denigration of the masses, or, rather, of every popular mobilization, if not canalized in the existing social structures and institutions¹⁶. Laclau perceives the uncertainty of the political sphere as the mirror of the uncertainty of the floating social reality, and the rhetoric (as a substitution of a literal word with a figured word, subsuming the signified of the first one under its own) as a basic foundation of the conceptual structure characterizing politics, and not only an ulterior and external element with respect to a given *quid*. The elements of the discourse (and, in particular, the identities) acquire a meaning only in their mutual relationships of differences and equivalences. Also the (sense of belonging to a) people, in this perspective, is not pre-constituted, neither is only the product of an ideology, but it is a concrete relationship between social agents, one of the possible articulations of a multiplicity of social demands, whose the systematic interconnection may result in a sense of identity. The dissatisfaction arising from the incapacity of the existing system to absorb in a differential way (each in isolation from the others) these demands and their accumulation over time —while the institutional system becomes increasingly remote from its popular basis— allow the creation of an equivalential relation between them¹⁷. Laclau calls such a kind of relation

15. In this work, conclusively identifying their vision of a radical democracy "in a form of politics which is founded not upon dogmatic postulation of any "essence of the social", but, on the contrary, on affirmation of the contingency and ambiguity of every "essence", and on the constitutive character of social division and antagonism. Affirmation of a "ground" which lives only by negating his fundamental character; of an "order" which exists only as a partial limiting of disorder; of a "meaning" which is constructed only as excess and paradox in the face of meaningless —in other words, the field of the political as the space for a game which is never "zero-sum", because the rules and the players are never fully explicit. This game, which eludes the concept, does at least have a name: hegemony" (p. 193).

16. Laclau (2005), utilizes several authors, such as Taine, Le Bon, Tarde, McDougall, to reopen the debate about crowd psychology, underlying the influence of the positivistic vision of the mobilization of anonym crowds as a pathological aberration of social life (pp. 3-64). Special attention is dedicated to the more nuanced approach of Freud, which Laclau uses as a starting point of his analysis. Cf. Eklundh (2020, pp. 107 ff).

17. See Laclau (2005): "Think of a large mass of agrarian migrants who settle in the shantytowns on the outskirts of a developing industrial city. Problems of housing arise, and the group of people affected by them request some kind of solution from the local authorities. Here we have a demand which initially is perhaps only a request. If the demand is satisfied, that is the end of the matter; but if it is not, people can start to perceive that their neighbours have other, equally unsatisfied

an “equivalential chain”, and, on the base of its creation, a social subjectivity, a “people”, a potential actor of history, is also formed, in an adversarial relationship with the current regime. So, a populist configuration emerges from the equivalential articulation of the demands, from the development on this basis of an antagonistic, virtual frontier which separates the ‘people’ from the power. Achieved a certain level of mobilization, several demands come together into a stable system of signification. Populism, not an ideology, but a political logic, may be filled up with widely varied social and political contents. It is therefore, in the political sphere, the opposite of institutionalism: while this latter is characterized by the predominance of the differential logic within the community, in the populist perspective an equivalential logic is preponderant, dividing society in two antagonistic camps, an “us” and a “them”¹⁸, the latter being conceived as the oligarchy detaining the power, which must be overturned (Laclau, 2005, pp. 67-124; cf. Villacañas, 2015, pp. 71 ff.).

In such a system of relations, the question arises to know how heterogeneous demands may join in a single global demand, capable of establishing its own antagonistic frontier between a “people” and an “oligarchy” and aiming to remove this latter from the power in order to “give it back” to the people. This is made possible by one demand which is able to represent and unify in the logic of the populist system the totality of the elements of the chain, determining their frontier and differentiating it from anything else, so that every identity may have a position in the system, below or beyond the dichotomic division. Such a demand, which plays the hegemonic function of being the element of unification of a camp, acquires in the discourse a universal signification overlapping with its own particular signified. So, this social demand becomes increasingly an empty signifier, detached from its particular initial signified, as incrementally diversified demands enter into the equivalential chain; it gets to embody not the realization, but the aspiration to plenitude and to totality¹⁹.

demands - problems with water, health, schooling, and so on. If the situation remains unchanged for some time, there is an accumulation of unfulfilled demands and an increasing inability of the institutional system to absorb them in a differential way (each in isolation from the others), and an equivalential relation is established between them” (p. 73); “The meaning of such demands is determined largely by their differential positions within the symbolic framework of society, and it is only their frustration that presents them in a new light. But if there is a very extensive series of social demands which are not met, it is that very symbolic framework which starts to disintegrate. In that case, however, the popular demands are less and less sustained by a pre-existing differential framework: they have, to a large extent, to construct a new one. And for the same reason, the identity of the enemy also depends increasingly on a process of political construction” (p. 86).

18. “S’aimer, c’est haïr le même ennemi”: (Sartre, 1951, p. 245).

19. See Laclau (2005): “there is the possibility that one difference, without ceasing to be a particular difference, assumes the representation of an incommensurable totality. In that way, its body is split between the particularity which it still is and the more universal signification of which it is the bearer. This operation of taking up, by a particularity, of an incommensurable universal signification is what I have called hegemony. And, given that this embodied totality or universality is, as we have seen, an impossible object, the hegemonic identity becomes something of the order of an empty signifier, its own particu-

Advantages of Laclau's approach

Another important element of Laclau's theory is the mobility of the frontiers dividing the political articulation, because hegemonic signifiers are in his view always floating. Alternative and rival chains of equivalences —each of them shaping a total, universal discursive dimension— connect, according to different logics, several popular demands. These chains overlap and clash, every one trying to smash the other, absorbing some of the demands composing its competitor in the different network of connections of its own hegemonic project, which is built around a different fundamental demand that tries to represent all the other demands proposing its own identity of “people” and its own dichotomic frontier between the “us” and the “them”. The success of a project or of another only depends on the issue of the fight for hegemony between these worldviews, on the capacity of each one to gain under its flag the support of social majorities. No demand is *a priori* included in a chain or in another, before the homogenization realized by an “empty signifier”, open to be filled with different signified (Laclau, 2005, pp. 129 ff.; see also Laclau, 2000). During periods of organic crisis, when the whole existing system of symbols and signifieds creaks, this fight for hegemony becomes increasingly intense and dramatic, while, during periods of greater stability, it becomes more discreet and latent, without generally calling into question the whole political and social framework. In this last case, the power seems to be able to satisfy enough demands by the use of a differential logic, preventing their concatenation in an alternative discourse able to undermine the foundations of the system. Also relying upon Mouffe's works²⁰, Laclau identifies a deep connection, and not a necessary contradiction, between populist theory and democratic theory. He points out that democracy is based on the existence of a popular, democratic subject —a “people”— which can

larity embodying an unachievable fullness. With this it should be clear that the category of totality cannot be eradicated but that, as a failed totality, it is a horizon and not a ground” (pp. 70-71); “For populism, as we have seen, is the terrain of a primary undecidability between the hegemonic function of the empty signifier and the equivalence of particularistic demands. There is a tension between the two, but this tension is none other than the space of constitution of a “people”” (p. 163); see also Laclau (1996, pp. 36-46).

20. See Mouffe 2000: “On one side we have the liberal tradition constituted by the rule of law, the defence of human rights and the respect of individual liberty; on the other the democratic tradition whose main ideas are those of equality, identity between governing and governed and popular sovereignty. There is no necessary relation between those two distinct traditions but only a contingent historical articulation” (pp. 2-3); “By privileging rationality, both the deliberative and aggregative perspectives leave aside a central element which is the crucial role played by passions and affects in securing allegiance to democratic values. [...] The failure of current democratic theory to tackle the question of citizenship is the consequence of their operating with a conception of the subject which sees individuals as prior to society, bearers of natural rights, and either utility-maximizing agents or rational subjects. In all cases they are abstracted from social and power relations, language, culture and the whole set of practices that make agency possible. What is precluded in these rationalistic approaches is the very question of what are the conditions of existence of a democratic subject” (pp. 95-96).

only arise from certain hegemonic articulation of the demands in equivalential chains. Their empty signifier might be able to collect, for example, claims for democracy, coordinating them with claims for liberty, if these latter are not yet part of the framework of shared rules in the political system, as it happens in Latin America²¹. Thus, for example, in Turkey in 2013 the particular, ecologist, claim for avoiding the destruction of Gezi park in Istanbul became the empty signifier, and so the totalizing and unifying element, of a multitude of claims for democracy and freedom shared by large segments of Turkish society²², becoming the catalyst of a popular revolt.

After this quick overview of Laclau's theory, it is time to assess its epistemological usefulness, both in general and in particular with respect to our necessity of a juridical approach to the phenomenon of populism. In terms of analysis of the mechanisms ruling on a deeper level the contemporary societies, the question arises²³ if his substantial abandonment of the distinction between base and superstructure and of the centrality of the conflict between labour and capital corresponds to the effective current economic dynamics. But this is probably a question which goes beyond Laclau's horizon, whose analysis is focused on the field of political theory. Precisely in this perspective, several precious tools can be drawn from his works. Laclau's theory seems in fact well adapt to the framework and to the functioning of politics in Western liquid societies²⁴ of the XXIth century, where the feeling of class belonging —previously facilitated by the big productive concentrations of the age of the mass worker, but today hampered by the dimension of flexible, precarious, discontinuous, decentralized work— and the intermediates bodies have significantly weakened with respect to the rise of the individualistic dimension of the consumer. Collective identities have in general become fluid,

21. See Laclau (2005): "if there is to be an articulation/combination between democracy and liberalism, demands of two different types have to be combined. Combination, however, can take place in two different ways: either one type of demands —liberalism, for instance, with its defence of human rights, civil liberties, and so on— belongs to the symbolic framework of a regime, in the sense that they are part of a system of rules accepted by all participants in the political game, or they are contested values, in which case they are part of the equivalential chain, and so part of the "people". In Latin America during the 1970s and 1980s, for instance, the defence of human rights was part of the popular demands and so part of the popular identity. It is a mistake to think that the democratic tradition, with its defence of the sovereignty of the 'people', excludes liberal claims as a matter of principle. That could only mean that the "people's" identity is fixed once and for all. If, on the contrary, the identity of the 'people' is established only through changing equivalential chains, there is no reason to think that a populism which includes human rights as one of its components is a priori excluded. At some points in time —as happens today quite frequently in the international scene— defence of human rights and civil liberties can become the most pressing popular demands" (p. 171).

22. Large segments, but not, on the whole, social majorities: this is why in the end, in the face of the repressive strength of the Government, the movement lost its battle, while the opposite equivalential chain of the Islamic party in power showed to be more large, stable and solid, able to mobilize social majorities both to contain the revolt of 2013 and, more recently, to stop and defeat the coup attempt in 2016.

23. See in particular the criticisms of Azzarà (2017).

24. For the notion of *liquid society*, see Bauman (2000).

uncertain and evanescent too. However, such a logic of individual isolation does not at all lead to a decline of the crowds and, in particular, to a prevalence of differential relations in the political sphere, but it imparts to this sphere its vocation for immersing the individual in an unknown, frightful and threatening reality. Consequently, the attitude of a rational control of the external reality is overcome by the antique, arcane collective need of the pre-rational and symbolic suggestion of mass archetypes²⁵. Consequently, the role of the crowds and of their latent structures —contrary to forecasts of XIXth century positivists, driven by their fear of crowds— tends to increase instead of vanishing. In fact, social networks and other mass medias place in every moment the individual in the center of an omnipresent virtual crowd, often overcoming national borders, and he undergoes an unprecedented multitude of haunting suggestions.

In political struggle, collective actors are not anymore generally conceived as pre-constituted bodies in the sphere of economic relations just fighting for power, but as improvised and itinerant fronts, gathered around symbolic and variable claims, which in the first instance compete for the determination of an horizon of answers toward which social demands are enchainned. This conception also and especially represents the perspective of subordinate classes, nowadays excluded not only from the ownership of the means of production, but also, beyond appearance, from the conscious command of the means of mass communication, in a double subjugation and alienation. The course of action of denouncing and unmasking unequal relationships, which still exist in the economic sphere and which structure on the ground of their paradigm the whole society, has not probably completely lost any role. But it does not anymore directly prelude to the formation of an historical subject aiming to social revolution, while the idea of a sort of “war of position” —fought, as Gramsci had theorized, on the field of civil society in order to exert a cultural hegemony and to obtain the consensus of the majorities— becomes the necessary premise of every realistic attempt to use the sophisticate machine of the contemporary State for purposes of social change.

It should be noted that these mechanisms seem to be well known by ruling oligarchies, which in turn gladly utilize them to realize their goals by populist discursive strategies. Unlike the ruling political group against which French Revolution of 1789 was directed, the one of nowadays (or, at least, its more dynamic and clairvoyant component) is not characterized by an only defensive strategy of a differential logic of

25. For an analysis of crowds archetypes in human history, the key reference remains Canetti (1960); see in particular, in this work, the notion of *double crowds*, which anticipates somewhat Laclau's conception of a dichotomic division, which characterizes populism.

separate absorption of demands. In a sort of “permanent revolution”, always calling into question the public faces, the hierarchies, the balances, values and institutional forms of the power, such a contemporary ruling political group continuously renews itself in order to guarantee the strategic survival of the economic structure and of the relations of social domination. Thus, some sectors of the establishment use populist strategies, form their own equivalential chains, create their own fracture people/elite, call on their own people (for example, we can think about the slogan *Make America Great Again*) and, making use of all the opportunities of mobilization that instantaneous mass media allow, may surpass other sectors of the establishment in the struggle for power. But also movements trying to represent the interest of the working class have learnt this lesson and, accepting the floating framework of the communication and of the politics in the liquid (post-)modernity, they have in turn built their own equivalential chains and the suggestion of their own identity of “people” (for example, we can think about the slogan of “La France Insoumise” at the last French presidential elections: “la force du peuple”), to aggregate social majorities and aspire to the political power.

There are some other advantages of Laclau’s populist theory, specifically concerning a lawyer’s perspective about populism. The approaches interpreting populism as an ideology often run the risk of expressing, in turn, an ideological, institutionalist approach, which politically contrasts what should be the object of the analysis, instead of providing an interpretation key. In addition, considering populism as an ideology leads the analysis on “juridical populism” to the research of the juridical view of such an ideology... except for the fact, as observed about populism in general, that identifying a juridical view shared by extremely variegated political movements would be a chimera. Rather, if populism is considered as a political logic, as a kind of political strategy, able to adapt itself to several ideological contents, but with some specific characteristics²⁶ which differentiate it from any other varieties of political logic, legal issues can be introduced as variables of this system. In this perspective, law, as a social phenomenon occupying an important and delicate place in complex societies, is a constituent element of equivalential chains, as juridical demands contribute to the formation of hegemonic discourses in the same way as, for example, economic or ethic demands. In fact, law contributes to govern collective life, with other non-legal (moral, religious, of diplomacy, of *bon ton*...) systems of rules, and contemporary societies tend to govern by detailed legal regulations large sectors of social relations.

26. Cf. in this regard the reflections of Müller (2016).

So, it is no wonder that juridical demands or demands with important juridical implications can have a central role in equivalence chains, even the role of the empty, hegemonic signifier, that is the universal element enchainning in an equivalential relationship all the other elements which form together one of the fronts of a populist dichotomy.

Hegemony and common sense

Before proceeding with some examples of what might be called “juridical populism”, another concept should be introduced, in order to better understand the idea of hegemony inspiring this paper: this is the concept of “common sense”. Several philosophers, since antiquity, have discussed about this notion, which even characterized the name of the Scottish School of Common Sense, founded by Thomas Reid (1710-1796). This author grounds his system on the existence of intuitive and pre-rational principles basing the relationship of people with reality²⁷. A partially different conception of common sense is developed by the Italian intellectual Giambattista Vico (1688-1744), who in his *Scienza nuova* confers upon it an ethical worth as a system of shared beliefs within a community and defines it as “judgment without reflection, shared by an entire class, an entire people, an entire nation, or the entire human race” (Vico, 1984, p. 63). The author affirms that “the natural law of gentes is coeval with the customs of the nations, conforming one with another in virtue of a common human sense, without ant reflection and without one nation following the example of another” (p. 91).

Gramsci (1975, II) also has quite a similar conception of common sense, which should be considered in order to better understand his theory of hegemony, essential to interpret the relationship between law and populism. According to this Italian intellectual, “civil society” is the complex of organisms having a “private” nature of the ruling social group: educative institutions or other apparatuses differently performing a function of ideological propagation, that is of social hegemony, through the diffusion of general approval for a certain social order. Instead, “political society”, as a legal power, that

27. See Reid (1785): “there are [...] propositions which are no sooner understood than they are believed. The judgment follows the apprehension of them necessarily, and both are equally the work of nature, and the result of our original powers. There is no searching for evidence, no weighing of arguments; the proposition is not deduced or inferred from another; it has the light of truth in itself, and has no occasion to borrow it from another” (p. 555); “The universality of these opinions, and of many such that might be named, is sufficiently evident, from the whole tenor of human conduct, as far as our acquaintance reaches, and from the history of all ages and nations of which we have any records” (p. 573).

is the State *stricto sensu*, has mostly a function of direct domination, through coercion and force²⁸. This author also uses a *lato sensu* notion of State, absorbing elements which otherwise he associates to the notion of civil society, into an integrated system of “hegemony armored with coercion” (pp. 763-764): the two levels of coercion-domination and of consensus-hegemony may in fact intertwine in a single complex mechanism, as it happens in the sophisticated system of power of contemporary societies. According to Gramsci (1975, III), the common sense is the conception of the life of a certain social stratum, not immovable and rigid as folklore, but always transforming and developing with scientific notions and philosophical notions come into common use (p. 2271). In such a dynamic perspective, this author identifies a close link with his idea of cultural hegemony: the struggle for hegemony is exactly a struggle for the definition and for the redefinition of the common sense, until its transformation in a new common sense, that is a new conception of the world and a new system of values, which substitute the precedent ones and justify a new order and a new power, creating the social consensus towards it (II, p. 1047). A common sense, grounding a system of power relationships, takes shapes and finally collapses only by virtue of conflicts; thus, such a kind of disruption and creation is the strategic object of the struggle for hegemony. A new equivocal chain, if we wish to revert to Laclau’s vocabulary, is then the potential embryo of a new common sense: its establishment only depends on the sort of the struggle for hegemony.

In the social reality of nowadays, reducing the role of the law at the level of “political society” does not take into account the complex nature of the mechanisms of power in liberal societies of the XXIth century, which, according to Gramsci’s hunch, hybrid the levels of the “civil society” and of the “political society”, of the domination and of the approval, of the popular involvement and of the revival of the mechanisms behind the scenes which base the supremacy of the ruling oligarchy. Legal issues are discussed in the press, on the television, on the internet, at the pub, at the barber shop: debates to which every citizen actively or passively participates, with new chances to be permanently up-to-date about the declarations and about the actions of political representa-

28. See Gramsci, (1975, III): “Si possono, per ora, fissare due grandi “piani superstrutturali” quello che si può chiamare della “società civile”, cioè dell’insieme di organismi volgarmente detti “privati”, e quello della “società politica o Stato”, e che corrispondono alla funzione di “egemonia” che il gruppo dominante esercita in tutta la società e a quello di “dominio diretto” o di comando che si esprime nello Stato o nel governo “giuridico”. Queste funzioni sono precisamente organizzative e connettive” (pp. 1518-1519); “in una determinata società nessuno è disorganizzato e senza partito, purché si intendano organizzazione e partito in senso largo e non formale. In questa molteplicità di società particolari, di carattere duplice, naturale e contrattuale o volontario, una o più prevalgono relativamente o assolutamente, costituendo l’apparato egemonico di un gruppo sociale sul resto della popolazione (o società civile), base dello Stato inteso strettamente come apparato governativo-coercitivo” (II, p. 800); see also Althusser (1976, pp. 67 ff.).

tives... maybe, with some wayfinding difficulties in this flood of information. Moreover, law regulates several fields of everyday life, unimaginably some time ago, so that many juridical elements are increasingly linked to the life of civil society and of its apparatuses. So, the task of the creation, transmission and reproduction of the consensus often involves the legal order. The struggle for hegemony is not limited to the sphere of direct political domination, but, incrementally with the growth of social complexity, it can have as protagonists equivalential chains linking in several ways different claims, for example of equality, of democracy, of liberty, of security, of transparency, of honesty, of solidarity, or of closure of national borders, of moral or religious reform, of geopolitical supremacy, of economic individualism, etc. All together, on the whole, several social demands shape an order that arises in the economic, in the ethical, in the legal field, or rather transversally between all these fields. A common sense, as a conception of the life and of the world, is therefore an articulated combination of ethic, esthetic, philosophic, scientific, economic, juridical elements and so on, reciprocally linked in the vision developed by a social group, and in particular by the group which hegemonically rallies the whole society in an “historical bloc”. The analysis of this paper will focus on the role that juridical claims may acquire in a hegemonic chain of equivalences, and, through it, in the hegemonic struggle for the colonization of the common sense.

The law in populist chains of equivalences: some examples

Topical subjects offer several examples about all these reflections. In that respect, a few well known cases, diffusely propagated by media and international commentators, are chosen in this paper.

a) 2016 United Kingdom European Union Membership Referendum

The case of Brexit shows very well that legal issues can be at the center of a populist discourse. In fact, the choice of British people, by the referendum of 2016, between remaining or leaving the European Union, had many different reasons and implications... but, above all, it is useful to remember that the main demand of the front of the Brexiters was exactly to withdraw from the European Treaties, which are acts governed by international law, by the activation of the procedure regulated by the withdrawal clause of article 50 of the Treaty on European Union. So, a juridical claim became the empty signifier enchainning many other social demands —several of them linked to the legal sphere too— in an equivalential relationship, even demands which in themselves were

reciprocally distant and hostile in the previous political spectrum. For example, restricting immigrants' access from other countries of the EU, as they could compete with local workers; autonomously deciding politics about immigrants and refugees coming from extra-EU countries and, more generally, about security and law and order; recovering full sovereignty in economic and social policies (even if the Kingdom had already kept its own currency), after the Greek crisis had attired public awareness about tragic social effects of European austerity politics; preferring political and economic relationships with the countries of the Commonwealth of Nations and with the USA, which share with the Kingdom the language and important cultural and legal elements, instead of the European continent. Moreover, other demands soldered in the chain of equivalences of the Leave front concerned law more specifically: in fact, the idea of the supremacy of European law, difficult to reconcile with the conception of parliamentary sovereignty of the Kingdom, and the style and the content of the European rules, with frequent difficulties of adaptation to national legal systems, were often used in brexiters' discourses to support and to exemplify their political stance²⁹. Contrariwise, the Remain faction adopted a more defensive differential strategy, trying to diffuse the fear of economic and political catastrophic consequences of a leap into the unknown and to absorb in isolation from each other the different claims of popular dissatisfaction, in the perspective of a possible future realization, at least in part, of reforms in the EU system, bargaining better conditions for the UK. Everybody knows which faction won that battle, the day of the referendum: the populist, heterogeneous front of the Leave, built linking such different demands in order to lead the Kingdom out from the EU, hegemonically persuaded the majority of the electors and colonized and transformed in anti-European the common sense of the Kingdom.

b) Donald Trump and Obamacare

Another example of juridical populism can be taken from topical subjects, in the USA, with respect to one of the personalities more often associated with contemporary populism: Donald Trump. His political strategy, through which he won the presidential election in 2016, was explicitly populist. His slogan, *Make America Great Again*, created a dichotomic fracture within the society, especially mobilizing the white middle-class

29. See the stance of Nigel Farage, leader of the brexiter UK Independence Party, favorable to "a proud, patriotic country that has control of its borders, represents itself on the world stage and makes its own laws in our own sovereign Parliament. I believe in a new British deal once we leave the EU, one that suits the needs of our own country" (Farage, 2015); according to Boris Johnson, at that time another important member of the Leave front: "you cannot express the sovereignty of Parliament and accept the 1972 European Communities Act" (Elliott, 2016).

impoverished by the consequences (delocalization, expansion of the tertiary sector, computerization, commercial international competition of developing nations producing goods at a lower cost) of the globalization, isolationist in foreign policy, conceiving immigration as a threat for employment and for security, opposing integration of ethnic minorities. Maybe paradoxically, in light of the previous personal carrier of Donald Trump, but less paradoxically, reflecting on the fluidity of the populist mechanisms of mobilization, he was able to build his own “people” around these grudges and to identify the enemy in the establishments of the institutional politics, of the press, of the bureaucracy and of the deep state, accused to facilitate at once the financial oligarchy of Wall Street, the intellectuals (especially of New York) and the social and the ethnic minorities, against the common interest of the “real” American people. The differential and defensive strategy of his adversary in the election, Hillary Clinton³⁰, was powerless against the suggestion of change and of revenge personified by Trump, who was then elected President of the USA.

What is more important to highlight here is the importance of the juridical sphere in Donald Trump’s populism, making for example a mostly legal demand, the repeal of Patient Protection and Affordable Care Act of 2010, usually called Obamacare, one of the claims of his campaign. This reform of the health care system, strongly wanted by the previous Barack Obama’s administration, keeping the essential structure of a system grounded on private insurances, had extended to millions of Americans the access to medical treatments, also by the use of public subsidies. Many people were compelled to subscribe an insurance and insurances were compelled to cover also people already in status of illness. The augmentation of the costs of a system that remained a private market affected, at least partly, people already insured, as well as public finances, making the reform quite unpopular. Trump decided in his presidential campaign —probably, in order to get a stronger support from his Republican Party, but also to make use of the diffused discontent against this act— to frontally attack it, pledging to repeal and replace Obamacare. Other Trump’s claims, like the construction of a wall at the Mexican border or a more protectionist economic policy are more known and discussed by commentators than the repeal of Obamacare, but this latter demand is more suitable for

30. Already in the primary elections of the Democratic Party, Hillary Clinton, despite the support of the whole establishment of the party, had only with many difficulties overcome her rival Bernie Sanders, who had also adopted a populist strategy, even if different from the one of Donald Trump. In fact, Sander’s strategy was progressive, coming from the wave of the movement Occupy Wall Street: trying to enchain the demands of the impoverished middle class with those of the very poor and of the minorities, against the financial oligarchy, the military-industrial complex and the richest ones, and promoting another New Deal, a public health system and a free university system.

being analyzed in this paper, because it shows very well the conception of the legal order that characterizes Donald Trump's populism.

How could such a demand successfully join a populist hegemonic equivalential chain, in the political context of the USA? This was made possible as a result of an historical evolution of the American political actors adopting a populist strategy. Although the prototype of American populism had been the People's Party —whose we have observed how the label of conservative and reactionary had been only and controversially attributed *ex post*— and although such a strategy of enchainment of claims in an equivalential relation had also characterized the progressivism of Franklin Delano Roosevelt's New Deal, after World War II, with McCartyism, then with George Wallace's presidential campaign, with Richard Nixon's and Ronald Reagan's administrations, populist strategies have been especially adopted by the most conservative American sectors, successfully getting to dismantle over time the system of welfare State of the New Deal (Laclau, 2005, pp. 133-137; see also Kazin, 1995). As the economic situation and the international framework had changed, the equivalential chain of the New Deal ideological system had become weak, while many social demands to which this system, already institutionalized from a long time, was not anymore able to adequately respond jumped into the adversary field. The myth of American liberty as freedom firstly from every interference of the State —aiming for example to regulate and to limit the internal market and to increase public expenses in order to improve the wellness of the needy members of the community— which had been overcome by Roosevelt's populist strategy, could in this manner finally overcome the New Deal ideology using another populist strategy. This new view identified state bureaucracy with a new parasite caste and it criticized heavy taxation and attention for ethnic minorities instead of the “real” Americans (mainly, the white middle class). Thus, Trump's populism should be contextualized in this historical development. The importance of the juridical claims in his populist discourse can now be more easily understood: claims including the repeal (or radical modification) of the Obamacare and a fiscal reform, aiming to a general reduction (but in practice mostly for the richest ones) of the income tax rates for persons and corporations³¹. Therefore, with regard to the economic and social role of the public sector, the

31. It is no accident that, after Trump's victory in the presidential election and his difficulties to obtain from the Congress the repeal of Obamacare (as the Republican majority in the Senate was very weak and they had internal divisions), the new US President could substantially empty of its content the health reform of the previous administration (eliminating the obligation of insurance) only through the same law that approved the fiscal reform, showing the connection between these two claims in Trump's populist political discourse.

conception of law of the conservative American populism³² results in an originalist, not evolutionary interpretation of the Constitution, exalting first-generation human rights and, especially, the economic freedom of the individuals. According to this view, in the internal market, the welfare state should reduce its role³³ and should impose as little as possible obligations of contribution and limitations caused by reasons of social solidarity, apart from the needs of defense and of security. Paradoxically, on the other side, Trump's rhetoric often calls on the idea of a unity and a homogeneity of the community (of the "real" Americans) against the internal and external threats.

c) 2016 Italian constitutional referendum

As a further example, the debate that preceded the Italian constitutional referendum of December 2016 should now be considered: in fact, it might better clarify the peculiarities of the populism of the XXI century, in particular with regard to its relationship with the legal field. Populism is often associated by many commentators to extreme political ideologies. It is true that moderate political views, especially if they are already integrated in the system of the ruling power, usually adopt institutionalist strategies, of differential and separated absorption of social claims, trying to defend the key aspects of the existing system. Nevertheless, historical phases of organic crisis, concerning not only the economic sphere, but also the whole spheres of public life and of social values, dissolve the institutional framework, strengthen and generalize the fluid dimension of politics: even "centrist" populisms become therefore conceivable. This is the case of the discursive strategy adopted by the Italian *Partito Democratico*³⁴, when Matteo Renzi gained its leadership. Without questioning the centrist position of the party on the political spectrum, he deeply changed its public rhetoric, so becoming one of the protagonists in Italy of the advent of the age of populisms. Thus, Renzi firstly built his discourse around the idea of "junking" the old politics, concentrating his attack on the proposals on the one hand of getting rid of a leadership (of his party, and, in general, of the Nation) unable and accustomed to an outdated world, on the other hand of a renewed and modernized country, through some reforms: a country more integrated in the European

32. These general observations can only indicate an overall tendency of Trump's political discourse (and of his predecessors on the path of an American conservative populism), but the drastic fluidity of his rhetoric should be contemplated in that respect. In fact, also after Trump's election, his discourse has remained very fluctuating and contradictory: for example, about Obamacare, he even declared, sometimes, that he wanted to guarantee, at any rate, a health-care coverage for everyone, but without provoking a rise in public expenses and in insurance premiums.

33. For an analysis of the process of privatization even of the production of the legal framework in the US, see Mattei (2014, pp. 276-278).

34. Some similar remarks might be made about the discursive strategy of Emmanuel Macron in France before his election.

Union, finally able to look forward to the future with enthusiasm. In his postmodern rhetoric, which fits a liquid society having lost strong feelings of belonging, his “people” was mostly composed of the “deserving” persons, the young ambitious ones, the new businessmen, creative and willing to invest in new technologies. So, a people of new consumers and of self-made men, who confront themselves with an oligarchy of privileged persons who benefit from welfare benefits that the State could not anymore grant in a globalized and computerized world: political bureaucracy, administrative bureaucracy, trade unions, workers having already entered into the labor market, having rights not sustainable anymore. With this in mind, the State should consequently reduce as far as possible its role of guarantor of the economic and social second-generation rights, and its role of interventionism aiming to “remove those obstacles of an economic and social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country” (art. 3 of Italian Constitution, come into effect in 1948): such a role should be reduced in order to better adapt to the liberalism inspiring the European construction, while the State should, in this view, focus its activity on supporting young, deserving people, seeking an individual success.

However, only over time, after several Renzi’s political successes and his rise to the presidency of the Council of Ministers, the claim of the necessity of a constitutional reform —juridical demand *par excellence*, even more in a country with a rigid Constitution— became even the main link, the empty hegemonical signifier of the populist chain of the head of the Government: it was a move which could, if successful, consolidate his power for a long time. So, Renzi “junking” the old politics became Renzi “reformer”, who, after compressing the social and labor legislation, proposed to undermine the most resistant legal obstacle coming from the “old” world, a Constitution formed after the end of World War II by a compromise between the christian-democratic, the social-communist and the liberal faction, which he considered as exceeded by the end of Cold War. Such a reform seemed in this view necessary to switch to the *pars construens* and to completely realize his postmodern project of legal system and of social order. The constitutional reform, approved by the Italian Parliament before undergoing popular referendum, did not directly concern the economic and social parts of the Constitution, but it confined itself to modifications of the institutional balances between public authorities, in particular strengthening the influence of the executive branch over the legislative procedure, eliminating perfect bicameralism and direct popular election of the Senate (making it elected by local authorities, and not anymore by the people, and

only in a few cases associated to the legislative procedure), abolishing the provinces³⁵ and strengthening the competences of the State in relation to the regional competences (which in turn had been expanded by a constitutional reform in 2001). All of this was linked to the elections Act which had been recently approved³⁶, strongly majoritarian, which ensured to the most voted party a large majority in the House of representatives (*Camera dei Deputati*). The combination of the constitutional reform and of the elections Act would guarantee to the ruling party and to its leader a political supremacy unusual in Italian recent political history, as the institutional structure in Italy, realized after the fall of the Fascist regime, envisaged a delicate balance of power, shared among several different institutions. It would be impossible here to delve into the complicated contents of the constitutional reform, but what seems more important is to highlight its role of empty hegemonic signifier within an equivalential chain, presenting the reform as the only possible way to ‘unblock’ the country and asking to trust in the charismatic figure of Renzi as able to realize all of this. The wished consequences of saving public money and of quickening the legislative procedure, arising from the simplification of the institutional architecture, were exalted by the supporters of the reform, who pledged substantial effects of moralization of public life, at a time of corruption scandals and of debates about excessive costs of politics. They also promised results of a political stabilization of the country, leading to a solid parliamentary majority for a long time and in tune with the government, and of an economic and social stabilization, through the approval of the strategic reforms wished by the winning party, with the effect of a greater prestige of the country on the European and international scene.

The adversaries of the constitutional reform did not share between them a general political perspective, as they were scattered in the whole political spectrum, often with incompatible general views. Despite this, as an answer to the populist strategy of “reforming the Constitution to unblock the country”, another populist block arose, opposed to the first one, that is what makes very interesting this example: so, not an equivalential logic opposing a differential logic, but two different equivalential logics fighting for the hegemony over social claims. The defense of the Constitution became the empty hegemonic signifier of this other chain of equivalences, organizing itself around the goal of stopping the reform. Notwithstanding the heterogeneity of such a front, the framework of a shared populist discourse took shape, filled up by each oppo-

35. A level of local administration between the Municipality and the Region.

36. Act n. 52 of the 6 May 2015, later repealed before the next general elections, after the popular refusal of the constitutional reform by referendum and after having been declared in part unconstitutional by the *Corte Costituzionale*.

sition force of its particular contents, mobilizing its militants, supporters and electors. The technical aspects of the reform were quite set aside in the public debate, though academics animatedly debated them, respectively highlighting an easier governability or the risk of authoritarian tendencies and of an excessive concentration of powers. In contrast, the shared discourse of the adversaries of the reform focused on the one side on the attack to the concrete experience of Renzi's Government, accepting the defy of the personalization of the confrontation —every political organization with its own criticisms: having hosted too many immigrants and refugees, having compromised workers' rights and supported young people's job uncertainty, having supported banks involved in financial scandals, having too often used the repression of law enforcement against protesters, etc.— and on the other side on the criticism about the influence of international financial powers and of foreign countries on the project of constitutional reform. Actually, the role of the State in the economy and its interventionism for purposes of social solidarity had already been largely dismantled during the previous years, but European institutions and international economic interest groups had often wished for more radical reforms in this direction and the spirit —social, supportive and favorable to the demands of the working class— of the constitutions written after World War II was conceived, in this view, as a dangerous obstacle to the supremacy of market logic. So, several documents had linked the demand of political centralization to the demand of weakening social rights, and to the perspective of constitutional reforms³⁷. Already in 2012, after the stipulation of Fiscal Compact Treaty³⁸, Constitutional

37. See *The Euro area adjustment: about halfway there*, by J.P.Morgan (2013), available on-line: "The constitutions and political settlements in the southern periphery, put in place in the aftermath of the fall of fascism, have a number of features which appear to be unsuited to further integration in the region" (p. 2); "At the start of the crisis, it was generally assumed that the national legacy problems were economic in nature. But, as the crisis has evolved, it has become apparent that there are deep seated political problems in the periphery, which, in our view, need to change if EMU is going to function properly in the long run. The political systems in the periphery were established in the aftermath of dictatorship, and were defined by that experience. Constitutions tend to show a strong socialist influence, reflecting the political strength that left wing parties gained after the defeat of fascism. Political systems around the periphery typically display several of the following features: weak executives; weak central states relative to regions; constitutional protection of labor rights; consensus building systems which foster political clientelism; and the right to protest if unwelcome changes are made to the political status quo. The shortcomings of this political legacy have been revealed by the crisis" (p. 12); see also the letter of Jean-Claude Trichet (in that moment President of the European Central Bank) and of Mario Draghi (later President of the ECB) to the Italian Government of August 5, 2011, after the meeting of the Governing Council of the ECB of August 4: "A comprehensive, far-reaching and credible reform strategy, including the full liberalisation of local public services and of professional services is needed. This should apply particularly to the provision of local services through large scale privatizations. [...] A thorough review of the rules regulating the hiring and dismissal of employees should be adopted in conjunction with the establishment of an unemployment insurance system and a set of active labour market policies capable of easing the reallocation of resources towards the more competitive firms and sectors. [...] In view of the severity of the current financial market situation, we regard as crucial that all actions listed in section 1 and 2 above be taken as soon as possible with decree-laws, followed by Parliamentary ratification by end September 2011. A constitutional reform tightening fiscal rules would also be appropriate".

38. An international treaty, which had been agreed between 25 EU States.

Act 1/2012 had introduced in the Italian Constitution the principle of balanced budget and bolstered the subordination of public subjects to financial European rules. So, the claim of full political, economic and social sovereignty was an element of unification of the anti-reform front, every political movement of this front highlighting one of the aspects (a stronger control of the borders, the opportunity to do expansionary fiscal politics, etc.) of such a wish of recovery of sovereignty. During the last days of campaign for the referendum, the choice of representatives of some allied countries in the EU and in the NATO of openly making a stand only strengthened this rhetoric based on the danger of a radical limitation of national democratic sovereignty coming from the approval of a reform that the common sense already perceived as imposed by foreign powers. Thus, the large majority of people rejected the proposition of constitutional reform, provoking the political crisis of Renzi's Government. So, one populist block vanquished the other one, chaining together a greater number of unsatisfied social demands in a firmer connection. The suggestion of unblocking the country was overcome by the suggestion of safeguarding national sovereignty and getting rid of a diffusely contested Government.

Conclusions: toward a juridical populism

The time has therefore come to draw out some remarks. In this paper, interpretations of populism as an ideology were contested, as they often just result in an ideological criticism towards populism, which does not help at all to understand it. Instead, using the works of Laclau and of Mouffe, populism was interpreted as a particular logic of politics, which prefers a strategy of tying down in an equivalential relationship the social demands (gathered by a certain claim that plays the role of an empty hegemonic signifier) than an institutionalist strategy of differential absorption of the demands (each in isolation from the others). To better understand the mechanisms of such a hegemonic strategy, this essay also focused on the reflections of Vico and of Gramsci and explored the notion of *common sense*, conceived not as something of fixed and unmovable, but as the battlefield of the hegemonic struggle. The adoption of a populist strategy instead of an institutionalist strategy implies greater opportunities of success in a phase of organic crisis, when the social system is not anymore able of providing appropriate responses to a multiplicity of social claims, willing to being enchained in a new frameworks of meanings, striving to substitute the old one, which swings and falls apart. The current historic stage may be defined as a moment of organic crisis. This is the more evident reason

of multiplication of populist phenomena, not necessarily spreading radical ideologies: even moderate views can behave in a populist way, as the stigmata of this age are crisis, fluidity and social uncertainty.

This paper has also shown how juridical claims can be suited to be enchainned in associations of equivalences with other claims, and may even play the role of empty hegemonic signifiers. Law, as economy, morals, aesthetics, the *bon ton* and all which concurs to the formation of the common sense is not foreign to the advent of an age of populisms. Even more in democratic societies, where law is conceived as a product of people's sovereignty, legal questions are currently debated and can create dichotomic divisions in public opinion. We can now go back to the views of some authors, conceiving populism as a pathology of the democratic process radically opposed to constitutionalism (Spadaro, 2009, pp. 2007 ff.; Voßkuhle, 2018, pp. 119 ff.; Ciarlo, 2018, pp. 1 ff.; Scoditti, 2019, pp. 10 ff.; Ferrajoli, 2019, pp. 1 ff.³⁹): this interpretation seems to consider constitutional law as something of static, while, in a period of organic crisis, the constitution is one the battlefields, where several institutionalist logics and several populist logics struggle with variable geometries. The Italian case shows how two populisms could fight for reforming or not reforming a constitution: one populist strategy aimed to modify it, another one managed to avoid this modification. How to interpret such a situation according to the model "constitutionalism versus populism"? Besides, experiences of populism in South America show that constitutions, even very progressive and open to people's participation and involvement, can originate from phenomena of populist hegemony. Such a spirit might also be found in several of the more commended European constitutions⁴⁰.

Populist logic, through its evocation of forces coming from outside the existing institutional system, may result in an element of dynamism and of versatility of constitutional democracies, helping to balance the risks of every excess of institutionalism, which threatens to lock the political system in a self-referential formalism, aside from popular masses and from their claims and only managed by professionals of politics. It is from such situations of discrepancy and of accumulation of an enraged and suspicious distance between governors and governed, that the more serious and baleful reactions originate. Thus, a dose of populism, bringing back at the center of the debate the subject matter of people's sovereignty, may reveal itself to be a life-sustaining medicine. Furthermore, trying to attribute to constitutionalism and to its mechanisms a kind of

39. Criticizing such a conceptual opposition, cf. Müller (2016) and Kaltwasser (2013).

40. See for ex. the Portuguese Constitution of 1976.

mystical value, able to autonomously solve social problems, might be an attempt to hide behind constitutional forms the real nature of the power, adversarial and in itself (whatever is its garment, even constitutional) violent, oppressive and threatening⁴¹. Making forget this nature, as it is the consequence of an institutionalist political logic, is really dangerous: this is why it may be beneficial that a dose of populism could balance it. The role of populism becomes even more fundamental during periods of organic crisis, whose the best way out passes through a democratic mobilization of the people, the last custodian of sovereignty, aiming to collectively elaborate, decide and start a new course of the social, political and institutional framework. In spite of the large margins of elasticity and of adaptation to social change that can be found in the systems of the constitutions, even if formally rigid⁴², searching inside the constitutional order the solution to the crisis of the constitutional order cannot always and necessarily be the most rational, efficient and equitable solution way out. For example, post-war European constitutions guaranteed more or less strongly economic and social second-generation rights: work, appropriate housing, effectiveness of access to instruction, universal and good quality health care, suitable salaries and retirement benefits, etc. Nowadays, about 60 years later, not only these rights are not completely realized, but the tendency is even to weaken them, towards a sort of restoration of the previous liberal political framework, from whose contradictions many horrors of the XX century originated. It was often sufficient not to apply constitutional rules, up to try to make penetrate in the people's common sense the idea that these regulations, outdated, could even be repealed. Also the frequent subordination of the economic policies of the governments to the inflexible willpower of the institutions of the international market and the growth of norms and of fundamental political decisions developed at the European level —absorbed by the market ideology and organized without a genuinely democratic system— increasingly elude and neutralize the principles of democracy and of popular participation which inspire national constitutions, as well as their social contents (cf. Somma, 2019, pp. 17 ff.). Recent history shows how a strategy of differential absorption of these social demands, in the perspective of gradually ensuring their satisfaction, may easily fail, when a direct activism of the masses, aiming to support it from outside the institutional system, is

41. According to Canetti (1960), the execution of every command leaves in whom carries it out a painful sting, whose he feels the need of getting rid, sooner or later: individually, passing it down by the action of making, in turn, a subordinate execute orders; collectively, by the formation of a "reversal crowd", aiming to the joint liberation from a large number of stings of a large number of people, who cannot individually get rid of such commands.

42. See in that respect the reflections of Italian scholars, such as Lanchester (2011), Amato (2016), cf. already Mortati (1998).

lacking. In the dynamic relationship between constitutional form and substance, it is exactly the presence of such an activism, as well as the capacity of foresight and the spirit of openness of the policymakers, that could induce the reception of a widespread need of social transformation in the framework of the existing constitutional texts, giving value through an evolutionary approach —as this might be the case of Italy (cf. Dossetti, 1995, pp. 97 ff.; Barbera, 2015, pp. 265 ff.)— to their democratic, popular and social spirit.

Is there any risk in populisms? Yes, of course, there is: but no more than in institutionalism, in fact. In either case, the wellness or illness of a society and of its social classes reside, in the end, not in the adoption by political actors of one or the other strategy, but in the adoption of one or the other constitutional order and of one or the other form of society. So, depending on what is appropriate in the concrete situation, political actors can choose to use different strategies. The political world of nowadays is a fertile soil for populism; but the more reasonable answer to this tendency could not be, rather than trying to deny the legitimacy of such a strategy, its reception⁴³? In politics, a strategy has firstly to work. Populist logic has no more, no less dignity than a different political logic: simply, in some cases, it works. Nowadays, it often works. Concretely, politics is choosing one side. Once more time, populism just unveils this simple reality. Law, even constitutional law, is one of the several battlefields for the creation of the new common sense, increasingly enchained as an element of populist political logics. Fellow lawyers, welcome to the age of juridical populism!

References

- Althusser, L. (1976). *Idéologie et appareils idéologiques d'Etat*. (Note pour une recherche). In L. Althusser, *Positions, 1964-1975*. Paris: Les éditions sociales.
- Amato, G. (2016). *L'elasticità delle costituzioni rigide. Nomos, Le attualità nel diritto*, (1).
- Azzarà, S. G. (2017). *Nonostante Laclau: populismo ed egemonia nella crisi della democrazia moderna*. Milan: Mimesis.

43. See Preterossi (2019): “Para volver a enlazar la relación con la política, superando la ruptura entre Estados que ya se han entregado a los algoritmos tecnocráticos y los pueblos (que aparecen cada vez más como una amplia área de exclusión abandonada en los territorios), yo creo que el terreno populista, si se declina en clave emancipadora y abierta y no como hostilidad al diferente, es un punto de partida conyuntural necesario. De este se sacan los recursos para una política contrahegemónica de patente matriz social y popular, fundada en la indivisibilidad de los derechos sociales y civiles y en la primacía de la soberanía democrática”; see also Formenti (2016).

- Barbera, A. (2015). Costituzione della Repubblica italiana. *Enciclopedia del diritto: annuali*, VII. Milan: Giuffrè.
- Bauman, Z. (2000). *Liquid Modernity*. Cambridge: Polity Press.
- Betz, H.G. (1994). *Radical Right-Wing Populism in Western Europe*. London: Palgrave Macmillan.
- Canetti, E. (1960). *Masse und Macht*. Hamburg: Claassen.
- Canovan, M. (1981). *Populism*. New York: Harcourt Brace Jovanovich.
- Canovan, M. (1999). Trust the People! Populism and the Two Faces of Democracy. *Political Studies*, 47(1), 2-16.
- Capozzi, E. (2010). Democrazia incompiuta, partitocrazia, antipolitica: una prospettiva interpretativa della storia italiana. In E. Capozzi, M. Griffo (Eds.), *Cercare la democrazia. Un itinerario tra politica e storia* (pp. 113-132). Naples: Alfredo Guida Editore.
- Ciarlo, P. (2018). Democrazia, partecipazione popolare e populismo al tempo della rete. *Rivista AIC*, (2), 1-11.
- De Benoist, A. (2017). *Le moment populiste: droite-gauche, c'est fini!* Paris: Éditions Pierre-Guillaume de Roux.
- Dossetti, G. (1995). Costituzione e riforme. In G. Dossetti, *I valori della Costituzione*. Reggio Emilia: Edizioni San Lorenzo.
- Eklundh, E. (2020). *Excluding Emotions: the Performative Function of Populism. Partecipazione e Conflitto*, 13(1), 107-131.
- Elliott, M. (2016). "Vote leave, take control"? Sovereignty and the Brexit debate. *Public Law for Everyone*. Retrieved from: <https://publiclawforeveryone.com/2016/06/23/vote-leave-take-control-sovereignty-and-the-brexit-debate>.
- Farage, N. (2015). Britain will be flattened if it stays in the EU. *The Telegraph*. Retrieved from: <http://www.telegraph.co.uk/news/politics/ukip/11961604/Britain-will-be-flattened-if-it-stays-in-the-EU.html>.
- Ferkiss, V. (1957). Populist Influences on American Fascism. *The Western Political Quarterly*, 10(2), 350-373.
- Ferrajoli, L. (2019). L'alleanza perversa tra sovranismi e liberismo. *Costituzionalismo.it*, (1).
- Foner, E. (2017). *Give Me Liberty! An American History*, II, V. New York: W. W. Norton & Company
- Formenti, C. (2016). *La variante populista. Lotta di classe nel neoliberismo*. Roma: DeriveApprodi.

- Galli, C. (2019). *Sovranità*. Bologna: Il Mulino.
- Gramsci, A. (1975). *Quaderni del carcere*, vol. II. Turin: Einaudi.
- Gramsci, A. (1975). *Quaderni del carcere*, vol. III. Turin: Einaudi.
- Hermet, G. (2001). *Les populismes dans le monde: une histoire sociologique. XIXe-XXe siècle*. Paris: Fayard.
- Hofstadter, R. (1965). *The Age of Reform: from Bryan to F.D.R.* New York: Knopf.
- Hofstadter, R. (1965). The Paranoid Style in American Politics. In R. Hofstadter, *The Paranoid Style in American Politics and Other Essays*. New York: Knopf.
- Iglesias, P. (Ed.). (2014). *Ganar o morir. Lecciones políticas de Juego de Tronos*. Madrid: Akal.
- Ignazi, P. (2003). *Extreme Right Parties in Western Europe*. Oxford: Oxford University Press.
- Jäger, A. (2016). The Semantic Drift: images of populism in post-war American historiography and their relevance for (European) political science. *Populismus: populist discourse and democracy*, working paper n. 3.
- Kaltwasser, C. R. (2013). Populism vs. Constitutionalism? Comparative Perspectives on Contemporary Western Europe, Latin America, and the United States. *The Foundation for Law, Justice and Society: Policy Brief*. Available at <http://www.fljs.org/files/publications/Kaltwasser.pdf>.
- Kazin, M. (1995). *The Populist Persuasion: an American History*. Ithaca, London: Cornell University Press.
- Knight, A. (1998). Populism and Neo-Populism in Latin America, Especially Mexico. *Journal of Latin American Studies*, 30(2), 223-248.
- Laclau, E. (1996). Why Do Empty Signifiers Matter to Politics? In E. Laclau, *Emancipation(s)*. London - New York: Verso.
- Laclau, E. (2000). *La guerre des identités. Grammaire de l'émancipation*. Paris: La Découverte/MAUSS.
- Laclau, E. & C. Mouffe (2001). *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*. London, New York: Verso.
- Laclau, E. (2005). *On Populist Reason*. London, New York: Verso.
- Lanchester, F. (2011). *La Costituzione tra elasticità e rottura*. Milan: Giuffrè.
- Lévy, B.H. (1994). *La pureté dangereuse*. Paris: Grasset.
- MacRae, D. (1969). Populism as an Ideology. In G. Ionescu & E. Gellner (Eds.), *Populism: Its Meaning and National Characteristics*. London: Weidenfeld and Nicolson.

- Martinelli, A. (2013). *Mal di nazione: contro la deriva populista*. Milan: Università Bocconi Editore.
- Mattei, U. (2014). *Il modello di common law*. Turin: Giappichelli.
- Matteucci, N. (1972). *Il liberalismo in un mondo in trasformazione*. Bologna: Il Mulino.
- Matteucci, N. (1976). *Dal populismo al compromesso storico*. Rome: Edizioni della Voce.
- Matteucci, N. (1976). Populismo. In N. Bobbio, N. Matteucci, G. Pasquino, *Dizionario di politica*. Turin: UTET.
- Mélenchon, J.L. (2014). *L'ère du peuple*. Paris: Fayard.
- Mény Y. & Y. Surel (2000). *Par le peuple, pour le peuple. Le populisme et les démocraties*. Paris: Fayard.
- Minogue, K. (1969). Populism as a Political Movement. In G. Ionescu & E. Gellner (Eds.), *Populism: Its Meaning and National Characteristics*. London: Weidenfeld and Nicolson.
- Mortati, C. (1998). *La Costituzione in senso materiale*, reprinted with an introduction of G. Zagrebelsky. Milan: Giuffrè.
- Mouffe, C. (2000). *The Democratic Paradox*. London - New York: Verso.
- Mudde, C. (2004). The Populist Zeitgeist. *Government and Opposition: an International Journal of Comparative Politics*, 39(4), 541-563.
- Müller, J.W. (2016). *What Is Populism*. Philadelphia: University of Pennsylvania Press.
- Pappas, T. S. (2014). Populist Democracies: Post-Authoritarian Greece and Post-Communist Hungary. *Government and Opposition: an International Journal of Comparative Politics*, 49(1), 1-23.
- Pinelli, C. (2019). Populismo, diritto e società. Uno sguardo costituzionale. *Questione Giustizia*, 2(1), 29-35
- Pollack, N. (1960). Hofstadter on Populism: A Critique of "The Age of Reform". *The Journal of Southern History*, 26(4), 478-500.
- Pollack, N. (1962). *The Populist Response to Industrial America*. Cambridge (Massachusetts) - London: Harvard University Press.
- Pombeni, P. (2004). Il populismo nel contesto del costituzionalismo europeo. *Ricerche di storia e politica*, 7(3), 367-388.
- Preterossi, G. (2019). Lucha de clase y lucha de pueblo. *Soft Power. Revista euro-americana de teoría e historia de la política y del derecho*, 6(1), 14-31.
- Reid, T. (1785). *Essays on the Intellectual Powers of Man*. Edinburgh: J. Bell; London: G. G. J. and J. Robinson.

- Riker, W. H. (1982). *Liberalism Against Populism. A Confrontation between the Theory of Democracy and the Theory of Social Choice*. Prospect Heights: Waveland Press.
- Sartre, J.P. (1951). *Le Diable et le bon Dieu*. Paris: Gallimard.
- Saward, M. (2006). The Representative Claim. *Contemporary Political Theory*, 5(3), 297-318.
- Scoditti, E. (2019). Populismo e diritto. Un'introduzione. *Questione Giustizia*, (1).
- Shils, E. (1956). *The Torment of Secrecy: The Background and Consequence of American Security Policies*. Glencoe: The Free Press.
- Sigal, S. & E. Verón. (1986). *Perón o muerte: los fundamentos discursivos del fenómeno peronista*. Buenos Aires: Editorial Legasa.
- Somma, A. (2018). *Sovranismi. Stato, popolo e conflitto sociale*. Rome: DeriveApprodi.
- Somma, A. (2019). *I limiti del cosmopolitismo: la sovranità nazionale nel conflitto tra democrazia e capitalismo*. Costituzionalismo.it, 1.
- Spadaro, A. (2009). Costituzionalismo versus populismo (Sulla c.d. deriva populistico-plebiscitaria delle democrazie costituzionali contemporanee). In G. Brunelli, A. Pugiotto, P. Veronesi, *Studi in onore di Lorenza Carlassare. Il diritto costituzionale come regola e limite al potere*. Naples: Jovene.
- Taggart, P. A. (2000). *Populism*. Buckingham: Open University Press.
- Taguieff, P.A. (1984). La Rhétorique du national-populisme: les règles élémentaires de la propagande xénophobe. *Mots. Les langages du politique*, 9, 113-139.
- Tarchi, M. (2015). *Italia populista: dal qualunquismo a Beppe Grillo*. Bologna: Il Mulino.
- Venturi, F. (1972). *Il populismo russo*. Turin: Einaudi.
- Vico, G. (1984). *The New Science* (English translation from the third edition of 1744). Ithaca - London: Cornell University Press.
- Villacañas, J. L. (2015). *Populismo*. Madrid: La Huerta Grande.
- Vofskuhle, A. (2018). Demokratie und Populismus. *Der Staat*, 57(1), 119-134.
- Wiles, P. (1969). A Syndrome, Not a Doctrine: Some Elementary Theses on Populism. In G. Ionescu & E. Gellner (Eds.), *Populism: Its Meaning and National Characteristics*. London: Weidenfeld and Nicolson.
- Worsley, P. (1969). The Concept of Populism. In G. Ionescu & E. Gellner (Eds.), *Populism: Its Meaning and National Characteristics*. London: Weidenfeld and Nicolson.
- Zanatta, L. (2002). Il populismo. Sul nucleo forte di un'ideologia debole. *Polis: ricerche e studi su società e politica in Italia*, 16(2), 263-294.
- Zolea, S. (2019). *Droit, populisme et sens commun: la théorie démocratique face à l'ère des populismes*. *Roma Tre Law Review*, (2), 129-164.