Review – Power to the People

https://www.e-ir.info/2023/03/22/review-power-to-the-people/

AKRITAS KAIDATZIS, MAR 22 2023

Power to the People: Constitutionalism in the Age of Populism
By Mark Tushnet and Bojan Bugaric
Oxford University Press, 2021

Power to the People is a turning point in constitutional scholarship on populism. According to a widespread view, populism is necessarily anti-pluralist, inherently anti-institutional and hence incompatible with constitutionalism (e.g. Müller, 2017). Andrew Arato and Jean Cohen offer the most refined version of this argument. While they acknowledge that there are many different variations of populism, they nevertheless insist that "the very logic of populism, […] in both left and right variants, points to political authoritarianism" (Arato and Cohen, 2022, pp.1-2). Tushnet and Bugarič reject the incompatibility thesis and offer a more nuanced analysis instead. Their conclusion is that some forms of populism are inconsistent with constitutionalism, while others aren't. As they put it: "Sometimes authoritarian populism leads to democratic backsliding and breakdown, and sometimes democratic populism fosters democratization" (p.38). A crucial point they make is that when populists slide into authoritarianism, they are hardly populists anymore, and they should be best described as "authoritarians masquerading as populists" (pp.1, 38). Contrary to conventional wisdom, then, they point out the democratic potential that at least some forms of progressive populism entail. In that respect, their analysis, while not explicitly referring to it, seems related to the discursive approach to populism, usually associated with the so-called Essex School. As Yannis Stavrakakis, a major advocate of this approach, argues, "populism is many things beyond the boogeyman of democracy portrayed by many liberal theorists; […] it often operates as a force rejuvenating democratic institutions and deepening popular participation" (Stavrakakis, 2020, p.4). Tushnet and Bugarič would certainly agree.

Power to the People is organized in three parts. In the first part (chs. 1-3), the authors offer minimal, or 'thin', definitions of both constitutionalism and populism, which they compare to argue that these two concepts are not always, and not per se, inconsistent with each other. They certainly can be, and they have often been, but they need not be. Populism comes in many different variations, conservative as well as progressive. The constitutional implications of each of them is a variable and not a given; context and detail matter. In the second part (chs. 4-10), the authors test their hypothesis in a series of case studies. Empirical analysis shows that more often than not, and in the most prominent cases, populism in power — whether right-wing or left-wing — tends to slide into authoritarianism. The names and the likes of, Viktor Orbán, Hugo Chávez, Donald Trump, or Jair Bolsonaro, among several others, come easily to mind. However, there are also political actors plausibly labeled as populist who cannot be seriously accused of authoritarianism. The populism of, say, Bernie Sanders, Jeremy Corbyn, Podemos in Spain, or SYRIZA in Greece is inclusionary and emancipatory. Moreover, several case studies examined by topic (and not by country) also indicate that populism comes in degrees. Political actors can be more or less populist, and they may utilize a populist discourse to advance some of their policies but not others. Proposals for court-packing or the abolition of presidential term limits, for example, often portrayed as part of a populist toolkit, may come from populists and non-populists alike.

The third part of the book (chs. 11-12) is more forward-looking. The authors note that populism arises as a reaction "to real problems with contemporary representative democracy" (p.227). By highlighting liberal democracy's representation and democratic deficits, (non-authoritarian) populism directs attention to the need for democratic innovation. In the last chapter of the book, the authors explore and discuss institutional innovations — such as

adequately designed referendums, deliberative polling or citizen assemblies — that, by giving more power to the people, deepen and empower democracy. Their analysis refutes a common misconception, namely populism's alleged anti-institutionalism. Institutional reformism is indeed quite common with populists. This, however, doesn't necessarily mean that populists are against institutions as such. True, (authoritarian) populists often do attempt to weaken, bypass, capture or even abolish institutions that stand in their way. But sometimes, populists just seek to reform or replace established institutions with new (or novel) ones. This is central to their strategy, which is shaped by populism's core elements: people-centrism and anti-elitism. Populists are, generally, against a corrupt and unresponsive-to-popular-demands elite establishment. Since elites are often supported by "a strongly entrenched and self-reinforcing status quo" (Johnson 2020, p.208), and since institutions tend to operate with a rather strong status quo bias, it should come as no surprise that populists seek to reform existing institutions that tend to reproduce the status quo. This, however, is not particular to populism; it has been, historically, at the very heart of any modern democratic reform. Hence, "populist "confrontations" with constitutionalism are often nothing more — or less — than attempts to find appropriate institutions, consistent with commitments to constitutionalism, that allow populists to deal with the political challenges they face" (p.5). Simply put, institutional reformism is not in itself a threat to constitutionalism. It all depends on the specific ways the reforms are carried out. Some reforms may indeed distort constitutionalism, but others may be perfectly compatible with it and even revitalize it.

Tushnet and Bugarič do not pretend to be politically neutral; they "regard [them]selves as progressives and are sympathetic to many aspects of progressive populist programs" (p.2). Interestingly, this stance allows them to forgo a common bias that scholars of comparative constitutional law, a field with "a strong cosmopolitan tilt", have when they engage with the study of populism, which has "a strong *anti*-cosmopolitan tilt" (p.4). *Power to the People*'s major contribution to the constitutional populism studies is a necessary and welcome disambiguation. Populists sometimes tend to be "proto-authoritarians" (pp.87-88, 148-50) or even end up as plainly authoritarians. When they do, however, they seem to deviate or pervert, indeed betray, the core populist ideas; they are hardly populist any more. Hence, both populism and constitutional studies need to carefully demarcate populism from authoritarianism.

References:

Arato, A. and J. L. Cohen (2022). *Populism and Civil Society: The Challenge to Constitutional Democracy*. New York: Oxford University Press

Johnson, D. (2020). 'In Defense of Democratic Populism', in G. Neuman (ed.),*Human Rights in a Time of Populism: Challenges and Responses*. Cambridge: Cambridge University Press, pp. 192-217

Müller, J.-W. (2017). 'Populism and Constitutionalism', in C. Rovira Kaltwasser et al. (eds.),*The Oxford Handbook on Populism*. Oxford: Oxford University Press, pp. 590-606

Stavrakakis, Y. (2020). *On Laclau's Alleged Monism*, POPULISMUS Working Papers no. 11, available at http://www.populismus.gr/wp-content/uploads/2020/11/Stavrakakis-monism-wp111.pdf

Acknowledgement:

This review is part of a research work that is supported by the Hellenic Foundation for Research and Innovation (HFRI) under the 1st Call for HFRI research projects to support faculty members and researchers (Project Nr.: HFRI-FM17-1502).

About the author:

Akritas Kaidatzis is associate professor of Constitutional Law at the Aristotle University of Thessaloniki Law School, with a specialization in the relation between law and politics and in Greek constitutional history. He is the principal

investigator of the research project Populist Constitutionalism (PopCon) (www.popcon.gr) and the author of 'Progressive populism and democratic constitutionalism', *Revus* 47/2022 (doi.org/10.4000/revus.8068) and 'Populist Constitutionalism' in *Research Handbook on Populism* (Y. Stavrakakis & G. Katsambekis eds), Edward Elgar (forthcoming 2023).