

Does populism remake the world of institutions?

Abstract: Hanspeter Kriesi in his article on populist challenge (Kriesi, 2014) came out with an inspiring conclusion on the reasons for which the populism in the East European countries is different compared to the West European populism. Let us summarise his main points: the Central and Eastern Europe democracies are less established, the party system's representation function is low, which is mainly caused by the lack of institutionalisation of those parties as well as by the low-quality performance of the public authorities. My concern to the issue of populism will be mainly analysed via the challenges that the rise of populism (as a phenomenon that is present both in West and East European politics) brings to the institutions, which are traditionally based on solidly structured political parties and on their well performed strategies. I will discuss the following questions:

Is the eastern populism different from the western understanding of it?

Is the likely difference connected with different cleavages in the society?

What were the likely causes of the lacking behind the institutionalisation of parties?

Is the lack of solid institutionalisation of parties due to the floating support of voters, to the volatile political leadership and weak coalitions and unclear mode of responsive and responsible politics in both national and subnational levels of governance?

What are the short and the long term possible consequences?

Keywords: populism, political institutions

I. Populism across the oceans and continents.

Cristobal Rovira Kaltwasser (2012) makes a thorough comparison of the populism as a phenomenon in the contemporary world focusing mostly on the Latin America countries experience and Western Europe. The author's comparative concern comes from the initial understanding of what democracy is about and what expectations and outcomes democracy is to deliver. And from that point of view makes democracy linked to populism. Summarising the broad range of literature on populism Kaltwasser points out that there is no one definition of populism neither clear picture of positive or negative implications. In case we expect that democracy is to deliver fair politics of contest under fair rules of democratic constitutionalism then populism is a spectre, pathology, and threat. It is

mostly so because the contestation is performed mainly within the electoral competition and in the framework of established institutions. In case we consider that democracy is to open doors for inclusiveness of those who feel marginalised then, populism may give another chance for opportunities, and thus be corrective if not an integral part of democracy. The latter approach considers populism as part of the

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stream for deliberative democracy the one that promotes political articulation of different demands of different groups and strata. Such articulation helps the heterogeneous actors to come together, identify the common enemy and build up strategies for their claims to be dealt with.

Populism is usually presented as wide if not massive in participation (often spontaneously gathered) of people, vague in long term policy strategies demands but very precise or detailed claims, and easy communicated protest actions (often darted to recalling of a responsible person), represented and led by a charismatic leader.

Despite many common features populism viewed by Kaltwasser stems from different kind of antagonism therefore the comparison between Latin America and Western Europe gives different picture of populism. While in Latin America the populists are said to have “*propensity to develop clientelistic linkages with the electorate*“, and the populism tends to generate inclusion of sectors of the society that were previously excluded, in Europe multiculturalism seems to generate a cleavage, which fosters the emergence of a type of populism that is marked by a xenophobic discourse.

I consider the above ground for analysing the phenomenon of populism across the oceans and Europe especially in many ways revealing and worth of elaborating. To my understanding, it is important to look at the causes for which the sparkling of the general protest manifested via populist challenges emerges. The causes for which the institutionalised governance does not meet the public expectations, deceives the voters to the point that it is not willing to wait until the next elections for change, are crucial for understanding of the actions taking up by the populist challenge and their chances for success. In other way, the populism may serve as a channel for left or right wing actors, as a channel for extremists of both colours, as a channel that makes established institutions vigilant at the best or locked down at the worse.

II. What kind of populism we may detect in Czech Republic or in Slovakia?

What are the grounds for having it emerge? Can we use the same comparative logics for analysing West and Eastern European experience?

I observe that there is populism both as the one in the government and outside the government. The populism within the government as for the issues as example might be Euroscepticism and anticommunism in the Czechia (unlike in Slovakia), and national populism in Slovakia¹ (perhaps unlike in Czechia). If we question ourselves why such a difference between the two countries, the answer may be found in darting either the enemy or in looking for the new state and national identity. On the one hand, for the Czech government it was Brussels that was to be blamed for the said bureaucratic regulatory powers imposed on Prague and the whole country, and the communism whose legacy from the past that is still to be watched thoroughly (let us remind that the Czech Communist Party MPs since 1989 get seats in the Parliament). On the other hand, for the Slovak government the main objective since 1993 was to establish the new statehood but also to form a nation within the new state. The parties in government (Smer-SD, Slovak National Party and Movement for Democratic Slovakia) stressed in one way or another the Slovak nation at the core of the state identity. Some of the analysis stress that such as nationally/centred government policies and leaders' communications were at the expense of intercultural political dialogue among party leaders in general.

For both countries as an example of protest populism I draw attention to different movements for transparency, for struggle against corruption, for recall of established elites. This kind of protest aims at the established elites irrespective of their position: the protest goes both against the parties in government as well as against the parliament parties in opposition. The newcomers who entered the Parliaments (as in Czechia: The Greens, the Public Affairs, TOP-09, Down or as in Slovakia: Alliance of New Citizens, Freedom and Solidarity, Common People and Independent Leaders, We are the Family, Peoples' Party/Our Slovakia, Network) do challenge not only the cabinet (as usually the opposition does) but also the parliamentary practice and the standing orders.

III. How do the newly emerged groupings challenge the Parliament?

Let me draw attention to the meaning of the regulation of the parliamentary procedure in the light of the tensions between the majority and the opposition². There are different sources which do affect the way how the MPs and other actors use their rights and privileges to influence the procedure. The parliamentary procedures are to be not only well conceived but fully understood in order to make them working.

The explanation comes from the general observation that all institutions need concise and clear procedures for the transaction of their business. And Parliaments belong without any doubt to the family of such institutions. Moreover, "...for a political assembly, embodying conflicting elements, combating parties and competing individuals..., agreed procedures are essential for the orderly conduct of proceedings."³ Why then take care of and take any interest in a crystal-clear issue? The issue may attract the reader since it concerns both scholars and members of the Parliament on the one hand and public actors and media on the other. The once very close shop and less transparent area, becomes more and more open and media at large take opportunity to cover issues of a certain and selected public concern. The daily TV news, short spots of parliamentary cross party debate or TV parliamentary channels and internet links to the Parliament working (both live and on history track) make the Parliament very open to public scrutiny and public criticism during the whole House term. But perhaps surprisingly, (perhaps, not that much) public eyes and ears are not that much attracted by the ratio of the debate. What is more noticed and generally recorded, is a well focused witty remark by an Opposition MP which introduces not only a spirit of humour but also makes out of serious arguments object of constant ridicule. This not only may destroy the Government Minister's long time build-up argument in support of the piece of legislation in question, but also construct a public image of a senseless and emptiness of MPs' discourse. Briefly, the media coverage of the parliamentary debate is far from helping to build an image of a balanced and ration/based argumentation. The consequences of it are reflected in the opinion surveys, where generally, the parliaments' credibility is the lowest among the institutions. To make it clear, my critical view is not pointing at the content of the debate, since it is protected, of course by the parliamentary immunity, nor at the style of the opposition MPs speeches, instead, I am mostly opposed to and critical of media publicity marketing with which they show the debate. Moreover, the media coverage tends to strengthen the appearance leadership based on a frequency of media performance. This is somehow makes a biased picture of the Parliament as a floor of

collective negotiation and creates an image of fragmented and strongly personalised politics not always linked to the rational decision/making.

One may be sceptical on the weight put on the floor debate. One may suggest that the work of governing does not take place in the House not even in the parliamentary democracy. One may advocate for communication between the Cabinet and the Opposition taking place outside the House instead of the open debate on the floor. Taking seriously all the pros and cons, despite all the critical the debate in the House still makes sense. We then still believe not only in a ratio of the publicly exposed arguments in support or in defeat of the motions that take place, so to say, at the right place which is on the floor of the House. Just to remember the very salient characteristics of the representative government as thought and described by J.S.Mill. In that case, the debate is conceived as substantive part of the MPs' business and as such at the core of the logics of the work of the Parliament. The nature of parliamentary procedures both legislative and other processes may thus in many ways shape the debate (in its length, content, form or impact on the final resolution). Today, the substance of the true interest in parliamentary procedures may thus be resumed as following: 1) Who governs the parliamentary business?, 2) Are the rules of procedure well established and well known in order to produce predictable decision outputs?, 3) Do parliamentary procedures guarantee a reasonable balance between the Government's power and the Opposition's influence?

The question on who governs the parliamentary business is at first easy to answer: It is and should be the majority and the party who has the power to gather and use in divisions the majority of the votes. The most ambitious considerations provide for responding to the rule of law principles, giving the chance to the legal procedures to govern the business of the Parliament. It then justifies the higher principle of protecting not only the minority (the Opposition) from being permanently outvoted but also to give chance to the public to support the MPs' speeches on the floor (this is the public opinion) to express their alternative options to the bills and to introduce motions (or amendments) during the respective legislative procedure. It seems then that the form of (statutory) law as for the procedures governing the legislative process is important from the point of view of the fairness of participation in the legislative process irrespective of the vote shares of the parties. We then suppose that the form of law governing the procedures makes the position of MPs more equal. This approach has been more common in the continental way of thinking about the rules of procedure than in the British tradition of the sovereignty of the Parliament, where this is not the Law but the House which is the master of its own procedures. And to quote Griffith (Griffith&Ryle: 2002:248: sub. note3): "...the government's control over the business of the House means that proposals for change which do not suit the government of the day are unlikely to be put into effect". The British Houses' procedures are guided by different sources of procedure. They are: practices, standing orders or resolutions, rulings from the Chair and few statutory provisions. Parliaments with the continental tradition (including Czech Parliament and Slovak Parliament) are governed by the statutory law of procedure, mainly. This legal form is in many aspects embedded even in the constitutional provisions. This legal source is completed by some rulings by the Chair and some practice. Unlike the British sources the statutory provisions take precedence and cannot be overruled by other rules. Comparing the non-legal rules in this time will not be complete but taking the example of the Speaker's rule that Members who carry mobile phones in the Chamber should have the sound switched off and should not receive information on them for use in debate in the British case, can be compared to the general power given to the Czech Chair of

the House to govern the internal -home- business of the House (and to rule on parliament restaurant opening hours, for example). But unlike the power of the British Speaker to prevent Members who have not taken the oath from drawing the parliamentary salary or allowances, or to their seats and use their offices and facilities by ruling his own capacity, the continental solution supports a legal provision if the elected candidate does not take the oath, (s)he loses the seat. The latter solution reduces room for the Chair to rule over the ways the mandate of the elected representative is handled.

The continental solution does not necessarily speak for the best solution. It only illustrates different approaches to conflict resolution on the ground of the sources of procedure. The statutory character of the standing rules invite for a different forum to solve conflict among parties in parliament. As it has been recently and repeatedly a matter of conflict that has been put forward before the Constitutional Court in the Czech Republic⁴. The main question that arises, concerns the fact that conflicts which are of political nature are being transposed to the conflict on the interpretation of the legal provisions. And consequently, conflicts over the legal interpretation of the rules of procedure do have immediate and direct effect on the bill passed in the Parliament. And as a result, it is the Constitutional Court who is at the end, the master of the rules of procedure in case they govern the legislative process. One can raise a question whether it does not happen at the expense of the capacity of the House to use non-legal and rather political means of communication and negotiation. The legislative process once it becomes overviewed by Constitutional Court (as it is the case of both Czech and Slovak countries) gives chance not only to the Court to interpret the fairness and constitutionality of the legislative procedure but also opens doors for a hand of MPs (and Senators) to go to the Court and claim that a piece of legislation is unconstitutional and therefore should be abolished. Given the fact that the Parliaments are getting too personalised and to some extent there is a growing number of independent MPs or MPs from the newly emerged groupings or challenger parties, the master of the Houses standing orders is the respective Constitutional Court.

There is also another way of conflict resolution à la continent: amending the statutory provisions. There are several examples which illustrate at best changes in Acts of Houses regulating the legislative process, the work of the committees, the establishing of the party factions, the composition of various organs, the divisions and different modes of voting, among others. Needless to stress, that any motion to such an amendment to this Law, requires very strong motivation from both majority party (coalition) and opposition to reach agreement and to make it working not only by the authority of the judicial overview but also by the understanding of the meaning of the rules as necessary and binding on their own right.

Whether the rules of procedure are good enough to be rightly observed and thus lead to responsible output, the answer is not easy to give. Griffith (2002:248) speaks of good procedure as such that is binding on all concerned, that notice is given of the business to be taken, and that the procedures should be clearly understood by all those affected. Answering the question of a good procedure is thus not only a matter of a good law of procedure (in case of our continental parliamentary experience) but also of the general understanding that the working of the parliaments requires specific capacity of all actors to accept and understand the logic of the collective decision making body. The Parliament is not a floor of individual representatives (irrespective of the electoral system, whether single constituency system or proportional representation system) of the People. The Parliament is more often constituted as a body of collective decision making and as such, it requires building up capacity for negotiation in between

the government majority and the opposition as well as intra-party caucuses and among non-aligned MPs. As many times stressed by scholars, the House is not an assembly of individuals, it is not a Chair forum nor is it the Prime minister arena. Procedures are then, to reflect democratic principles, so complex and long. The complexity is given by the number of actors involved in different readings of the bill or other motions. It is due to the variety of tools for interventions to the procedure (amendments, amendments to amendments to the bill), or for the purpose driven (or misuse) of the MPs privilege. The very crucial question on the table is, for instance, whether the agenda of the session is to be in hands of the Chair, Conference of the presidents (party leaders), the government or whether it is to be voted on each session and thus be object of possible obstruction from the floor.

What makes the (good?) understanding of the importance of the institutional procedures certainly hard, are situations in which MPs do lack experience and in which even the chairpersons had not, when taking the seat, served in previous parliaments. Shortly, frequent (almost after each general election) changes in presidencies (chairs)⁵ and a low incumbency rate do not help to build up a strong familiarity with the rules and there is a potential risk for disrespect for procedures.

Whether the rules of procedure do provide for a respectful balance of power of the majority (coalition government) and opposition' influence over the parliamentary work, is a crucial issue of democratic principles of governing, in general. Taking it from the formal point of view, each vote of every MP has the same weight. Only in exceptional cases, when rationality is given justifiable precedence, the chair may have two votes. More often we are witnessing the dilemma of the ruling by majority who itself is to respect the minority. The logic of the parliamentary government strengthens the need for governing and for taking the responsibility for governing. Following are the expectations for the minority either to take chance for scrutinising the government, to make the scrutiny public and enter campaigning to the next general elections, or to participate in the legislative or other processes to make the consensus base larger and politics less adversarial. Of course, rarely we observe yes/no situation. As mentioned above, any work in the parliament should be the work on consensus building terms. However, there are clear cut situations which require strong leadership from the majority (like the Financial Bill) on the one hand and on the other for some bills it may be preferable to be of joint effort of the majority and the opposition (like Health Care reform bill or Representation of People Act, electoral reform). At least one constitutional principle may come on table: that the government responsibility is not reduced for the fact that the majority party in government has accepted the amendments to the bill introduced by the Opposition. In other words, in any case the government is willing and open to accept the broadly shared opinions on the piece of legislation it does not limit the answerability of the cabinet for passing the legislation. Following this argument, it makes us convinced, that the government is to be given the opportunity to withdraw its bill in any stage of legislative process in case it considers that its original bill has been "overwritten" by multiple amendments initiated by private MPs.

IV. Some concluding remarks instead of conclusion

The above analysis reflects research and observation of the Czech and Slovak parliamentary practice over approximately last two decades. It seems that the division of the institutional roles of the government and the opposition are not yet well established. There seem to be

many incentives which support a tendency to take the seat for individual driving in the parliamentary business. There appear to be quite important constitutional issues brought to the Constitutional Court which makes the latter the master of the law on parliamentary legislative procedure. The emergence of new parties that take up seats in the parliament make the situation even worse, since the individualistic approach to politics hampers the character of the parliament as collective actor. No much effort is to be made for bringing the motion of censure to the floor, no much effort is to be invested in order put forward a piece of legislation on the agenda (a single MP may put forward a piece of legislation, for instance). This is to be reviewed, to keep the parliamentary parties both responsible and responsive.

Hanspeter Kriesi raised the question on whether the rise of populism in Eastern Europe was due to the lack of institutionalisation of the parties. Perhaps, yes. However, one of the main reason which I see is the lack of responsibility and responsiveness of the already established parties. The same occurs in the Western Europe, according to the research carried out by Bardi, Bartolini and Trechsel⁶. What makes to two parts of European politics different is the scope of changes and range of reforms, that the political parties and civil societies were expected to overcome. Both institutional and non/institutional reasons are perhaps behind the scenes, today as they are open to much more participants and actors whose identity and stable attachment to the cause with the electorate is sometimes very unclear, fluctuating and oscillating. Therefore, I am less inclined to blame the voters for their confidence in the new parties and leaders. I would rather call on responsibility the political parties for their weakness to make the constitutional regime (and parliaments) more stable.

Notes

¹ Meseznikov, G. and Gyarfasova, O., *National Populism in Slovakia*. Institute for Public Affairs, Edition Working Papers, Bratislava 2008.

² The following analyses comes partly from my previous work on parliamentary procedures, published in short article: Reschova, J. *Do Parliamentary Procedures Matter?* (2016).

³ Griffith and Ryle, *Parliament. Functions, Practice and Procedures*. Second edition. London Sweet&Maxwell 2003 p. 247.

⁴ J. Kysela, The Influence of the Constitutional Court on the Rules of Legislative Process in the Czech Republic. In *Rule of Law and Mechanisms of its Protection. Czech Perspective* (L. Pítrová, ed. et al.) RW&W, 2015.

⁵ The Czech Senate practices the rule that after partial elections a new voting on the speaker seat takes place. This is every two years.

⁶ Luciano Bardi, Stefano Bartolini and Alexander H. Trechsel (2014) Responsive and Responsible? The Role of Parties in Twenty-First Century Politics, *West European Politics*. 37:2, 235-252.

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