

How to defend the democratic principle when elections and parchment barriers fail.

A realistic approach to constitutional democracy

MATTEO LARUFFA

Introduction

Historically, democratic theories aroused from the study of democracy's twists and turns, triumphs and crumbles. Within this inevitable logic, basic ideas and standards of analysis have been introduced in our discipline as attempts to observe and understand promising or deluding experiences of the long walk of democracy since very back in the past to recent times. As a result, from the beginning of political theory in antiquity until now, open questions still push our scientific research and normative thought to explore, and hopefully, to learn more on democracy. One of the overriding lessons of these years of democratic crises is not just that history has declared itself to be without end, rather than our research on these phenomena will have to continue and progress free from the conviction that we can study new events and problems with old theories and methods. In short, what we think of

democracy, its crises and achievements will always require new discoveries which can keep democratic theories updated to the unstoppable evolution of political realities.

Crudely stated, we do not always realize the lag of our knowledge of these political problems behind the real path of history. But sometimes, as in the case of the crisis of democracy, the plain fact is that this lag became evident as our theories and research methods fail to fully describe and explain the phenomenon we witness. A lot of work still needs to be done in order to formulate new paradigm for the study of democracies in crisis, and to clarify the persisting ambiguity which characterizes our theoretical background. The trial that politics has placed before many constitutional democracies is forcing us to rethink past ideal bases of constitutional democracy and to identify new assumptions that can be rigorously enough for enabling political scientists and scholars to achieve a more

systematic, useful and consistent research of the phenomenon.

For example, contrary to the approach exposed by Giovanni Capoccia, the defense of democracy is not only a political process where the successful strategy consists of a democratic majority winning a political battle against an extremist minority¹. Indeed, the current crises show an opposite perspective where incumbents are antidemocratic and other institutions can fight to protect democracy or fail in their mission. That is why, rather than studying how democratic incumbents try to protect democracy against outsider movements by counteracting electoral threats, we focus on other principles and actors of constitutional democracies.

If we frame the problem in this way, because of the peculiarities of the current crisis of democracy we should review some of the theoretical premises that we usually take for granted as the unquestionable pillars of constitutional democracy: elections and checks and balances enshrined in the separation of powers.

Electoral failures and populist attacks

It will become abundantly clear that the conditions under which many democracies are attacked from within are showing that the elections are no longer the first defense of democracy, and this assumption has various implications. For instance, let us begin by observing the consequences in terms of the accountability of democracies. According to Leonardo Morlino, among the first scholars to use the term accountability for assessing the quality of democracy,

it indicates the obligation of elected political leaders to answer for their political decisions when asked by citizen-electors or other constitutional bodies². In contrast to the mainstream notions of accountability used so far in the literature, as that one above briefly mentioned, the set of dimensions for monitoring the capacity of democracy to defend itself would not include electoral accountability. Indeed, as already said, electoral defenses can easily fail, and political actors do not act as in the past when parties gathered to form a democratic front against extremists. To sum up, after the democratic political sphere has been broken, patterns of attitudes, values and beliefs about politics can create ambiguous electoral results, which can give rise to antidemocratic dynamics that democratic institutions cannot always and easily control. This does not mean that the people cannot save democracy. However, although citizens can do it, as they can save it, they can also condemn democratic institutions as well.

Under the current circumstances, they can produce democratic mandates without democratic powers, values and policies. If elections are used for strengthening political leaders whose goals are against democracy itself, then, elections cannot be considered anymore just an instrument to get rid of unpopular or dangerous incumbents, or more conventionally, the key method to decide who governs and pacifically achieve government turnover. This is perhaps sufficient to abandon the consensus view of the electoral process as unconditionally a "democratic mean for democratic aim". In spite of all the times that elections are occasion for citizens to control the political power and remove incumbents, the

results of many recent elections and popular consultations force us to be skeptical on an idyllic idea of the vote. For example, in the American founding fathers' vision, elections were exclusively contemplated as the «primary control on the government»³. It becomes evident that, as people can vote out a political group in support of another, elections can be also a tool used by antidemocratic leaders to gain power peacefully, silently and unquestionably (for the democratic rule: who wins has to govern). In the last years, we have witnessed that democracy cannot rely anymore on the elections as the vote had revealed to be not an impeccable mechanism, but a two-way mechanism which can defend or defeat democracy. Elections can be the way to save or to overthrow democracy, to create a democratic trap or to escape from it. In a few words, elections are becoming an instrument of political power rather than a guarantee of political freedom. The current risk for many western democracies is not anymore that one of a violent death, as vividly-sketched by James Madison⁴ to depict the recurrent epilogue of democracy since the ancient times. Perhaps, it might be instead, the gradual agony of an irreversible or long term political de-growth, where consensus can narcotize entire democracies concealing numerous dangers.

This argument which breaks the illusion of the elections, as they would be enough for a regime to be truly democratic, is also strengthened by the fact that the power of elections and their functions are limited to a few specific moments of democratic life of a country. Namely, even if elections are used to get rid of an incumbent acting against democratic principles, rather than to claim a mandate for antidemocratic

leaders and groups, they do not provide any continuous defense to democracy but when citizens are invited to vote. Democracy cannot count on this mechanism as a constant defense. That is to say, it cannot count just on its citizens, not between two elections nor during the elections, because they can be the moment when the attack on democracy becomes real and its crisis starts. Since we are concerned here only about the institutional defenses intervening at the level of political decisions, we are not rejecting the political component of these theoretical phenomena. On the contrary, we wish to deal with it from the point of view of how institutions change politics and can impact on it, having the role of constraining its actions and setting some limits to political power.

The affirmation of populist movements at the government of many democracies and their use of the power in order to reshape institutions and constitutional rules is the main example of the current attacks against democracies' defenses. When the power is monopolized under the control of one single leader or party challenging democracy from the government, then this ruling power will tend with time to neutralize the institutional defenses of the regime, so as to establish a defenseless democracy. This tells us that the risks for democracies in crisis is that the attack against them can hit what Jürgen Habermas called the «essential criteria of a democratic political order»⁵. To put the definition of crisis of democracy in a nutshell, democracy is in crisis when it allows to its enemies to attack its institutions of defense (constitutional bulwarks) from within. In the simplest case, populism resembles one of these pathologies of de-

mocracy as Peter Wiles wisely wrote half a century ago⁶.

The crisis of democracy starts when democratic elections are used for establishing antidemocratic powers. This view is now widely used by political and social scientists. In *Autocratic Legalism*, Kim Lane Scheppele explains why:

What is particularly disturbing about this phenomenon, however, is not the sheer number of democracies that have proven vulnerable, but instead the way that a number of these failing democracies have retreated from their earlier standards. As I argue in this Essay, democracies are not just failing for cultural or economic or political reasons. Some constitutional democracies are being deliberately hijacked by a set of legally clever autocrats, who use constitutionalism and democracy to destroy both⁷.

It is possible to witness the institutional disarmament of entire regimes which maintain nothing more than the appearance of constitutional legality. This is a crucial difference between the current troubles for democracy and the past ones, as today democracy is mainly challenged when political actors try to achieve non-democratic goals through democratic methods. The disarmament of democratic institutions could be considered one of many different trajectories engendered from the crisis of democracy after the attack to its defenses. The most likely recent case of institutional disarmament is that one of Hungary.

Despite the worrisome conditions of some democracies, before defining a new methodology on how to save democracies from themselves, another complementary issue seems strictly connected to the question "how to defend democracy from electoral risks?" The following paragraphs give an overall glance of the unexplored paradox of the political power and its limits. Contra-

ry to the mainstream vision of the balance of power as based on the barriers between executive and legislative, this research investigates the idea of limits to political power of the incumbent from a different perspective which rejects what J. Madison called "the purity of the theory"⁸.

Rethinking the separation of powers

Adam Przeworski's words greatly influenced this part of the research, when he wrote that: "We tend to confuse the ideals of founders for a description of really existing institutions. This ideological veil deforms our understanding and our evaluations"⁹. After having discussed in the previous pages some reasons to free our study of elections from a perfect vision of the vote, we must investigate with the same free perspective also the political power, which is the cornerstone of the entire theoretical approach that we develop here as a measure of the balance of power between winner and loser parties.

In the past, those who wanted to divide the political power, tried to delve with it imagining a horizontal separation based on giving different functions (for instance, legislative and executive ones) to different institutions. In some cases, this level of division could be increased by a vertical separation between central government and local ones. As Daryl J. Levinson and Richard H. Pildes rightly noted, political competition changed the separation of powers system in the American democracy, and we would not hesitate to add that it is possible to note similar changes in almost all west-

ern democracies. Levinson and Pildes argued that:

Just as parties can create the conditions necessary for interbranch competition to emerge, they can also submerge competition by effectively reuniting the branches¹⁰.

With this in mind, it seems reasonable to assume that against the expectations of architects of constitutional design, beyond a conventional idea of the division of powers between legislative and executive, these two branches are ever less competitive one another, as they work together and share most of their functions. One of the most telling indications that these branches are working as a single political decision-maker is that usually the executive proposes and the legislative disposes. For example, in the processes to approve laws and policies. Hence, their actions and functions complete one another, as parts of a single process where the power is handled by some groups of people within institutions, rather than by one institution against the other. It is not unrealistic to reshape our analytical perspective on how the political power has developed itself in the last century, in order to include in the idea of balance of power the actual behavior of executive and legislative branches as well as of the parties which compete in the political decision-making process. This idea reflects the reality of many democracies in a pragmatic way. For example, with reference to the USA, Francis Fukuyama recently argued: «The normal functioning of our check-and-balance system has been dependent on some degree of cooperation between the parties. It has seized up in recent years as the parties have become more polarized and ideological»¹¹. The *de facto* arrangement of political power

becomes the hallmark of a new realist view of democratic institutions.

Let the issue be phrased as follows: in presidential systems where politics is polarized, the legislative has used powers to check only on presidents of the opposite parties, while these powers are substantially not exercised in other cases. Under these circumstances, presidential systems do not function very differently from the parliamentary ones. Similarly, in parliamentary systems, it is very unusual that the legislative votes against the executive (for example the parliament approves a motion of no confidence), because the majority supports the government, and in most of parliamentary democracies, a motion of no confidence implies also the end of the legislature. That is to say that members of parliament avoid to simply be forced to leave their own office and job. As Leonardo Morlino and Wojciech Sadurski stress: «the parliamentary majority supports the government without controlling it or it can be actually controlled by the government»¹². In a few words, it is not just the life of the government that depends on the parliament, but also the life of the parliament depending on that of the government. Finally, if we analyze the actual behavior of the two branches, we discover that things are not different in many semi-presidential systems as well. In this sense, the balance of power and the division of power are not effective.

To illustrate my point, let see some examples and data confirming these claims on this connection of power in the hand of the majority. As an example, we can observe the disagreement between executive and legislative in the United States by monitoring the voting behavior of the majority within Congress on the president's posi-

tion via roll call voting in terms of "vote concurrence". This measure calculates the number of times the majority within Congress voted with the president's position on roll call votes. Although this is not the only possible proxy, it might be plausible to use this one. Let consider the data (Source: The American Presidency Project) related to the last three presidents before Donald Trump. During the years of Bill Clinton's presidency, the vote concurrence was 86,4%, when the Democratic Party held the majority of the Congress (this is an average of vote concurrence before the incumbent party lost the majority). It declined to 48,6% when the majority changed (this is an average of vote concurrence after the opposition became the majority in Congress during the period of divided government). In the first period of Clinton's administration, the majority controlled both the branches. Indeed, the legislative and executive did not perform like competitive branches or anyway they acted in agreement almost 9 out of 10 times. During George W. Bush's presidency, similar evidence show that the two branches work as it would be one single deciding institution in more than 8 cases out of 10 before the majority changed, when vote concurrence declined from 80,78%, to 32,3%.

Finally, when Barack Obama was president, he had 91,25% of support when the majority was Democrat, and 55,8% (this last average is related to the available data until 2013) after the Republicans controlled again the Congress. This means that, in the first period of the Obama administration, executive and legislative decided together more than 9 times out of 10¹³.

In these cases, the relation between executive and legislative changed when the

majority in the Congress changed, and this happened under each president. As obvious as this evidence might be in the perspective of the alternation of united or divided governments occurring election by election, it is not obvious what they demonstrate with regards to perspective of the mainstream theory of division of power. Basically, in a system like the USA, the division of power between executive and legislative exists and works just when the division within the political power exists and works, producing effective dissent and checks. This example is more relevant because it concerns the American case. Namely, the constitutional system of division of powers that is traditionally seen as perfect. Albeit it is well known as a mechanism of constitutional checks and balances without a flaw, these data tell us that the reality of the limit to the political power in the United States is very different. Because the same party does not control nor engender any form of dissent against representatives of its own group, also when they sit in or chair other institutions. Indeed, when one party or a coalition controls the political branches, then there are no incentives to check each-others. If the majority dominates the political power, then the barriers between executive and legislative dissolve, and while a "dominated" decision-making process emerges, the opposition runs into the condition of the spectator as an actor confined to be unable to counterbalance the majority.

This is more relevant if we considered the most disregarded part of the doctrine of the separation of power, which M. J. C. Vile described as the "separation of persons". According to M. J. C. Vile, the three branches of government should be composed of quite separate and distinct groups of peo-

ple, with no overlapping membership¹⁴. Therefore, we can say that the relation between executive and legislative depends on the relation between majority and opposition.

Another example of the connection between executive and legislative, which becomes an addition of powers in the hands of the majority, is possible because the use of the delegation of legislative functions to the executive. According to David Epstein and Sharyn O'Halloran, in the USA, delegation toward the Executive Office of the President and executive agencies is more common and frequent under unified government, while delegation gives more often new functions to independent agencies under a divided government¹⁵. As would be expected, we can say in other words, that Epstein and O'Halloran's research shows how the Congress more likely votes to delegate discretion to the executive when it is controlled by the same party, while the Congress does it significantly less and with more constraints, when the opposite party holds the executive¹⁶. Let focus on some paradigmatic examples in which the majority uses both executive and legislative powers in the relation with the opposition.

John D. Huber suggested that in a parliamentary system, in a confidence vote procedure, the government is the first-mover which does a take-it-or-leave-it policy proposal¹⁷. Hence, in most parliamentary democracies, in Michael Laver and Kenneth A. Shepsle's terms, everyone outside the executive does not have a significant impact on the process of legislation¹⁸. Giovanni Sartori described into details other cases like that one of "governing by legislating" where different procedures force the legislative to be under the "take or leave"

of the executive, with injunctions that allow little, if any, room for feedback and mutual interaction¹⁹.

The division of powers between executive and legislative effectively exists when the political power is not wholly concentrated in one party, and hence, the majority controls just one of these branches. Indeed, Fukuyama affirms that: «Institutional checks in a political system are not, after all, like physical barriers to action. They work only to the extent that the people who constitute the system agree to abide by them, and this in turn is a function of politics»²⁰.

Despite optimism regarding the Enlightenment theories of the division of power, a realist point of view tells us that check and balances work just if this division is first of all within the political power, rather than between powers, because the second is simply impossible without the first. This is the *conditio sine qua non* that makes checks and balances effective.

Real political power beyond parchment barriers

From this latter perspective, the greatest challenge that emerges is not to look how the institutions are divided between themselves, but how actors divide and unite themselves inside and across the "walls" of the institutions. Leaving aside the classic idea of the Roman principle "*divide et impera*" (divide and rule), the real political life has been shaped by the opposite principle "*unite et impera*" (unite and rule) that radically overturns the traditional vision drives political actors towards the coordination

within institutions. When these institutions are united under a single party which can monopolize the decisions, the political power of the incumbents becomes a mean of imposition without opposition. Particularly noteworthy is to emphasize that many democratic institutional systems are under the risk of being politically dominated, where the boundaries between powers are not those ones of executive and legislative competing one another, as written on the paper, but just those ones between majority and opposition, and the first can divest the second of its purpose with various silencing strategies where legal procedures are used as political weapons. The two broad conditions – the substantial reduction of checks between executive and legislative, and the trend towards the unification of these institutions into a single political decision-maker – had important consequences that need to be studied well beyond the ideal barriers existing on parchment or in our theoretical models of the balance of power. Political parties enter across institutions, as well as the horizontal and vertical separation of powers.

Therefore, the line of division of power to be considered is not anymore that one between legislative and executive, it has to be a line of division in the political power that we can observe from monitoring the patterns of behavior between majority and opposition. In this sense, it is more useful to think that the lines that unite the power, rather than those ones which divide it, are the new crucial targets to observe for pursuing our research goals.

This suggests, on a broader canvas, that we need to venture beyond what James Madison called “parchment barriers” and follow the power where it goes²¹. Indeed,

in the *Federalist Paper* N. 48 Madison grappled with this problem of the fluid nature of powers conferred to the branches of the state, which cannot easily be kept under control or limited, as every one of them can creep quietly into the domain of the other:

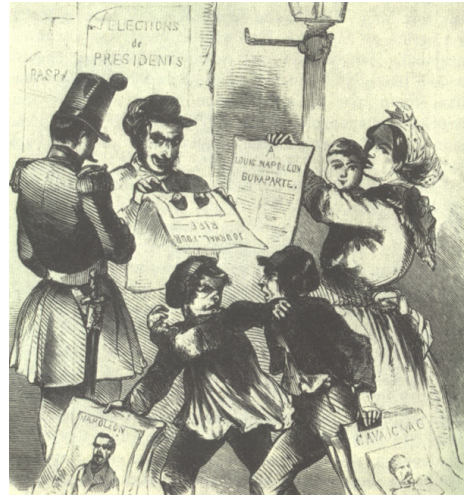
That none of them ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers. It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each, against the invasion of the others. What this security ought to be, is the great problem to be solved. Will it be sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power?²²

In the logic of this argument, the effective division within the political power is the condition that can preserve a balance between majority and opposition, rather than allowing the emergence of a unified political control over the entire institutional system, where the opposition lost its function of democratic defense. Therefore, the limits to political power are not just provided by “non-political” powers, like independent institutions and courts, but firstly by preventing it can be unilaterally dominated or monopolized, as the political opposition can do by preventing the debates are conducted in an authoritative way. This reflects the idea already stated by Michel Crozier: «in a democracy [...] purpose cannot be imposed from on high by fiat»²³.

This does not contrast with the intransigent idea of “necessary partition of powers”

that Madison explained in the *Federalist Paper* N. 48 and N. 50. From this standpoint, the current crisis of democracy invites us to shed light on the “partition within the power.” My argument is that the division within the power, and above all within the political one, is the most important principle so that institutions cannot be dominated by one group or party. The majority can simply circumvent the opposition by limiting the possibilities and/or time of the debate on a proposed bill or using some executive powers in order to curb other parties in the legislative branch. Simply put, the winning political party can use institutional rules and processes which are prerogatives of the government in the parliament in order to take advantage and to gain leverage over the opposition. We can call executive majority the political party which accumulates under its own control executive and legislative powers as tools that can use in the relation with the opposition. The term executive close to majority, tells us that one side of the political spectrum in does not just act through legislative means but it uses executive ones against the opposition, whose power is confined to the legislative realm. This is a contemporary and more detailed definition of the risks envisioned by James Madison as «the superior force of an interested and overbearing majority»²⁴. As Madison wrote: «When the legislative and executive powers are united in the same person or body, there can be no liberty»²⁵.

On the contrary, the opposition cannot resort to any executive power or easily decide unilaterally when it does not control both branches or there is a low legislative party cohesion. By differentiating between these two circumstances, we can acknowledge that the executive majority does not



A brawl between supporters of Luigi Napoleone and Cavaignac during the campaign for the presidential elections in France 1848, contemporary caricature

have the same limits of a simple legislative majority. Indeed, in the first case, it can regularly circumvent the opposition, while in the second case, the opposition has effective powers to oversight the majority, modify proposals of laws and policies. Pointing in the same direction, Norberto Bobbio noted that decision-making processes in democracy are based on negotiation and agreements between parties rather than the simple will of the majority²⁶. In this unified framework, where decisions involved complementary executive and legislative branches, majority and opposition compete, but with unequal powers and tools. The majority, like a Janus two-faced, uses both legislative and executive powers, while the opposition has at disposal just minor legislative ones. Indeed, in the common lexicon people say, “government and opposition” as synonym of “majority and opposition.” In the real dynamic of pow-

er, government is majority and majority is government. Following the ideas of equilibrium of powers proposed for the first time by Bolingbroke, it is worth wondering which are the actual reciprocal restrictions and controls, between executive and legislative, when the majority can act like a puppet-master performs from behind the scenes how powers compete and does it just for the democratic show.

This is not a critique against the traditional formula "the majority decides", while it is a critique to the distorted use of the principle of majority, which results in a unique and unbalanced accumulation of powers. These pages do not claim to avoid the majority rule, but to keep an eye on the use of the majority rule, particularly when behind the formal straightforward use of this principle, there might be opposite purposes and undeclared strategies of control of the entire political decision-making. In this normative and theoretical vision, we agree with Robert O. Keohane, Stephen Macedo, and Andrew Moravcsik, when they remember that in constitutional democracy there is a wide variety of constraints, authorized by supermajority requirement, which are designed to check what simple majorities can do and avoid it can transform itself into a majority tyranny²⁷. Moreover, the implications of the executive majority's strategy to decide unilaterally are not irrelevant. Specifically, the presence of the opposition and its contributions to the decision-making make possible that we can define democracy and its institutions as representative. Nevertheless, a democracy where the majority systematically decides unilaterally without procedures opened to the opposition, is a democracy which loses its representative connotation and reveals

itself a mechanism of political imposition. That is to say, the power to decide is ever less diffused among different actors and parties.

In a democracy, where the power is fairly distributed between majority and opposition, decisions are representative because they condense in themselves the wills of citizens, their disagreements and different preferences. In the evolution from direct democracy to representative one, the abuse of political power can transform many polities from within, into regimes where the will of the majority overwhelms the other part of the population. In this status, the new type of regime is the outcome of a regression of democratic institutions, where imposition replaces representation. Therefore, for a regime to be considered democratic today, it also must work as a system where the majority decides but decision-making process are open to the opposition. As Ian Shapiro recorded: «democracy is an ideology of opposition as much as it is one of government»²⁸.

The executive majority can compel the opposition and other powers into ever marginal roles as well as minimal capacities to impact on the functioning of democracy as a whole and the decisions of its institutions. We believe, by the way, that political polarization is pushing a process of change occurring in many western democracies also as part of the acceleration of political decisions. These changes in the boundaries between executive and legislative have almost completely disregarded or got round the original warnings of thinkers, political philosophers and others that can be considered the fathers of many democratic constitutions or their main inspirers. As a case in point, contrary to what we witness

today, John Locke explicitly wrote that: «the legislative cannot transfer the power of making laws to any other hands»²⁹.

To sum up, rather than simply accepting the traditional divisions between powers, by proposing a new focus, the aim is also to study the real divide between actors (majority and opposition) competing for a shared or unified control of the entire political system and its decisions (i.e. policies, laws, appointments). Finally, for the purpose of this research, the attempt to trace and observe the concentration of political power will be limited to the cases of majority governments in parliamentary systems and of unified government in presidential ones. In summary, this is crucial in order to understand how institutional systems can prevent strongly unified party government (in presidential regimes) and majority party (in parliamentary ones) from taking hold.

The concept of democratic strength

One last point is worth stressing: while studying the novelty of the current threats to constitutional democracy, the electoral origin of this menace and the strategy of attack against institutional and constitutional guarantees, the current debate has given just a very limited share of attention to techniques of defense and survival of democracy.

Consequently, although our contribution is still far from offering a completely new understanding of the crisis of democracy, it addresses this topic with innovative theoretical insights and empirical findings, which suggest a more comprehensive

approach of analysis when studying these risky historical phases. The mainstream perspective of research has been reversed. With the new type of inquiry proposed here, the research moves to a wider perspective which includes not just the non-institutional side of the phenomenon, but also its institutional one. Accordingly, while traditional studies give more emphasis to the former rather than the latter, this model of analysis envisions the preeminent function of the institutional factors as the center of the entire theory of democracy. Namely, we cannot just observe democracy in terms of the elections and political parties, and such an assessment of democracy is incomplete at best. Our theoretical framework invites to embrace a wider perspective which escapes from the reductive focus of observing what happens outside the institutions, and it provides a principle and a method for observing democracy inside the institutions. A point of view which is oriented to examine the power of the incumbents from the direct observation of political decisions, the relations with opposition and independent institutions, the respect of the constitution.

This is a decisive theoretical pivot which has been developed by stressing the utility of alternative empirical data as primary sources of information for our analysis, in comparison to the evidences derived from citizens' perceptions and their variations. Facts like institutional changes are profoundly different from something which can ambiguously look like whichever problem for democracy and whose effects (as demonstrated) are uncertain. See, for example, the lack of trust in political institutions and the variety of its consequences. On the contrary, a real treat to the structural integrity and political identity of a demo-

cratic regime is undoubtedly an emblematic proof of a condition of crisis. As a matter of fact, every attack against institutions raises the red flag of a dangerous risk for democracy.

Viewing the crisis of democracy within a dynamic of attack and defense leads us inevitably to discover new intriguing findings. Indeed, once we have identified them, the analysis discloses worrisome aspects of the phenomenon, which have been usually ignored as hidden behind the fashionable theory of deconsolidation or the most visible features of populism. The research method utilized here tells us that what we can see at first glance (for instance, voters' disengagement, violent rhetorical style, political campaigns made of resentment and fake news, models of leadership based on imitation of strongmen, etc.) is not always what can hurt democracy the most. It is clear that these resounding aspects damage democracies, their political system, the selection of new leaders, the quality of electoral competition and citizens' participation. However, it is more plausible to claim that what matters for the survival of democracies in crisis is not simply what damages it but what defends it. Hence, it might be something else. It is precisely for this reason that, in the case of democratic crises, institutions are key ingredient to the survival of democracy. It should be clear that during democratic crises, elections are actually preserved as a method of legitimation of power (rather than of freedom from power). This reminds us that democracy is about more than just elections and it is exactly this "more" – which is its institutions – that makes democracy possible and protects it (sometimes, as in these cases, from itself). We claim that what can save

democracies in crisis are the constitutional bulwarks and defenses enshrined in their institutions. The existence of strong defenses of democracy is the most important requirement of its consolidation as they can ensure its stability thought time. Developing more and better institutional defenses of democracy means to improve also the capacity of self-government.

Moreover, after having formally figured out the value of institutions for understanding the crisis of democracy, another step is to pinpoint how to explore this part of the democratic life left in the shadow of the current debate. Namely, the institutional integrity, manipulation or disintegration, the evolution of political power, the role of the opposition and the control exercised by independent actors. Filling the gap that we already mentioned a few paragraphs above might serve as the basis to formulate novel arguments on how this defensive principle has shaped the institutional systems of democracies worldwide. Figuring out how to reduce the impact of these adverse political leaders and movements should be one of the key challenges of democracy over the next generation.

These theoretical assumptions opened the way to the idea of monitoring and measuring the variation through time of a sample of selected formal and informal institutional factors, which are particularly significant markers of the endurance or demise of democracy's integrity and identity. Within the main object of our research, we have sought to provide a new key concept for assessing if institutional defenses can turn out to play a key role in equipping constitutional democracy to deal with adverse political conditions. We refer to the idea of democratic strength as the capacity of democracies to

resist untouched over time when threatened from elected leaders and their attacks to institutions. This is the cornerstone of our answer to many new research questions: which democracies are more capable to cope with the populist attack?

Conclusions

What our research suggest is that democratic strength varies from country to country, and within each regime its level can vary from government to government as the relationship of the majority with the opposition, independent institutions and constitutional rules can change as well. Within this framework, the institutional defenses stand as the key factors protecting democracy from several types of political attack. In other words, during the democratic crisis, they became the leading contextual variables: what works as democracy's last safeguards when elected incumbents attack its institutions. We focus our attention on the interaction between political strategies and institutional structures. It is at the level of this intermediate connection between mechanisms of institutions (namely, their design, settings and functions) and aims of politics (namely, its vision, strategies and goals) that democracy can find itself in crisis, and then it can be subverted and collapse on the one hand, or be saved and flourish again on the other hand. The end of this demanding process of survival depends on the democratic strength of democracy, that is to say, its defensive institutions, their inertia or reaction.

In actuality, only vigilant institutions can protect democracy from the self-de-

structing tendencies that can be originated at the electoral level. In a healthy and strong democracy, its institutions are first of all vigilant actors defending the existence of democratic principles of political structures and their procedures despite the existence of anti-democratic purposes of political strategies and their outcomes. What arises from the current tensions within many democratic regimes is that the survival of democracy to its inner unforeseen risks depends on the defensive principle of its institutions. To the extent that democratic absolutism will be contained within and respectful of legal procedures of the regime, the defensive principle of institutions states that: democracy will survive for the integration of political aims into the institutional mechanisms of its constitution, while it will die for the disintegration of institutional mechanisms into political aims. Where defensive institutional mechanisms work effectively, they can protect democracy from aggressive political aims. For a democracy to be saved from the attacks of its incumbent, the constitutional engineering of the institutions has to be design so that it will be impossible that they will be easily curbed by political aims discording with democratic ideals and values.

- ¹ G. Capoccia, *Defending Democracy: Reactions to Extremism in Interwar Europe*, Baltimore, Johns Hopkins University Press, 2005, p. 5.
- ² L. Diamond, L. Morlino, *Assessing the Quality of Democracy*, Baltimore, Johns Hopkins Press, 2005.
- ³ A. Hamilton, *Federalist Paper N. 7*, in «Independent Journal», November 15, 1787.
- ⁴ J. Madison, *The Federalist Paper N. 10*, November 29, 1787.
- ⁵ J. Habermas, *Legitimation Crisis*, Cambridge, Polity Press, 1973, p. 316.
- ⁶ P. Wiles, *A syndrome not a doctrine*, in G. Ernest, I. Ghita (ed. by), *Populism: its meanings and national characteristics*, London, Weidenfeld & Nicolson, 1969, pp. 166-179.
- ⁷ K. Lane Scheppele, *Autocratic Legitimism*, in «University of Chicago Law Review», 85, n. 2, 2018, p. 547.
- ⁸ J. Madison, *Spirit of Governments*, in «National Gazette», February 18, 1792.
- ⁹ A. Przeworski, *Democracy and the Limits of Self-Government*, New York, Cambridge University Press, 2010, p. XIV.
- ¹⁰ D.J. Levinson, R.H. Pildes, *Separation of Parties, Not Powers*, in «Harvard Law Review», n. 13, 2006, p. 12.
- ¹¹ F. Fukuyama, *Checks and Balances*, in «The American interest», October 18, 2017.
- ¹² L. Morlino, W. Sadurski, *Democratization and the European Union: Comparing Central and Eastern European Post-communist Countries*, Oxon-New York, Routledge, 2010, p. 6.
- ¹³ J.T. Woolley, G. Peters, *House and Senate Concurrence with Presidents*, in *The American Presidency Project*, University of California, 1999-2016. <<http://www.presidency.ucsb.edu/data/concurrence.php>>, June 2018.
- ¹⁴ M.J.C. Vile, *Constitutionalism and the Separation of Powers*, Indianapolis, Liberty Fund, (1962) 2012, p. 18.
- ¹⁵ D. Epstein, S. O'Halloran, *Delegating Powers: A Transaction Cost Politics Approach to Policy Making under Separate Powers*, New York, Cambridge University Press, 1999, pp. 154-155.
- ¹⁶ Ivi, pp. 142-143.
- ¹⁷ J.D. Huber, *The Vote of Confidence in Parliamentary Democracies*, in «The American Political Science Review», 90, n. 2, 1996, p. 268.
- ¹⁸ M. Laver, K.A. Shepsle, *Making and Breaking Governments: Cabinets and Legislatures in Parliamentary Democracies*, Cambridge, Cambridge University Press, 1996, p. 3.
- ¹⁹ G. Sartori, *Comparative Constitutional Engineering*, New York University Press, 1997, p. 166.
- ²⁰ F. Fukuyama, *Checks and Balances*, in «The American interest», October 18, 2017.
- ²¹ J. Madison, *The Federalist Paper N. 48: From the New York Packet*, February 1, 1788.
- ²² *Ibidem*.
- ²³ M. Crozier, S. P. Huntington, J. Watanuki, *The crisis of democracy: report on the governability of democracies to the Trilateral Commission*, New York, Cambridge University Press, 1975, p. 160.
- ²⁴ J. Madison, *The Federalist Paper N. 10*, November 29, 1787.
- ²⁵ J. Madison, *The Federalist Paper N. 47*, February 1, 1788.
- ²⁶ N. Bobbio, *Democracy and Dictatorship: The nature and limits of state power*, Cambridge, Polity Press, 1989, p. 116.
- ²⁷ R. O. Keohane, S. Macedo, A. Moravcsik, *Democracy-Enhancing Multilateralism*, in «International Organization», 63, n. 1, 2009, p. 6.
- ²⁸ I. Shapiro, *Democracy's Place*, Ithaca, Cornell University Press, 1996, p. 56.
- ²⁹ J. Locke, *Two Treatises of Government*, London, 1689.