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What Is Left of European Citizenship?

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Abstract. The European Union has opened the way towards a new form of citizenship founded on two promises: one "federal," the other "cosmopolitan." However, the condition of asylum-seekers and the attacks on the rule of law have, over the past ten years, undermined this dual ambition of the European Union at the risk of ruining both its cosmopolitan and federal dimensions. In this particular context, political theory has a role to play in elucidating the concepts at stake, such as that of "illiberal democracy," which is now being mobilized in Europe to mask a gradual liquidation of democracy.

1. Introduction

"I am not really a *Game of Thrones* fan but on democracy, I can say: *Winter is coming*."

This statement is not that of a left-wing activist but one made in 2019 by the French judge at the European Court of Human Rights—who stressed that in Europe fundamental rights are now being challenged, criticized, and sometimes even ignored (Vergnaud 2019). One could say the same thing about European citizenship. Actually, many authors are going through a rather bitter time, witnessing the disappointment of the hopes they held as recently as ten or fifteen years ago—that the European Union would be a sort of laboratory for a new form of citizenship, variously called a "citizenship of rights" or cosmopolitan citizenship. In order to understand these hopes and also the disillusionment we feel today, let first recall the original contradiction between human rights and the nation-state, a paradox outlined by Hannah Arendt in a now seminal work.

Today, there is little question that nation-states and universal rights for individuals can coexist. Yet in *The Origins of Totalitarianism*, written in 1951, Hannah Arendt saw a contradiction between these two concepts. This conflict emerged with the birth of the modern nation-state as soon as the French Revolution linked the *Declaration of the Rights of Man and of the Citizen* to the demand for national sovereignty. In the 1789 text, the claim that all sovereignty resides in the nation (Article 3) almost immediately follows the statement that all men are born free and holding equal rights (Article 1). "In other words, man had hardly appeared as a completely emancipated, completely isolated being who carried his dignity within himself without reference

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to some larger encompassing order, when he disappeared again into a member of a people" (Arendt 2004, 369).

In practice, Arendt continued in her famous chapter entitled "The Decline of the Nation-State and the End of the Rights of Man," the consequence of this original conflict is to reduce the rights of man to those of national subjects. As shown by the example of stateless persons in the interwar period, individuals stripped of their nationality were cast into absolute illegality, left "rightless." Hence the ambivalent nature of human rights, which in practice are guaranteed only where they are citizens of a given state. Only such citizens in fact enjoy the "right to have rights."

Arendt's book is now seventy years old, a period during which Europeans might seem to have overcome this original tension between human rights and the nation-state. For Arendt was writing at the very beginnings of that transformation which saw the emergence—after two centuries when national law had held absolute sovereignty—of fundamental rights and freedoms as a new legal category. Several texts (some more binding than others) now provide for protection of the individual, irrespective of nationality. At the international level, the Geneva Convention lays the ground for a legal status for persecuted individuals. On the European stage, the European Convention of Human Rights allows an individual of any nationality to bring violation of his/her fundamental rights before the Court. But it is above all the European Union that has advanced this "de-nationalisation of rights" by opening the way towards a type of citizenship founded on two promises: one "federal," the other "cosmopolitan."

In this paper, I first recall briefly what these promises were. I then show how the condition of asylum-seekers and the attacks on the rule of law have, over the past ten years, undermined this dual ambition of the European Union at the risk of ruining both its cosmopolitan and federal dimensions. This paper is based on the conviction that, in this particular context, political theory has a role to play in elucidating the concepts at stake. That is why I will conclude with a critical analysis of the concept of "illiberal democracy," which is now being mobilized in Europe to mask a gradual liquidation of democracy.

2. The Two Promises of European Citizenship

2.1. The Federal Promise

Many have claimed that European citizenship is not a "true" citizenship because it is "derived"—in other words, it is contingent on holding the nationality of a member state. According to the Treaty on the Functioning of the European Union, "Every person holding the nationality of a Member State shall be a citizen of the Union" (Art. 20 (1) TFEU). States alone determine who may become a European citizen, since they are in sole control of the rules for obtaining national citizenship. But this passes too quickly over the fact that the primacy of state citizenship was the default situation in all of the new federations founded on a voluntary association between previously independent states. The increasing centralisation of many federal states over the course of the twentieth century may have obscured the nature of federalism as it was first practised in the United States, Switzerland, and Germany—all of which

were originally founded on a voluntary association between their component member states (Schönberger 2009).

This was the case in the first decades of the American federation—for nearly a century, in fact, from 1777 to 1868. It was only with the adoption of the Fourteenth Amendment (passed after the Civil War) that federal citizenship won out: "All persons born or naturalized in the United States [...] are citizens of the United States and the State wherein they reside." In Germany, citizenship of a federated state counted above national citizenship until 1934: one was first Bavarian or Prussian, and only then German. Switzerland's federal constitution still provides that "Any person who is a citizen of a commune and of the Canton to which that commune belongs is a Swiss citizen."

In these voluntary associations of states, right from the outset, federal citizenship meant the right to move freely between federated states and to enjoy the same rights as citizens of the receiving state. We need only think of Article 4 of the American Constitution of 1787: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." As Christoph Schönberger points out, these two facts—the right to free movement between federated states, and states' duty to grant the same treatment to their own citizens and those of their sister states—form the inner kernel of federal citizenship. These "federative rights" demonstrate the function of federal citizenship in emerging federations: to erase the distinction between nationals and non-nationals for the purposes of the states that make up the federation.

There are "striking similarities" between this early type of federalism and the European construction (Schönberger 2009, 266). The benefits of European citizenship—understood in its horizontal (rather than vertical) sense—include the right to move freely between EU countries (Article 45 of the Charter of Fundamental Rights of the European Union) and even to settle freely anywhere in Europe and enjoy (almost) the same rights as host-country residents (Magnette 2007). Except in certain protected sectors such as access to high public office, the guiding principle is now clearly that of equal treatment for national citizens and other Europeans, whether in terms of access to work, equal salary and working conditions, or a wide range of social and tax benefits provided by member states. The nature of European citizenship corresponds to that of a federation of states, which differs from a federal state inasmuch as it allows for the persistence of the sovereignty principle for its constituting part (Beaud 2007). In its original sense, a federation is defined as a durable union based on a free convention (*foedus*). This implies that the idea of a constraining link between the federation and the states—which Olivier Beaud calls "the statist misinterpretation" (Beaud 1996, 46; my translation) is irrelevant and that the principle of a de jure principle of equality between the members of the federation is posited (Cheneval 2005, 276). Understood as a third way between a federal state and a confederation, the federation of states thus transcends the sacrosanct distinction between domestic public law and international law.

2.2. The Cosmopolitan Promise

Beyond a federal model of citizenship, however, European citizenship has also been seen as a laboratory for cosmopolitanism. Some authors, notably the French philosopher Jean-Marc Ferry, have understood Europe as an unprecedented political model

representing the first incarnation of the principles of Kantian cosmopolitanism. Let us recall that in 1795 Immanuel Kant had envisioned a federation of free states which would lead to perpetual peace, rejecting the idea of a world state (which he saw as inevitably despotic and ungovernable) in favor of a league of independent states. Cosmopolitan law (in other words, the transnational law that creates a relationship between a state and citizens of another) was limited to the conditions of universal hospitality, namely, the right of a foreigner not to be treated as an enemy on arrival in another state.

The European Union has moved far beyond this basic "right to visit," recognizing European citizens' right to settle in another member state. This is why Ferry saw granting transversal rights to European citizens (right of free movement, residency rights, right to appeal against one's own state) as "a patent example of cosmopolitan law" (Ferry 2005, 126). What is more, rights in this development are no longer restricted to "citizens of the European Union"—those who hold the nationality of a member state, as per the founding treaties. Several texts adopted since 2000 move towards (partial) harmonization of status between Union citizens and long-term residents originally from another state, and thus towards a "citizenship of residence." The distinction between nationals and foreigners, one of the founding facts of the nation-state, seemed to be crumbling away. That said, the nation-state was in no danger of disappearing, still standing at the heart of European decision-making processes. Instead, the EU opened the way towards a "demoï-cracy" or a federation of democracies based on several national peoples granting each other reciprocal and equal rights, but without consolidating themselves into a single *demos* (Nicolaïdis 2004, 97–110). According to these authors, what was so unique about the European process was not that it promoted universal values. Rather, Europe's singularity lay in the fact that it did not seek to rely on a single *demos* but on multiple *demoi* working together without becoming one (Magnette and Lacroix 2005, 216).

Joseph Weiler thus argued that the political regime of the Union rested on a principle of "constitutional tolerance." In the normal course of democracy, authority of the majority over the minority is acceptable only on the understanding that all protagonists see themselves as part of the same people. In the EU, on the other hand, various national groups agree to submit to a constitutional type of discipline emanating from a political body made up of distinct national groups. Weiler described such a discipline as "an autonomous voluntary act, endlessly renewed on each occasion, of subordination [...] to a norm which is the aggregate expression of other wills, other political identities, other political communities" (Weiler 2001, 68). In other words, rather than simply redefining the boundaries of the political community within an enlarged nation-state (the European nation), European construction appeared to favor the emergence of a different sort of political community, the new feature of which was to implement a discipline rooted not in a constituent *demos* ("We the People") but rather in a "society of societies," a community of others ("We the Peoples") (Weiler 2001).

In this vein of thought, the hope was that European construction would gradually alter the way in which national groups represented themselves. The principle of voluntary, plural affiliation would encourage them to question the founding ideas of rigid identity politics as different national cultures opened up to each other. Moreover, Weiler (and many others) expressed the hope that this "ethos of tolerance" would set up a "spill-over effect: a gradual habituation to various forms of

tolerance and with it a gradual change in the ethos of public administration which can be extended to Europeans and non-Europeans alike" (ibid., 70). For this strand of thought, the EU would break with its own principles if it were to become a "normal" polity based on a single "demos," for the European process was precisely deemed a "political practice of refusing and resisting particular identifications" (Markell 2000, 57). It is in this sense that mutual recognition between European peoples operated as a "laboratory" for a type of cosmopolitanism that respected national pluralism. In place of the contradiction suggested by Arendt, a virtuous circle seemed to be taking shape between national belonging and recognition of universal rights.

3. The End of European Citizenship?

Why talking about the disappointment of these hopes? The benefits represented by this idea of citizenship did not evaporate overnight, but one can identify at least two elements of doubt [1] and weakening of this notion of citizenship in both its cosmopolitan and its federal dimension.

3.1. The Return of "Rightlessness"

First of all, the conditions imposed on asylum-seekers in today's allegedly "liberal" democracies is a bitter slur on previous aspirations to denationalise rights. They throw into stark relief the fact that in times of crisis, human rights are all too quickly stripped back to rights of national citizens—and specifically those of the "right" national citizens, usually meaning those from an EU country. We need only look at the official reports of institutions that are hardly renowned for their activist or revolutionary zeal, for example that of the human rights commissioner to the European Council, Nils Muižnieks. In his activity report for 2016, for the most part devoted to the migrant crisis, Muižnieks (2017, 5) seriously suggests that 2016 was coterminous with the "beginning of the end of the European human rights system and European integration." Actually, the migration control policies implemented in and by the EU are giving new reality to the figure of the "rightless" individual drawn by Arendt. This may seem an exaggerated claim, since there are now texts that protect the rights of all individuals regardless of nationality.

But this would be to miss the real meaning of the concept. To be "rightless," Arendt believed, was not to be deprived of this or that particular right. A criminal may justifiably be deprived of free movement without becoming "rightless." To be fundamentally deprived of one's human rights, Arendt wrote, is above all the "deprivation of a place in the world which makes opinions significant and actions effective" (Arendt 2004, 376). Consequently, a "rightless" person is one who is deprived of the social fabric that makes it possible to claim rights. Now, what does the Dublin Convention do, in decreeing that asylum demands must be filed in the first country of EU arrival, if not make it very difficult to assert such claims? Italy and Greece are overwhelmed and can no longer deal with asylum claims declared nonreceivable in other countries, which in turn have only relocated a third of the 160,000 migrants they had agreed to admit in 2015. What is achieved by the agreements concluded

[1] A third element of doubt lies in the way freedom of movement has been reserved for the "economically active" and has undermined social rights. See, notably, Menendez and Olsen 2020.

with authoritarian states (Turkey, Libya, Sudan) if not to prevent migrants from claiming their "right to have rights" where they have some chance of being heard? What to make of the claim of the Court of Justice of the European Union that it has no jurisdiction over the issue of whether a state has the duty to grant a humanitarian visa in order to register an asylum claim?[2]

This last example provides a concrete illustration of this notion of "rightlessness." In the present case, a Syrian couple residing in Aleppo went to the Belgian consulate in Beirut in October 2016 to apply, on their behalf and on behalf of their three children, for a visa under Article 25 of the European Visa Code, which provides that a state may issue a visa on humanitarian grounds for a maximum period of ninety days. They resided in a place of military clashes and one of them claimed to have been kidnapped and tortured before being released for ransom. This humanitarian visa was refused by Belgium. Referral for a preliminary ruling was made to the Court of Justice of the European Union on the question of whether a state is obliged to issue this "humanitarian" visa if its refusal risks exposing the applicants to inhuman or degrading treatment—which would constitute a violation of Article 4 of the Charter of Fundamental Rights. Under pressure from the Commission and the member states, the Court declared itself incompetent on the grounds that European Visa Code only concerns a stay of less than ninety days. Even if this was formally the case for the visa applied for, the Court stated that the applicants' real intention was to establish themselves over a long period of time, since they intended to apply for asylum once they arrived in Belgium. Several lawyers have pointed out the fragility of the "intention" criterion for measuring the scope of a text (Sarolea, Carlier, and Leboeuf 2017).

For my purposes, the main point is the lesson that the advocate general had drawn before the Court, namely, that the refusal to issue a humanitarian visa leaves little alternative for men and women who are victims of persecution but to be caught and exploited by criminal networks—networks whose dismantling is nevertheless the stated objective of the European Union.[3] They have no legal way of claiming their rights. They are deprived of the opportunity to access a polity where their voice can at least be heard. As Arendt (2004, 377) wrote about the interwar period: "Not the loss of specific rights, then, but the loss of a community willing and able to guarantee any rights whatsoever, has been the calamity which has befallen ever-increasing numbers of people."

A second example is the judgment handed down on 13 February 2020 by the European Court of Human Rights, which ruled that the prohibition of collective expulsion of aliens (Article 4, Protocol 4, of the European Convention on Human Rights) could not benefit those who try to enter a state's territory illegally. The case concerned two migrants from Mali and Côte d'Ivoire who had attempted to climb the fences separating the Spanish enclave of Melilla from Morocco and who had been handed over by Spain to the Moroccan authorities without their situation being examined individually. The Court found that the two migrants concerned had by their own doing put themselves in an illegal position by using force in an attempt to enter Spanish territory in a place where this is prohibited rather than using legal

[2] Judgment of the Court (Grand Chamber) of 7 March 2017 (text rectified by order of 24 March 2017), Case C-638/16 PPU, ECLI:EU:C:2017:173.
[3] Opinion of Advocate General Mengozzi (delivered on 7 February 2017) in Case C-638/16 PPU, ECLI:EU:C:2017:93.

procedures for gaining lawful entry. Consequently, the absence of any examination of their individual situation by Spain prior to their expulsion was the "consequence of their own conduct."[4] As Maximilian Pichl and Dara Schmalz point out, the decision overlooks the very great difficulty for sub-Saharan migrants to access from Morocco places where their asylum application could be legally received. Above all, it amounts to saying that a person's "own conduct" makes it possible to suspend a right as fundamental as the right not to be expelled without an individual examination of his or her situation. Let us retain the conclusion of the authors: "When we allow unlawfulness to justify rightlessness, the European project is in severe danger" (Pichl and Schmalz 2020). Consequently, it has become difficult to consider, as did Ferry, that EU citizens' right to move freely among the member states is a "patent example of cosmopolitan law." In light of these examples, the EU appears rather as a *polis* among others—with its own territory, its legal system and its people—than as a new "cosmopolis."[5]

3.2. The Rule of Law under Threat

For a long time, the EU looked very much like a federation of democracies. If European institutions themselves could be accused of suffering from democratic deficit, no one could at least have denied that belonging to the Union was a crucial factor in stabilizing and extending the rule of law and democracy on the national stage—as illustrated in the early 1980s by the examples of Greece, Spain, and Portugal. Now, today, it is clear that the biggest challenge in building a political union in Europe lies in confronting national democratic deficits—as shown by the emergence of authoritarian regimes, or at least serious infringements of the rule of law, in Hungary, Poland, and Romania. What is called the "federative homogeneity criterion" (namely, the duty of federated states to respect shared political principles) was of key importance for the founding philosophers of federal thought. As Céline Spector reminds us, this is true of Montesquieu, who in book 9, chapter 2, of *L'Esprit des lois* stipulates that "the federal constitution should be composed of states of the same nature, above all of republican states" (Montesquieu 1989, 132). Why this preference for republics or democracies? It arises from the fact that the spirit of monarchy is that of "war," as opposed to the spirit of "peace" in a republic, and thus the two types of government cannot happily coexist in a federative republic (Spector 2020). Similarly, the *federalism of free states* imagined in Kant's *Toward Perpetual Peace* posits that the civil constitution of each state must be republican—that is, founded on freedom (as men), dependence on a common legislation (as subjects) and equality (as citizens) (Kant 2006, 74ff. [AA 8:350]). This sharing of political values also plays an important role in Alexis de Tocqueville's analysis of the American federation's conditions for success. As he writes in *Democracy in America*:

> From Maine to Florida, from the Missouri to the Atlantic Ocean, they believe that the origin of all legitimate powers is in the people. They conceive the same ideas on liberty and on equality;

[4] *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 231, 13 February 2020, ECLI:CE:ECHR:2020:0213JUD000867515.
[5] I owe this remark to an anonymous referee.

they profess the same opinions on the press, the right of association, the jury, the responsibility of the agents of power (Tocqueville 2010 , vol. II, chap. 10, p. 599).

This federative-homogeneity criterion also comes into play in several federal constitutions, in the form of a federal guarantee to ensure preservation of the republican model in federated governments. This is the function of Article 4, Section 4, of the US Constitution ("The United States shall guarantee to every State in this Union a Republican Form of government"), of Articles 51 and 52 of the Swiss Constitution, and of Article 28(1) of the German Basic Law ("The constitutional order in the *Länder* must conform to the principles of a republican, democratic, and social state governed by the rule of law").

There is a partial equivalent of this homogeneity criterion in the Treaty on European Union, where Article 2 provides that "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities." Most important of all is the Article 7 mechanism introduced by the Treaty of Amsterdam, providing for possible suspension of the voting rights of a country found to be in violation of Article 2 principles. This is something very close to a federal guarantee, a federal right to intervene in the internal affairs of a state. In a commentary on this article, the legal theorist Olivier Beaud pointed out in 2004 that "its application or attempted application would be a real truth test for the Union, one in which we cannot know which party would win" (Beaud 2004, 129; my translation).

We are now at the actual point of this truth test, since the Commission proposed that this mechanism be set in motion for Poland (on 20 December 2017) and the European Parliament for Hungary (on 12 September 2018). Yet there is almost no chance that these procedures will be successfully concluded, because they rest on the premise that all states would unanimously recognize a violation of the Article 2 principles—and Hungary and Poland have already declared reciprocal support for each other (without even considering the fact that many other countries would be reluctant to set a precedent of this sort). For this and other reasons, Dimitry Kochenov and Laurent Pech (2016, 1069) have argued that Article 7 is the "least dissuasive 'nuclear' instrument ever made." Another possible solution is the Conditionality Regulation (see European Parliament and Council 2020), initially proposed by the European Commission in 2018 (see European Commission 2018), whose purpose is to condition the allocation of EU funds on compliance with the rule of law. However, the European Council conclusions adopted in December 2020 (see European Council 2020)—after Hungary and Poland held up the agreement on the EU budget and recovery fund for weeks—have been welcomed with much skepticism by some legal experts who feel that they "systematically undermine" the Conditionality Regulation (Scheppele, Pech, and Platon 2020).

There are two scenarios that we are looking at in regard to the Article 2 principles.

(1) In the first of these the EU does not succeed in ensuring respect for the rule of law in its member states, in which case it would be threatened from within. The Union's lack of power to enforce respect for its moral and political authority would then be plain for all to see, thus reducing it to the status of a mere international organization. What is at stake is not only "values" or "principles" but also the fact that these differences in political regimes undermine the very possibility of European cooperation. The European Union is based on the principle of mutual recognition—that

is, standards adopted by one state are presumed to be equivalent in others. However, how can judicial and police cooperation take place between states that do not offer the same guarantees in terms of court independence or respect for individual freedoms? The case was raised in July 2018 when the Court of Justice of the European Union authorized a state (Ireland) not to execute a European warrant issued by Poland if the Irish judges held that the right to a fair trial would not be respected in that country.[6]

(2) Alternatively, the second possibility is that the EU does manage to ensure member states' respect for the Article 2 principles, but at the risk of denying national states their own power of self-determination. Returning to *Perpetual Peace*, Kant envisioned a federation of free states between countries endowed with a republican constitution, but with the caveat that no state must intervene by force in the constitution or government of another. Such "intervention of external powers," Kant (2006, 70 [AA 8:346]) argued, would pose a threat to the rights of a people struggling with its internal ills. In consequence, it "would itself [...] be an offense and render the autonomy of all states insecure" (ibid.). It would also jeopardize the premise of the federation, namely, the existence of free and independent political entities. Against this argument, it has been convincingly argued that deterioration in domestic political institutions is likely to have effects beyond the individual members and could affect the interests of all EU citizens (Kochenov and Pech 2016; Müller 2013).

These perplexities lead us to wonder if the model of the EU as a "federation of states" has reached those outer historical limits where it will be forced to admit that it must either slowly but surely disintegrate into a diffuse international organization, or move towards a federal state model. More precisely, we are now facing an issue that neither Kant nor the authors of the founding treaties seriously envisaged: It may be easy to refuse to admit to the federation a state that fails to respect republican principles, but what are we to do when a state (or several) "de-democratises" once already a member? A number of leading legal scholars have already put forward possible ways to enforce the values of Article 2 more effectively (Scheppele, Kochenov, and Grabowska-Monoz 2021). As far as political theory is concerned, it also has a (modest) role to play in elucidating some key concepts of public debate. This is what I have tried to do by elucidating the notion of "rightlessness," and I would like now to turn to that of "illiberal democracy"—a concept that is at the heart of the ideological battle over respect for democratic principles within the EU.

4. The Battle over Terminology

In a recent analysis of the tendencies hostile to liberal democracies, Mark F. Plattner (2019, 5) underlines that "it increasingly appears that this battle will be fought out not only in the arena of party competition but also in the realm of political thought." Actually, our era is witnessing the blossoming of a number of contradictory concepts which are often used as a cloak of respectability by authoritarian regimes. In this regard, though I agree with Plattner that much of the coming contest will be a "battle

[6] Judgment of the Court (Grand Chamber) of 25 July 2018, *Request for a Preliminary Ruling from High Court (Ireland)*, Case C-216/18 PPU, ECLI:EU:C:2018:586.

of terminology," I depart from him in claiming that the term "illiberal democracy" obscures the real issues at stake.

4.1. Democracies without Rights?

In recent years, the formula of "illiberal democracy" has emerged to describe new political regimes that, while respecting electoral mechanisms, are marked by authoritarian abuses. The term, initially introduced by American journalist Fareed Zakaria, was claimed by Viktor Orban as early as 2014, when he said that "democracy is not necessarily liberal. Just because something is not liberal, it still can be a democracy" (Orban 2014). This new form of "democracy," based on the legitimization of the ballot boxes, is thus supposed to mark the triumph of the popular will against the constraints imposed by law.

That Orban is trying to legitimize his authoritarian drift in this way is a good war. But it is more surprising to see this term "illiberal democracy" being used by political figures such as Emmanuel Macron and by many political science researchers. Thus, Yascha Mounk analyses the emergence of a "democracy without rights" (nonliberal democracy) already at work in Poland and Hungary, which he contrasts with the "rights without democracy" (nondemocratic liberalism) that he believes characterize European institutions and, in general, global governance. The forms of authoritarian nationalism that emerge here and there, he writes, reflect not a lack of democracy, but rather a lack of respect for independent institutions and individual rights (Mounk 2018).

However, there is no such thing as illiberal democracy. Democracy without rights is not a democracy. The majority will of the voters, as expressed at the ballot box, is not the only criterion of democracy. It is only a consequence of the primary criteria of equal rights and freedom for all. Since it designates equal political rights, citizens' equal membership in the political community undeniably constitutes equal liberties. The necessary uniformity behind this means, first of all, observing an ideal of nondomination, which is not exhaustively covered by national independence. Even the ostracism practiced in classical Athens sought not to eliminate difference, but rather to prevent the domination that can arise even from one charismatic personality rising too high above others. When Aristotle claimed that friendship would bring citizens together, "friendship" meant not uniform character or identity as such, but the sentiment that binds together those who have agreed to manage their differences through reciprocal respect for each other's liberty (Derrida 1994). Even for a theorist of the indivisibility of popular sovereignty as radical as Rousseau, the "general will" results from a contract whose purpose is to ensure each individual in his rights. Arising from the secret vote of the individual deciding alone "in the silence of the passions," the general will in Rousseau's view is not the same thing as Schmittian "acclamation," and it excludes the case of a Jacobin-style dictatorship (Lacroix and Pranchère 2018, 202).

True, democracy taken historically is not necessarily predicated on the idea of human rights, and has the notion of equality rather than that of individual independence as its core. However, if we are to take the political definition of democracy seriously, we must reject any definition of democracy as a substantive "identity" or sameness of the people with themselves. Civic autonomy does not mean homogeneity: It requires an equality of rights that includes the right to liberty. Ancient

democracy stood in solidarity with the equality of citizens' freedoms. Modern democracy is inseparable from a requirement of universality: It refuses to reserve citizenship for a minority of individuals. It cannot be cut off from human rights, since it is they that allow the confrontation of ideas without which there can be no democratic political life and, therefore, no legitimate formation of the majority will. Political regimes that refuse to promote human rights, the independence of the judiciary, the limitation of government power, and pluralism of opinion cannot be described as "democracies." To claim that authoritarianism exercised in the name of the "people" is both democratic and illiberal is to falsify the meaning of words and miss the nature of the modern democratic process.

This does not mean that *democracy* and *liberalism* are synonymous terms. There have been and still are forms of liberalism that are hostile to democracy, either because they prefer an elite government controlled by the separation of powers, or because they believe that the rules of the market society must be radically removed from political power. This is why the democratic movement of the nineteenth century was defined by a project to go *beyond* liberalism by extending rights and extending political participation and establishing social rights. But this overcoming was never meant to be a destruction.[7] The democratic movement, however critical of liberalism, has never defined itself "illiberal" and has not called into question the liberal *acquis* of rule-of-law institutions and guarantees of individual freedoms. What is meant today by the term "illiberal democracy" is precisely a democracy that attacks liberalism, not in the name of extending the rights of all, but with a view to restricting them.

What is more, the disadvantage of the formula "illiberal democracy" is that it reduces human rights such that they fall only on the side of liberalism. However, the proclamation of human rights in 1789 precedes the divergence between liberalism and socialism, two trends that they give rise to almost immediately. The multifaceted debate between liberals and socialists is opened by the second sentence of Article 1 of the 1789 *Declaration*: "Social distinctions may be based only on considerations of the common good." Such a formula can lead both to political liberalism, which places freedom above equality, and to democratic socialism, which makes freedom and equality two inseparable components of the same system. This makes it possible to introduce an essential clarification: Saying that illiberal democracy does not exist does not mean that the only possible form of democracy is liberal representative democracy. Other formulas, more radical or more socializing, are possible.

However, there can be no democracy without full respect for individual rights. Or we must adopt the model developed by Carl Schmitt, where democratic equality is identified with national homogeneity and politics with the ability to distinguish its enemies. But such a position is only acceptable to those who confuse democratic autonomy with nationalist theology. It is time to call a spade a spade: What we are witnessing in Hungary and Poland is not the emergence of a "democracy without rights," but the gradual establishment of authoritarian regimes—in other words, a gradual liquidation of democracy.

[7] In an 1843 article, Arnold Ruge (1993)—a friend of Marx's who was then on the same positions—expressed the common conviction of the radical democrats of his time by defining democracy as the self-overcoming of liberalism.

4.2. The People against Democracy?

The same could be said of the now widespread idea that we are witnessing a revolt of the "people" against democracy—something that is explicitly suggested by the title of Mounk's book, *The People vs. Democracy*. Some authors have already rejected the false opposition between an elite in favor of liberal democracy and a "people" backing authoritarian solution. The authoritarian drift in Hungary and in Poland has not been the result of mass mobilization against the rule of law but rather the outcome of "what one might call political engineering" (Howse 2019, 643) by a certain elite and "no right-wing populist has come to power anywhere in Western Europe or North Europe without the collaboration of established elites" (Müller 2019). The emergence of so-called "populisms" owes at least as much to the elites' corruption or moral bankruptcy as to popular discontent.

This is not the place to discuss the immense literature that has developed over the last decade around the issue of populism (Mudde and Rovira Kaltwasser, 2012 and 2017). Let me simply mention that today "populism" that is opposed to "liberalism" has little to do with the reality of historical populisms, which were antioligarchic movements claiming the rights of the people against forms of domination (Chollet 2020; Pranchère 2020). Most contemporary movements that are referred to as populist express not an ideal of equality and inclusion of all within the people, but "a democratization of oligarchic sentiment" (Savidan 2016; my translation), i.e., a demand for the exclusion of all those who are perceived as a threat because of the "contagious" nature of their vulnerability (poverty, foreign origin, marginality, etc.). "Populism," then, no longer refers to the defense of the freedoms of those exposed to domination, but to the affirmation of the identity of a homogeneous people. By virtue of a deleterious sophism, it is a question of pitting the power of the people against the rights of those who compose them: The unity of the people serves as an argument to crush democratic society, always plural and conflictual.

We must denounce this sophism for what it is: a false trick, radically opposed to democracy. In a democracy, the people are a society; they do not form a "bloc." Democracy, Claude Lefort wrote, combines two apparently contradictory principles: one, that power comes from the people; the other, that it is nobody's power. But it can only live through this contradiction: If a party claims to identify with the people, democracy is threatened (Lefort 1981, 92–3; my translation). That is why Jan-Werner Müller is right to point out that the claim of a monopoly on the representation of the people is not democratic and that to describe the Hungarian, Polish, Turkish, and Russian regimes as "illiberal democracies" is "to give them undue pleasure, to offer them, without any necessity, a dream opportunity to legitimize themselves" (Müller 2016, 100; my translation).

5. Conclusion

The two violations of the promises of European citizenship described in this paper provide a concrete illustration of the general warning issued by Michaela Hailbronner in her editorial "Rough Days Are Coming":

> When we think about necessary change, we also need to consider what it is we want to preserve. To some, this may smack of a lack of ambition, or defeatism. I disagree. We cannot and do not need to free change of risk, but we do need to think about what our safeguards are.

> [...] We have an obligation to *think* about what our safety nets are and how we can ensure they hold even as we, or some of us, may pursue radical reform. (Hailbronner 2019, 2–3; italics in the original)

In a similar vein, although in a very different style, the philosopher Étienne Balibar recently declared that "the defence of the institution is also the insurrection" (Balibar 2019; my translation). This is why I have not put forward any bold proposals today that could transform the meaning of European citizenship. Not that these proposals are not necessary, but it seemed just as important, in the current situation, to insist on the fragility of what has been achieved in order to reflect together on the best strategy to defend it. As far as political theory is concerned, its (very) modest contribution could be the elucidation of concepts that can be used to mask a de-democratisation process and the reminder that there is no federation without respect for republican principles at the state level.

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