Constitutional Regression or Different Understanding of Democratic Constitutions?

In their kick-off of this series, Petra Guasti and Mattia Zulianello touched upon one of the most discussed defining features of populism: That it is in conflict with two key features of liberal democracy: pluralism and minority rights.

Populists in power and constitutional regression - A myth?

The tension between populism and key liberal democratic values is deeply rooted in the heart of populist ideology. The idea of a homogenous ‘people’ with a general will as the only legitimate input in the political decision-making process is at odds with the checks and balances in liberal democracies. Ideas such as minority rights, pluralism, or power-sharing are central to liberal democracy and often enshrined in a country’s constitution. This often leads to the assumption that populists use constitutional changes to consolidate their power and dismantle democracy, a phenomenon we call ‘constitutional regression’.

Recent events such as January 6th in the US, the PiS party’s disregard for judicial rulings in Poland, or Netanjahu’s attempt to curb judicial power in Israel speak volumes to the threat populists can pose to constitutional democracy. Yet, there are voices that argue that the populist approach to constitutionalism is not undemocratic, but simply a different idea of democracy: one that views the constitution as a living document that changes with the people’s general will. We argue that the relationship between populism and constitutional regression is anything but clear cut and requires further investigation.

What the data tell us

As worrying as the events in the US, Hungary, Poland, or Israel with respect to quality of liberal democracy are, we should be careful not to infer a general causal relationship between populism and constitutional regression from these salient cases. We are more likely to hear about cases where populists have used (or tried to use) constitutional changes to dismantle liberal democracy than those where they have not.

What happens around the world when populists change constitutions? In a forthcoming paper, we analyzed the relationship between populist government, constitutional changes, and liberal democracy empirically. We focus on the quality of liberal democratic institutions and participation in democracies in Europe and Latin America. With its people-centered approach, populism might have a positive effect on the inclusion of citizens in the democratic process while dismantling horizontal accountability. We use [V-Dem](https://v-dem.net/)’s participatory (PCI) and liberal component index (LCI) to operationalize democratic quality, and the [Comparative Constitutions Project](https://comparativeconstitutionsproject.org/)’s Database to code constitutional changes. To capture populism across two continents, we use [V-Party](https://www.v-dem.net/data/v-party-dataset/)’s populism score.

Our results show how different populists in power use constitutional changes to implement their understanding of democracy. While populists in power in Latin America have used constitutional changes to improve liberal democratic institutions - against our expectations -, they did not improve the quality of participatory democracy overall. In Europe, on the other hand, populists have used constitutional changes to decrease the quality of both democratic characteristics.

Below, we implemented an interactive tool that lets users choose between 3 different data sets on populism to explore the constitutional changes and their effect on different indices of democratic quality in a variety of countries.

Participation

If you go through some of the different countries, you will see how much variance there is in how populists in office use constitutional canges. Our results speak to the findings of many other papers that show how much variance there is in populist parties behavior toward democracy. To understand the effect of populism on democracy, we need to combine cross-country analyses with in-depth case studies. The large variance implies that it is not only the populist ideology that drives how governments use constitutional changes. What exactly other driving forces are can not be answered by our research right now, but existing scholarship points to the [host-ideologies](https://www.cogitatiopress.com/politicsandgovernance/article/view/919), the political system or a [country’s previous democratic quality](https://ejpr.onlinelibrary.wiley.com/doi/epdf/10.1111/1475-6765.12564) as explanations.

Conclusion

Still, the large variance of how populists use the law to implement their ideology leaves us with a bit of a puzzle. While illiberalism is a challenge when populists are in office, populism does not only consist of it and what facet of populism unfolds the most depends on many factors. So far, our knowledge on the intersection between populism and constitutionalism comes from a few salient cases, but many of these are not only populist but also far right parties - we should not underestimate or forget about this. We need more research at the intersection between populism and legal studies to understand how populism is implemented in the law. As a first step, we proposed to utilize [judicial review as a measure populist government performance.](https://ejpr.onlinelibrary.wiley.com/doi/epdf/10.1111/1475-6765.12573) We hope that there is much more research to come on this important intersection!