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The Challenge of Representative Government, Ancient and Modern

When thinking about populism, one of the first images coming to mind is that of populist leaders and their rhetoric.¹ Abhorrent as their words may be to those who do not share their views, the real danger of populism lies of course in what populist politicians do or intend to do to the institutions of liberal democracies. In my contribution to this volume, I should like to examine several key features of populism, notably the institutional connection between populism and democracy. I will argue that the democratic principle of representation is one of the essential factors underlying present-day populism. Turning next to the democracy of Classical Athens, I will discuss some similarities and differences, and see what institutional instruments were in place in Athens to address this problem.

1 Populism

Populism is a phenomenon of democratic states. Today, in every democratic state populist parties have emerged which derive their political force from a few specific grievances. Some are regional or national, such as the feeling of being colonised by Western Germany in former Eastern Germany, heavy job-losses in regions such as north-eastern England, northern France, and Limburg in the Netherlands, or threats to social welfare such as pensions. Almost everywhere, populist policies oppose immigration. Some claim to defend western Christian culture against Jews and Muslims, some to defend the white race and some national autonomy. But whatever their differences, all populists claim ‘not to be heard’ by what they call ‘the elite’, and all invoke as justification of their political stance ‘the will of the people’: a self-proclaimed *dēmos* allegedly neglected in the established democratic institutions. Political scientist and populism-expert Cas Mudde calls this core message of populist ideology ‘thin’, because it entails hardly anything else – there is no encompassing program concerning society at large or the future; besides the key

¹ My heartfelt thanks go to Christoph Riedweg, Riccarda Schmid and Andreas Victor Walser for organising a timely and lively conference, and for inviting me to participate. In this contribution I have retained its format of a discussion paper, only referencing the quoted sources and literature.

grievance, there is only this opposition against the ‘elite’ fuelled by the claim to embody ‘the will of the people’.²

The complaint ‘not to be heard’ may seem strange, considering that the populist voice is overtly loud. Likewise, the fact that not a few populist leaders are millionaires or highly educated makes us wonder who the ‘elite’ they so claim to detest may be. In Europe, populists invariably identify ‘the elite’ with the EU. In states where the populist party (or parties) is not governing, ‘the elite’ is the national government as well. Despite the obviously rhetorical intent, it is worthwhile to take all of this somewhat seriously if we are to understand what may be behind this idea of an ‘elite’ decried to have failed the *dēmos*.

An answer can be found in the now classic work *The Principles of Representative Government* (1997) of political scientist Bernard Manin. I summarise his main viewpoints, adding some details relevant to our present issue.³ Manin argues that modern parliamentary democracy is based on the principles of representative government and the dynamics of elections, a type of democracy he contrasts with the direct democracy of Classical Athens. In modern democracies, the total body of citizens consists of numerous subgroups and millions of individuals, each with their own interests and their own views about the common good. They elect representatives, whose duty, however, it is to represent the *whole* people and to serve the *general* interest. Hence, these representatives need to forge the plurality of viewpoints and interests into a general interest, or to weigh them against the common good. To this end, representative governance needs supporting principles: deliberation, i. e. fair hearing with careful evaluation of arguments, respect for minority positions and the willingness to compromise. Only if the government adopts a position at a distance from the particular interests and short-term wishes of the citizens, will they be able to do so.

In this system, political leadership requires qualities like political insight, civil courage, and eloquence. In the elections, the citizens assess the candidates for leadership, and they choose whom they think the best. In principle, the result of the procedure are leaders who possess such qualities more than others (I underline: in principle). The elected are an elite – if not a social elite, then in any case a governmental elite. Manin argues that this qualitative difference between voters and elected representatives and the necessary distance between government and citizens are still the essential elements of present-day representative governance.

2 Mudde 2004; Mudde/Rovira Kaltwasser 2017.

3 I also address this issue in Blok 2023.

This model of representation was founded in the Enlightenment and inspired by the Roman Republic. Its architects had a system in mind in which the electorate comprised the economically and socially independent part of the population (men only), who would vote for representatives who were well-educated and committed to the common good. The universal suffrage established in the subsequent two centuries necessarily assigned a crucial role to political parties. Citizens need to organise themselves into political parties to propagate their political views and to create political power. But parties are also institutions with interests of their own, namely winning elections. Parties and politicians depend on voters and their particular interests, and they make programmatic promises to win their support. Once successful, however, they must compromise with other parties, if not with other realities. Hence, their interests as party politicians in a full democracy are to some degree at odds with their duty to serve the general interest.

Democratic representative government, in sum, poses a challenge to its representatives: to handle the inevitable tensions between party interests and the common interest with care. But it also poses a challenge to its citizens: to understand and accept the principles underlying the distance between the government and the electorate. And this includes that the wishes and interests of voters are not always fully served, and certainly not at once: decisions in a liberal democracy are a compromise and take long to come about. This is not easy. According to the political scientist Pierre Rosanvallon, it is the disappointment of voters in the inability of democratic governments to live up to their promises that lies at the bottom of populism.⁴ On this view, populism is an inevitable by-product of democratic representative government and the role of political parties that is part and parcel of universal suffrage.

The core message of populism, in sum, is an attack on the principles of representative government. Their target is the governmental elite they see represented invariably in other parties, never in themselves, and in the distance between the government and the population. The *dēmos* they claim to represent allegedly holds not multiple viewpoints and interests, but just one, namely their own. Consequently, they oppose the supporting rules of representative governance: deliberation, respect for minority positions, and the necessary compromises. And consequently, they attack the institutions supporting these principles: the independent judiciary, international covenants, the critical press. Since all of this is built on the voting power of a sizeable section of the electorate (on average now 30%) in a fully-fledged democracy, they can successfully contend to be democratic.

⁴ Rosanvallon 2008, 274.

Populism is one response to the challenge of representative government. Another is holding a referendum, and depending on circumstances the two may go together. In most states, with the notable exception of Switzerland, the referendum by-passes the government in a direct consultation of the citizens. Deliberation is usually weak, because sufficient information is often lacking and not all voters are in the position to digest it. The referendum as an instrument leaves no room for minority positions and compromises: to every problem the only answers are yes or no, and for many issues such a reduction is inadequate. (The Brexit referendum is a notorious example.) I shall not further discuss the referendum, but it is worth mentioning because it is relevant to the analysis of the democracy at Athens. The same applies to the third, and essentially different, response to the challenge of representative government, the use of sortition for the selection of representatives.

2 Athens

When now turning to Athens, we can ask which of the factors I just described applied to the Athenian democracy. Did populism exist in Athens, and if so, in what shape? And what of this is due to the governance structure of Athens?

The first striking feature is that in its developed stage, from ca. 450 to the end of the fourth century, Athenian governance was geared to minimise the distance between government and governed, both in its institutional set-up and in its ideology. As several scholars, building on the pioneering work of James Headlam, have argued, the extensive use of sortition, not election, for the selection of political offices, combined with the term of office of usually just one year, guaranteed an intense rotation of offices among the male citizens.⁵ The rotation of offices concerned the legislative, the executive and the judiciary powers of Athenian governance. On average, 4% of the male citizens over thirty years of age held a political office and 20% was a member of a jury court annually. Taking turns in this way in governing and being governed, i. e. the quintessential feature of citizenship as Aristotle captured it, prevented a significant gap to emerge between government and citizens.⁶

Since the Council, the executive offices and the judiciary swore an oath to observe the laws and were expected to act in the interest of the whole polis, they needed to distance themselves from private or partial interests of groups of citi-

5 Headlam ²1933 (orig. 1891), ²1933; Finley ³1991, 74; Whitehead 1986, 265; Manin 1997, ch. 2.

6 Arist. *Pol.* III 4, 1277a25–27. 1277b14–17; III 13, 1283b42–1284a3.

zens; in this sense, the principle of representation was in place. But due to the intensive use of the lot, this distance was minimal, and the quick rotation of offices and turns in leadership further prevented partial interests to develop.

The beating heart of Athenian governance was the Council of 500, the members of which were allotted from the demes per *phylē* (subgroup of 1/10 of the male citizens). The order of the prytanies, the chairmanship of each *phylē* for one-tenth of the year, also rotated by lot, and so did the function of secretary; hence, no subsection of the council could grow to outweigh another. The *phylai* had their own assemblies, which led Nicholas Jones to oppose the prevailing viewpoint that the Athenian democracy had hardly to no representational features. He argued that the *phylai* operated as associations of representation, since the *phylē* could and did serve the interests of its *phyletai*, for instance awarding honorific decrees to members and holding common property.⁷ However, I find his view unconvincing, because the grants of honours took place within the *phylē* itself; there is no evidence that the *phylē* operated for its own interests at polis level, except in taking visible pride in its prytany. The fact that for the council the *phyletai* were not chosen but selected by lot, further undercut a representation of sorts and a program of interests to develop. Only the *stratēgoi* were elected, initially by *phylē*, to lead their military actions, but this is not a representative function.

For legislation, the Council had a role in preparing decrees and adding an advice (*probouleuma*). The final decision, however, normally lay with the assembly, to which all adult male citizens had unrestricted access. In the course of time, as Stephen Lambert (2018) has shown, decision-making shifted towards the assembly: despite the constitutional changes of 403, in the second half of the fourth century probouleutic decrees were outnumbered by non-probouleutic decrees proposed directly in the assembly, and the probouleutic ones were discussed and amended in the assembly. Deliberation clearly took place in these decisions, but in terms of democratic power, this legislative authority of the assembly is similar to a referendum.

In line with this institutional framework, democratic ideology, too, objected strongly against any distance between the citizens and their governance, to an extent that any form of leadership had to clear itself from the appearance of being an elite. Several contributions to this volume examine how leading speakers in the assembly and courts persuaded their listeners that they were one with the mass of the citizens, in no way at a distance from them. Standing out in some way, for instance by speaking frequently in the assembly, could be construed as

⁷ Jones 1995; 1999, 174–194.

raising oneself above the others, hence speakers always insisted that the opposite was the case. Conversely, resourceful speakers could win the *dēmos* by tapping into their suspicions of anything ‘elitist’.

Furthermore, every citizen holding an office or fulfilling a duty on behalf of the *dēmos* was, for that very reason, a potential object of distrust; as Edward Harris put it: “the Athenians were obsessed with preventing the abuse of power by officials”.⁸ Instead, the *dēmos* used legal means to pressurise officials into complying with their wishes. Especially in the last decades of the fifth century, they threatened officeholders with crushingly high fines if they failed in anything the *dēmos* wanted them to do, often set with very short deadlines.⁹ This is even more striking when we take into account that these officials were their fellow citizens, who happened to be allotted to these posts for the year. Such fines were imposed by the jury courts, the same institution where one had to seek legal redress, and the courts were filled with largely the same people who had passed the decrees setting the fines in the first place. For this reason, the separation of legislative and judicial powers in Athens was, I think, very weak, even if they operated as distinct institutions.

In sum, from this perspective it is hardly useful to speak of populist *elements* in the Athenian democracy – it *was* a populist democracy. And although of course they did not use this modern term, probably it was this type of regime the critics of the Athenian *dēmokratia* had in mind when pointing out the overwhelming power of the *dēmos*. Just one quote from Aristotle’s *Politics* on the power of the majority may suffice: “Where the laws are not sovereign, demagogues arise; for the *dēmos* becomes a single, composite monarch, since the many are sovereign not as individuals but collectively.”¹⁰

3 Checks and self-correction

Nonetheless, I would argue that the constitution held several checks on the *kratos* of the *dēmos* which prevented the democracy to collapse to popular pressure, checks which the contemporary critics apparently overlooked or valued differently.

⁸ Harris 2013, 317.

⁹ Blok 2022.

¹⁰ ὅπου δ' οἱ νόμοι μὴ εἰσι κύριοι, ἐνταῦθα γίνονται δημαγωγοί. μόναρχος γὰρ ὁ δῆμος γίνεται, σύνθετος εἷς ἐκ πολλῶν· οἱ γὰρ πολλοὶ κύριοι εἰσιν οὐχ ὡς ἕκαστος ἀλλὰ πάντες. Arist. *Pol.* IV 4, 1292a10–13, transl. Rackham 1932.

For preventing such a collapse, the democratic principle of self-correction is crucial. Over time, Athens created and enhanced its potential for self-correction by legislation that reinforced the resilience of the democratic nature of its institutions. Let me explain this.

In every fully-fledged democracy, sovereignty lies with the people, represented in its assembly. Its authority to make decisions and laws on the power of the majority is both its strength and its deepest weakness. In present-day democracies, the greatest challenge are political parties that seek to destroy the liberal democracy not by illegal, but by *legal* means; this is precisely the danger of populist parties.¹¹ At the level of legal theory and philosophy of law, such parties raise the problem of which arguments might justify taking measures against them. In other words, on which legal-philosophical principles can a democracy, which by definition is open to all political viewpoints and parties, *ban* a political party? The conventional term for such principles is ‘militant democracy’, but in his persuasive answer to this question, legal philosopher and political scientist Bastiaan Rijpkema prefers ‘defensive democracy’. He argues that one of the core principles of the liberal democracy is its potential for self-correction, i. e. revising or undoing its decisions. The same principle holds the reason why banning parties aiming to destroy the liberal democracy is justified: the decision to abolish the democracy, even when taken by a majority, is the one decision that cannot be undone. In other words, when a democracy sustains its potential for self-correction, it will be resilient against internal destruction.

The theoretical foundations of the classical democracy were very different from the modern liberal ones, but they share the problem, as we saw, of populist pressure as an inherent by-product. What populist parties and their leaders are to modern democracies, charismatic leaders and their impact on the *dēmos* were to the classical democracy. In the interaction between such leaders and the sovereign *dēmos*, Dean Hammer identifies a form of plebiscitary politics (a term he derives from Max Weber) which facilitated the shift to tyrannies and which continued to be influential throughout the classical democracy.¹² Yet, it seems the Athenians were aware of their own weakness for captivating leaders, on which they instituted legal restraints. They did so first by targeting persons and next by improving legal processes.

First, in the fifth century, the law on ostracism targeted powerful leaders individually and often pre-emptively, to cut their influence short by removing them

¹¹ In this section, I follow the analysis of Bastiaan Rijpkema, consulted in the Dutch original (2015); for the English edition, see Rijpkema 2018.

¹² Hammer 2005. In Classical Athens, depending on the leadership it led to more stable (Aristeides, Perikles) or volatile (Kleon, Kleophon) politics.

from the political field. At the level of selection for office, as Claire Taylor has pointed out, allotment worked as a counterweight to elections, which inevitably favoured those who lived in the city and who due to eloquence, eminence and wealth could make their mark more strongly than the average Athenian.¹³ After the mid-fifth century, ever more offices and duties were assigned by lot, rather than by election.

Next, the Athenians focused on legal processes. The *graphē paranomōn* (charge in court of having proposed a decision by the assembly against the laws) meant to correct the decision of the assembly itself after it was made, although it was still the proposer of the wrong decision who was blamed and punished for it. In the fourth century, with the newly created distinction between laws and decrees, the Athenians made the legislative procedures more strict, and to use Mirko Canevaro's words, they instituted "laws against laws".¹⁴ Laws were now made by the *nomothetai*, after careful publication, debate and scrutiny, and the *graphē nomon mē epitēdeion einai* (charge that a law does not fit the existing body of laws) could be invoked in case the *nomothetai* had nonetheless accepted a law that was at odds with existing laws.

All these laws could and were used by political leaders against competitors and opponents, removing them from the political field by having them exiled or punished with crushing fines that left them indebted to the polis.¹⁵ In other words, although these legal procedures were meant to improve the quality of legislation and the democracy, they could be employed to infringe on individual political liberty, and they were liable to political manipulation.

Nonetheless, democratic Athens managed to institute legal instruments of self-correction, to make sure that decisions such as in 412/11, when a majority in the assembly voted for abolishing the democracy,¹⁶ would definitely be a thing of the past.

¹³ Taylor 2007.

¹⁴ Canevaro 2018.

¹⁵ Zimm 2016 argues that imposing unpayable fines was the legal instrument *par excellence* against political opponents, in effect "lawfully applied constraints of free speech."

¹⁶ Th. 8.54, 64–70 describes how the oligarchs managed to manipulate the Athenian assembly into accepting the oligarchy before removing further resistance by surreptitious violence.

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