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Diversity in Europe: from Pluralism to Populism?

Yvonne Donders

1 Introduction

Diversity and pluralism have always been central values in intergovernmental settings on the European continent¹. The Council of Europe (CoE) is founded on the core values of democracy, human rights and the rule of law, which it sees as “the common heritage” of its Member States. It recognizes and appraises the interconnection between these values and cultural diversity and pluralism. In 2000 the Committee of Ministers reaffirmed that ‘... cultural diversity has always been a dominant European characteristic and a fundamental political objective in the process of European construction’ and that ‘all democratic societies based on the rule of law have in the past developed measures to sustain and protect cultural diversity’.²

The European Union (EU) is similarly 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. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’³ Although important aims of the EU are close cooperation and further integration, including free movement and the establishment of an internal market, the EU is also to ‘... respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced’.⁴

1 The original, shorter, version of this chapter was prepared during her visiting professorship at the Osaka School of International Public Policy granted by the Japan Society for the Promotion of Science and published asヨーロッパにおける多様性: 多元主義からポピュリズムへ (yoroppa ni okeru tayousei: tagensyugi kara popyurizumu he) (translated in Japanese by Dr. Michiya Kawamura), 未来共生学 (mirai kyousei gaku) (Journal of Multicultural Innovation) Vol. 5 March 2018, at 87–106.

2 Committee of Ministers of the Council of Europe, *Declaration on Cultural Diversity*, Strasbourg, 7 December 2000.

3 Treaty on European Union, article 2.

4 Treaty on European Union, article 3.

The EU Charter on Fundamental Rights confirms that ‘... the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law ... The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe ...’ Article 22 of the Charter further specifies that ‘[t]he Union shall respect cultural, religious and linguistic diversity.’

Although continuously proclaimed and upheld by these European intergovernmental organisations, it seems that the values of diversity and pluralism have lost popular support within the Member States. In May 2017 the Secretary-General of the Council of Europe presented its yearly report on the state of democracy, human rights and the rule of law in Europe. That year it was called “Populism – How strong are Europe’s checks and balances?” In the report the Secretary-General warns that many European societies today ‘... appear less protective of their pluralism and more accepting of populism.’⁵

Rise of populism, left-wing as well as right-wing, is indeed very present in European countries.⁶ The increased support for populist parties and populism in general is often connected to the growing discontent by many people with globalization and its economic setbacks, including a more critical approach towards neo-liberalist economic policies. Several economic consequences of globalization, such as displacement of manufacturing to low-wage countries and competition from cheap foreign labour, affect certain groups disproportionately, for instance those with less education and skills. These people, who have been called “losers of globalization” have become socio-economically vulnerable, which has made them susceptible for populism.⁷

It has however also been argued that the rise of populism is just as much caused by social and cultural issues.⁸ The decline of traditional cultural and

5 Council of Europe, Report by the Secretary-General of the Council of Europe, *State of Democracy, Human Rights and the Rule of Law, Populism – How strong are Europe’s checks and balances?* (Strasbourg, May 2017) foreword by Thorbjorn Jagland.

6 Cas Mudde, ‘Europe’s populist surge, a long time in the making’ *Foreign Affairs* (November/December 2016).

7 Ronald F. Inglehart (University of Michigan) and Pippa Norris (Harvard Kennedy School), *Trump, Brexit, and the Rise of Populism: Economic Have-Nots and Cultural Backlash*, Faculty Research Working Paper Series (August 2016) 10–11; Mark Elchardus, ‘Declinism and Populism’, *Clingendael Spectator* (3-2017 Vol. 71 Item 1) 3–4; Frans Bieckmann, ‘Emphasis on Nationalist Right-Wing Populism conceals underlying systematic crisis’, *Clingendael Spectator* (3-2017 Vol. 71 Item 7) 4–5.

8 Inglehart and Norris (August 2016) 13–16; Harry C. Boyte, ‘Populism-Bringing Culture Back In’, *The Good Society*, Vol. 21 No. 2 (Penn State University Press, 2012) 300–319; ‘Culture matters more’, *The Economist*, 11 August 2012.

religious identification and large-scale immigration have changed societies and have given rise to fear, racism, and xenophobia. Some people see immigration as the root cause of the crumbling away of unity and homogeneity in their societies, including the loss of traditional, national values and identity. Populist movements and parties respond to these fears by rejecting immigration and by criticizing pluralism, including the value of diversity and special rights for minorities. Some have even argued that ‘populists are always antipluralist’.⁹ Populist movements and parties promote the protection and safeguarding of the own values and cultural identity. Such rejection of pluralism has important repercussions for democracy and for human rights, as pluralism is a crucial factor for both of them.

Are Member States of the Council of Europe and the EU, organizations that were founded on the values of democracy, human rights and pluralism, indeed moving away from pluralism in the direction of populism? This chapter explores and outlines the rise of populism in European countries, focusing on the anti-pluralism dimension of populism and its link to the core values of democracy, the rule of law and human rights.¹⁰

2 Clarifying Key Concepts: Pluralism and Populism

Before exploring the pluralism dimension of populism in European countries, the two central concepts of pluralism and populism as used here are briefly clarified.

2.1 *Cultural Diversity and Cultural Pluralism*

Cultural diversity is defined in article 2 of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) as referring to ‘the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies. Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse

9 Jan-Werner Müller, *What is Populism?* (Pennsylvania, University of Pennsylvania Press, 2016) 3.

10 Parts of this chapter were inspired by the Netherlands Advisory Council of International Affairs report: *The Will of the People? The Erosion of Democracy under The Rule of Law in Europe* (Advice no. 104, June 2017). The present author is member of the human rights committee of this Advisory Council and has contributed to this report.

modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.' Cultural diversity describes the factual situation of cultural differences existing between and within States. It is an umbrella notion that covers cultural diversity at different levels: between individual States, regions, communities and individuals, but also within States, regions and communities.

Cultural diversity should be distinguished from the related notion of cultural pluralism. The difference and the connection between cultural diversity and cultural pluralism are explained in the Universal Declaration on Cultural Diversity. Article 2 states that 'cultural pluralism gives policy expression to the reality of cultural diversity'. In other words, cultural diversity, also termed 'plurality', reflects the factual situation. Cultural pluralism refers to the way cultural diversity is appreciated and translated into laws and policies. Cultural pluralism implies that cultural diversity is considered to be good, a desirable and socially and politically beneficial condition. It implies that individuals and communities are given the opportunity to maintain their specific cultural identity, provided that it is consistent with the laws, policies and values of the wider society.¹¹

2.2 *Populism*

The term populism is used to capture a wide variety of political ideologies, movements and parties. One of the things that these have in common is their proclamation of being "anti-establishment" and "anti-elitist". Populist movements are suspicious of and hostile to what they call elites, mainstream politics and established institutions, because they do not take the problems and wishes of the (ordinary) people seriously. Populist parties and movements claim to speak for these forgotten people.¹²

Populist movements and parties accordingly claim to represent "the people" or "ordinary citizens" whose voices are not heard by the establishment and elite. They thereby present the people as a homogeneous entity with coherent views. Mudde defines it as follows: 'populism is an ideology that separates society into two homogeneous and antagonistic groups, "the pure people" and "the corrupt elite", and that holds that politics should be an expression of "the general will" of the people.' Features central to populism are monism and

11 Yvonne Donders, *Human Rights: Eye for Cultural Diversity* (inaugural lecture University of Amsterdam 29 June 2012).

12 Inglehart and Norris (August 2016) 6–7; Müller (2016) 1; Fareed Zakaria, 'Populism on the March, Why the West Is in Trouble', *Foreign Affairs*, November–December 2016; Elchardus, (2017) 1.

moralism: both “the” people and “the” elite are seen as essentially sharing the same interests and values, while the main distinction between them is based on morals (“pure” versus “corrupt”).¹³

By extension, populist parties and populist leaders are critical of independent and pluralistic institutions, such as the judiciary or the media, which they challenge for obstructing the will of the people. For instance, they accuse courts and judges of being out of touch with reality or with “what the people want” and they criticize media for being biased or protective of the elites. Many populist movements aim to weaken the independent judicial authority or media by increased political influence. They are particularly critical of international norms or supervisory bodies, which they consider undemocratic and against the sovereign will of the people.¹⁴

3 Democracy, Rule of Law and Human Rights in Europe

After the Second World War, the Council of Europe was established to protect the values of democracy, rule of law and human rights in Europe. These three pillars can be found in the Statute of the Council of Europe and in 2008 the Committee of Ministers of the Council of Europe once again explicitly stressed their connection: ‘Democracy, rule of law and human rights can be seen as three partly overlapping circles. (...) There can be no democracy without the rule of law and respect for human rights; there can be no rule of law without democracy and respect for human rights, and no respect for human rights without democracy and the rule of law’.¹⁵ There are many different definitions of and approaches to the concept of democracy. Here a very broad distinction is made between a formal or procedural model and a substantive model of democracy.¹⁶

A minimalist, formal or procedural approach to democracy focuses on the process of political decision making, in which public participation is organized by periodically organizing free and fair elections. The representatives of the

13 Cas Mudde (2016); Cas Mudde, ‘Populism isn’t dead. Here are five things you need to know about it’, *The Guardian* (7 July 2017).

14 Council of Europe (2017) 15, 35 and 77; Mudde (2016).

15 Committee of Ministers, *The Council of Europe and the Rule of Law – An overview*, 1042bis Meeting, 27 November 2008, document CM(2008)170, 21 November 2008, paras. 26–27.

16 G.H. Fox and G. Nolte, ‘Intolerant Democracies’, *Harvard International Law Journal* (vol. 36:1 Winter 1995) 14–20; Netherlands Advisory Council of International Affairs (2017) 11–16.

political party and programme that gains the most votes win power and determine the direction of political decision-making until the following elections. This approach puts the emphasis on election procedures and voting rights, but it also implies protection of a limited number of freedoms, such as freedom of expression and freedom of assembly.¹⁷

In this formal or procedural model of democracy, a decision is viewed as democratic if it has been taken by a majority of the votes cast and in accordance with the prescribed procedures. This implies that even where a regime is corrupt or violent, its decisions can be said to be legitimate provided that they are taken in accordance with the applicable ground rules and the government has been elected by a majority of the population. At its most extreme, this formal approach would allow democracy itself to be abolished if the majority of the population so wishes.¹⁸

A critique on the formal and procedural model of democracy is that it equates the will of the majority with the will of “the people”. A population is however never uniform or homogeneous. Instead it includes and represents many different social, economic, cultural and political views and interests and majorities can shift over different issues. To quote Jürgen Habermas: ‘The people from whom all governmental authority is supposed to derive does not comprise a subject with will and consciousness. It only appears in the plural and as a people it is capable of neither decision nor action as a whole.’¹⁹ In other words, there is no such thing as “the people”, nor is there a single collective will of the people.

Another objection to this approach is the centralization of the majority rule as legitimate and optimal option for decision-making. Simple majority rule without guarantees of certain fundamental rights and without the constraining effect of an independent judiciary may imply that minority groups are constantly confronted with decisions made about them by others. This may also lead to a democratically legitimated oppression of dissenting minority groups in society. For instance, a government could hold a referendum in which it requests approval for legislation that would result in discrimination against people of a given sex, race, ethnicity, religion or sexual orientation. If such referendum is supported by a majority of voters, it could legitimize human rights infringements such as to take away women’s voting rights, withdraw citizenship from inhabitants with an immigrant background or criminalize

17 Netherlands Advisory Council of International Affairs (2017) 12.

18 Netherlands Advisory Council of International Affairs (2017) 12.

19 J. Habermas, ‘Popular sovereignty as procedure’ in: J. Bohman and W. Reghs (eds.) *Deliberative Democracy: Essays on Reason and Politics* (Cambridge: MIT Press, 1997) 41.

homosexuality. It could be argued that such minority groups should then try to gather more support in the political arena for their own positions and thereby grow to become a majority. In practice, however, this is not always possible.²⁰

The European Court of Human Rights has consistently emphasized that democracy cannot be equated with majority rule. 'Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair treatment of people from minorities and avoids any abuse of a dominant position.'²¹ This does not mean that all Member States of the Council of Europe have to follow the same system of democracy. According to the European Court of Human Rights: '... it is relevant to recall that there is a wealth of historical, cultural and political differences within Europe so that it is for each State to mould its own democratic vision ... By reason of their direct and continuous contact with the vital forces of their countries, their societies and their needs, the legislative and judicial authorities are best placed to assess the particular difficulties in safeguarding the democratic order in their State.'²²

The above shows that a minimalist or formalist form of democracy is not compatible with the European Convention on Human Rights and therefore inadequate for membership of the Council of Europe and of the EU. These organisations promote a maximalist or substantive approach to democracy. This approach focuses not merely on the democratic process itself but on the *aim* of the process, namely to promote a society which is founded on certain principles and values, including equality, non-discrimination and respect for human rights and minority rights.²³ While the formal approach focuses on

20 Netherlands Advisory Council of International Affairs (2017)13.

21 *Hamidovic v. Bosnia and Herzegovina*, European Court of Human Rights, Application no. 57792/15, judgment of 5 December 2017, para. 128; *S.A.S. v. France*, European Court of Human Rights, Application no. 43835/11, judgment of 1 July 2014, para. 128; *Young, James and Webster v. the United Kingdom*, European Court of Human Rights, Application no. 7601/76; 7807/77, judgment of 13 August 1981, para. 63; *Chassagnou and Others v. France*, European Court of Human Rights, Application nos. 25088/94, 28331/95 and 28443/95, judgment of 29 April 1999, para. 112.

22 *Animal Defenders International v. The United Kingdom*, European Court of Human Rights (GC), Application no. 48876/08, judgment of 22 April 2013, para. 111; *Hirst v. the United Kingdom* (no. 2), European Court of Human Rights (GC), Application no. 74025/01, judgment of 6 October 2005, para. 61; *Scoppola v. Italy* (no. 3), European Court of Human Rights (GC), Application no. 126/05, judgment of 22 May 2012, para. 83; *Ždanoka v. Latvia*, European Court of Human Rights (GC), Application no. 58278/00, judgment of 17 June 2004, para. 134.

23 Zakaria calls this 'constitutional liberalism', which '...is not about the procedures for selecting government, but rather government's goals...' and '...seeks to protect an individual's

the manner in which power is acquired, the substantive approach emphasizes how the State exercises this power and how it is limited, by independent institutions of checks and balances and by respect for and protection of human rights, including the rights of minorities. The substantive model of democracy accordingly includes a rule of law component and a human rights component, all of which are central in the basic documents and functioning of the Council of Europe and the EU.²⁴

The maximalist or substantive model of democracy adds among others the principles of legality and legal certainty. The first prescribes that individuals, public officials and private actors must act in accordance with the law. The second means that the text of legislative acts must be easily accessible and the State must respect the law and apply it in a foreseeable and consistent manner. Crucial element of the substantive approach to democracy is also the separation of powers between the different State branches, creating a system of checks and balances to prevent concentration of power and the arbitrary exercise of power. Important part hereof is access to justice before independent and impartial courts, which is a human right in itself. The human rights principles of non-discrimination and equality before the law are other crucial elements. The law should treat all persons equally and all persons are subject to the same laws. Nonetheless, unequal or special treatment, for instance of minority or disadvantaged groups, is permitted and sometimes even required to achieve substantive equality. Respect, protection and promotion of all human rights by the State is an indispensable component of the substantive model of democracy. These human rights include not only civil and political rights, such as voting rights, freedom of expression and association, and rights to access to justice and a fair trial, but also economic, social and cultural rights, such as the rights to education, health and social security, as well as the rights of minorities.²⁵

Pluralism is an important aspect of substantive democracy, including the promotion and protection of human rights and the rights of minorities. The

autonomy and dignity against coercion, whatever the source – state, church, or society'. Fareed Zakaria, 'The rise of illiberal democracy', *Foreign Affairs* (vol. 76:6 November/December 1997) 25–26; Netherlands Advisory Council of International Affairs (2017) 13, see also R. Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978) 181.

24 Netherlands Advisory Council of International Affairs (2017) 13.

25 Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007-e, March 2016; European Commission, *A new EU Framework to strengthen the Rule of Law*, COM(2014) 158 final and Annex I, 7632/14 ADD 1. Netherlands Advisory Council of International Affairs (2017) 18–20.

European Court of Human Rights has continuously stressed the importance of pluralism as a critical condition for and essential foundation of democracy: 'pluralism, tolerance and broadmindedness are hallmarks of a democratic society.'²⁶ The Court has often reiterated the importance of pluralism in relation to, for instance, political parties, the media and the protection of minorities. In doing so, it has indicated that States have not merely negative obligations to respect pluralism, but also positive obligations to promote and protect it. Pluralism in political and societal debate as well as in the media strongly depends upon the protection and promotion of the rights to freedom of expression and freedom of association as incorporated in Articles 10 and 11 of the European Convention on Human Rights. Under these rights divergent views expressed by political parties and via demonstrations should be accepted even if they annoy, shock, offend or disturb.²⁷ This because political parties play an '... essential role in ensuring pluralism and the proper functioning of democracy'.²⁸ Political parties should also be allowed to discuss problems, even when they are 'irksome', and to challenge the actual structure of States and to plea for constitutional or territorial changes, provided that the means used are legal and democratic and that the changes proposed are compatible with fundamental democratic principles.²⁹ In other words, political parties that aim to harm or destruct democracy and to deny the rights and freedoms recognised in the European Convention on Human Rights are not protected by that same treaty.³⁰

26 *Hamidovic v. Bosnia and Herzegovina*, European Court of Human Rights, Application no. 57792/15, judgment of 5 December 2017, para. 128.

27 *Handyside v. the United Kingdom*, European Court of Human Rights, Application no. 5493/72, judgment of 7 December 1976, para. 49; *Plattform "Ärzte für das Leben" v. Austria*, European Court of Human Rights, Application no. 5/1987/128/179, judgment of 25 May 1988, para. 32.

28 *United Communist Party et al. v. Turkey*, European Court of Human Rights, Application no. 133/1996/752/951, judgment of 30 January 1998, para. 43; *Socialist Party et al. v. Turkey*, European Court of Human Rights, Application no. 20/1997/804/1007, judgment of 25 May 1998, para. 41; *Yazar et al. v. Turkey*, European Court of Human Rights, Application nos. 22723/93, 22724/93 and 22725/93, judgment of 9 April 2002, para. 46.

29 *United Communist Party et al. v. Turkey*, European Court of Human Rights, Application no. 133/1996/752/951, judgment of 30 January 1998; *Socialist Party et al. v. Turkey*, European Court of Human Rights, Application no. 20/1997/804/1007, judgment of 25 May 1998; *Yazar et al. v. Turkey*, European Court of Human Rights, Application nos. 22723/93, 22724/93 and 22725/93, judgment of 9 April 2002, para. 49; *Stankov and the United Macedonian Organization Ilinden v. Bulgaria*, European Court of Human Rights, Application nos. 29221/95 and 29225/95, judgment 2 October 2001, para. 86, 88, 90.

30 *Yazar et al. v. Turkey*, European Court of Human Rights, Application nos. 22723/93, 22724/93 and 22725/93, judgment of 9 April 2002, para. 49; *Refah Partisi (the Welfare*

The Court is also clear on the role of States in protecting and promoting media pluralism. It considers that ‘... the State is the ultimate guarantor of pluralism, especially in relation to audio-visual media, whose programmes are often broadcast very widely ... That role becomes all the more indispensable where the independence of the press is subjected to external pressure by politicians and economic decision-makers.’³¹

As regards minorities, the Court has consistently stated that: ‘the role of the authorities is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.’³² The Court further concluded in 2001 that there was an emerging consensus among the Member States of the Council of Europe ‘... that recognises the special needs of minorities and the obligation to protect their security, identity and lifestyle ... not only for the purpose of safeguarding the interests of the minorities themselves, but to preserve a cultural diversity of value to the whole community.’³³ Although the Court continuously emphasized that States have positive obligations to promote and protect pluralism, it gives States a large margin of appreciation on *how* to do so. The Court not only recognizes its own subsidiary role, but also acknowledges that there is no uniform European conception of morals or values or of the requirements of the protection of the rights of others, for instance in relation to attacks on a minority’s or individual’s religious convictions.³⁴

Party) and Others v. Turkey, European Court of Human Rights (GC), Application nos. 41340/98, 41342/98, 41343/98 et al., judgment of 13 February 2003, para. 98; *Centro Europa 7 S.R.L. and Di Stefano v. Italy*, European Court of Human Rights (GC), Application no. 38433/09, judgment of 7 June 2012, para. 129.

- 31 *Frasila and Ciocirlan v. Romania*, European Court of Human Rights, Application no. 25329/03, judgment of 10 May 2012, para. 64.
- 32 *Hamidovic v. Bosnia and Herzegovina*, European Court of Human Rights, Application no. 57792/15, judgment of 5 December 2017, para. 41; *S.A.S. v. France*, European Court of Human Rights, Application no. 43835/11, judgment of 1 July 2014, paras. 127–28. Other cases on religious minorities include: *Kokkinakis v. Greece*, European Court of Human Rights, Application no. 14307/88, judgment of 25 May 1993; *Manoussakis and others v. Greece*, European Court of Human Rights, Application no. 18748/91, judgment of 26 September 1996; *Serif v. Greece*, European Court of Human Rights, Application no. 38178/97, judgment of 14 December 1999, paras. 49, 53; *Thlimmenos v. Greece*, European Court of Human Rights, Application no. 34369/97, judgment of 6 April 2000; *Chaâre Shalom ve Tsedek v. France*, European Court of Human Rights, Application no. 27417/95, judgment of 27 June 2000.
- 33 *Chapman v. the United Kingdom*, European Court of Human Rights, Application no. 27238/95, judgment of 18 January 2001, para. 93.
- 34 *Chapman v. the United Kingdom*, 2001, para. 94 and 116; *S.A.S. v. France*, 2014, para. 142 and 153; *Otto Preminger Institut v. Austria*, European Court of Human Rights, Application no. 13470/87, judgment of 20 September 1994, para. 50; *E.S. v. Austria*, European Court of Human Rights, Application no. 38450/12, judgment of 25 October 2018, para. 44.

In short, the Council of Europe and the EU clearly favour, promote, and probably even require, a substantive form of democracy, which includes the rule of law, the separation of powers between State institutions, independent administration of justice, decision-making that complies with the requirement of legality, and respect for and protection of everyone's human rights, including those of minorities. It is this comprehensive vision of democracy, rule of law and human rights, including respect for and promotion of pluralism, that forms the foundation of the Council of Europe and the EU.

4 Populism and Democracy

As explained above, populist movements and parties are broadly united in their dislike of the establishment and their emphasis on the will of "the people" in political decision-making. They consider existing political parties as (corrupt) elites who do not listen to the wishes of the people and act only in their own interests or the interests of the wrong groups. In a representative democracy model political parties obtain their mandate from the electorate and the two groups are thus mutually dependent. However, populist parties and movements treat them as being in opposition to one another: the establishment is bad and the people are good.³⁵

It is however not clear what is meant by "establishment" or "elite" and who belongs to them. One could argue that many of the leaders and members of populist parties actually (also) belong to the establishment and elite. Some are long-time politicians and most are highly educated and have earned high incomes. Being "anti" the current government or policies is further not typical for populism; all opposition groups in the parliament are to a certain extent against or critical of the status quo and want to make changes.³⁶ This is, as also noted above, crucial to a well-functioning democracy. In this regard it is noteworthy that in several European countries, populist parties are no longer mere opposition parties. Some of them form or participate in governments, such as in Poland and Hungary, or they support a minority government, such as in Denmark.

As stated, populist parties and movements present "the people" as a more or less homogeneous group, also referred to as "the silent majority", "heartland" or "hard-working families", who are properly understood only by the populist

35 Netherlands Advisory Council of International Affairs (2017) 36; Zakaria (2016).

36 Müller (2016) 2.

parties and their leaders.³⁷ Populist parties and movements assert that they champion freedom and democracy and their aim is to repair what they see as a rupture between people and politics. They strongly support and promote forms of direct democracy such as referendums or internet forums. The will of the majority is thereby equated with the will of the population as a whole. This also implies that anyone taking a different view is dissociated from the people.³⁸

It is however an illusion to think that “the people” are a homogeneous entity. Society or the people are a collection of different individuals and groups with varying views and interests, which may sometimes coincide with and sometimes contradict one another. Such views and interests are further not static and can change over time. ‘Anyone may be at once an entrepreneur, conservative, migrant, gay, highly educated, religious and physically disabled.’³⁹

By promoting the majority principle as the key element of democracy populist parties and movements seem to emphasize democracy’s highest ideal, the rule by the people. In principle, there is nothing wrong with citizens having a greater say in politics. However, by merely focusing on the majority principle and by equating the majority with the will of the people, they support merely the minimalist, formal, procedural, or “degraded”⁴⁰ model of democracy.

In line with this, populist parties and movements question the role of independent institutions not subject to democratic control, such as judicial or financial institutions at national and especially at international level.⁴¹ One example is the criticism in the UK on High Court judges, who in the newspaper *The Daily Mail* were called ‘Enemies of the People’ for having ruled that the British parliament had to give its approval before Brexit could materialize. Other examples are the increased critical stance of several States, including the UK, Russia and Turkey, towards judgments of the European Court of Human Rights.⁴²

37 Netherlands Advisory Council of International Affairs (2017) 36.

38 Müller (2016) 1–6, 20; Cas Mudde, ‘The Populist Zeitgeist’, *Government and Opposition* (vol. 39:4 January 2004) 541–563; Daniele Albertazzi and Duncan McDonnell (eds.), *Twenty-First Century Populism: The Spectre of Western European Democracy* (London: Palgrave Macmillan 2008) 2–7.

39 Netherlands Advisory Council of International Affairs (2017) 38.

40 Müller (2016) 6.

41 Mudde (2004) 561; Müller (2016) 50.

42 James Slack, ‘Enemies of the People’, *Daily Mail* (4 November 2016); Claire Phipps ‘British newspapers react to judges’ Brexit ruling: ‘Enemies of the people’, *The Guardian* (4 November 2016); Philip Alston, ‘The Populist Challenge to Human Rights’, *Journal of Human Rights Practice*, 9 (Oxford University Press 2017), 8; Patricia Popelier, Sarah Lambrecht, Koen Lemmens (eds.), *Criticism of the European Court of Human Rights*

In other words, populist parties and movements reject the more maximalist and substantive approach to democracy, which includes independent rule of law checks and balances as well as protection of pluralism and the rights of minorities against mere majority will. This has made critics argue that populism is in fact not a champion of but a danger to democracy, because what populist parties and movements really intend is a distortion of democracy.⁴³

5 Populism, Human Rights and Pluralism

Another substantive element of democracy that populist parties and movements are critical about is the protection of human rights for all, including minorities. While they do not reject the overall idea of human rights, they seem to accept or promote serious limitations on individual human rights, such as freedom of movement or association and respect for privacy, for instance for the sake of security.⁴⁴ Populists also tend to use human rights selectively. An example of this is the approach of several populist leaders towards the right to freedom of expression. As stated above, this right is essential for democracy and therefore covers all forms of (political) expression, including expressions that 'shock, offend or disturb'.⁴⁵ Populists validly use this right to express their views, even if these are controversial or provocative. However, when their views and ideas are criticized by others, they often deny these critics their right to freedom of expression. They portray their opponents as immoral or elitist and they delegitimize their critique as being demonizing, inaccurate and biased. Populist leaders take a similar approach to the media, whereby media that criticizes them is dismissed as being biased and presenting false information and fake news.⁴⁶

In relation to minorities the same selectivity seems to appear. In general populist parties and movements do not support cultural and religious pluralism and they question special rights for ethnic, linguistic or religious minorities.

(Intersentia, Antwerp, June 2016); Lauri Mälksoo, Wolfgang Benedek (eds.), *Russia and the European Court of Human Rights: The Strasbourg Effect* (European Inter-University Centre for Human Rights and Democratisation, 16 November 2017).

43 Alston (2017), 4; Netherlands Advisory Council of International Affairs (2017) 37; Müller (2016) 6 and 50–57.

44 Alston (2017), 1–4.

45 *Handyside v. the United Kingdom*, Application no. 5493/72, European Court of Human Rights, judgment of 7 December 1976, para. 49; European Court of Human Rights, *Fact Sheet Hate Speech* (Strasbourg July 2017).

46 Council of Europe, Report by the Secretary-General (2017) 35; Müller (2016) 3.

However, populist parties sometimes show a selective and discriminatory approach to freedom of association and freedom of religion. While they promote freedom of religion for majority religions or religions they support, such as Christianity or Judaism, they do not support freedom of religion for others, such as Islam.⁴⁷

Populist parties and movements consider cultural and religious pluralism, in particular related to immigration, a threat to the rights of “the people”. They therefore reject multiculturalism. Instead they romanticize joint traditional values and create a fictive, single national cultural identity, including what they see as genuine patriotism. They promote mono-culturalism and defend the idea of a homogeneous, native and authentic “people”, sometimes referred to as “our own people”. This implies a clear demarcation between us and them, between insiders and outsiders. Stereotyping and exclusion of foreigners and immigrants, in particular those with a Muslim background, are often part of this process.⁴⁸

All this indeed seems far from the foundational values of democracy, rule of law and human rights, including pluralism, that the Council of Europe and the EU want to promote. How and why has populism become such an important factor in European countries?

6 The Rise of Populism in European Countries

In several European countries, there seems to be a broad decline in public confidence in politics and government. Many citizens feel that democracy under the rule of law and human rights no longer works for them – and at times even works against them.⁴⁹ This dissatisfaction fuels support for populist movements and parties, who promise to remove power from the political and administrative elite and return it to the “ordinary people”.⁵⁰

Since the start of the 21st century populist tendencies increased in several European countries.⁵¹ The emergence of the FPÖ in Austria, Front National in

47 Müller (2016) 51; Mudde (2016).

48 Inglehart and Norris (2016) 7; Zakaria (2016); Bieckmann (2017) 3 and 6.

49 Alston (2017), 6; Ron Dudai, ‘Human rights in the Populist Era: Mourn then (Re)Organize’, *Journal of Human Rights Practice* 9 (Oxford University Press 2017) 17.

50 Müller (2016) 57–60; Rene Cuperus, ‘The Populist revolt against Globalisation’, *Clingendael Spectator* (3-2017 Vol. 71 Item 3) 4–5.

51 B. Bugaric, ‘Populism, liberal democracy, and the rule of law in Central and Eastern Europe’, *Communist and Post-Communist Studies* (vol. 41:2 June 2008) 191–203.

France, Forza Italia in Italy and Lijst Pim Fortuyn in the Netherlands, showed an early “populist Zeitgeist”. In recent years the number of populist parties and movements have grown further and they have gained a sustainable amount of support.⁵²

Although there is some kind of European trend visible in the rise of populism, there are quite some differences between European countries. For instance, the populist parties in southern Europe, such as MoVimento 5 Stelle, Podemos and Syriza, have a radical left-wing background. They are parties that protest, above all, against the negative socioeconomic consequences of globalisation. By contrast, populist parties in northern and eastern Europe are more right-wing and focus on a desire to preserve national identity and culture, including an aversion to immigration, particularly from Muslim countries. But here too there are differences. For example, the Norwegian Fremkskrittspartiet has a neoliberal agenda, whereas the French Front National actually wishes to increase the socioeconomic protection of vulnerable groups.⁵³

Why is populism steadily rising and sustaining in European countries? This seems odd for a continent that is firmly based on democracy, rule of law and human rights.⁵⁴ The rise of populism in European countries could be explained by a complex mixture of developments and factors, which are economic as well as social and cultural. Many extensive studies have been done on the phenomenon of populism in European countries and its underlying causes, explanations and implications.⁵⁵ Here a short overview will be presented, focusing on the social and cultural aspects.

An important factor explaining the popularity of, in particular right-wing, populism in European countries, is a notable shift in what people see as decisive political issues. Whereas in the past economic issues were crucial to voters, now social and cultural issues seem to be just as or even more important to them. The traditional firm divide between left – and right-wing parties and voters that was largely based on economic considerations (more or less government spending, more or less welfare state, more or less regulation of business)

52 Mudde (2004) 541–563; Netherlands Advisory Council of International Affairs (2017) 36.

53 Netherlands Advisory Council of International Affairs (2017) 36.

54 Zakaria (2016).

55 One such extensive study, including relevant references, is: Ronald F. Inglehart (University of Michigan) and Pippa Norris (Harvard Kennedy School), *Trump, Brexit, and the Rise of Populism: Economic Have-Nots and Cultural Backlash*, Faculty Research Working Paper Series, August 2016. See also Netherlands Advisory Council of International Affairs, *The Will of the People? The Erosion of Democracy under The Rule of Law in Europe* (Advice no. 104, June 2017).

no longer exists. Not only has the divide itself been softened and have both left – and right-wing parties and voters adopted parts of each other's economic ideologies and ideas, it also seems that social and cultural factors, instead of merely economic ones, are found to be more crucial.⁵⁶

This can be explained by the fact that globalisation has had its effects on economies, but also on the composition and construction of societies. Social and cultural values have thereby become important drivers of populist support, in particular among the older generation and the less educated.⁵⁷ These people seem to hold more traditional values and norms that they feel are lost in a society with rapid value changes that are broadly supported by the younger generation and the more educated. These value changes include, for instance, 'the expression of diverse forms of sexuality, LGBT rights, same-sex marriage and varied family units, and more fluid gender identities; more secular values, habits, and ethical norms; open-mindedness towards migrants, refugees, foreigners, and multicultural diversity of lifestyles, foods, and travel; and cosmopolitan support for international cooperation, humanitarian assistance, and multilateral agencies like the United Nations and EU'.⁵⁸

Social and cultural values are also challenged by increased immigration. The fact that European countries, in particular in the South, are facing large immigration flows has clearly contributed to increased support for, in particular right-wing, populist parties and movements. Immigration to and in Europe has many forms and origins. It includes refugees, people fleeing war and conflict, immigrants from former colonies, as well as people migrating as guest workers. It seems that although 'Western populations have come to understand and accept the influx of foreign goods, ideas, art, and cuisine, they are far less willing to understand and accept the influx of foreigners themselves'.⁵⁹ Many people in European countries do no longer feel at home in their own societies and they blame this on newcomers. Critique on immigration has an economic dimension, for instance people losing their jobs to lower paid immigrants, but it also has an important social and cultural dimension. People see their societies and neighbourhoods changing by the arrival of newcomers with different ethnic, cultural and religious backgrounds. Some people, mostly the higher educated and more mobile ones, support such diversity and see it as an enrichment of society. Other people however, often less educated, less mobile and with more insecure jobs, see their cultural identity being

56 Inglehart and Norris (2016); Zakaria (2016).

57 Zakaria (2016); Mudde (2016); Boyte (2012), 300–304.

58 Inglehart and Norris (2016) 13 (citation) and 14.

59 Zakaria (2016).

eroded and feel excluded from the national and local society. They therefore support populist parties and movements that criticize or reject immigration and pluralism.⁶⁰

Economic, social and cultural factors leading to the rise of populism can also be connected to the integration process in the EU. Populism could thrive on increased critique on the functioning of the EU and on its promotion of open borders. One of the pillars of the EU is free movement of persons, goods and services. This implies among others that citizens of EU Member States are free to move to another EU country to work or study. This free movement has led to substantial labour related migration flows within the EU. At first this form of migration was welcomed, since receiving States and societies recognized they needed the labour force and pluralism was still seen as something positive. However, this positive attitude has largely faded away since the turn of the century and anti-pluralist and anti-immigration sentiments have grown among EU populations. This also had to do with the fact that new Member States from Central and Eastern Europe joined the EU and therefore citizens from these countries, such as Poland, Romania and Bulgaria, could also freely move and work within the EU. These people were often lower skilled labourers, working for instance in construction, transport or agriculture. Especially when the economic crisis hit Europe around 2009, including rising levels of unemployment, public opinion started to criticize the open borders in Europe. People are not only concerned about the economic consequences of EU migration, but they also dislike the social and cultural diversity that it brings. Populist parties and movements, with their anti-pluralist and anti-immigration policies, gained their support.

Populist parties and movements are also targeting the EU as a prime example of the gap between the political elite and establishment and the "ordinary people". Member States of the EU have transferred authority in some political areas from their national governments to the EU as a supranational entity. Consequently, vital issues such as border control and monetary policy, are no longer their exclusive responsibility and decision-making is done outside the country and thus further away from the national constituencies. Populist parties accuse the EU of being undemocratic, although the EU has a directly elected parliament. But most of all they create a picture of the EU as a bureaucratic bastion that forces European countries to give up their national sovereignty and cultural identity, something they will prevent by changing the EU or by leaving it.

60 Inglehart and Norris (2016) 15; Cuperus (2017) 5–6.

It seems that in particular these social and cultural factors, linked to widespread (im)migration and regional integration, explain why populism is rising more and faster in European countries compared to elsewhere in the world. It seems that populist ideas are less influential in, for instance, Asia, even in the similarly advanced economies of Japan and South Korea. Japan is a society that has similar economic issues as European countries and is aging even faster than some European countries. It does however not have many immigrants and is not part of a firm regional integration policy compared to the EU. It could perhaps also be argued that Japan better combines nationalism with pragmatism and is generally faithful to some of its traditional social and cultural values such as social harmony and solidarity. In part as a result, populist movements exist, for instance the party Zaitokukai, a nationalist party opposing rights for Korean immigrants, but they do not attract wide support.⁶¹

7 Concluding Remarks: Back to Substantive Democracy, Including Pluralism and Human Rights

It is clear that populism is an important political stream in European countries that has gained a steady amount of support. There are however important differences between European countries. It is therefore difficult to speak of “populism in Europe”, since the underlying causes, factors and responses, vary among the different States. At the same time, if European organisations want to uphold the European “common heritage” of democracy, rule of law and human rights, how can they do so in the face of sustained populism in many of its member countries?

Globalization is an important overarching development that played role in the rise of populism. Globalization, with its increase in the movement of people, goods, services and information, has changed societies in terms of economy, but also in terms of social and cultural composition. Social and cultural value changes linked to globalization and in particular to immigration may

61 Zakaria (2016); Mudde (2016); Yoichi Funabashi, ‘Japan, Where Populism Fails’, *New York Times*, 8 February 2017; John Plender, ‘How Japan resists the populist tide’, *Financial Times*, 1 January 2017; Ahotaro Tani, ‘Populism fails to catch fire in Japan – Gripes from the young and fears for the future won’t fuel radical politics’, *Nikkei Asian Review*, 24 August 2017. Some have however argued that Prime Minister Abe and his Liberal Democratic Party are practicing “light populism”, see Steward, Devin T. and Jeffrey Wasserstrom, ‘The Global Populist Surge Is More than Just a Western Story – Just Look at Asia’, *The Diplomat* (10 December 2016).

come at such speed that societies, or some groups in societies, find it difficult to digest. Greater efforts and resources are therefore needed to bridge the opposition between different groups in society and to promote newcomers to integrate, including better safety nets.⁶²

Bridging social and cultural varieties and integration of newcomers should however not imply the promotion of some kind of single cultural identity, as promoted by populist parties and movements. As argued above, there is no such thing as a homogeneous and authentic people, nor a single cultural identity or joint set of values.⁶³ Substantive democracy, including the rule of law and human rights, is the best way to ensure inclusive and pluralistic societies. This implies that the rights of minorities, including ethnic and religious minorities and immigrant groups, are protected and promoted. These groups should be given sincere opportunities to integrate into mainstream society, as well as to develop and maintain their cultural identity.⁶⁴

Selective use of human rights is dangerous and wrong. As has been stated: ‘...rights by their nature do not admit an à la carte approach. You may not like your neighbors, but if you sacrifice their rights today, you jeopardize your own tomorrow, because ultimately rights are grounded on the reciprocal duty to treat others as you would want to be treated yourself. To violate the rights of some is to erode the edifice of rights that inevitably will be needed by members of the presumed majority in whose name current violations occur’.⁶⁵

Majorities do not automatically represent “the people”, which is a complex and dynamic concept and not a fixed and static entity. Moreover, majorities and minorities can be composed of different people for different issues. They can also shift in time. ‘Those who today belong to the majority and endorse curtailment of the rights of others may tomorrow find themselves in a minority and see their own freedoms threatened’.⁶⁶

Populist parties promise to bring politics closer to the people. This is a good cause that however should not go at the expense of the substantive parts of democracy, such as the rule of law and human rights. Substantive democracy that

62 Zakaria (2016); Netherlands Advisory Council of International Affairs (2017) p 60–65.

63 Council of Europe, Report by the Secretary-General (2017) 95; Müller (2016) 3, 101–102; Cuperus (2017) 3.

64 Müller (2016) 55; Yvonne Donders, ‘Do Cultural Diversity and Human Rights make a Good Match?’ *International Social Science Journal* (199–2010 UNESCO, Blackwell Publishing) 15–35.

65 K. Roth, ‘The dangerous rise of populism. Global attacks on human rights values’, in K. Roth et al (eds.) *Human Rights Watch World Report 2017* (New York: Seven Stories Press, 2017) 2.

66 Netherlands Advisory Council of International Affairs (2017) 38.

includes rule of law and human rights ensures that *all* people are represented and that their rights are respected and protected. However, it is not these parties or institutions in the abstract that can provide such guarantees. It is the people who form such institutions and processes that are responsible for ensuring their well-functioning. They should defend and promote these concepts and use them to address the sincere concerns people may have.⁶⁷

Populism has brought forward serious popular concerns of an economic, social and cultural nature. There is no longer, if there ever was, uncritical support for globalization and its economic, social and cultural consequences. Some people argue that the European values of democracy, rule of law and human rights do not provide the right answers to their concerns. Populism however, with its limited approach to democracy as mainly majority rule, its distance to rule of law independent checks and balances and its selective promotion and protection of human rights, provides no answer at all.

67 Netherlands Advisory Council of International Affairs (2017) 38; Müller (2016) 103.