Is the West really that different?

Hungary and Poland have both faced accusations of violating the EU's democratic values. **András Sajó** *argues that while it has become common to portray these states as implementing distinct forms of illiberal democracy, they share more in common with 'western' democracies than is commonly recognised. The actions of the Hungarian and Polish governments should be viewed as an abuse of constitutionalism and the rule of law, not as a different conception of these ideas.*

The 'new' member states of the EU are increasingly perceived as populist-authoritarian political regimes. They are accused of (further) undermining the values and decision-making efficiency of the EU. But while the departure of these states from the EU 'normal' is obvious, we have witnessed a Manichean forcing of Hungary and Poland into political science terminological straitjackets (autocracy, competitive authoritarianism, right wing populism, even 'soft fascism') with all the paralysing consequences dictated by the label.

Pedantic straitjacketing of this kind may serve the disciplinary needs of academia, but it does little to aid our understanding of complex phenomena. In a new book, *Ruling by Cheating: Governance in Illiberal Democracies*, I argue that these failing democracies are not simply the opposite of democracy: in reality, they unpack the totalitarian and authoritarian tendencies of democracy itself, maximising the illiberal potential of 'western' constitutionalism.

Ruling by cheating

Constitutional democracies are inherently vulnerable as they have historically incorporated illiberalism, for example by granting privileges to certain churches and illiberal actors. From Poland to Bulgaria and from Peron to Chavez, illiberal democracies rely on shortcomings that are kept within boundaries in 'consolidated' democracies. All these continuities and commonalities are important, although there remain fundamental differences between the 'cheaters' and more honest democracies.

In a genuine though imperfect democracy it is unthinkable that political competitors would aim at the perpetuation of power or seek to increase their domination without inhibitions. The uninhibited extension and perpetuation of centralised state power in the hands of the ruler necessitates systematic and systemic lying (disinformation by state means like education and mass media) and cheating.

While the illiberal democracy systematically relies on cheating and lying, the democratic credentials of illiberal democracies still matter. The illiberal regimes cannot, and do not wish to, dispense of democratic processes, elections in particular. These are successful systems because they manage to mobilise genuine popular support (at least of a relative majority). The leader receives this popular support even if it is the result of mass media manipulation that relies on existing prejudice and resentment. The European illiberal leaders mobilise deeply rooted nationalism. National identity is a source of pride and a cultural expression of fear originating in historical losses. In most illiberal regimes, the leader can also rely on authoritarian predispositions among a good number of citizens (a predisposition that exists in many mature democracies too).

Most commentators fail to note that such regimes are popular enough to allow the illiberal leader to play at democracy and win elections (just like critics of China tend to forget that the restrictions imposed by the Party on individuals are welcomed by many Chinese). Illiberal democracies are successful, among other reasons, because they clean democracy of liberalism (constitutionalism).

These systems are built from the imperfections of 'consolidated' democracies. The imperfections (shortcomings of constitutional design, cronyism, and the prevalence of *ressentiment* in politics that has become a personal competition in a world of spectacle democracy) are present in 'consolidated' democracies and the demise of democracy (politely called a backlash) is not a tale about a faraway fairy land. The cocksure West would be better off to see its own traits in the mirror of Hungary (and Hungary should see its own traits in Russia).

Plebiscitarian leader democracies

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Poland and Hungary (as well as Peron's Argentina and Chavez's Venezuela, among others) are plebiscitarian leader democracies in the sense used by Max Weber. Weber defined these democracies as being democratic in their *form* but authoritarian in their *substance*, with a leader's legitimacy stemming from their charisma. For Weber, Britain served as a model for these democracies – many years before the UK turned into an elective dictatorship. Weber realised the dangers of this form of democracy (centralisation of personal power) but assumed that there would be sufficient parliamentary and other controls to counter the inevitable tendency.

While parliamentary controls, checks and balances are formally in place in Hungary and Venezuela, none of these institutions work as envisaged in theory. Plebiscitarian leader democracies eventually turn into Caesarism (aka Bonapartism) with populist overtones. Not all plebiscitarian leader democracies are populist even if the elite/people dichotomy is always present and (most importantly) those who are not the supporters of the leader are deemed to be 'fake nationals'. But in Hungary and Poland, nationalism is more important than populist arguments, though populism was important in obtaining power.

These regimes insist on defining the identity of the ruled and the ruler in a populist manner. In a plebiscitarian leader democracy, the leaders do care about *their* people.

As Jacob Talmon points out, there are "dictatorship[s] resting on popular enthusiasm and thus completely different from absolute power wielded by a divine right king, or by a usurping tyrant". The leader will express *their* people's desires and fears (nasty as these may be) and cater for the wellbeing of this part of the electorate, in the name of the common good.

'The people' here means a sufficiently large minority that is sizeable enough to win elections. This is unremarkable: it is normal in democracies to have distortive electoral systems, such as relative majorities receiving a bonus. This is not a peculiar shortcoming of the often-vilified US electoral college.

European plebiscitarian leader democracies not only cheat on democracy. Illiberal democracies abuse the rule of law systematically, relying on shortcomings such as formalism and inflexibility that are an inherent part of western rule of law. For example, public procurement follows the general frame required by EU law, but the specific criteria of the calls contain objective criteria that favour government cronies. If that does not help, the procurement will be classified as a matter of national security interest, or otherwise classified as not requiring a public call.

While the semblance of the rule of law is maintained and legal security is provided for ordinary life, law becomes a matter of cheating when it comes to power and domination. Legalism is observed: with a sufficient parliamentary majority, the laws can be written in a way that authorises formally neutral legal decisions even though the law systematically favours the interests of the government and its cronies and keeps the subjects of the law dependent of the state and its local satraps. These same rules (for example tailor-made electoral rules in the best tradition of US gerrymandering) help secure continued electoral victories.

The rule of law

The rule of law is both a shield and a sword. As Oscar R. Benavides, President of Peru, described it, "for my friends, everything; for my enemies, the law." Giovanni Giolitti, the liberal Prime Minister of Italy, formulated it as "laws are applied to enemies, but only interpreted as regards friends." The first version describes Putin's Russia, the second one Hungary and Poland. The Caesarist regime *pretends* to observe law to protect otherwise illegal transactions and consolidate the gains of corruption. This is how the basis of power is built: the legally entrenched favours granted to cronies enable them to provide a network necessary for political, economic and cultural domination.

Law-making and its application are based on tricks and cheating. Benjamin Constant called such regimes usurpation which is characterised by counterfeit liberty. The Manichean presentation of these regimes fails to observe that contrary to standard authoritarian regimes, liberty does exist in usurpation: the plebiscitarian leader, because he or she responds to *their* people's wishes, allows private liberties and tolerates political liberties as long as their exercise does not threaten the perpetuation of power.

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How does cheating fit into the rule of law? It is a standard technique of interpretation used by judges all over the world *not* to see injustice. Procedural formalities enable malefactors to keep illicit gains and political accountability is of little relevance when immorality is normalised. One could refer to all the examples of cronyism without legal consequences or political consequences during the Covid-19 pandemic, from Greece to the United Kingdom.

'Morphological' research that concentrates on the techniques of emptying democracy and constitutional institutions is important for practical reasons too: it helps to unmask the normalisation of cheating, the deliberate impotence of judges and prosecutors, and the inhumanity of the everyday submission of citizens. Those concerned about a democratic backlash should be aware of continuities and commonalities between democracy and usurpation in order to understand the insufficient reactions of the European Union and its member states to the challenges to the foundational values and common interests of the European Union that illiberal democracy represents.

For more information, see the author's new book, Ruling by Cheating: Governance in Illiberal Democracies (Cambridge University Press, 2021)

Note: This article gives the views of the author, not the position of EUROPP – European Politics and Policy or the London School of Economics. Featured image credit: European Council

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