

Justice, political ethics, and democracy. Assessing two levels of government

Florian Çullhaj¹

DEPARTMENT OF APPLIED SOCIAL SCIENCE,
EUROPEAN UNIVERSITY OF TIRANA, ALBANIA
e-mail: florian.cullhaj@uet.edu.al

Abstract

Fiat iustitia ne pereat mundus, literally 'Justice must be done so the world may not perish'. It is a famous Latin proverb that forms the basis of modern jurisprudence. Both in the original version, 'Fiat iustitia e pereat mundus', implying, 'Let justice be done, and even the world may perish' – and in our adjusted version, justice must be at the basis of human society, at least in a democratic political system.

*However, what kind of justice is most congruent with today's pluralist democracy? The one is grounded on ethical intersubjective a priori mediation or directly applied justice regardless of its consequences. How can today's democracy and comprehensive doctrines be compatible with negotiating pluralism and gaining stability within Albania successfully? To answer the above questions, in this article, we will use John Rawls' response, introduced in his 1993 book *Political Liberalism*.*

*Furthermore, another goal of this article is to elucidate the Albanian politician's ethics outlook. In this regard, a set of fundamental questions arise here. For example, why do our politicians act as they do? Is there a proper political way to act? To cope with these questions, we will analyze Max Weber's essay *Between Two Laws* to grasp*

¹ Florian Çullhaj, Ph.D., is a political scientist educated in Albania and Italy, with over ten years of teaching experience. Currently, he is a full-time Lecturer at the European University of Tirana and a guest lecturer at the University of Rome 'Tor Vergata'. Florian's research areas focus on; political culture, theories of democracy, political liberalism, and authenticity. Florian is the author of the book "Democratization from Within: Political Culture and the Consolidation of Democracy in Post-Communist Albania" (Editor: Nuova Cultura, Collana: Crossroads No. 81, Rome, 2017), of the book "Nga Pabarazia te Populizmi. Politika e së Majtës shqiptare", UET PRESS, (forthcoming), and several articles published in national and international journals.

the current Leader's type of ethics. Weber's classification of the ethic of conviction and ethic of responsibility, and to what extent he prescribes each ethic to the 'ideal politician', will be at the heart of this line of reasoning

The article proceeds into four key sections — the first deals with assessing the Leader's political ethics in current Albania. The second section provides a parsimonious classification of the current state of Albania's democracy; the third section offers a short analysis of the Socialist Party government, both central and local, whereas the last part provides a solution for democratic consolidation through the empowerment of the Constitution.

Keywords: justice, political ethics, democracy, Constitution, Albania, Government, Rawls.

Assessing Leader's political ethics in post-communist Albania

Fiat iustitia ne pereat mundus, in the version used by Emmanuel Kant (2004) in his work *Towards Permanent Peace*, justice must be the basis of human society, at least in a democratic political system. As a result, what form of justice may we consider bringing Albanian society on the tracks of legality. Justice that comes through intersubjective mediation, grounded on the public political culture of a democratic society or justice applied directly by the arising leaders based on their comprehensive truth (Rawls, 1993). In today's Albania, a rampant injustice prevails in almost every interaction between politics and society. Political leaders applied justice based on an extreme version, namely 'Let justice prevail, and the world (Albania) may be destroyed'. But then again, is this a *reasonable* principle. Is it legitimized by the public reason (Rawls, 2005, pp. 443; Habermas, 1992, pp. 306–308; Habermas, 2008, pp. 114–147) is it a shared principle so that the ruling elite does not enjoy the permanent idea of holding the truth in their pocket?

According to Max Weber, the goal is to distinguish between being and beings and find out the 'polytheism of values'. In the face of a world that makes no sense, Weber points out that it is up to people to give meaning to the world. Because of the world's unenchanted, men displaced the Gods and transformed the world into a sterile environment of his rational action. Consequently, under this variance and incompatibility with the new values, the acceptance of one set necessarily leads to the exclusion of the other set. Max Weber calls this phenomenon a 'clash of values', which we also meet within the same sphere of interaction. For example, in his essay *Between Two Laws* (Weber, Gerth, Mills, 1958; Deflem, 2008, pp 37-55). Weber analyses the concept of 'polytheism of values' - which he borrowed in part from John. S. Mill - a concept that in the

ethical field translates into dualism, between *ethics of principles* – also known as the ethics of ultimate ends or beliefs – and the *ethics of responsibility*. The first form of ethics refers to absolute principles, which function regardless of their consequences. For example, religious ethics are the ethics of revolutionaries and other conditions that run based on fixed principles, irrespective of the results. In contrast, the ethics of responsibility always considers the relationship between purposes, means, and consequences. Not including absolute principles, the ethics of responsibility always run considering the implications of its action; that is, the consideration of the results is its *modus operandi*. Respectively, the ethics of principles and responsibility are two opposite and incompatible ethics, which refer to two diverse ways of understanding politics. According to Weber, ethics of principles is *apolitical*, revealed by anyone who acts according to his principles without asking whether his action can transform the world. Instead, the ethics of *responsibility* is inextricably linked to politics because it never loses attention from the consequences of an action.

During the years of transition in Albanian, justice transmitted by political leaders resembles that of Ferdinand I of Habsburg. These leaders applied justice grounded on the *apolitical* ethics of ultimate goals. Justice as a normative judgment without mediation, namely as *fiat iustitia (e) pereat mundus*; ‘blind’ justice that does not respond to the conditions in which it operates. Neither of these leaders ruled considering dissent and the existence of a plurality of opinions in society but prescribed justice based on their comprehensive truth. Nor of them succeeded in fostering a shared democratic political vision but focused merely on applying their rational ideas. In doing so, they persuasively abused the *ethics of responsibility* as one of the fundamental political principles of a democratic society.

Classifying Albania’s democracy

In 2016, political philosopher Jason Brennan (2016) published a controversial book called *Against Democracy*. According to him, democracy is not necessarily the fairer political system than other forms of government and does not empower citizens or create reasonable results for all. Brennan proposes replacing democracy with another form of government, otherwise known as ‘epistocracy’. Following the analysis, two questions arise that require a more in-depth answer on the shape of the political system that Albania has taken during the post-communism period. Is epistocracy an alternative to democracy, and does Albania meet the conditions classified as post-democracy or post-political? (Mouffe, 2018)

Epistocracy is a system in which the votes of individuals who can prove political knowledge are worth more than the votes of individuals who do

not have this knowledge. In other words, it is a system that favors the most politically informed citizens. We have objections to Brennan's proposal because it sounds exclusive and elitist, but his argument is interesting enough to open theoretical and empirical debate. Brennan takes up an idea already articulated by Giovanni Sartori (2016) on the limits of democracy, assuming the existence of active citizenship in politics. Brennan metaphorically divides the electorate into three categories: the Hobbits, the Hooligans, and the Vulcans. The first, Hobbits, shows no interest in politics, much like in Tirana. The city where the Mayor gained votes for the quality and precision of the white pedestrian lines, more than for the destructive concrete of the capital. While the Mayor calmly promotes and 'perfectly arranges' the city's affairs, his administrative machine paces autonomously, deepening the capital's damage without being disturbed.

The second is Hooligans, rebels who do not dare to organize a revolution, often transform politics into a spectacle every time the Party appeals to them. This commitment is fatal, which polarizes public opinion that ultimately no longer understands where their common interest lies. The third is Brennan's favorites, the Vulcans, who own the knowledge and analytical skills, have an open mind, and try not to fall into sterile conversations. Brennan goes on to underline that voting is not simply an individual choice but an 'exercise of power over others' that must always be used responsibly because political choices fall on all citizens without distinction. Those who abstain 'are generally Hobbits', while the voters 'are Hooligans'. According to him, 'the problem is that many theories of democracy assume that citizens behave like Vulcans.'

Nevertheless, Brennan hopes that one day Vulcans will reign, but he presents no convincing evidence that they exist. Brennan has no desire to specify how an epistocracy can work, which is understandable. He outlines some options, like extra votes for graduates, an epistemological council with veto rights, a qualifying exam for voters. However, he does not pause long to predict what could go wrong.

In the Albanian context, the political parties have had a *sui generis* trajectory. From relatively open parties in the early years of democracy, which acted as a filter between institutions and popular will, they have already been transformed into monocratic parties, associating the Leader with the Party. i.e., Berisha's party, Nano's Party, Meta's Party, Basha's Party, Rama's Party. The omnipotent leader concept shows whom the voter is acquainted with, who he is, and whom he aspires to be. This Leader is like a guru to this voter, given that the latter feels alienated and politically incapable of expressing personal ideas. This voter reads the guru's thoughts in headlines or hears them on TV shows. The usual slogans of politics, the most famous faces of it are his political compass. He does not have even the slightest critical spirit and personal filter because, according to him, what the Leader publicly articulates is the only and the absolute truth.



Brennan boldly highlights the political ‘disease’ of democracy in our time, which is the lack of a general culture that offers opportunities for political insight, the lack of which is the genesis of the political deficit that seeks to transform every one of us into a ‘hooligan-style fan’ of leaders. Political fanaticism is the classic expression of political servility and loss of identity. At this point, the average Albanian who is not yet a ‘Vulcan’ is faced with a forced choice. Either remain at the service of Party schemes, already transformed into interest groups, or enslaved to general situations, when the only remedy is escaping defeating the inner fantoms. In conclusion, the loss of identity is the same as that of a crawling servant, a condition in which the political ethics of post-communist leaders has transformed people’s political mindset. By choosing a self-referential ruling class, post-communist leaders kept the most educated from giving guiding ideas, bringing the political participation into a closure. Today, many of these leaders entered the office through the support of hooligans, but not those quoted by Brennan, the real ones. That is a notorious phenomenon that furthers the need to reconsider the wrong path of Albanian democracy and the imperative need to find alternative ways to push for the *openness* (Ferrara, 2014) of the political representation of every citizen. Transcending Brennan’s trichotomy through the radicalization of democracy suggested by Gramsci (1975) followed by political theorists like Laclau and Mouffe (1985).

On the other hand, the sociologist and political scientist Colin Crouch (2000), praised and criticized for his book titled *Post-democracy*, posed the problem of the erosion of democracy by the extremization of economic liberalism, when few voices had articulated this danger. According to Crouch, in today’s democracies, even as elections continue to take place and influence governments, the debate over them is a well-controlled spectacle. Conducted by groups of professionals experienced in persuasion techniques and practice on a limited number of issues, selected by these same groups. The mass of citizens are passive, receptive, and even apathetic, merely reacting to their received signals. In addition to the spectacle of electoral ‘war’, elites who stand exclusively for economic interests in closed interaction with elected governments privately decide politics, and this is the model of what Crouch labels *post-democracy*.

All the same, the Belgian scholar Chantal Mouffe (2018), in her book *On Left Populism*, prefers to call this political situation *Post-political*. Accordingly, under the pretext of the modernization imposed by globalization, the political parties have accepted the dictates of financial capitalism and the limits imposed by the latter to interfere in state affairs and distributive policies. As a result, this political style drastically reduced the role of parliaments and institutions that allow citizens to influence political decision-making. Elections no longer offer the opportunity to choose existing alternatives through traditional parties. The

only thing allowed by *post-politics* is a bipartisan alternation between center-right and center-left parties. Anyone who opposes central consensus and the dogma that no alternative exists to financial globalization passes for an extremist and is disqualified as a populist.

Both diagnoses are present more than ever in today's Albania. In close collaboration with the political power, the financial interest groups control the country's main spheres of justice (Walzer, 1986). The current democracy in Albania shows continuity with the old model of the communist system, where the role of the Party remained unchanged as a provider of all sorts of power. Furthermore, the function of the Political Party should not be limited only to conveying the interests of society towards the political system as in the old system, but also to an educational role towards democratic values.

Especially in a small country like Albania, the opportunities to exercise this role are even more significant. In the last three decades, parties have oriented themselves towards absolute possession of power by extending their influence to every sphere of the individual's life. This phenomenon led to a further reduction of the organizational capacity of society and difficulties for new social movements' birth as crucial prerequisites for the democratization and the emancipation of society. By analogy, we borrow Habermas' terminology, which announced a "colonization of the world-life" resulting from the tight control that the state and the market exert more and more over the society. Respectively, the state through legalization and the market through the philosophy of consumption are appropriating any space for free public debate on the objective concerns of society. In the same vein, SP has created a "partisanship of the world-life" by controlling every space of the system in a capillary way, with the final aim of preventing the free vote (Çullhaj, 2017).

This omnipotent power stifled the citizens' self-determination initiative by making possible what Almond and Verba (1963) called *the reduction of personal political competence of the ordinary person's belief of his influence on politics*. This way of exercising political power once again gives citizens the idea that they have no means to exert pressure on the Party and at the same time on the government and that obedience to authority remains part of their partisan culture. Consequently, the transition to the democratic system did not bring citizens the expected change for freedom of action and organization, leaving the Albanian political system to be included in those democracies considered by the literature as *enfeeble democracies* (Ferrara, 2021).

In today's political conditions, it is imperative that critical feeling is awakened through self-awareness that the political domain belongs to the people. Post-democracy and post-politics speak us for the ill use of democracy as a tool to take over political power and not to remedy the new challenges of liberal

democracy. We must bear in mind that the foundation of liberalism was and stays constitutional justice and the separation of powers, on the condition that there are opposing interests in society that must be mediated in that specific place like the Parliament. In this modern agora, where *the most reasonable* is elaborated (Rawls, 1993).

To conclude, Albania satisfies a triple democratic political state that the authors define as a phenomenon of current politics: post-democracy, post-politics, and enfeeble democracy. Nevertheless, what is the solution? According to Mouffe, in pursue of Gramsci's point of view, it is necessary to set up a 'new hegemony that allows the radicalization of democracy'. Not by moving away from the liberal democratic system, but by building *a people* and combining 'different resistance battles' into an 'equivalent ratio of differences'. In short, according to the Belgian political scientist; *Opposing post-democracy [and post-politics] does not mean abandoning liberal principles such as the separation of powers, the right to vote, civil rights, the multi-party system, but their [further] protection and radicalization* (Mouffe, 2018) (Ferrara, 2021; Raws, 1993).

Governing without *reasonable* principles. The case of the Socialist Party

The Socialist Party (here and after SP), as a left-wing Party, should prioritize the reduction of inequalities but register as a balance sheet of government a deepening of the poverty based on international reports². Not to mention the mass emigration of educated people where, according to the Albanian Institute of Statistic (INSTAT), 53% of refugees have attended secondary and higher education in the last decade. According to the survey data, among those who left, 54% of them had a high school diploma, professional or general training, or a higher education diploma. 14% of emigrants in the period 2011-2019 attended university education. Data shows that of the people who emigrated alone and not with their families, 24,749 of them had a higher education degree and a doctorate. This number is higher because no emigrant family member lives in our country. For this reason, the INSTAT was unable to find the exact profile of the economic status, age, and education of the emigrated families in total, representing 50% of all emigrants who left during the period under review. (<http://www.instat.gov.al/>; Revista Monitor, 2020).

² The Economic Review's autumn report for Europe and Central Asia shows that the crisis caused by COVID-19 is increasing poverty, a consequence of rising unemployment. The World Bank predicts that moderate poverty - the share of the population living on less than \$ 5.5 per person per day - will increase by about 5%. According to the bank's estimates, this indicator, which currently stands at 35.6%, should be around 41.5%. <https://a2news.com/2020/10/07/paralajmerimi-i-bb-thellohet-varferia-415-e-popullsise-me-me-pak-se-55-dollo-ne-dite/> (Accessed on, 07.06.2021)

On the other hand, in the perspective of a Left government, which should focus on strengthening the state apparatus, a worrying phenomenon for the economic policies of the SP still is the Public-Private Partnership. Through PPPs, tens of millions of euros in Albanian taxes go to foreign investors, from tenders for concessions and incinerators to hospital services that hit a sizable part of the budget (www.reporter.al). Let us pause for a moment on the phenomenon of PPPs that characterized the politics of the SP in its government, both central and local, to convey to the reader a vision of the Albanian Left compared to the reasonable/most reasonable Rawlsian standard.

Over the past decade, governments in Albania have acted through the application of secret contracts with businesses or, in other words, ‘confidential’. According to Balkan Investigative Reporting Network (here and after BIRN) (www.birn.eu.com and www.reporter.al), public authorities in Albania, including central and independent government institutions, have decided to keep 236 public procurements secret. From 2008 to 2018, there were 20 classified as ‘confidential’ contracts in the DP-SMI coalition period. While in the period 2013-2017 of the SP-SMI government and the Socialist Party government from 2018 onwards, there were 216 ‘confidential’ contracts. This praxis reached its peak in 2018 with the 76th ‘confidential’ contract. These contracts are agreements settled in the name of liberalization, privatization, deregulation in the public service sector.

It should be clear to everyone that contracts of this type radically interfere in the life of every citizen and have negative consequences for the state budget, limiting competition between economic operators and generating added costs to taxpayers. Furthermore, the lack of public discussion and information on the content of these contracts is not only a restriction of law and democracy but eventually its cancellation despite the reasons behind it. The secret negotiations on these contracts are in the hands of the two levels of government, and some investors selected by them as the most ‘suitable’, who decide how Albania should be in the decades to come. Regardless of the content, this practice is still disturbing, and equally disturbing is the fact that a leftist government is applying it.

The reason for this secrecy is apparent. According to the Left, people are ‘immature’, so they can make caprice about the ‘necessary’ investments that the government decides by itself. Consequently, the people assumed infantile could organize violent demonstrations, and the support for the opposition groups that oppose such practice may rise. In short, people can create annoying situations that would damage the ‘good order’ of the services that arise from the PPPs. Therefore, it is better to put everyone in front of the *fait accompli*, justifying at the end that the ‘financial impossibility of the state’ requires us to act without wasting time to enjoy a better public service immediately.

Thus, Albania's current concern is not the *nanny* state entwined with regulation classically for a leftist government but the PPPs. Hobbes imagined the state as a monster in his definition, where everyone must give up their freedom to live in security and peace. People voluntarily should join the old Leviathan to avoid a greater evil, chaos, and violence against all. Today in Albania, the Leviathan is no longer the state but are PPPs. They use the state to secure 'confidential' deals, to strengthen further these interests to the detriment of the public interest. To conclude, in a nutshell, the problem is that no one has legitimated the new Leviathan because it creates opportunities and privileges for a few chosen and closes them for the rest of the population. The legitimacy has been taken from the people by a left-wing 'democratically' elected government

Democratization through Constitution. A novel solution for democratic consolidation

In countries where the liberal Constitution was adopted, it brought a variety of successes in various areas of life. On the one hand, the liberal model has fully realized the historical mission entrusted to consolidate democracy in a plurality of political systems that coincide with the constitutional experiences of Western Europe and those countries that have adopted the Anglo-Saxon cultural model. It can be said that the success of the liberal Constitution is accomplished in the political systems of a nation-state. Instead, it cannot be denied that the liberal model represented a reference point for the political systems of the Communist bloc - a permanent attempt by the latter to democratize and modernize its constitutional structures - after the fall of the regimes. However, in this second group of states, the success of liberal constitutionalism appears partial. The functions and attitudes of the liberal constitutional model, a common denominator, can be found for the two political orders considered.

According to Habermas, the liberal model can present itself as an instrument of resistance and reaction in the phases of political legitimation to the undemocratic myths and an agent of consolidation of democracy in the later stages. These phases coincided with the loss of authoritarianism in 1945, the construction of the welfare state, and the constitutional experiences of post-communist countries. This trajectory reveals the victory of democracy over autocracy, which is an event that, according to Habermas, is a *sine qua non* for those who have long not appreciated the universal spirit of this political enlightenment (Habermas (1998); Bermeo, 2016, pp. 5– 19; Berman, 2017, pp. 29 – 38)

The affirmation of the liberal Constitution itself is explained by a series of reasons, not reducible only to the difficulty of transplanting the liberal model into

ex authoritarian political systems, willing to accept only some basic principles, rejecting others. Through these considerations, it is easy to understand how some political systems are subjected to a double challenge, on the one hand, the solution of development problems and, on the other, the modernization of their institutional structure. The theories of transition challenge the phase of democratic and constitutional consolidation. (Stepan and Skach, 1993) In this sense, the image described by the political analysis is particularly motivating to highlight the indeterminacy of democratization processes. Therefore, in Huntington's words, 'every wave of democratization corresponds to a wave of setbacks, an insecure democratic system, or authoritarian regression' (Huntington, 1991, pp.17-20).

In Albania, the Constitution somehow is not considered a set of shared values and norms, thus ignoring its axiological content concerning the processes of democratic consolidation. The deficiency of constitutional ethos and an honest approach towards the Constitution as a fundamental instrument to guarantee stability, legitimacy, and continuity centered on common basic principles seems to be the leading cause of the fragility and weakness of the illiberal democracy of today's Albania (Cianetti, & Hanley, 2018, pp. 243-256; Møller, J. 2008, pp. 555- 561; Çullhaj, 2019). This gap has led the Albanian political system to move to the category of *electoral democracy*, namely, a system that merely organizes periodic elections. With the political style of the SP, democracy has undergone a regression towards *pseudo-democracy* or *semi-democracy* characterized by strong authoritarian tendencies (Collier and Levitsky, 1997). It is worth mentioning that governing for two electoral terms without establishing a Constitutional Court makes sense regarding the form of democracy the SP created.

The nature of the constitutional transition processes is an added precondition for the consolidation of democracy. Suppose this factor is ignored, as in the Albanian case. In this scenario, democratic stagnation is guaranteed or, the highest success that can be achieved is an empty democracy, the same as today's political model. Thanks to the political style of the SP, the constitutional order in Albania and the democratic system are in decline. The latter canceled progress in the constitutional and political sense, proposing a different concept of democracy, in stark contrast to the ethos of liberal democracy. These elements, the illiberalism of today's system, and constitutional stagnation cannot be considered contingent and linked to the difficulties met by the SP in solving development problems and modernizing the institutional setup.

Since becoming a dominant majority, the SP has slowly begun to merge the essence of the Constitution with its political vision, creating a relationship of dependence between the degree of compliance with the Constitution and the electoral result. Owning the government, it realized that those in power could

very well exercise this activity without the constitutional control that the latter's spirit implies. The importance of the Constitutional Court, the independence of the judiciary, or popular referendums have remained interesting topics only for classes and academic conferences. In practice, they are annoying obstacles for those in power, and they want to remain as such. Consequently, it is not the government that has to adapt to the needs of the Constitution, but it is the Constitution that must adapt to the needs of the government. If SP prefers this political style, there is no reason to complicate his enterprise with constitutional limitations. It means that it is not the Constitution made by the people for the people, to the people, but the Constitution interpreted in such a way that the SP can continue to remain a majority in Parliament.

It is said that democracy's sincerity is manifested in the loyalty with which the ruling Party is ready to give up control, respecting the rules of the game of democracy, and above all, knowing how to lose. Nevertheless, democracy exhausts when the Party that fought to uphold democratic regulations to come to power is willing to break them to stay in power. We want to emphasize that what is happening today results from a politics without principles, much less left-wing. Justice reform insisted on separating the judiciary from political power, yet, thanks to alliances, the separation of the career in the new Court from political influences was not achieved. This phenomenon will continue to make the judiciary dependent on the Executive and violate the Constitution's spirit. Political corruption will continue to triumph. Whoever is and will be an 'executive controller' has well understood that the Constitution creates an annoying web of rules and nothing more (Khaitan, 2019).

As for the fact of the decision-making process of the SP, which acted far from conforming to the more reasonable Rawls standard, for illustration, we come to the aid of the last two decisions taken by the Constitutional Court and the Administrative Court. With these decisions, the Court intervened in the country's legislation, curbing the will of the Executive, which extended its power beyond the limits set by the Constitution and applicable laws. With the Court's decision, the principle of separation of powers was simultaneously respected and established legal limits to the Executive's activity. However, what is the problem? Let us analyze them in a single file?

The amendments made in 2017 to article 262 of the Albanian Penal Code stated that 'The organization of gatherings and events of people in squares and places of public crossing, without having obtained authorization according to special provisions, or when the organizers violate the conditions established in the authorization request, constitutes a crime punishable with a fine or imprisonment of up to one year'. The essence of this change, classifying the protest as punishable, is meant to curb protests and public organizations, which are the

essence of a functioning democracy. In January 2020, the Shkoder Court of Appeal asked the Constitutional Court to declare the changes to the Criminal Code unconstitutional, making protests organized without authorization a criminal offense. With the sentence of 04.05.2021, the Constitutional Court repeals the first paragraph of article 262, which states; ‘Without the prior authorization of the competent body according to special provisions’ of the Penal Code of the Republic of Albania as it is incompatible with articles 17, paragraph 1 and Article 47 of the Constitution of the Republic of Albania’. The decision of the Court is a positive sign to keep the Executive within the constitutional framework. If the Constitutional Court had not been ‘frozen’, but its reform had been planned at the end of the reform and not at the beginning of it, as some constitutionalists of the country argued, we would have another political dynamic. Freedoms and political rights, important to Rawls, would have a more outstanding guarantee of being respected even under the pressure of an Executive that acts without a self-limitation of principle.

The second case relates to the alienation of the property of the Tirana Botanical Garden. A bit of history. The Tirana Botanical Garden was built in 1964 and occupied an area of fifteen hectares of vegetation and greenery, found near the Artificial Lake of Tirana. Completed in 1971, the Garden has a phytogeographic collection of cultural and scientific value and is part of the University of Tirana. The Garden is used for educational purposes, a tourist attraction, and is considered a small green paradise and the favorite green place in Tirana. However, the Council of Ministers, on 17.07.2019, decided that Botanical Garden would become the property of the Municipality of Tirana. The decree issued that the Botanical Garden becomes the property of the Municipality of the Capital.

The Municipality of Tirana is denied by law from changing the destination of the assets that are not in its ownership; it remained unclear which activity this space would have been used, an area so rare in the capital. The public’s reaction was almost insignificant, except for a part of the students, professors, and employees of the Faculty of Natural Science (www.exit.al); no significant reactions were recorded for this event due to law 262 in the penal code. The community begins to self-censor its sensitivity, especially to post-material values such as environmentalism or the violation of the principles of democracy or liberalism. The only official reaction came from the former Rector of the University of Tirana, Mynyr Koni. He considered the government’s decision to transfer the Botanical Garden from the University of Tirana to the Municipality of Tirana as unfair, expressing his opposition to the decree because it violates the autonomy of the University of Tirana and is in total contradiction with the Higher Education Law 80/2015. On November 15 - 2019, the Rector Koni filed a lawsuit with the Administrative Court of Appeal against the decision, which

transferred authority to the First-Degree Administrative Court 232/5000 ([www.exit.al](#)). However, justified from a Rawlsian perspective, no conditions have been met to place this decision in public debate.

Furthermore, it does not meet any criteria considered more reasonable for us. However, on 07.05.2021, the Administrative Court annulled the government's decision and ordered the transfer of the Botanical Garden to the Municipality of Tirana, which will continue to be owned by the University. Although the final argumentation has not yet emerged from the competent courts, it should be noted that it is still the law that intervenes to place limits on the unlimited exercise of power for any institution that operates within the limits of law and justice. These two decisions are the epitome of a functioning system of liberal democracy and perhaps the only tool left for society to resist any arbitrary and irrational power.

Finally, we close this section with the analysis of a disturbing phenomenon in the world today, namely the detachment of liberal principles from democratic processes. Twenty years ago, Fareed Zakaria wrote an essay in Foreign Affairs magazine entitled *'The Rise of Illiberal Democracy'* (Zakaria, 2003). According to him, democracy is progressing, but not in its best form. At that time, he was writing; 'From Peru to the Palestinian Authority, from Sierra Leone to Slovakia, from Pakistan to the Philippines, we are witnessing the rise of a disturbing phenomenon in international life: illiberal democracy'. His idea was to protect the individual from the abuses of a tyrant and the abuses of democratic majorities. Zakaria made an interesting prediction about this growing phenomenon for the alienation of the nature of democracy from within (Çullhaj, 2017). According to him, electoral democracy as a means of government choice in post-communist countries does not necessarily coexist peacefully with liberalism if the latter sets constitutional and institutional boundaries to democracy.

Today's problem with illiberal governments is that they came to power legitimately and not by force, especially in post-communist countries, where the Constitution and institutions have stabilized. However, this was just a time of democracy and not an ethos ingrained in these societies. In conclusion, according to Freedom House ([www.freedomhouse.org](#)), in 2018, transition nations experienced the most significant decline in the 23-year history of this project's founding: 19 out of 29 countries fell in their overall democracy ratings. For two consecutive years, there have been more established authoritarian regimes than established democracies. Viktor Orban considers liberal democracy as one of the government options among others, adding that, according to him, this system is incapable of meeting the government's goals as a protector and guarantor of the nation's interests.

Consequently, Orban favors 'illiberal democracy' in the example of countries like Turkey or China. Trump's coming to power confirmed Orban's approach (Kreko, & Enyedi, 2018, pp. 39-51). According to Nate Schenkkan (www.freedomhouse.org), 'illiberalism' is not a derogatory word for 'policies we disagree with', but it is an ideological position that rejects the need for independent institutions as control over the government. It should be noted that the trajectory is different in countries with established democracies and different in countries with fragile democracies.

Conclusion

According to Levitski and Ziblat (2018), many observers in the USA find comfort in the American Constitution, which was designed precisely to discourage and dissuade demagogues. Two basic norms had kept the balance of control in the United States before Donald Trump took power. The first one is mutual *tolerance*, which means that competing parties accept each other as legitimate rivals. The other is self-control, or the idea that politicians should exercise *forbearance* to set up their institutional prerogatives. In summary, the authors point out that Donald Trump did not foresee the collapse of American democracy; what remained of most concern to them was the political legacy he would leave behind.

Unlike the United States, a cultural clash is underway in European Union between liberal and illiberal states. Illiberal states cause a ripple effect not only upon their internal politics, transforming institutions into dysfunctional ones, but this institutional dysfunction is also reflected at the European level, putting the correct functioning of the system in difficulty. Consequently, an immediate response from Brussels is needed to limit this phenomenon, empirically and in the abstract, as a guarantor of the values of liberal democracy.

As for countries with fragile democracies such as post-communist ones, the task of dealing with the phenomenon of illiberalism appears even more challenging. The schism that is taking place in these countries, between democracy and liberalism, shows how difficult it is to build a liberal ethos. According to Darhebdorf, after the 1989 revolution, founding a civil society with a liberal ethos would take sixty years. Of course, this statement is more than correct in today's Albania. The essential condition is that we must never and under any circumstances agree with this type of approach as commonly happens in Albania. Instrumentally, some public individuals position themselves as supporters of the phenomenon of illiberalism. This attitude is destructive. Because when liberal values deteriorate, an added vigilance is needed since it



is the most critical moment in which authoritarianism appears and must not be tolerated but must be kept under constant pressure. Liberal democracy has positioned itself as the future political horizon and ought to be defended with determination.

In this article, we analyzed Rawls' principle of the most *reasonable*. We then applied it to the political style of the Albanian Left represented by the Socialist Party and the principles behind its politics. From the above analysis, the Left followed the principle *fiat justitia ne pereat mundus*; blind justice applied without mediation. Government in both levels effectively functions as autocracies as long as the Rawlsian principle of the *most reasonable for us* has never been considered, let alone implemented. Regarding the decision-making process of the SP, which acted far from conforming to the Rawls standard, reasonable/most reasonable, by way of example, we have come to analyze two recent rulings of the Constitutional Court and the Administrative Court. If the Constitutional Court had not been suspended, meaning its reformation must have been planned at the end of the reform and not at the beginning, as some constitutionalists of the country argued, we would have had another political dynamic. The freedoms and political rights so crucial to Rawls would have a more outstanding guarantee of being respected even under an executive's pressure that acts without a self-limitation of principle.

Additionally, we tried to answer the question that today Albania is classified as Post-democracy, Post-political, or enfeeble democracy? Jointly these diagnoses are revealing themselves more than ever in today's Albania. Financial groups, in close collaboration with political power, already control everything in the country. People's awareness of their political, constitutional rights earned over the years has been fading away.

Finally, the analysis focused on the relationship between the degree of respect for constitutional principles and the political style of the SP government. The emphasis here is that what is happening today is the consequence of a politics without principles. The justice reform insisted on separating the judiciary from political power, yet, thanks to alliances, the separation of the career in the new judiciary from political influences was not achieved. This phenomenon will continue to make the judiciary dependent on the Executive and will continue to violate the spirit of the Constitution. Political corruption will continue to prevail.

In short, what is the solution? As Chantal Mouffe points out, it is necessary to create a new hegemony that allows the radicalization of democracy. Not by moving away from the liberal democratic system, but by building a people and combining different resistance battles in an equal relationship of differences.

References

- Almond, G. A., & Verba, S. (1963). *The civic culture: Political attitudes and democracy in five nations*. Princeton, N.J: Princeton University Press.
- Berman, Sh. (2017). 'The Pipe Dream of Undemocratic Liberalism'. *Journal of Democracy* 28, no. 3.
- Bermeo, N. (2016). 'On Democratic Backsliding'. *Journal of Democracy* 27, no. 1.
- Brennan, J. (2016). *Against democracy*. Princeton University Press.
- Case, H. (2017). *Shape-Shifting Illiberalism in East-Central Europe*. Current History, Hinsey, University of California Press.
- Cianetti, L., Dawson, J. & Hanley, S. (2018). Rethinking 'democratic backsliding' in Central and Eastern Europe - looking beyond Hungary and Poland, *East European Politics*, 34:3 DOI: 10.1080/21599165.2018.1491401.
- Crouch, C. (2004). *Post-democracy*. Malden, MA: Polity.
- Çullhaj, F. (2017). *Democratization from Within: Political Culture and the Consolidation of Democracy in Post-Communist Albania*, Editore: Nuova Cultura, Collana: Crossroads Nr. 81, Roma.
- Çullhaj, F. (2019). The Wind of 'Illiberalism' is Blowing Around Post-Communist Countries: Solutions Must Come from Within, *Polis No 18/2019 International Scientific Journal*.
- D. Álvarez García, (2017). "Democracy as Horizon", *Jura Gentium*, XIV, "The Prospect for Liberal-Democracy in Troubled Times".
- Dahrendorf, R. (1990). *Reflections on the Revolution in Europe*. New York:
- Deflem, M. (2008). *Max Weber on the rationalization of law*. In *Sociology of Law: Visions of a Scholarly Tradition* Cambridge: Cambridge University Press. doi:10.1017/CBO9780511815546.004
- Ferrara, A. (2014). *The Democratic Horizon: Hyperpluralism and the Renewal of Political Liberalism*, Cambridge (Mass.) Cambridge University Press.
- Habermas J. (1998). *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* Cambridge: MIT Press.
- Habermas, J. (2008). "Religion in the Public Sphere: Cognitive Presuppositions of the 'Public Use of Reason' by Religious and Secular Citizens," in *Between Naturalism and Religion* (Cambridge: Polity Press).
- Habermas, J. (1992). *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Cambridge, MA: MIT Press.
- Huntington, S. P. (1991). *The third wave: Democratization in the late twentieth century*. University of Oklahoma Press.
- Kant, I. (2004). *Drejt paqes së Përhershme, Përkth, G. Karakashi, Shb; Dritan, Tiranë*.
- Khaitan, T. (2019). 'Executive aggrandizement in established democracies: A crisis of liberal democratic constitutionalism', in Mark Graber, Sanford Levinson, & Mark Tushnet eds. *Constitutional Democracy in Crisis?* Oxford University Press.
- Kodi Penal i Republikës së Shqipërisë
- Kreko, P., & Enyedi, Z. (2018). Orbán's laboratory of illiberalism. *Journal of Democracy*, 29,
- Møller, J. (2008). A Critical Note on 'The Rise of Illiberal Democracy. *Australian Journal of Political Science*, 43(3) doi:10.1080/10361140802267316.
- Mouffe, C. (2018). *For a left populism*. London, Brooklyn, NY, Verso.



- Rawls, J. (2005). *The Idea of Public Reason Revisited*. The University of Chicago Press.
- Sartori, G. (2016). 36. *The Theory of Democracy Revisited*. In R. Blaug & J. Schwarzmantel (Ed.), *Democracy: A Reader* (pp. 192-196). New York Chichester, West Sussex: Columbia University Press. <https://doi.org/10.7312/blau17412-044> .
- Stepan, A., & Skach, C. (1993). *Constitutional Frameworks and Democratic Consolidation: Parliamentarianism versus Presidentialism*. *World Politics*, 46(1), 1–22. <https://doi.org/10.2307/2950664> .
- Walzer, M. (1983). *Spheres of justice: A defence of pluralism and equality*. Oxford: Robertson.
- Weber, M., Gerth, H., & Mills, C. W. 1. (1958). *From Max Weber: essays in sociology*. New York: Oxford University Press.
- Zakaria, F. (2003). *The Rise of Illiberal Democracy*, Foreign Affairs, United States, Council on Foreign Relations.

Internet Sources

- <https://a2news.com/2020/10/07/paralajmerimi-i-bb-thellohet-varferia-415-e-popullsise-me-me-pak-se-55-dollo-ne-dite/>
- <https://exit.al/gjykata-pranon-padine-e-ut-se-per-pronesine-e-kopshtit-botanik/>
- <https://freedomhouse.org/report/nations-transit/2018/confronting-illiberalism>
- <https://lapsi.al/2019/05/27/miliona-euro-shpenzime-nga-qeveria-zbulohen-236-tendere-sekrete-investigimi/>
- <https://www.monitor.al/anketa-ne-dekaden-e-fundit-kane-emigruar-360-mije-persona-largohen-nga-vendi-gati-7-e-familjeve-rekord-tirana/>