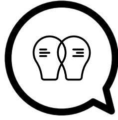


IDEAS PARA EL DEBATE

DEMOCRACY ON THE BALLOT: WHEN THE SYSTEM BECOMES THE ISSUE

Michael Ignatieff, Premio Princesa de Asturias en Ciencias Sociales 2024, ofreció una conferencia en Madrid organizada por la Fundación Ramón Areces y el Instituto Minda de Gunzburg Center for European Studies de la Universidad de Harvard en la que el escritor y político canadiense ofreció varias recetas para mejorar el actual sistema democrático. Para Ignatieff, que en la actualidad es catedrático de Historia y Rector Emérito de la Universidad Centroeuropea de Viena "el autoritarismo es una tentación y un peligro precisamente porque siempre llega disfrazado de democracia".

Por Michael Ignatieff,
Premio Princesa de
Asturias 2024

Democratic self-rule is an unending argument about what democracy is. Whether a measure is or isn't democratic is a recurrent question. We live in democracies without finally agreeing what democracy is. Majority rule or constitutional rights, separation of powers, a free press, and an independent judiciary?

"Government by the people, for the people, of the people", or 'power checking power to keep the people free"? Liberal democracy or majoritarian democracy?

Who seriously supposes these are settled questions?

Democracy's basic constitutional structure –majority rule, balanced by the rule of law— is contested ground[1]. The fundamental question is who, in the name of the people, should rule, politicians, bureaucrats or judges?

These clashes of principle and jurisdiction are permanent features of a democratic system, a feature not a bug.

To maintain normal operation, a democracy, as the philosophers say, 'brackets' these questions. It does not and cannot resolve these conflicts of high principle. Instead, it reproduces its legitimacy with voters performatively. When the system works as it should, every player in their separate roles —politicians, lawyers, regulators, bureaucrats, a free press— do their jobs, respect each other's prerogatives, stay out of each other's lanes, and when they clash, as they do from time to time, accept either a political or a legal resolution of the conflict.

Recurrently, however, the performative legitimacy of democracy becomes difficult to maintain. Branches of government clash. Conflicts of principle, suppressed in normal operation of the system, surge to the surface of political debate. Sometimes, settled constitutional provisions come into question. Sometimes an institution of long standing fails to adapt and becomes a source of discontent with the system as a whole. When this is the problem, reform is the answer: constituencies emerge to push for change, and over time, constitutions are re-written, institutional balances are re-drawn, old institutions are retired or refurbished, and the overall performative legitimacy of democracy is improved.

Michael Ignatieff

As an operating system, democracy is an improvisational concert of competing sources of power in constant evolution and change. How can it be otherwise if the freedom of its members is its ultimate goal and rationale? This contestability is a crucial strength, a key source of the adaptability that 'brittle' authoritarian systems lack.

In normal times, the contestability of democracy as a system of rule does not prevent it from reproducing stable patterns of popular consent. We argue about what is democratic or

undemocratic, and then we accept, more or less willingly, the legal or political resolution of the issue. We compete for power with each other, but we do not question the democratic bona fides of our opponents. We accept, sometimes through gritted teeth, that the other is a democrat, someone who plays by the rules and accepts the outcome of elections, win or lose.

This is not where we are today, not in the United States, nor elsewhere in democracies around the world. The very rules of democracy are in question, the commitment of key competitors to these rules is a matter of dispute. For the first time, Americans face an election in which not just one, but both candidates are questioning the democratic credentials of the other. Will they play by the rules? Will they accept the outcome, win, or lose?

"It may be true that Trump's base is unpersuadable, but there is a cost to the system when you give up on your opponents."

For the first time, democracy itself is on the ballot, the actual commitment of candidates to abide by democratic outcomes is not clear from the outset.

My question is: can a democracy survive when two competitors for power deny the other is a democrat?

When President Biden declared that "democracy is on the ballot," he was launching his re-election campaign with an existential appeal, aimed at solidifying his base and winning over independents and lapsed republicans who agree that his opponent poses a threat to American institutions[2]. Those of us who agree with him may not register a collateral effect of this framing. If democracy is on the ballot, those who vote for Biden will be encouraged to regard Trump diehards as undemocratic authoritarians. Making democracy the ballot question turns opponents into enemies. Demonizing Trump's supporters gives up on Trump voters as a lost cause and turns the election from an exercise in persuasion across the divide to each side preaching only to its choir.

It may be true that Trump's base is unpersuadable, but there is a cost to the system when you give up on your opponents. Democracy is all about winning over opponents and building alliances with people with whom you disagree. The system works when we consider opponents not as enemies, but as adversaries. An adversary merely wants to defeat you and might be your ally tomorrow. Regarding your opponent as an enemy of democracy, on the other hand, renders persuasion impossible and may turn out, in the longer run, to be dangerous for democracy itself[3].

You may say Trump leaves Biden no choice. That may be true, but the question remains whether defining your opponent as an enemy of democracy is good for democracy. It may be true that America is polarized, but truth, to adapt an African proverb, is not always good to say. Deeply divided societies, as ours were in the 1950's and 1960's, suppressed reflection of these cleavages with a language of comity and common national purpose. However disingenuous this language was in relation to the real divisions in our societies then, it created a political system that rewarded bipartisanship and successfully pushed extremism to the sidelines.

> **"It is too late to moderate the language. The polarization is too deep for gestures of conciliation. Both sides are dug in and look to the November election to provide a decisive result."**

Anyone who has been in politics, as I have, appreciates the hypocrisies and false politeness that democratic politicians use to mask and mitigate the hatreds at the heart of the game[4]. But I'm not calling for a return to the useful hypocrisies of the 1950's. The politics of comity and bipartisanship, which we are supposed to have once enjoyed in the distant 50's and 60's, are overpraised. In the United States, collegiality reposed on bipartisan collusion in the suppression of black votes in the South, in the marginalization of women in public life, in the total suppression of the right of gay Americans to seek public office in affirmation of their sexual preferences. Our partisanship today reflects not the failure of American society to heal its divisions, but its success in drawing into the political system groups who fought exclusion in the North America of the 50's and 60's. It is not surprising that the liberal revolution of inclusion is threatening to the power and position of white males. It is not surprising that they should fight back against the liberal elites whom they blame for upsetting the democratic apple cart. Trump has built his electoral base by cultivating fear and resentment of the very changes in America that give liberals reason to be proud.

There is no way back to the old hypocrisies of comity and bipartisanship. Truth about our divisions is better than glib falsehoods, but there is a price to be paid for truth, and there is a price to be paid for inclusion. Our newly included and empowered elites do not trust each other, and they actively distrust the older ones they are trying to dislodge. Liberal democracies are stabilized by complex institutional balances, organized hypocrisies and in turn sustained by tacit trust among elites. We are re-negotiating all of these balances for a new and unprecedented age of inclusion. When the defining issue of an election becomes the commitment of adversaries to the rules of the democratic game, polarization can become lethally dangerous to the very system both sides say they are committed to maintaining.

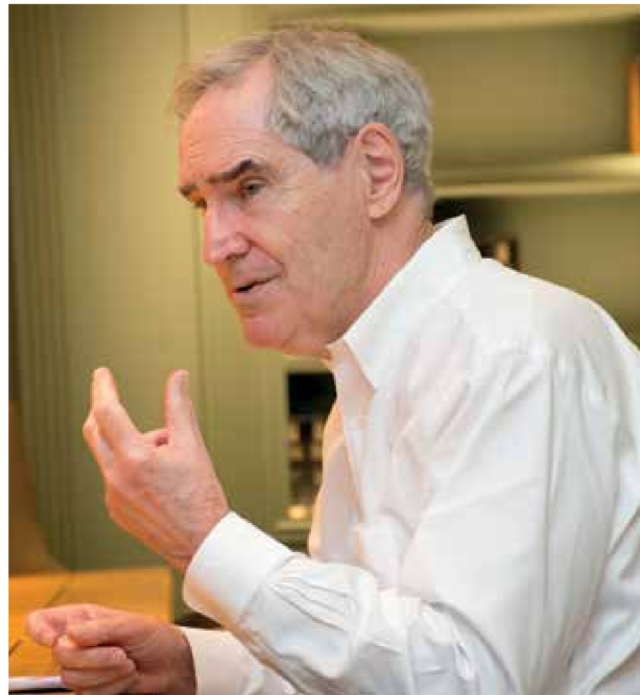
It needs to be remembered that in the upcoming election, both sides make their opponent's attachment to the system the issue. Former President Trump is building his campaign around the claim that fraud in the 2020 election denied him re-election, and that prosecutions, for various offenses, since that time violate his right to stand for office once again[5]. Whatever you happen to think of these arguments, millions of Americans believe 'lawfare' is denying them a legitimate electoral choice, and they will vote for Trump, not to abolish democracy, in their minds, but to save it, or at least their version of it. So for this side too, the choices are also existential. In their view, Biden's re-election threatens the foundations of the system of American government.

It is too late to moderate the language. The polarization is too deep for gestures of conciliation. Both sides are dug in and look to the November election to provide a decisive result. That is, after all, how democracy decides its foundational arguments. A decisive result can become a teachable moment, but it had better be decisive.

Crisis can be avoided in November only if the electoral count is decisive. But what if it isn't? In such a situation, one test of a good democrat is losing gracefully. But why should Trump be a good loser this time, if he believes the result last time was a fraud? As for Biden, why would he choose graceful concession, if he seriously believes that the future of free elections in America was at stake? His own rhetoric —'democracy is on the ballot'— might force him into confrontation.

If the result is close, if one side wins the popular vote while the other wins the electoral college, the matter may end up in front of a Supreme Court. If neither side accepts their ruling, the matter will go, as it did in the contested election of 1876, to the Congress. In 1877 Congress found a compromise that installed Rutherford B. Hayes as President, at the price, Daniel Ziblatt and Eric Foner have reminded us, of rolling back the post Civil War enfranchisement of black voters in the south. One can only hope that a resolution of a contested election in 2024 will not end up with such a dire result[6].

If *both* sides come out of 2024, believing they were robbed, the matter might end up being settled on the streets. To avoid this dreaded outcome, we can only hope that one of the competitors will be willing, however reluctantly, to put the interests of the democratic system ahead of their own bitter sense of grievance in defeat. But this means that the future of democracy in America would no longer depend



on the good sense of the people, or even the wisdom of America's Founding Fathers and the intricate machinery they bequeathed to future ages, but on the virtue of one or other of two implacable competitors. It is never too late to trust to virtue, but it is, at the best of times, a most uncertain bet.

What does this story of a possibly contested election in 2024 tell us? First, it's obvious that democracy functions best when it is NOT on the ballot, when the democratic bon fides of competitors are NOT in question. Democracy is not functioning normally when its rules become the ballot question.

When both sides claim the other side is a menace to democracy and neither trusts the institutions to regulate the dispute, we enter terrain we have travelled before. It was this kind of impasse, that led Weimar Germany's President to confer ultimate power on the 'Austrian corporal' in 1933. Millions of Germans, tired of democratic crisis, unable to determine who was speaking true, initially

welcomed the unanimity that an exit into authoritarianism seemed to promise[7].

The US is not the only country where democracy itself has become a ballot question, and where an exit into authoritarianism is possible. In Israel, the Prime Minister's far-right coalition has legislated to weaken the rule of law and prevent the Supreme Court from curbing the power of the Prime Minister. Despite months of mass protest, and a full-scale war in Gaza, the Netanyahu government seems determined to remake Israeli democracy in its own image. In Turkey, Erdogan used the pretext of a military coup in 2016 to round up political opponents, neuter the independence of courts, universities, and media, and consolidate power in his own hands. In India, opponents of Prime Minister Modi claim that his likely victory in the current elections will put Indian democracy in danger[8]. In Orban's Hungary, his opponents seek, likewise, to make his dismantling of democracy, during his tenure, the ballot question in future elections.

"In normal times, democracy reproduces its legitimacy not by means of rhetoric, but performatively by its quotidian operation. In crisis, quotidian performance, the system working as it should, does not restore faith in it on the losing side."

I hesitate to put Spain in this company, given the success it has made of its transition out of authoritarianism since the 1970's. Yet clearly something is amiss in the current democratic climate. I leave it to our Spanish colleagues to tell us what is wrong, but from the outside, it appears that democracy is on the ballot here. The Prime Minister's amnesty to Catalan separatists, in return for propping up his government, remains a source of profound division. The Sanchez government argues that concessions to the Catalans are necessary to stabilize Spanish democracy, while the opposition insists that amnesty betrays the rule of law and damages democracy.

In each of these cases, both genuine democrats and incipient authoritarians use the language of democracy to justify their actions. Democracy is 'a promiscuous legitimizer', and it is this that gives democracy a bad name. It is the sole remaining source of legitimacy in the world today, and democrats and authoritarians alike use its legitimizing power to serve their own very different ends. Authoritarianism is a temptation and a danger precisely because it invariably arrives, cloaked in democratic garb.

In normal times, democracy reproduces its legitimacy not by means of rhetoric, but performatively by its quotidian operation. In crisis, quotidian performance, the system working as it should, does not restore faith in it on the losing side. Those who lose may decide to take matters in their own hands. This occurred on January 6, 2021, at the US Capitol.

For millions of Americans, the insurrection on that day was a despicable assault on democracy. Hundreds of those arrested for offenses on that day have been sentenced to prison. But for millions of others, a lesser number probably, but still sizeable, it was a patriotic uprising to defend democracy against an unjust attempt to ratify a stolen election.

In democracies born of revolution —the US and France, for example— the revolutionary tradition legitimizes insurrection when 'losers' believe the political system has betrayed them. Those insurrectionists who wore 18th century Sam Adams costumes on that day in January —just like the *gilets jaunes* in France who wore

the Phrygian cap of revolutionary France—were not just dressing up. They were seeking to invest violence with democratic legitimacy.

Daniel Ziblatt and Steven Levitsky argue, echoing Juan Linz, that saying no to violence should be the cardinal commitment of all democrats[9]. True enough. The problem is that American democracy's most sacred utterance—the Declaration of Independence–can be parsed to justify insurrection:

> "When a long train of abuses and usurpations... evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government and to provide new Guards for their future security"[10].
>
> Democracy's 'promiscuous legitimations' help us to understand why Trump feels entitled to celebrate the insurrectionists of 2021, now in prison, not as criminals but as martyrs to freedom.

The problem, Robert Kagan argues, in a forthcoming book, is not democracy's ambiguous relation to violence, but the deeply embedded tradition in America of political movements prepared to use violence to achieve their designs[11]. Before the Civil War, the slave-holding southern states stood out for states' rights against the federal system; they launched a Civil War to defend slavery; and the South continued violent opposition to racial equality right through the 1960s; since the 1960's, the Republican party has come to stand for white resistance to black equality, women's right to choose and the constitutional doctrine of the 'separation of church and state'. Trump stands in a long tradition that stretches back to include Joseph McCarthy, Colonel Lindbergh, Father Coughlin, Jefferson Davis and the racist secessionists of the Civil War.

Democracies then and now have harbored violent authoritarians, and not just in America.

In Modi's India, the radical sectarian Hindu parties claim the assassin of Mahatma Gandhi as one of their heroes. Modi has never disavowed their association with political murder; Marine Le Pen's National Rally has authoritarian, anti-semitic roots that make its attachment to the constitution of the 5th Republic uncertain; Alternativ fur Deutschland's leaders in Germany cunningly play upon Nazi nostalgia while pretending to be democrats; Italy's leading party in the ruling coalition, refuses to disavow its lineage with Mussolini's fascists. There is no shortage of democratic players whose commitment to the rules of the game, especially to non-violence, is open to question.

The argument that democracy is threatened by enemies within implies if we could just defeat them at the ballot box once and for all, all would be well. We all want to believe that authoritarian populism is the democratic crisis, and that the crisis can be solved with its electoral defeat. What about the possibility that authoritarian populists are actually democrats who think *we* are the threat to democracy?

If democracy is in crisis today, one reason is that its historical traditions, and its best feature —the inherent contestability of its rules— make its legitimacy conditional and performative. Instead of thinking of ourselves as defending a system whose rules are or should be uncontestable, we need to think instead that disagreement about the rules is inherent in the democratic system itself.

Arguments about the proper boundaries between the political and legal realm have been the stuff of democratic conflict since the 17th century and these arguments, central to Trump's challenge to the legitimacy of his prosecution, will not end with Trump. We do ourselves no favors if we assume, *ab initio*, that there is no argument of principle on the other side that has to be addressed or refuted. The rule of law is not some sacred abstraction to which we all should bow down. It is a contested concept whose regulatory role in constraining majority rule and political power is never settled.

The law is also a social practice that millions of citizens know only too well. The rule of law's very legitimacy, at the pinnacle of the democratic system, the support it enjoys among voters depends on how they see justice being done every day, at the bottom of the system. The spectacle at the bottom is not pretty. Rule of law is not such a sacred concept if your only experience of the law is the traffic court, the ordinary criminal court, the often ragged, incoherent, and downright arbitrary unfairness of many judicial proceedings. This is an important reason why courts, judges, and above all, lawyers are unpopular professions, and why ultimately, the rule of law does not enjoy vibrant popular commitment. It is scarcely surprising that the venomous attacks by authoritarian populists on lawyers, the legal system, and the 'deep state' enjoy a broad constituency of support.

The counter-majoritarian institutions of the liberal state —courts, regulatory agencies, universities, the so-called 'deep state'— are staffed by educated professionals and it is easy work for populists to turn angry citizens against them[12]. 'We've had enough of experts' was a powerful rallying cry among Brexiters in 2016. Orban, Trump and Erdogan have proved skillful in exploiting popular resentment towards counter majoritarian institutions and the professions —lawyers, professors, journalists— who keep them functioning. Populism mobilizes this social resentment, and it does so, as Jan Werner Muller has taught us, in the name of 'we the people' and majority rule[13].

I've been arguing that democracy is in trouble, not just because it harbors enemies within, as Robert Kagan claims, but also because of democracy itself, because of the way it operates as a promiscuous legitimizer, because of the infinitely contestable nature of democratic rules themselves, and because of real disillusionment with how both law and politics fail their citizens. Our problems would be simple if we could defeat democracy's enemies at the ballot box. But our problem is that once we win, and I hope we will, we will have to restore democracy's promise.

There is a case to be made that democracy *should* be on the ballot, just not as the war cry of two polarized opponents. All of our democracies could use some serious institutional reform, but we won't begin unless we abandon the illusion that all our problems with democracy would be solved if we could just defeat authoritarian populists at the ballot box. For it is our institutions, not just the players, that need changing.

Here, political scientists, the scholars who think about the system for a living, can set the agenda. They have compiled a comprehensive agenda of reform: whether it is

by institutionalizing citizen assemblies, chosen by lot, or by giving citizens the chance to vote on line to advise legislators on public policy decisions. Many democracies, including Spain, need ethics commissions to regulate public controversies about politician's behavior[14]. In other countries, Canada for example, changes in voting systems from first past the post to some form of proportional would improve regional representation. In other countries, Belgium or Netherlands, changes in the thresholds at which parties can secure representation in Parliament, might help these democracies form stable governments more easily. In the United States, abolition of the electoral college has become essential so that the system guarantees that the person who wins the popular vote actually wins the presidency. Term limits for Supreme Court justices would increase the rotational churn of appointments and possibly moderate the courts' polarization. Electoral primaries could be reformed to produce less extreme candidates. Non-partisan districting commissions, a common feature in so many democracies, could help the United States escape the increasingly grotesque partisan gerrymandering of electoral districts. And so on.

The political science literature abounds with realistic proposals for reform. It would be a waste of time for me to rank my preferences, and irrelevant besides, since the reforms must be tailored to the specific needs of each of our democracies. From my experience, there are just two substantial obstacles to democratic reform that matter. The first is that the popular constituency for reform is small —voters care about democracy, but do not engage with detailed proposals for institutional reform— and the second is that everyone evaluates a reform according to whether it favors their side or the other. Paradoxically, the reforms that stand the best chance of becoming law might be those where neither side can be certain whom it will benefit. Reforming the system means keeping reform from being taken hostage in the war of parties. This requires a leader to have a legislative majority in the first place, a concerted strategy to win over gatekeeper groups in civil society, and a great deal of political skill. So we will need to elect political leaders daring enough to put the system ahead of their interests, persistent enough to confront the public's suspicion of democratic reform itself, and far-sighted enough to believe that one day, long after they are gone or in retirement, voters will thank them for making their system of government more accountable, more responsive and more democratic. For reform in the past is the real reason an inherently contestable system has survived—and with reform, we can believe it will surmount this crisis.

[1] Dieter Grimm "Rule of Law and Democracy", in G. Amato, B. Barbesan and C. Pirello (eds.) *Rule of Law Versus Majoritarian Democracy* (Oxford, Hart Publishing, 2021), pp. 43-62.

[2] https://www.whitehouse.gov/briefing-room/speeches-remark/2022/11/03/remarks-by-president-biden-on-standing-up-for-democracy/

[3] Michael Ignatieff "The Politics of Enemies" *Journal of Democracy*, Volume 33, Number 4, October 2022, pp. 5-19.

[4] Michael Ignatieff *Fire and Ashes: Success and Failure in Politics* (Cambridge: Harvard University Press, 2013).

[5] Daniel Henninger "The High Price of Democrats' Anti-Trump Lawfare" *Wall Street Journal*, March 3, 2024.

[6] Steven Levitsky, Daniel Ziblatt *Tyranny of the Minority: How to Reverse and authoritarian turn and forge a democracy for all* (New York: Penguin, 2024), ch. 3, p. 81; Eric Foner Reconstruction: *America's unfinished revolution* (New York: Harpers, 2014).

[7] Frank McDonough *The Weimar Years: Rise and Fall*, 1918-1933; Eric D. Weitz Weimar Germany: Promise and Tragedy.

[8] D.R. Chowdhury, J. Keane *to Kill a Democracy: India's Passage to Despotism* (New York: Oxford University Press, 2021).

[9] Ziblatt and Levinsky, p. 40.

[10] US Declaration of Independence (1776).

[11] Robert Kagan *Rebellion: How Anti-Liberalism is Tearing America Apart Again* (New York: Penguin, 2024).

[12] Ivan Krastev y Stephen Holmes *The Light that Failed* (New York, 2021).

[13] Jan Werner Muller *What is Populism?* (Princeton: University Press, 2016); Andreas Schedler "Again, What is Populism?", *Review of Democracy*, 2024, https://revdem.ceu.edu/2024/02/01/again-what-is-populism/

[14] Miriam Durantez González "Sanchez Case shows Spain's Ethics code vacuum leaves everyone exposed", *Financial Times*, April 28, 2024.