



Revista Derecho del Estado

ISSN: 0122-9893

Universidad Externado de Colombia

HAREL, ALON

Radicalism, Conservatism and Liberalism: Contemporary Lessons for Politics and for Political Activists**

Revista Derecho del Estado, no. 49, 2021, pp. 5-14

Universidad Externado de Colombia

DOI: <https://doi.org/10.18601/01229893.n49.02>

Available in: <https://www.redalyc.org/articulo.oa?id=337669245002>

- How to cite
- Complete issue
- More information about this article
- Journal's webpage in redalyc.org

redalyc.org

Scientific Information System Redalyc

Network of Scientific Journals from Latin America and the Caribbean, Spain and Portugal

Project academic non-profit, developed under the open access initiative

Radicalism, Conservatism and Liberalism: Contemporary Lessons for Politics and for Political Activists**

SUMMARY

Introduction. 1. Radicalism, Conservatism and Liberalism. 2. The Egalitarian Proposal and the Liberal Dilemma. Conclusion. References.

INTRODUCTION

In *The Legal Foundations of Inequality*, Gargarella provides a sophisticated account of the constitutional history of the Americas. *The Legal Foundations of Inequality* is not merely a historical survey; it provides an analytic frame within which the legal development in the continent of America can be understood and become intelligible. It also develops a normative critique of the major legal and political movements and provides an alternative egalitarian route for the future.

I was greatly enriched by reading it. Needless to say I cannot contribute to the historical account provided by Gargarella. This essay aims therefore at examining the contemporary relevance of Gargarella historical insights. Part I examines the three primary movements identified by Gargarella (radicalism, conservatism and liberalism). I try to identify and sharpen some of the sentiments underlying these ideologies and, finally, I show that contemporary political and legal developments can be enriched by understanding the history. Radicalism of the 19th century can be equated with contemporary populism; the ancestor of 19th century conservatism is nationalism and liberalism has retained its original name. I establish that these three ideologies are as influential as they have been in the 19th century. I also argue that economic interests are as important now in shaping political realities as they have been in the history described by Gargarella. Part II provides a normative account; more particularly, it aims at mitigating the tension identified by Gargarella between individual and collective self-governance.

* Professor of Law at The Hebrew University of Jerusalem (Jerusalén, Israel). D. Phil. (Philosophy of Law), LL.M., Hebrew University, LL.B., Hebrew University. Contacto: alon.harel@mail.huji.ac.il ORCID: 0000-0001-5122-9508.

** Recibido el 11 de septiembre de 2020, aprobado el 26 de octubre de 2020.

Para citar el artículo: HAREL, A. *Radicalism, Conservatism and Liberalism: Contemporary Lessons for Politics and for Political Activists*. En *Revista Derecho del Estado*, Universidad Externado de Colombia. N.º 49, mayo-agosto de 2021, 5-14.

DOI: <https://doi.org/10.18601/01229893.n49.02>

Gargarella's work is not merely theoretical; he writes with a passion which indicates that his work is also designed to improve the society in which he lives. This essay is designed precisely to honor this aspect in Gargarella's work; it shows that Gargarella's account of the past can be the key for understanding the present and improving the future.

1. RADICALISM, CONSERVATISM AND LIBERALISM

The politics of the Americas was governed by three main political movements: radicalism which emphasizes self-governance, conservatism which is founded on political elitism and moral perfectionism and liberalism which cherishes individual rights and often also free markets. The politics and the constitutional framework of the Americas was determined by the interplay between these three movements. Often, as Gargarella shows, two of these movements (conservatives and liberals) joined forces to oppose the third (radicals).

The terms: radicalism, conservatism and liberalism are ideological abstractions. In reality the political movements designed to implement these ideals consist of different people and sentiments which do not always cohere with the ideologies as understood in political theory. Politics, after all, is never merely political theory; it is never a simple translation of political ideologies into practice and policies. In the process of translating theory into practice, various institutional, personal and other contingent factors transform some of the ideological commitments and the story of the Americas is not an exception.

Further, each of these movements consisted of various features which are unified by what Wittgenstein has called family resemblance. Often the movements had certain substantive and procedural ideals but they did not always promote all of these ideals and, at times, even fought against some of them. This makes the task of describing these three movements without providing numerous qualifications a particularly difficult one. Nevertheless, at the risk of being a charlatan, let me provide a rough description following the description by Gargarella.

Radicals praised self-governance and were opposed therefore to legal mechanisms which limit the power of self-governance such as a bill of rights or judicial review. Instead, they were sympathetic to institutional structures that enable voters to monitor carefully and to influence the decisions of their representatives. Conservatives were, as a rule, hostile to self-governance given that they had certain conceptions of the good which they wished to realize by using legal means. Most typically these conceptions of the good were religious ones. Liberals were opposed to collective self-governance given their concern to protect certain rights and freedoms and, in particular, the right to property. In the following more detailed discussion I wish to highlight the underlying sentiments beneath each one of these movements.

Last I point out the ways in which these ideologies can be shown to shape the political landscape of contemporary societies.

Radicalism is understood by Gargarella as a movement that advocates political majoritarianism and desires to strengthen the authority of the people and their political powers. To do so, radicals typically advocate institutional mechanisms designed to reinforce the influence of the people in political decision-making. For instance, radicals would oppose granting power to courts and other non-elected institutions; they would advocate closer relations between the people and the representatives. They also advocate designing mechanisms for reinforcing deference on the part of the representatives (including in extreme cases even granting people the power to dismiss representatives who deviate from their duties to defer to the will of the people).

Gargarella identifies from the outset one prominent value underlying radicalism: the desire for self-governance. I would argue that radicalism can be justified in several different ways each of which has its own logic and each has its own institutional ramifications. Let me distinguish between three different ways to ground radicalism: a republican or freedom-based, a consequentialist and a relativist justification.

The republican argument rests on the conviction that all members of the society ought to have a decisive say in self-government. Self-government is a right in itself and people are entitled to make decisions concerning their own future (230). Self-governance is understood as a form of freedom: collective freedom, namely the freedom of the community as a whole to pursue its goals and values.

The second argument is a consequentialist one which maintains that decisions made by the people as a whole would in the long run promote the public good better than other institutional mechanisms. The assumption here is that people are endowed with a 'moral sense' as Jefferson put it and, consequently, that they would be able to effectively participate in the governing of the polity and make the right choices (215). In fact, some radicals have said that without consulting *all those potentially affected*, decision-makers lose fundamental information without which they cannot make an informed decision (23). Under this justification the participation of the nation as a whole is necessary for reaching the right and the just decisions.

The last possible justification is absent in Gargarella analysis presumably because it had no echo in the political realities in the Americas. It is sometimes maintained that the citizens as a whole should participate in decision-making because there is no right and wrong in politics and, consequently, every decision is as good as any other. This form of relativism cannot be sustained philosophically but it has had influence on actual politics.¹

1 Note that although the first (republican) and the second justification (consequentialist) are distinct, they are often interrelated. For instance, Gargarella writes that collective self-government

It is easy to see the affinity between radicalism as described by Gargarella and contemporary populism. Populists claim that representatives represent the people by complying with their preferences and judgments. Further, contemporary populists often share the hostility of 19th century radicals to the courts and other intermediate institutions which mediate between the people and their government and thereby, according to populists, distort the real will of the people. Those institutions are perceived both by contemporary populists and by radicals as elitist and detached from the real sentiments of the nation.

There is however one feature which is fundamentally different between contemporary populists and radicals. The radicals as described by Gargarella, have been highly sympathetic to redistribution of resources and to support for the poor. This is not a characteristic which is shared by contemporary populists. In fact, I will argue later that contemporary populism is used to distract attention from the economic inequalities characterizing contemporary societies.

Conservatism is described by Gargarella as a combination of political authoritarianism and moral perfectionism. Political authoritarianism is diametrically opposed to self-governance. Advocates of political authoritarianism such as Edmund Burke believe that governance is an expertise which should be reserved therefore to experts. The people should not govern because they cannot govern and they cannot govern because they lack the expertise to govern.

In the context of conservatism, this view is accompanied by moral perfectionism under which there is a right conception of the good and it is the task of the state to guide people to lead the good life. Further, the good life is not the one that we happen to prefer to have or happen to value; it is one that is determined externally and objectively independently of us. In addition, conservatives believe that the law can guide us to realize the conception of the good and, to do so, it is legitimate to use force when it is needed. The use of legal force is (or, at least, may be) needed to protect the moral fabric of the community. In the Americas the conception of the good favored by conservatives has typically been a religious form of life. At times this led to religious persecution of minority religions and, at other times, merely to privileges granted to certain religious groups and denied to others.

The most typical justification of conservatism is of course the conviction that some forms of life, eg. Catholicism are good ones but often one finds an argument favoring conservative agendas on other grounds: the conviction that homogeneity, conformism and order are important values without which a political community cannot be sustained (92-93). A characteristic expression of these sentiments was made by Gabriel García Moreno who said: "The

conveys the conviction in the wisdom of the people and their ability to make decisions for themselves (230). Hence the right to self-governance is designed to manifest a trust in the power of reasoning of citizens and their ability to pursue the public good.

first [goal of my power] will be that of harmonizing our political institutions with our religious beliefs; and the second will be that of investing our public authorities with the forces required to resist the assaults of anarchy” (92).

So, in addition to the conviction that there is a right or correct or decent way of life which needs to be strictly enforced, conservatives also share certain beliefs concerning the need for order, discipline and homogeneity. In contemporary society, one finds many manifestations of this view. Often however these sentiments take the form of nationalism rather than religion. The prevalent hostility to immigration also reflects the sympathy towards homogeneity and cultural conformism. Hence, I believe that contemporary nationalists can be described as the authentic ancestors of conservatives as described by Gargarella.

Liberalism: In the Americas the liberal tradition was associated with strict and often absolute protection of rights and protection of ‘free markets.’ Liberals defend the autonomy of each person, namely his or her right to choose freely and develop her own conception of the good even when this conception is not shared or even offensive to others. To guarantee the protection of these rights, liberals were willing to limit the power of the citizens to govern. As the people did not always share the liberal worldview, liberals joined forces with conservatives in order to limit the political power of the citizens. From the perspective of liberals, this coalition was intended to protect individual freedom against the will of the people by limiting their collective freedoms. Institutionally this took the form of rigid constitutional provisions and powerful courts designed to protect rights.

Gargarella emphasizes the coalition between conservatives and liberals designed to address the radical threat – the threat of collective self-governance. This coalition is in his view the primary force which governed the Americas and it provides the best explanation for its legal and constitutional development. This coalition was ultimately based on fear, in particular the fear of governance by the people (223). This fear was at least partly motivated by economic concerns, in particular, the fear that collective self-governance would lead to a major egalitarian redistribution of resources (224). Let me explore the ways in which this framework can be used to explain not our history but also our present.

Interestingly in contemporary societies a different coalition is being formed which, I dare to conjecture, is also motivated by economic concerns: a coalition between populists (the contemporary ancestors of radicals) and nationalists (the contemporary ancestors of conservatives). Populism is a proceduralist theory. In its pure form, it merely advocates a certain proceduralist mechanism for decision-making. Hence, in principle, it can cooperate with any other movement whatever its substantive commitments are as long as these commitments are shared by the majority. It seems natural that

when the majority supports a certain substantive view, eg conservatism, the advocates of this substantive view would join forces with populists.

The contemporary reincarnation of this phenomenon is as follows: populists and nationalists form a coalition targeting liberalism. Further, as I argued earlier I suspect this coalition rests also on economic considerations. Unlike the liberalism described by Gargarella, contemporary liberalism is not hostile to redistribution and some of the most vocal liberals advocate redistribution of resources. By cherishing nationalist sentiments, the coalition of populists and nationalists distracts attention from the economic inequalities and relegates the vast economic inequalities to the margins of politics. It thereby facilitates the contemporary economic exploitation of vast number of workers.

Let me illustrate this dynamic in the context of Israel. The Israeli public has become conservative and, in particular, nationalist. Due to legal and constitutional constraints the nationalist agenda cannot be fully realized. The courts limited the pursuit of certain nationalist policies on the grounds that they are unconstitutional. The nationalists use populist rhetoric to attack the courts (and other institutions such as the media). Their argument does not rest on the claim that the nationalist policies they pursue are just but on the (populist or radical) claim that this is the will of the people and the will of the people ought to be honored.² This tactic distracts attention from the vast economic inequalities and thus facilitates the pursuit of neo-liberal policies which gradually lead to the degeneration of public services. Hence, instead of the 19th century coalition of conservatives and liberals designed to overcome the radical agenda and thereby secure the right to property, one may currently find a coalition of the populists and nationalists designed to overcome the liberals and, thereby, secure the very same economic inequalities. It is evident that the historical analysis developed by Gargarella and the theoretical framework proposed by him can be used to shed light on contemporary politics.

2. THE EGALITARIAN PROPOSAL AND THE LIBERAL DILEMMA

At the end of *The Legal Foundation of Inequality*, Gargarella provides his sharp critique of the three dominant movements and, in particular, of the radicals and the liberals. Under his view, the liberals failed to value the importance of collective self-governance ie to facilitate broad political participation and collective self-governance. In his view the liberals violated their own principle of equality by failing to acknowledge the significance of political equality.

2 For a description of this dynamic, see: <https://blog-iacl-aidc.org/2019-posts/2019/3/22/symposium-chief-justice-baraks-legal-revolutions-and-what-remains-of-them-the-authoritarian-abuse-of-the-judicial-empowerment-revolution>

Further, the liberal agenda and, in particular, the protection of the right to property undermined even the primary and the most cherished liberal ideal – the ideal of individual self-governance. As Gargarella argues some degree of economic prosperity is necessary for realizing the core ideals of liberalism. In particular, some degree of economic prosperity is necessary for developing a conception of the good and making intelligible choices designed to pursue the conception of the good. By rejecting economic redistribution, liberals betrayed their own agenda and frustrated the ability of individuals to gain individual freedom.

The ideal of equality as understood by Gargarella requires both collective and individual equality.

Both ideals are important and both should be honored by the political and legal institutions. Yet, as Gargarella is quick to note, the tension between individual and collective governance exists and should be acknowledged and addressed rather than ignored. The primary question that needs to be answered is how to reconcile the two. To address this question Gargarella suggests to differentiate between different spheres: the personal sphere and the collective sphere: personal problems should be handled by each individual and collective problems should be confronted and solved collectively (230). Individual self-governance should prevail with respect to personal problems and collective self-governance should prevail with respect to collective problems. This proposed solution does not entail that the tension disappears as identifying what counts as personal and what counts as collective would inevitably be controversial. It entails however that both individual and collective self-governance should be honored and be regarded as important values.

I share this conviction and I also share the belief that even the realization of individual self-governance hinges on certain economic preconditions and those economic preconditions require a radical redistribution of resources. I wish however to focus on a different promising way to mitigate the tension between collective and individual self-governance. More particularly, I wish to look more carefully at a concept which is mentioned by Gargarella himself but is not fully developed, namely the understanding that the voice of the people should be *refined* by their representatives. To faithfully represent the people does not always imply merely to replicate their views; it requires to shape them in light of the underlying values. This insight was first articulated by Madison. Gargarella presents this view as follows:

The argument can be stated as follows: given that certain majoritarian procedures only help us to discover an unrefined version of the majority will, we need to adopt different refining procedures. In the end, it is arguable that the system of checks and balances, for example, helps us to refine the voice of the people, as Madison put it in *Federalist* 10, and not to disregard it. (228).

Gargarella rejects the view that checks and balances refine the voice of the people, but this does not imply rejection of the assertion that the voice of the people needs to be refined. I believe that the political system needs to take seriously the perspective of the people and thereby facilitate collective self-governance, but sometimes taking seriously the perspective of the people requires deviating from the policies they advocate or judge to be correct. Our political representatives need to talk in the name of the people but this does not imply that they are merely pipes of the existing convictions of the people or that they ought to defer to the particular policies that the people support or advocate. Sometimes, precisely because representatives ought to honor the voice of the people, they need to adopt policies with which the public disagrees.

To establish this claim we need to ask what does it mean to take seriously the perspective of the people and to follow their inner convictions? Arguably, the most natural answer is the populist answer that maintains that ideally, the representative should merely mirror the actual preferences and judgements of her constituents. This ‘populist’ answer also explains why the decisions and actions of the representative can be attributed to the represented. After all it could be argued that the representative merely did what the people wanted and, hence, responsibility for the act should be attributed to the people.

I contend that this view fails to acknowledge the complexity of preferences and judgements; for instance, the prevalence of conditional and second-order preferences. Representation is indeed about endorsing the perspective of the represented, yet, at times, endorsing one’s perspective requires deviating from some of one’s actual preferences and/or convictions.³

The following hypothetical illustrates this point. Assume that the representative Alan represents Daniel who supports capital punishment. Daniel believes (assume unjustifiably) that capital punishment deters and is therefore desirable. Assume also that Daniel is a consequentialist who believes that if capital punishment does not deter it ought not to be used. What should the representative do?

The populist view as understood here holds that representation requires the representative, Alan, to support capital punishment on the grounds that this is what the represented, Daniel, would have done. But, it is intuitively plausible to argue that if Alan knows that, in fact, capital punishment does

3 An analogy from visual representation might be helpful. A photograph is often regarded as an accurate and therefore perfect representation of a person, and there is of course a sense in which it is. But, in certain respects, a caricature can represent a person better than a photo. It is precisely because a caricature fails to depict some features of the represented and exaggerates other features that it may represent a person better than a photograph (see, e.g., SONTAG, S. *On Photography*. London: Penguin Books, 1977). Similarly, it is precisely because the representative ignores certain actual preferences and judgments of the represented while honoring others, that she may represent her better than a populist, namely better than a deputy who always defers to the preferences and judgments of the represented.

not deter, he ought to vote against capital punishment as only such a decision on his part honors the conviction of the represented that capital punishment is justified *only to the extent that it deters*. Alan's decision to oppose capital punishment is not designed to promote the interests of the represented or even to do justice, but simply to represent; to give effect to Daniel's 'real' commitments even when they deviate from his actual convictions concerning capital punishment. In the language of Madison, the representatives have "to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens."⁴

It is evident that there are many problems and difficulties in implementing this ideal of refinement. First it is difficult to differentiate between the cases in which our representatives refine our views in a way that promote our values and principles and cases in which they deviate from our inner values and act in accordance with values that are alien to us. Further, even if in principle we could identify what a legitimate refinement is and what counts as betrayal on the part of our representatives, it may be easy on the part of political institutions and politicians to manipulate and act on the basis of values which conflict with those of the public. But all of these observations do not undermine the basic insight, namely that self-governance is not a mechanical process by which representatives (operating like robots) simply mirror or replicate the views of the majority; instead, they need to evaluate the underlying reasons and refine these judgments in light of these values. The process of refinement may often serve to mitigate although not to eliminate the tension between individual and collective self-governance.

CONCLUSION

What I have tried to show in this essay is that the historical observations of Gargarella do not merely provide a deep understanding of the past but also new insights about the present and potentially the route to improve the future. Precisely as the coalition between the liberals and the conservatives served to entrench economic inequalities in the 19th century, so I argued, the coalition between populists and nationalists is being used as a means of distracting political attention away from the economic challenges of our society. I also argued that collective self-governance does not imply the automatic endorsement of any majoritarian decision or conviction; at times, collective self-governance requires refining public opinion and, such a refinement is more faithful to collective self-governance than mere deference to public opinion. I think those observations corroborate my conviction that learning past politics as Gargarella has done sheds light on the present and the future of politics and may provide guidelines for political activists.

4 *The Federalist Papers*, No. 10 (Madison).

REFERENCES

GARGARELLA, R. *The Legal Foundations of Inequality*. Cambridge University Press, 2010.

HAREL, A. *Chief Justice Barak Legal Revolutions and What Remains of Them: The Authoritarian Abuse of the Judicial Empowerment Revolution*. Disponible en:

<https://blog-iacl-aidc.org/2019-posts/2019/3/22/symposium-chief-justice-baraks-legal-revolutions-and-what-remains-of-them-the-authoritarian-abuse-of-the-judicial-empowerment-revolution>

SONTAG, S. *On Photography*. London: Penguin Books, 1977.

The Federalist Papers. Disponible en: <https://guides.loc.gov/federalist-papers/full-text>