

Editorial
**Foreword to a study on political and legal status of opposition in
Europe, the Western Balkans, and Beyond***

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The genesis of the interest in the special issue “The Political and Legal Status of Opposition in Europe, the Western Balkans, and Beyond” is quite multifaceted and difficult to abridge in a single event, theoretical speculation or individual concern. Such a difficulty also emerged during a workshop for assessing the leading theme, the whole structure, the specific field of study, and methodology¹; as an outcome of the presentations and the discussions, three basic issues arose: 1) it was quite impossible to address ‘oppositional behaviours’ uniquely through strict and formal legal studies, unless accepting the risk of limiting the object of the study and, more likely, reducing contributions to compilations of norms and rules of procedure, thus offering poor or little theoretical substance; 2) even after decades of scholarly debates, legal studies lack a conventional definition of the basic features of political systems, especially regarding the opposition (which may be, for instance, parliamentary, political, extra-parliamentary, social) and the concept of ‘democracy’; 3) oppositional behaviours develop through a transversal pattern, following different perspectives depending on the strategic vision of the different political actors, especially when it comes to minorities marked by specific ethnic, religious or national features. It was quite perceptive, however, that such difficulties were just different standpoints from looking

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at contemporary issues in a more comprehensive way. Thus, interdisciplinary methodology and critical approaches are the backbones of the following pages.

As far as interdisciplinarity is concerned, although the need of relying on the comparative public law tools (especially looking at the constitutional space), contributions enclose insights on historical aspects, contemporary political phenomena, analytical evaluations on regional (supra-national) and domestic trajectories, having the manifold and multidimensional concept ‘opposition’ as compass. The authors’ acceptance of ‘opposition’ as leading theme opened up to a series of scholarly evaluations on terms that are daily used in legal studies, as already mentioned, but the heterogeneity fostered new appraisals and nurtured curiosity on a ‘fictitiously easy concept’ to grasp with – which will be briefly discussed at the end of this Editorial.

About the structure, it is conceptually divided into three main areas: a first part on European experiences sharing a generally common tradition with regard to politics and ‘oppositional practice’, but with some specific features (France, Spain, Switzerland, United Kingdom); a second part encompassing cases from South-Eastern Europe that outline the transition processes towards the EU standards (Western Balkans in general, Serbia, Montenegro and Albania). The third part is less intuitive in its understanding and might be superficially addressed as the result of a ‘cherry-picking mistake’, but is an evidence of how the main topic of this special issue attract discussions on contemporary political issues. In looking outside Europe, and in the light of recent economic and political events, the leading role of BRICS countries suggested a further space of investigation, thus, the will of analysing the experiences of Brazil, India and South Africa, while excluding those of China and Russia due to the need to cope with the difficulties in finding a common theoretical groundwork—but also in this case problems left for chances, aiming at working, in the next future, on oppositional behaviours in authoritarian systems. Furthermore, the contributions on India and South Africa focus on minorities as founding elements of a broad concept of opposition within, respectively, the constitutional system and local governance.

The first contribution, “Opposition and minority groups in the troubled waters of the French National Assembly”, critically addresses the recent recognition and the development of a proper scheme for the opposition within the French constitutional system after the 2008 constitutional amendment, with a focus on the National Assembly’s rules of procedure and the role that minority groups play according to the political system, even defining some non-standard prerogatives as a symptom of an ‘unstable health’ of the constitutional order.

Manuel Fondevila Marón, in “The parliamentary opposition in Spain: Theory and practice”, offers a general assessment on the role of the opposition in Spain. After evidencing the lack of a proper legal statute for opposition, the contribution exposes the main elements composing the ‘toolbox’ that frames opposition’s prerogatives, especially in reference to the oversight on the government and the interconnections with the constitutional review of legislation. The subsequent part adopts a more critical

approach digging into issues arising from the lack of harmonisation between different forms of coordination, also addressing the impact of the novel arrangement of the party system and issues arising from polarisation and fragmentation within the Spanish political ground.

Nicolò Paolo Alessi's "Consociational systems and the role of opposition: The case of Switzerland" moves from a critical understanding of consociational systems (defined as oppositionless) forms of government, focusing on the lack of political alternance in Swiss politics. To this end, it moves from Lijphart's definitions of consociational and consensus democracy, based on four elements, namely 1) a grand coalition cabinet; 2) segmental autonomy; 3) mutual veto rights; 4) proportional representation. Such features provide a strong impact on plural social groups through an inclusion/exclusion logic which may undermine minorities, thus, the article addresses some 'remedies' within the Swiss system, focusing on direct democracy and the 'pluralisation' of the Swiss system.

One of the most interesting cases regards the concept of 'opposition' under subjective features. The contribution by Enrico Andreoli, "A 'variable-geometries system'. Theory and practice of opposition in the UK", analyses one of the most important experiences in reference to the opposition within a constitutional framework, mainly referring to the subjective structures and the specific institutional design. After outlining the opposition and its increasing institutionalisation in recent times, the article addresses two basic 'dimensions': 1) the status of the opposition within the constitutional architecture; 2) the 'procedural' aspects involving constitutional guarantees within a pluralistic political system. The following parts underlines the opposition as the alternative of the government within the British system and the extended (or decentralised) concept stemming from it. Within the conclusion, the metaphor of 'variable-geometries' explains two basic issues of the contemporary system in relation to the government-in-waiting and oppositional actions by extra-parliamentary forces.

In "Parliamentary opposition in the Western Balkans – A mixture of political, ethnic and religious components", Silvo Devetak offers several insights from his decades-long experience in studying, analysing and interpreting ex-Yugoslavia's selected countries, namely Bosnia and Herzegovina, Montenegro, North Macedonia, Kosovo, and Serbia. Taking into account the last two election rounds within the aforementioned systems, the contribution focuses on democratic functioning of parliamentary opposition in Western Balkans under five specific elements: a) developed democracy and efficient functioning of the political system; b) guarantees related to rights of free association and expression, avoiding forms of discrimination; c) the rule of law, d) equal access to media, e) a suitable electoral legislation allowing people to express a vote with a proper awareness.

In "Democratic functions of the political opposition in the 21st Century Serbia – Standards with tiny roots", Tamaš Korhecz analyses the trajectory of the Serbian political system and critically addresses some contemporary practices in reference to

the position and functions of opposition. Moving from the introduction of liberal democratic features (i.e., multiparty political system, political rights, separation of powers, market economy) during the Nineties, the essay explores the history of the multiparty system and the legal framework devoted to organise and regulate political opposition, with the aim of highlighting ‘measures and techniques’ that political parties considered and used as tools to marginalise and frustrate the political opposition: a) domination, control and exploitation of public institutions and resources; b) control over media and domination in media; c) distortion of local elections and local democracy.

The contribution “Integration and (political) opposition in the light of the EU enlargement to South-East: The cases of Montenegro and Albania” analyses the concept of ‘opposition’ in theoretical terms, also taking into account the EU enlargement process to the Western Balkans and the EU standards in reference to the democratic machinery. The contribution subsequently recalls the EU Commission evaluations on opposition and democratic features of Albania and Montenegro, to highlight the need of a definition of the opposition that takes into account the need to further develop its basic features in order to design a novel subject into the constitutional order.

The ‘beyond Europe’ (or BrICS) part starts with the contribution “Democratic constitutionalism in Brazil: Participation, polarization and opposition in a crisis context” by Milena Petters Melo and Thiago Burkhardt. After outlining the novel and transitional setup offered by the entry into force of the 1988 Constitution (e.g., with regard to plural subjectivities, entitlement of new rights, representation, legal and political mechanisms for participation to the decision-making processes, etc.), the analysis addresses the impact of polarisation on constitutional democracy to further explain the fundamental role that dissent plays both as a dynamic element of constitutional democracy and as an expression of democratic resilience.

Domenico Amirante’s “The Indian Constitution in defence of democracy and multiculturalism: Pragmatism, flexibility and hybridisation” offers tools to Western legal scholars for avoiding easy and/or superficial assessments on the Indian constitutional system and democracy, asking for an effort to go beyond a contemporary events’ appraisal (India general election of 2024), for nurturing a broader portrait of the biggest—in quantitative terms—democracy in the world. The essay starts explaining the political and strategical role that India is currently undergoing through at regional and global levels, to briefly provide an account on the Indian Constitution and highlighting three features, namely pragmatism, flexibility and hybridisation, that are theoretical tools for the understanding of Indian democracy and constitutional machinery.

The contribution “Disruptive (party) politics and the constitutional environmental mandate: The case of South African municipalities” by Nonhlanhla Ngcobo highlights the interconnections amongst three subjects—i.e., local government, environment, politics. It starts introducing local governance’s framework

after the entry into force of the 1996 constitution and the transitional period which affected state structures, subsequently portraying the country's environmental law framework and the relevant duties, powers and responsibilities for local governments, to further highlight the political practices that affect the capabilities for oppositional behaviours.

From this journey through a very complex topic, both a few conclusive appraisals and many insights for further investigations emerged. At first, we should underline once again that in legal studies there is no accepted, universal and valid-for-all definition of 'opposition', unless in those cases that embraces a subjective concept of it. Although references to formally recognised minority groups might suggest a common theoretical ground, the discourse always shifts towards functions that have—or should be—performed in terms of rights, duties, prerogatives, etc. Oppositional behaviours appear to be the common ground for a tentative definition of opposition that might be suitable for legal scholars, but many difficulties suggest opting for a less strict definition of it. The contributions confirm the contemporary attitude towards polarisation and a little space for interventions through constitutional apparatuses; in other words, it seems that the constitutional order (the legal space) frames oppositional behaviours (the political space) and provides little in subjective terms, nurturing and generally developing scholarship on rights and duties related to all aspects regarding opposition (i.e., oppositional behaviours). Furthermore, after the initial legal intervention, oppositional behaviours' regulation is usually left to politics, yet with a strong influence by the political system.

Our investigation has led us to seriously question the irenic view of politics and the interpretation of parties as fair means of consensus building. As Ronald Dworkin already stressed, true democracy does not exist if the members of a political community do not consider individuals as equals in a sense that goes far beyond formal political equality, since they must also express equal concern and respect for each other's autonomy. A democracy should contain in its rules and structures of government provisions that guarantee this high form of equal concern and respect, even at the cost of disempowering a majority. Rarely, however, do the forces in power consent to such self-restraint, and the dominant trend is the radicalisation of political hostility.

The opposition remains fundamentally underestimated in its role as a legitimising force of power in office, though, legal scholars remain aware that every norm is a double-edged sword that acts as both a limitation and an incentive. One of the most stimulating outcomes resulting from this study is the acceptance of a *boucle étrange* between politics and the law, between the legal and political systems; thus, further explorations are essential to provide a strong account on the legal status of opposition, especially if we look at it through the lens of different political regimes.

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