

Joanna Rak

Adam Mickiewicz University (Poland)

ORCID: 0000-0002-0505-3684

e-mail: joanna.rak@amu.edu.pl

Why Did Italian Democracy Become Vulnerable? Theorizing the Change from Neo- to Quasi-Militant Democracy¹

Abstract: Embedded in scholarship on militant democracy, this research aims to explain how Italian legislation was positioned to militant democratic measures and how this changed over time. Drawing on the qualitative source analysis and the explanatory frameworks of democratic vulnerability tests two competing theory-grounded assumptions. While the first one assumes that Italian democracy became vulnerable when traditional militant democracy instruments were outmoded, the second considers the misuse or abandonment of those means with social consent as the source of vulnerability. The crisis-induced socioeconomic inequality and uncertainty weakened the Italian political nation. As a result, the latter supported populists in return for a promise of political change. The anti-democratic legal means employed to extend power competencies and prevent the exchange of ruling parties were the way to and the costs of the expected political change. At the same time, the political nation became unable to self-organize to strengthen democracy self-defense. As a result, Italians co-produced a quasi-militant democracy that turned vulnerable because militant democracy measures were misused or not used with the consent of Italians that relinquished their political subjectivity in favor of the Northern League and the Five Star Movement.

Keywords: *neo-militant democracy, quasi-militant democracy, contentious politics, anti-democratic restrictions, the Northern League, the Five Star Movement, Italy, political nation*

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Introduction

The March 2018 Italian general elections brought victory to two populist parties, the Northern League (Italian: *Lega Nord*) and the Five Star Movement (Italian: *Movimento 5 Stelle*). The Northern League is a regionalist and nationalist party calling for the defense of Italian sovereignty. In turn, the Five Star Movement is an internet-driven movement spreading a utopian vision of implementing direct democracy (D'Alimonte, 2019; Tarchi, 2015, p. 283). Their ideological appeal fell into the Europe-wide post-crisis growth in populism popularity and widely shared expectations to root out the long-lasting political dissatisfaction sources peculiar to modern Italy (Baldini & Nels Giglioli, 2020, p. 363). In Italy, memories of the effects of implementing austerity measures put forth by the European Union and the International Monetary Fund were still vivid (Cozzolino, 2020). Austerity-derived unemployment, poverty, homelessness (Stuckler et al., 2017, p. 18), the announcements of the imminent catastrophe of the Euro currency, regional disparities, and increase in migration to Italy created favorable conditions for populists to gain public support again (Caiani & della Porta, 2011). The post-crisis populist rule was reflected in Italy's decline in the global report on democracy due to its abuse of civil rights and manipulation of the justice system. Researchers started to diagnose and warn against the new phase of democratic erosion in Italy that resulted from the failure to contain the rise of far-right populists, especially the Northern League and the Five Star Movement, but also the Brothers of Italy (Italian: *Fratelli d'Italia*) in time (Albertazzi & Zulianello, 2021; Di Matteo & Mariotti, 2021).

Contemporary fears of weakening democracy are similar to those expressed in the 1930s and 1940s by a German émigré in the United States, Karl Loewenstein, after international fascism, which had started in Italy and Germany, spread across the world swiftly (Capoccia, 2013, p. 208; Specchia, 2021). The academic argued that the Weimar Republic became vulnerable to subversive movements and parties, unable to protect itself against the Nazi Party attack, and utterly defenseless in the face of the wave of fascism (Loewenstein, 1937a, p. 426; 1937b, p. 651). He blamed democratic fundamentalism prevailing in the state institutions and the legal structure for making democracy vulnerable to being destroyed from within by its enemies. Drawing upon this diagnosis, Loewenstein formulated his famous call for militancy: "Democracy must become militant" (Loewenstein, 1937a, p. 423; Norman, 2021, p. 725). In his approach, militant democracy consists in the use of anti-democratic legislative measures against subversive individuals, groups, parties, and their propaganda coupled with restrictions imposed on democratic liberties of free speech, the press, association, assembly, universal suffrage, and organization in political parties to protect democracy from its enemies (Maddox, 2019, p. 492).

In the 21st century, Loewensteinian call for militancy is up to date again. Researchers point to similarities between interwar fascism and contemporary populism and notice an analogous need to protect democracy from its enemies (Gökariksel, 2000, p. 215). Although traditional militant democracy measures are inherent in contemporary Italian and other

democratic regimes, their efficiency as precautions against subversive forces has considerably decreased after the Great Recession of 2008–2009 (Steuer, 2019; Osiewicz & Skrzypek, 2020). The economic difficulties increased support for racism, nationalism, xenophobia, and anti-democratic solutions (Berberoglu, 2020, p. 5). Embedded in the recent achievements of scholarship on militant democracy and democratic vulnerability, this research examines how Italian legislation was positioned to militant democratic measures and how this changed over time.

In the article, the theoretical categories of neo-militant democracy and quasi-militant democracy are considered the antinomic ideal types determined with a criterion of the respect for the sovereignty of a political nation. They constitute the extreme points of a continuum. A neo-militant democracy is the set of means used within a political, legal, and social structure in which parliament and the judiciary employ legal means for the sake of limiting individual democratic rights and freedoms. The repertoire of neo-militant democracy measures is broader than the one attached to militant democracy by Loewenstein. Those means include counterterrorism, antiterrorism, and anti-extremism legislation, restraints on access to public employment, public gatherings, citizenship, hate speech, protests in social media, referendums, registration of political parties, and restrictions of freedom of speech, religion, and association, passive voting rights and active voting rights. A quasi-militant democracy rests on a resemblance to a neo-militant democracy. However, in contrast to a neo-militant democracy, it serves anti-democrats mainly to extend their power competencies. While neo-militant democracy measures aim to defend, preserve, or expand the sovereignty of a political nation against its enemies, quasi-militant democracy means to challenge, undermine, or curb the sovereignty of a political nation. In a neo-militant democracy, a political nation is a beneficiary of restrictions, whereas, in a quasi-militant democracy, those who act against a political nation benefit from the restrictions.

The scholarship on this modern form of militant democracy called neo-militant democracy (Rezmer-Plotka, 2020a) and democratic vulnerability offers two competing explanations. The first explanatory framework rests upon the assumption that democracies became vulnerable to the influence of internal and external actors that seek to undermine them because the traditional precautions, namely, Loewensteinian militant democracy measures, are outmoded. Contemporary geopolitical competition brought about new threats to democracies (Morgan, 2018; Wigell, 2019). Anti-democrats discovered legally unsecured, sensitive channels for interfering with political structures through meddling and hybrid interference directed against democratic elections. Despite legal restrictions on the freedom of speech and media, they efficiently meddle in democratic elections by hacking data, disseminating it as scandals through leaks, and producing intense cognitive flows of disinformation and distrust across social media (Aaltola, 2021, p. 6). As long as the legal measures fail to address innovations, democracies are exposed to novel threats. Therefore, it is necessary to delve analytically into the legal regulation of militant democracy means and its application to verify this assumption.

The second type of explanation starts from the assumption that socioeconomic inequality and uncertainty shaped by neoliberal globalization culminated in the global financial crisis weakened political nations (Berberoglu, 2020; Bonanno, 2020, pp. 15, 18; Merkel, 2018, p. 2; Son, 2018, p. 41). The latter agreed to relinquish a certain amount of their political sovereignty, followed by changes in political and legal structures. As the researchers argue, far-right populism came up with solutions to “liberal,” “distorted,” “corrupt,” and “bourgeois” democracy (Berberoglu, 2020, p. 5). Restrictions on civil rights and freedoms were considered the price to pay for the increase in the quality of life, which political nations ravaged by austerity policies were ready to pay. Thereby, the rise in fascism and political repression takes place under cover of law and order. Populists use anti-democratic means to broaden their power competencies, defeat political opponents, and prevent the exchange of ruling parties (Berberoglu, 2020, p. 5). As long as those means are to undermine or overthrow democracy, not to protect it, authoritarianism occurs (Invernizzi Accetti & Zuckerman, 2017, p. 186; Müller, 2016, p. 249). The authoritarianism that uses the disguise of neo-militant democracy is referred to as quasi-militant democracy (Rak, 2020, p. 113). The latter draws energy from a weak political nation incapable to self-organize resources to an extent sufficient and necessary to strengthen democracy self-defense (Minkenberg, 2006). The political and legal structure of quasi-militant democracy is inherently vulnerable because militant democracy measures are misused or not used. The misuse or abandonment occurs with the consent of political nations, relinquishing their subjectivity in favor of the undemocratic rule of political parties.

Methodological Assumptions for the Research

The study addresses how Italian legislation was positioned to militant democratic measures and how this changed over time. Drawing on the explanatory frameworks of democratic vulnerability and the legal regulation of militant democracy means and its application, it tests two competing theory-grounded assumptions. As the first assumes, Italian democracy became vulnerable to anti-democratic threats when traditional militant democracy measures were outmoded. According to the second assumption, Italian democracy’s vulnerability resulted from the misuse or abandonment of traditional militant democracy measures with the consent of the political nation.

The qualitative method of source analysis is applied to collect data on Loewensteinian militant democracy measures in Italy. The source selection is deliberate and oriented on finding information about the restrictions of democratic liberties of free speech, the press, association, assembly, universal suffrage, and organization in political parties. As a result, the source corpus includes the following legal acts (in force, in 2008-2019) that introduced Loewensteinian means: the Constitution of the Italian Republic (Italian: *Costituzione della Repubblica Italiana*) (1947), the Royal Decree No. 773 of 1931 (Law on Public Safety), Law of 26 April 1993 containing urgent measures regarding racial, ethnic, and religious

discrimination (Legge 26 aprile 1993, n. 205), Law of 11 August 1991, No. 266 (General Policy Law on Volunteerism), the Italian Penal Code (Italian: *Codice Penale*), the Italian Civil Code (Italian: *Il Codice Civile Italiano*), and the Declaration of Internet Rights. It also considers Venice Commission and the Freedom House reports to assess the measures' adequacy to emerging threats. The qualitative content analysis technique identifies and evaluates the characteristics of militant democracy instruments and how they changed over time.

Accordingly, the analysis covers the period of austerity-driven democratic backsliding from 2008 to 2019. Although de-democratization started a long time before (see, e.g., Verbeek & Zaslove, 2016; Veugelers & Chiarini, 2002; Zaslove, 2004), this paper is intended to focus on this particular phase of change. The Great Recession was conducive to undermining democracy (Caamaño and Bértoa, 2020, p. 387). Although populism and far-right extremism pre-existed the crisis and Italy's stagnation in living standards also pre-dated 2008, the crisis might have been more of an accelerator of pre-existing trends rather than a turning point in political history. After the imposition of austerity policies by the European Union and governments, populists began to gain support for their anti-democratic solutions in the wake of mass mobilization. In Italy, no later than in 2009, political activists established a populist, anti-austerity, anti-establishment, anti-immigration, anti-globalist, and Eurosceptic political party, the Five Star Movement (Caiani, 2019; Franzosi, Marone, & Salvati, 2015). In turn, implemented for the sake of public health, Covid-19-induced restrictions that limited civil rights and freedoms marked a new phase of militant democracy development (Steuer, 2020, p. 131). Thereby, the coronavirus pandemic outbreak at the beginning of 2020 in Europe triggered a new, still unfinished, and unpredictable wave of democratic decline (Rezmer-Plotka, 2020b). Notably, the period under analysis includes the critical junctures for the Italian political structure. These are the rise of populist power rooted in anti-austerity mobilization and the 2018 victory of the Northern League and the Five Star Movement in general elections.

Loewensteinian Militant Democracy Measures in Italy

The Constitution of the Italian Republic provided citizens with the right to form associations freely and without authorization for purposes that were not forbidden by criminal law. Nevertheless, to prevent the establishment of clandestine structures, all secret associations, and associations that, even indirectly, pursued political aims through organizations having a military character were forbidden (Constitution of the Republic of Italy, 1947, Article 18). In turn, trade unions could be established freely. According to the provisions of the law, the only obligations that could be imposed on them included registration at local or central offices. A condition for registration was that the statutes of the trade unions established their internal organization on a democratic basis (Constitution of the Republic of Italy, 1947, Article 39). Similarly, volunteer organizations could be formed as long as their structures were democratic (Law of 11 August 1991, No. 266., 1991).

There were no party laws and no documents, even electoral law, regulating conditions for establishing political parties in Italy in the period under scrutiny. In addition, the state had no register of political parties, and the rules for the establishment of private associations applied for party formation. According to Articles 36–38 of the Italian Civil Code, Italian parties fell in the vague category of “non-recognized associations” and were not recognized as legal persons. Thus, contrary to the militant democracy framework, their establishment rules were not firmly fixed (Pilet & van Haute, 2012, p. 28; *Il Codice Civile Italiano*, 1942, Articles 36–38).

The Constitution of the Italian Republic regulated freedom of assembly. According to Article 17, “Citizens have the right to assemble peaceably and unarmed. No previous notice was required for meetings, including those held in places open to the public. In case of meetings held in public places, previous notice shall be given to the authorities that may prohibit them only for the proven reason of security or public safety” (Constitution of the Republic of Italy, 1947). As Royal Decree No. 773 of 1931 specified, the organization of the meeting must have been notified at least three days in advance. In the event of an omitted notice or for reasons of public order, morality, or public health, the meeting could be prevented from taking place and could, for the same reasons, have the time and place determined. The media had guaranteed access to public gatherings, but authorities could set time and local restrictions. Security forces could legally disperse an assembly if it threatened public order or security.

Moreover, when, during meetings or gatherings in a public place or place open to the public, some demonstrations or cries were seditious or detrimental to the prestige of the authority, crimes were committed, or which in any case could endanger public order or safety, they could be dissolved. The display of flags or emblems presenting a symbol of social subversion, revolt, or insult to the state, government, or authorities was always considered a seditious manifestation. Similarly, the display of badges of fascist associations was also a seditious manifestation. At the same time, electoral meetings did not fall into the category of public assembly. The public security authority ensured that public order was maintained (Royal Decree No. 773, 1931, Article 1). Police had the right to use force to disperse unlawful assemblies (Royal Decree No. 773, 1931, Article 24). In case of threat of anxiety, the Interior Minister could announce the state of public emergency (Royal Decree No. 773, 1931, Article 214). During the state of public danger, any person could be arrested or detained if it was necessary to restore or maintain public order (Royal Decree No. 773, 1931, Article 215). In times of hardship and social mobilization caused by the austerity policies, no new restrictions on freedom of assembly were introduced. It was only the pandemic that prompted further restrictions in the name of protecting public health (Cachia, 2021; Fasone, 2021).

As a signatory to the European Convention on Human Rights and other relevant international treaties, Italy protected freedoms of speech, the press, and correspondence confidentiality. These constitutional guarantees were supported by an independent judiciary (Freedom House, 2019). Freedom of speech was guaranteed by the Constitution of the

Italian Republic, whose Article 21 indicated that “Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication” (Constitution of the Republic of Italy, 1947). However, it could be restricted to protect morality, the right to confidentiality, state, official, investigation, professional, and industrial secrets, honor, and to prevent racial, ethnic, and religious discrimination. Accordingly, these are legitimate aims of restrictions only if the limits are necessary for a democratic society. Incitement to hatred and racial, ethnic, national, or religious discrimination was punishable by a term of imprisonment of up to three years. An organization whose purpose was to incite others to discrimination or violence on the grounds of racial, ethnic, national, or religious issues was prohibited. Anyone who participated in such organizations was punishable by a term of imprisonment of up to six months. Promoting such an organization was punishable by imprisonment of up to six years. (Legge 26 aprile 1993, n. 205, Article 1). The Italian Penal Code stated that anyone who offended the present person’s honor or dignity was punishable by imprisonment of up to six months or a fine of up to EUR 516 (Article 595). Moreover, anyone who offended others’ reputation was punishable by imprisonment of up to one year or a fine of up to EUR 1 032 (Codice Penale, 1930, Article 595).

Limits on media content were minimal and resulted from limitations imposed on freedom of speech. The exception was the problematic framework for blocking websites that hosted copyright-infringing content without judicial oversight (Freedom House, 2019). In 2015, Italy introduced the crowdsourced Declaration of Internet Rights. By defining network security rules, this nonbinding document stated that security on the Internet must have been guaranteed in the public interest, ensuring infrastructure integrity and protection from any attacks and in the interest of individuals. Despite the declaration, those restrictions on the freedom of expression were not permitted. The document indicated that protecting the dignity of persons from abuses resulting from the freedom of expression must have been provided. Internet users were protected from incitement to hate, discrimination, and violence (Declaration of Internet Rights, 2015, Article 13).

On 15 April 2015, the Italian Senate adopted a Government decree that restricted freedoms of speech and the press (Antiterrorism Decree, 2015). Antiterrorism Decree amended provisions of the Criminal Code concerning terrorism-related violations. Recruitment of terrorists, endorsing, and inciting browsers to terrorism committed through a computer or telematic tools were prohibited (EDRi, 2015; Antiterrorism Decree, 2015, Article 1). Websites used for these activities could be blocked and deleted. The unit of the Ministry of the Interior created and updated a list of websites used for “subversive” and “terrorist” activities, similar to those already established for child abuse websites. Moreover, the unit could request Internet Service Providers to filter or delete the websites on the list on a Public Prosecutor’s demand (EDRi, 2015; Antiterrorism Decree, 2015, Article 2). These provisions could be applied broadly to sanction legitimate free expression manifestations that met the international norms of protected speech (Freedom House, 2019). In addition, the decree introduced the possibility of using informatics tools and software to remotely gain data and

communications of a computer system, which legalized “remote computer searches” and the “use of software for covert data collection” (EDRi, 2015).

When passive voting rights are concerned, the Constitution of the Italian Republic pointed out that all voters who attained the age of twenty-five on the day of elections were eligible to be deputies (Constitution of the Republic of Italy, 1947, Article 56), voters who attained the age of forty were eligible to be elected to the Senate (Constitution of the Republic of Italy, 1947, Article 58), and any citizen who attained fifty years of age and enjoyed civil and political rights could be elected President of the Republic (Constitution of the Republic of Italy, 1947, Article 84). Active voting rights were regulated in the same document. Regardless of sex and gender, any citizen who reached the majority (eighteen years to vote for deputy candidates and twenty-five for senator candidates) was entitled to vote. The vote was personal, equal, free, and secret. The exercise thereof was a civic duty. The right to vote could not be restricted except for civil incapacity or as a consequence of an irrevocable penal sentence or in cases of moral unworthiness as laid down by law. The law laid down the requirements and modalities for citizens residing abroad to exercise their right to vote and guaranteed that this right was effective. The state authorities established a constituency of Italians abroad for elections to the Houses of Parliament. According to criteria established by law, the number of seats of such constituency was outlined in a constitutional provision (Constitution of the Republic of Italy, 1947, Article 48).

In sum, Italians who possessed civil and political rights were provided with general suffrage involving the age of majority threshold. Italy imposed minimal restrictions on the freedom of association and organization in political parties. Threats were seen mainly in secret and military structures defined as undemocratic. An organization whose purpose was to incite others to discrimination or violence on the grounds of racial, ethnic, national, or religious issues was prohibited. The values in whose name freedom of speech and the press could be restricted were morality, reputation, honor, dignity, the right to confidentiality, and secrets. Also, the restrictions could prevent racial, ethnic, and religious discrimination and incitement to hatred and racial, ethnic, national, or religious discrimination. In 2015, freedom of speech and media restrictions were introduced to prevent terrorism-related violations, including recruiting terrorists, endorsing, and inciting browsers to terrorism committed through computer or telematic. Only reported, peaceful, and unarmed public gatherings were allowed. Crimes, verbal and nonverbal references to social subversion, revolt, or insult were considered threats. The possible limitations of the freedom of assembly resulted from the protection of higher values embodied in public order, security, safety, morality, health, and the prestige of the state, government, and authority.

Concluding Remarks

Italian democracy became vulnerable not because of the type of militant democracy measures implemented after the Great Recession. Those fell into the neo-militant democracy

repertoire and were sufficient to neutralize the threat arising from the distribution of populist ideas. Furthermore, the legal restrictions were neither lifted nor weakened but strengthened in 2015. No precaution was considered too old-fashioned to deal with emerging threats. Instead, the reasons for vulnerability are to be found in the social change after the great crisis, which underlay the drift from neo- to quasi-militant democracy at the level of goals. The crisis-induced socioeconomic inequality and uncertainty might have weakened a political nation. The latter supported far-right populists in exchange for the promise to end liberal democracy. Therefore, fascism and political repression arose under cover of law and order, with social consent and active acceptance. The anti-democratic means used to extend the government's power competencies, eliminate or weaken political opponents, and prevent the exchange of ruling parties were the way to and the costs of the expected political change. Thereby, Italian quasi-militant democracy could develop and last because the political nation did not make considerable efforts to increase its political sovereignty, which would be reflected in the legal regulation of militant democracy means and application, but sought to recover from the social and economic consequences of austerity policies and punish the political elites that imposed austerity measures on Italians. The replacement of the ruling elite was to guarantee complete change and prevent another social crisis. At the same time, the political nation might have become unable to self-organize resources to an extent sufficient and necessary to strengthen democracy self-defense mechanisms. Italians, by their passivity in identified areas, co-produced and co-maintained quasi-militant democracy. This novel phenomenon turned inherently vulnerable because the neo-militant democracy measures were misused or not used. The misuse and abandonment were with the consent of Italians that relinquished their political sovereignty in favor of the Northern League and the Five Star Movement.

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