

## The Decline of “Middle-Class Constitutionalism” and the Democratic Backlash\*

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*1. Reading Tocqueville via Eugenides. An introduction about the American democracy as the “Great Experiment”*

In a short story published in 2008 in *The New Yorker*, Jeffrey Eugenides goes straight to the heart of the topic of my short paper.<sup>1</sup> Describing the life of Kendall, a young editor with some economic hardships, the author portrays how inequality is subtly, if relentlessly, on the increase in the United States. More specifically, Eugenides demonstrates how the social and political implications of this process progressively affect Kendall’s life.

In the tale, the life of the protagonist, without real career prospects and full of economic dissatisfactions, strongly contrasts with the one of the rich old owner of the publishing house at which he is employed. The owner, Jimmy Dimon, an old billionaire who used to be a pornographer, and who, in his new life, is a «free-speech

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<sup>1</sup> See for quotations: [www.newyorker.com/magazine/2008/03/31/great-experiment](http://www.newyorker.com/magazine/2008/03/31/great-experiment) and A. de Tocqueville, *La democrazia in America* (1835-1840), it. trans. *De la démocratie en Amérique*, Torino, 2006.

advocate and publisher of libertarian books», is financing a small publishing house. It is not by chance, that the publishing house is called “Great Experiment”. It is a quotation of Tocqueville’s masterpiece *Democracy in America*, Jimmy’s favourite book.

Jimmy decides that the time is ripe to publish a new, simplified, edition of this book. More specifically, Kendall’s goal is to select the book’s «prescient bits», «picking out particularly tasty selections». Above all, Dimon loves the beginning, for example: «Among the novel objects that attracted my attention during my stay in the United States, nothing struck me more forcibly than the general equality of condition among the people». There is, apparently, a strong political engagement behind this idea. Jimmy seems to feel a moral duty to inspire and enhance a robust opinion movement, whose aim should be to overcome indifference regarding the social conditions of the poorest. He affirms: «What could be less in supply, in Bush’s America, than equality of condition!». Nonetheless, a strong contradiction characterizes the manner in which he deals with his employee. For example, he decides not to provide Kendall and his family with health insurance, forcing Kendall to invest a portion of his (low) salary to bear its costs.

However, Jimmy’s accountant, Piasecki, has an idea regarding how Kendall can overcome his financial difficulties. He suggests cheating their mutual boss, stating that Dimon is an old guy and he does not really care about anything. Kendall is uncertain as to what to do. First, to avoid this scenario, he asks his boss for health insurance coverage, explaining that saving this money would enable him to finance some necessary renovations at home. Unfortunately, Jimmy Dimon does not even consider his request. «That was never part of your package – Jimmy answers – I’m running a nonprofit here, kiddo. Piasecki just sent me the statements. We’re in the red this year. We’re in the red every year. All these books we publish, important,

foundational, patriotic books – truly patriotic books – and nobody buys them! The people in this country are asleep!».

It could appear weird. Kendall has a job and a salary, but he does not earn enough to consider himself completely “free from want”<sup>2</sup> and, even worse, he seems totally powerless compared to his employer. Dimon can exercise, on the contrary, clear economic power over Kendall, who appears completely vulnerable, without any real protections. This condition triggers in him a dangerous perception. Working on *Democracy in America*, in fact, Kendall is strongly impressed by the differences between what he reads and the present state of American democracy.

Concurrently with his stream of thought, Kendall becomes enlightened by the economic gap between him and his parents, reflecting on a hypothetical intergenerational conflict. Kendall is not ashamed of his standard of life, as he «had never expected to be as rich as his parents», even though «he’d never imagined that he would earn so little or that it would bother him so much». He is rather afraid for his children; they «got older [and] Kendall began to compare their childhood unfavourably with his own». The conclusion has a bitter

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<sup>2</sup> This is one of the four freedoms quoted in the Roosevelt’s Message to Congress in January 1941: the third one, namely the “freedom from want”. See at least C. Sunstein, *The Second Bill of Rights. FDR’s Unfinished Revolution and Why We Need It More Than Ever*, New York, 2004, *passim* and, on the transformations impressed by the New Deal, B. Ackerman, *We the People. Transformations*, Cambridge - London, 1998, *passim*. For a historical perspective, A. M. Schlesinger, *The Age of Roosevelt (1957-1960)*, Voll. I-III, Boston-New York, 2003. See moreover, for an interesting historical perspective on the New Deal, considered to be an answer to the global crisis between capitalism and democracy of that time, K. K. Patel, *The New Deal. A Global History* (2016), it. trans. *Il New Deal. Una storia globale*, Torino, 2018 and, from a critical perspective, I. Katznelson, *Fear Itself. The Origins of Our Time*, New York, 2013. Stressing the «worldwide relevance of each “freedom”» (p. 47) and the necessity to “invest” in «global stability» (p. 114 ss.), see E. Borgwardt, *A New Deal for the World*, Cambridge, London, 2005.

taste: «How had it happened in one generation? [...] Nowadays, if Kendall wanted to live as his own father had lived, he was going to have to hire a cleaning lady and a seamstress and a social secretary». His living conditions, on the contrary, reflect a «middle-class squalor» and he sees only one possible way out: committing a crime, even if he used to be one of the «most honest people». It seems a necessity, however, to save his children from a dangerous and overwhelming slippery slope.

I will not further describe the plot or reveal the end of the story. However, I would like to call the attention to what I consider the main problem: how equality of living conditions is politically relevant for a well-functioning liberal democracy, whose mode of production is based on an advanced capitalist economy.<sup>3</sup> Therefore, I will focus on the malfunctions of a democracy when inequality is no longer politically bearable. I see in this process the crisis of what I would define as “middle-class constitutionalism”, whose main characteristic is not to create a homogenous and non-conflicting society of equals, but rather to offer preconditions to govern social and political conflicts in a constructive manner for the general welfare of society. Coping with the structural tendencies of a capitalist market economy, liberal democracies have, in fact, the responsibility to try to reconcile political equality with economic inequality.<sup>4</sup>

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<sup>3</sup> See J. Köcka, *Geschichte der Kapitalismus* (2013), it. trans. *Capitalismo. Una breve storia*, Roma, 2016.

<sup>4</sup> For an interesting perspective, see S. M. Lipset, *Some Social Requisites of Democracies: Economic Development and Political Legitimacy*, in *American Political Science Review*, 1959, p. 69 ss.: «Increased wealth is not only related causally to the development of democracy by changing the social conditions of the workers, but it also affects the political role of the middle class through changing the shape of the stratification structure so that it shifts from an elongated pyramid, with a large lower-class base, to a diamond with a growing middle-class. A large middle class plays a mitigating role in moderating conflict since it is able to reward moderate and democratic parties and penalize extremist groups» (p. 83).

Unfortunately, the polemic and unstable balance between political equality and economic inequality cannot be considered achieved once for all time. This balance cannot be examined statically, as far as it is a structural contradiction of liberal democracies. It is a dynamic balance, which should be steadily able to acknowledge innovations and reconcile new arising conflicts. Therefore, the question how to govern this tension has consistently been one of the main features of the «political practice» of western countries in the twentieth century. From this perspective, this topic is related to the periodic «revival of the concept of economic justice» as a compelling political task, which «matches a decline of confidence in the beneficence, and indeed in the possibility, of a freely competitive market economy».<sup>5</sup>

At the national level, this task implies a perpetual commitment on at least two fronts: fostering fair rules on the production side (industrial relations) and coping with inequalities through significant distributive interventions (progressive income taxation and social rights with redistributive effects). Nowadays, unfortunately, that old balance between democracy and capitalism seems unsustainable and the concept of “economic justice” is again under pressure. Moreover, it no longer appears possible to find a new compromise, looking unilaterally at the national context. As Gramsci has already noted, after all, at the beginning of the twentieth century, “political nationalism” and “economic cosmopolitanism” are strictly related to each other and should be analysed and understood together.<sup>6</sup>

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<sup>5</sup> C. B. Macpherson, *The Rise and Fall of Economic Justice*, in Id., *The Rise and Fall of Economic Justice and Other Essays*, Oxford, 1985, p. 14.

<sup>6</sup> See A. Gramsci, *Quaderni del carcere*, II - Quaderni 6-11, a cura di V. Gerratana, Torino 2014, p. 748 and G. Vacca, *Modernità alternative. Il Novecento di Antonio Gramsci*, Torino, 2017, p. 93

2. *Beyond the Ancien Régime: the equality of living conditions as a constitutional issue*

Significant quotations from Tocqueville’s seminal book are perfectly integrated in the Eugenides story. What emerges is that uniformity of living conditions for Tocqueville does not mean that it is necessary to find perfect economic equality nor the need for an invasive system of public welfare. This point helps us to avoid overemphasizing the different meanings that a complex and controversial concept like “equality of living conditions” could have in Europe and in the United States.

The «democratic movement» – the gradual progress toward equality of living conditions – is, according to Tocqueville, probably one of the most important features in understanding the future and the development – “the becoming” – of a civil and political “society/community”. This trend appears to be a real imperative as long as the constitutional compromise is based on perfect equality of political rights: universal suffrage. Then, in different ways and times, each strong political democracy, since the “liberation of Prometheus”<sup>7</sup>, experiences its own path to achieving a sustainable degree of social homogeneity. It is not by chance that each country, more or less slowly and along with an increasingly important system of progressive taxation, developed its own tradition and its peculiar welfare model.<sup>8</sup> In this light, «the working class was the most

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<sup>7</sup> D. S. Landes, *The Unbound Prometheus* (1969), it. trans. *Il Prometeo liberato*, Torino, 2000.

<sup>8</sup> See more specifically for the German experience, even if from a historical and comparative perspective, G. A. Ritter, *Der Sozialstaat. Entstehung und Entwicklung im internationalen Vergleich*, it. trans. *Storia dello stato sociale*, Roma-Bari, 2007. Moreover, see G. Esping-Andersen, *The Three Worlds of Welfare Capitalism*, Cambridge, 1990.

consistently pro-democratic force», considering that «capitalist development is associated with democracy because it transforms the class structure, strengthening the working and middle class».<sup>9</sup>

Nonetheless, it cannot be forgotten that the French observer knows very well that the «democratic movement» in the United States radically differs from the European one. Without an aristocracy, beyond the Atlantic Ocean, people’s living conditions are progressively and naturally homogenizing, at least while the “frontier” was still open.<sup>10</sup> In the old system, in the so-called *Ancien Régime*, something similar to what American democracy produced would have been unfeasible. Louis Hartz clearly underlined this characteristic of “American liberalism”, affirming that in the United States it was possible to find a “natural liberalism”, without any traces of an old order.<sup>11</sup> From a different perspective, showing a similar mindset, Hannah Arendt examined the distinctive roots of the French and the American Revolutions, discovering them in the social context<sup>12</sup>.

At that time in Europe, conversely, social differences were not just related to economic inequality, but were dependent on “status”. Even after the French Revolution and the Industrial Revolution, the specific character of European socio-economic inequality remained. In Europe, some legacies of the old system inevitably continued to

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<sup>9</sup> See D. Rueschemeyer, E. Huber Stephens, J. D. Stephens, *Capitalist Development and Democracy*, Cambridge, 1992, p. 7-8; p. 45-47.

<sup>10</sup> See A. Buratti, *La frontiera americana. Una interpretazione costituzionale*, Verona, 2016. On this point, see moreover W. Sombart, *Warum gibt es in den Vereinigten Staaten keinen Sozialismus?* (1906), it. trans. *Perchè negli Stati Uniti non c’è il socialismo?*, Milano, 2006. On this topic see E. Foner, *Why there is no socialism in the United States*, in *History Workshop*, 1984, p. 57 ss.

<sup>11</sup> L. Hartz, *The Liberal Tradition in America* (1955), it. trans. *La tradizione liberale in America*, Milano, 1960.

<sup>12</sup> H. Arendt, *On Revolution* (1963), it. trans. *Sulla rivoluzione*, Torino, 2009.

exist in the new “industrial society”.<sup>13</sup> The clear *persistence of the old régime*, at least until the Great War, has been deeply examined by Arno J. Mayer. According to Mayer, the old order for a long time tried to slow its waning, opposing «the forces of inertia and resistance». <sup>14</sup> In this light, these forces until 1914 «contained and curbed» the new order and, more precisely, its «dynamic and expansive new society within the *Anciens Régime* that dominated Europe’s historical landscape». <sup>15</sup>

In the nineteenth century, the old system was collapsing, even though «in its prime as well as in its perdurable extension into modern times, the *Anciens Régime* was [still] a distinctly pan-European phenomenon». <sup>16</sup> Meanwhile, however, the battle for social and political equality had already begun. Within the new European industrial society, nevertheless, a different form of inequality, namely economic inequality, among different social classes was born. <sup>17</sup>

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<sup>13</sup> R. Aron, *Dix-huit leçons sur le société industrielle* (1962), it. trans. *La società industriale*, Milano, 1971.

<sup>14</sup> A. J. Mayer, *The Persistence of the Old Regime. Europe to the Great War*, London, 1981: «Through losing ground to the forces of industrial capitalism, the forces of the old order were still sufficiently wilful and powerful to resist and slow down the course of history, if necessary by recourse to violence» (p. 4)

<sup>15</sup> A. J. Mayer, *The Persistence of the Old Regime. Europe to the Great War*, cit., p. 6.

<sup>16</sup> A. J. Mayer, *The Persistence of the Old Regime. Europe to the Great War*, cit., p. 6-7: «The old order’s civil society was first and foremost a peasant economy and rural society dominated by hereditary and privileged nobilities. Except few bankers, merchants, and shipowners, the large fortunes and incomes were based in land. Across Europe the landed nobilities occupied first place not only in economic, social, and cultural terms but also politically».

<sup>17</sup> On the role of “conflicts” in a pre-modern society, from a Machivellian perspective, see P. Pasquino, *Political Theory, Order, and Threat*, in *Nomos*, 1996, p. 19 ss., G. Borrelli, *Repubblicanesimo e teoria dei conflitti in Machiavelli: un dibattito in corso*, in L.M. Bassani, C. Vivanti (a cura di), *Machiavelli nella storiografia e nel pensiero politico del XX Secolo*, Milano, 2006, p. 329 ss. and F. Del Lucchese, «Disputare» e «combattere». *Modi del conflitto nel pensiero politico*

Whereas in the past it had been impossible to overcome birth conditions related to a fixed societal hierarchy, in the new order, the possibility of changing and improving one's economic status by working became a new potential threat to social stability, and progressively, a political claim. Against this backdrop the “assault on property rights” by classical liberal thinkers can be more clearly understood: they had to cope with an old order based on privileges like monopoly, slavery, inheritance laws, etc.<sup>18</sup>

We must not forget that, albeit briefly, Tocqueville detects a risk in this homogenisation process. More precisely, he sees a peculiar form of “tyranny” around the corner: the “Tyranny of the Majority”.<sup>19</sup> This form of tyranny can be considered twofold. At first glance, it refers to a political condition of the democratic arena. It is possible to find a Madisonian echo at this level.<sup>20</sup> Secondly, it concerns the risk of too high a level of conformism in the public space.<sup>21</sup> It is acute, but not surprising. Tocqueville marks a clear connection between equality of political rights and social equality as something fundamentally new.

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di Niccolò Machiavelli, in *Filosofia politica*, 2001, p. 71 ss. On how to conceive conflicts A. Pizzorno, *Come pensare il conflitto*, in Id., *Le radici della politica assoluta*, Milano, 1994, p. 187 ss. Critically G. G. Balestrieri, *I Discorsi di Machiavelli: una teoria dell'ordine*, in *La Cultura*, 2018, p. 347 ss. See moreover, on the concepts of “social class” and “bourgeoisie”, M. Cacciari, *Passato futuro del «borghese»*, in A. Bonomi, M. Cacciari, G. De Rita (a cura di), *Che fine ha fatto la borghesia?*, Torino, 2004, p. 5 ss.

<sup>18</sup> E. Anderson, *The Great Reversal. How neoliberalism turned the economic aspirations of classical liberalism upside down in favour of capital interests*, in *Progressive Review*, 2018, p. 206 ss.

<sup>19</sup> See M. J. Horwitz, *Tocqueville and the Tyranny of the Majority*, in *The Review of Politics*, 1966, p. 293 ss.

<sup>20</sup> On the two original souls of American democracy, R. Dahl, *A Preface to a Democratic Theory* (1956), it. trans. *Prefazione alla teoria democratica*, Milano, 1994.

<sup>21</sup> G. Oskian, *Tocqueville e le basi giuridiche della democrazia*, Il Mulino, Bologna, 2014.

John Stuart Mill denounced a similar danger in England<sup>22</sup>. Even if equality of living conditions brings clear advantages, new risks can be easily foreseen.<sup>23</sup>

This point appears particularly significant even nowadays, though from a different perspective. The attention of sociologists seems in fact increasingly attracted by a new form of individualism, shaping a new “society of singularities”, that appears to reflect a «process of singularization».<sup>24</sup> *Prima facie*, in contrast to the old path of standardisation which characterized the first form of individualism at least since the nineteenth century, this process could conceal, however, a new and different form of conformism or new reasons for «resentment»<sup>25</sup>. This topics, nevertheless, opens up scenarios that cannot be explored here.

### *3. Governing economic inequality. Examining social homogeneity as a democratic bulwark*

Considering the concept of “middle-class constitutionalism”, it is necessary to analyse the Weimar Constitution and its attempt to shape a new balance between freedom (*Freiheit*) and equality (*Gleichheit*).

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<sup>22</sup> See J. S. Mill, *On Liberty* (1859), Harmondsworth, 1985.

<sup>23</sup> M. J. Horwitz, *Tocqueville and the Tyranny of the Majority*, cit., p. 299 ss.

<sup>24</sup> See A. Reckwitz, *Die Gesellschaft der Singularitäten*, Berlin, 2017 and I. Charim, *Ich und die Anderen. Wie die neue Pluralisierung uns alle verändert*, Wien, 2018.

<sup>25</sup> See F. Fukuyama, *Identity. The Demand for Dignity and the Politics of Resentment*, New York, 2018: «while the economic inequalities arising from the last fifty or so years of globalization are a major factor explaining contemporary politics, economic grievances become much more acute when they are attached to feelings of indignity and disrespect» (p. 10-11). On the struggle for recognition, see A. Honneth, *Riconoscimento. Storia di un'idea europea* (2018), it. tran. *Anerkennung. Eine Europäische Ideengeschichte*, Milano, 2019.

Reflecting a new idea of the relationship between state and society,<sup>26</sup> the Weimar Constitution (*WRV*) was in fact built on the attempt to reconcile clashing classes, whose crisis settlement should have been managed by the system of Councils (165 *WRV*). Within this framework, art. 164 *WRV*'s aim was to promote and protect an independent middle class (*den selbständigen Mittelstand*) from an excessive tax levy and its possible oppression and absorption in other social classes.<sup>27</sup> Even though the debate on the “Economic Constitution” at that time has been very complex and followed different paths,<sup>28</sup> the idea of “middle-class constitutionalism”, as far as it is considered here, cannot reflect this conception.

More specifically, one of the main aims of the Weimar Constitution was to overcome social conflicts among classes, while keeping the classes rigidly separate. Moreover, the original conception of art. 164 *WRV* seems to have been inspired by the idea of a society rigidly divided into working class and owners of means of production, where the middle class seemed somehow an extraneous element.

It can be underlined that a crucial agent on the road towards dictatorship is traditionally considered to be the pauperization of the middle class. This class feared to collapsing into the working class, being flattened by the economic crisis.<sup>29</sup> Within a turbulent economic and political context, the Weimar constitutional protection of the

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<sup>26</sup> On the features of the Weimar «Sozialverfassung» («social Constitution»), see recently C. Gusy, *100 Jahre Weimarer Verfassung*, Tübingen, 2018, spec. p. 237 ss. and H. Dreier, C. Waldhoff (Hrsg.), *Das Wagnis der Demokratie*, München, 2018, spec. p. 195 ss.

<sup>27</sup> P. Ridola, *La Costituzione della Repubblica di Weimar come «esperienza» e come «paradigma»*, in Id., *Stato e Costituzione in Germania*, Torino, 2016, p. 45.

<sup>28</sup> See F. Neumann, *Über die Voraussetzungen und den Rechtsbegriff einer Wirtschaftsverfassung*, in *Die Arbeit*, 1931, p. 588 ss. and H. Ehmke, *Wirtschaft und Verfassung*, Karlsruhe, 1961.

<sup>29</sup> See S. Kracauer, *Die Angestellten*, en. trans. *The Salaried Masses. Duty and Distraction in Weimar Germany*, Verso, London-New York, 1998.

middle class was not able to do anything to prevent the political process of progressive marginalisation, *via* pauperization, of that class.<sup>30</sup>

By using the concept of “middle-class constitutionalism”, therefore, my purpose is rather to analyse, as Hermann Heller at that time underlined, speaking of the necessity of fostering «social homogeneity» to protect and enhance democracy, how inequality is democratically relevant, considering at the same time that a bearable level of it is nevertheless inevitable.<sup>31</sup> In other words, efforts to confront economic inequality imply the goal of guaranteeing and fostering political stability, considering social homogeneity and social mobility as politically necessary: the “bourgeoisie” cannot be considered *per se* «the protagonist of democracy».<sup>32</sup> At the same time, however, perfect economic equality cannot be achieved in a total and radical way, at least until the Constitution protects private property and, more in general, economic liberties as constitutional rights. This proposition can be considered a paradox. Nevertheless, it still characterizes the foundations of the contemporary structure of a democratic constitutional state, representing one of the preconditions of capitalism’s embeddedness.

After all, in the Eugenides story, Kendall reads that Tocqueville does not mean that «there is any lack of wealthy individuals in the United States». However, the French author adds that «wealth circulates with inconceivable rapidity, and experience shows that it is

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<sup>30</sup> For the historical context, B. Kohler, U. Wilhelm, A. Wirsching (Hrsg.), *Weimarer Verhältnisse? Historische Lektionen für unsere Demokratie*, Ditzingen, 2018.

<sup>31</sup> H. Heller, *Politische Demokratie und soziale Homogenität* (1928), it. trans. *Democrazia politica e omogeneità sociale*, in U. Pomarici (a cura di), *Stato di diritto o dittatura? e altri scritti*, Napoli, 2017, p. 9 ss.

<sup>32</sup> D. Rueschemeyer, E. Huber Stephens, J. D. Stephens, *Capitalist Development and Democracy*, cit., p. 46.

rare to find two succeeding generations in the full enjoyment of it». Once more it is clear that democracy needs certain economic conditions to improve and grow. As Tocqueville noted, focusing on the United States where equality of living conditions used to be something natural, the need for the construction of a sound balance among different instances and conflicting social conditions implies the necessity of tools that allow the redistribution of wealth among the people. Everybody needs to have the chance and the opportunity to improve his/her status.

Since the crisis of the Weimar Republic, considered as a paradigm and as an experience,<sup>33</sup> the problem of how to combine the structural existence of economic inequalities and the necessity of guaranteeing political stability, therefore, has emerged repeatedly in different ways. The political understanding of how classes should relate could reflect, for instance, either the Marxian view of social conflict or the organicist idea of a pacific inter-classism. Nonetheless, it does not exempt from consideration that in a constitutional state, based on a pluralist representative democracy and on capitalism as a method of production, governing and recomposing tensions in a fruitful and peaceful way for the general welfare is a compelling political task.<sup>34</sup>

From a constitutional point of view, politics should consider the necessity of fostering and enhancing the creation of a system characterised by a strong social mobility, in which the majority belongs to a highly differentiated and pluralist middle class. This class should reflect a widespread social homogeneity and existing

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<sup>33</sup> P. Ridola, *La Costituzione della Repubblica di Weimar come «esperienza» e come «paradigma»*, cit., p. 26 ss.

<sup>34</sup> See D. Rueschemeyer, E. Huber Stephens, J. D. Stephens, *Capitalist Development and Democracy*, cit., p. 40 ss.

inequalities should not be perceived as morally unjust.<sup>35</sup> Moreover, inequalities should be corrected by state regulations, a fair system of progressive taxation and state interventions in the economic system, whose main aim should be to avoid forms of marginalisation and stigmatisation. Finally, everybody should have the right to self-determination, equal dignity, and, at least, the same opportunities to compete and therefore to succeed (*Chancengleichheit*). Nowadays, however, the challenge is to test this model in an emerging global context, which is stressing the old national order.<sup>36</sup>

#### *4. Capitalism vs. Democracy? Democratic embeddedness and the economic costs of democracy*

The Tocqueville belief that equality of living conditions is a first, if not absolute, guarantee against political instability, is an interesting point of view that can shine a light on the present situation. Capitalism is a successful tool to create wealth, which in part should be shared. However, this conclusion cannot be taken for granted. Thus, coping with inequality and poverty becomes a new challenge for a constitutional democratic system and the key factor in saving

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<sup>35</sup> For example it can be somehow justified as morally just according to J. Rawls, *A Theory of Justice* (1971), it. trans. *Una teoria della giustizia*, Feltrinelli, Milano, 2008 or even more severely, criticizing the so-called “double-standard”, by T. Pogge, *Povert  mondiale e diritti umani. Responsabilit  e riforme cosmopolite*, Laterza, Roma-Bari, 2010.

<sup>36</sup> See H. Kissinger, *World Order. Reflections on the Character of Nations and the Course of History*, London, 2014.

capitalism from itself.<sup>37</sup> This outcome, however, must be considered nowadays not only from a national perspective, but also a global one.<sup>38</sup>

At the national level, the shaping of “middle-class constitutionalism” can be historically considered as a reflection of efforts to embed capitalism. Capitalism, as far as it fosters economic growth of a country and improves the standard of living of the population, can be conceived as a pillar of democratic stability,<sup>39</sup> producing a legitimising effect on politics.<sup>40</sup> To achieve that goal, capitalism is, however, a double-edged sword. On the one hand, it is a successful method to create new wealth, even though it is often characterized by cyclical crises. On the other hand, capitalism’s aims are *per se* inevitably incompatible with all the redistributive efforts of the contemporary constitutional state. Capitalism presents as necessary features profit ends, private property for the means of production, and a structural order of economic inequality. The role of politics is to take into consideration the reasons for social homogeneity, protecting, supporting, and improving the preconditions of sustainable economic growth.

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<sup>37</sup> See for example R. B. Reich, *Saving Capitalism* (2015), it. trans. *Come salvare il capitalismo*, Roma, 2015.

<sup>38</sup> See M. Jacobs, M. Mazzucato (eds.), *Rethinking Capitalism. Economics and Policy for Sustainable and Inclusive Growth*, Chichester, 2016 and, for a different opinion on how to imagine the future of capitalism in a globalized world, J. Hickel, *The Divide. A Brief Guide to Global Inequality and Its Solutions* (2017), it. trans. *The Divide. Guida per risolvere la disuguaglianza globale*, Milano, 2018. For a similar perspective, criticizing the recent developments of advanced capitalism, see S. Sassen, *Expulsions: Brutality and Complexity in the Global Economy* (2014), it. trans. *Espulsioni e complessità nell’economia globale*, Bologna, 2015, spec. p. 91 ss.

<sup>39</sup> See J. F. Helliwell, *Empirical Linkages Between Democracy and Economic Growth*, in *British Journal of Political Science*, 1994, p. 225-248.

<sup>40</sup> See G. Poggi, *La vicenda dello stato moderno. Profilo sociologico*, Il Mulino, Bologna, 1978, 191 and M. Foucault, *Naissance de la Biopolitique* (1978-1979; 2004), it. trans. *Nascita della biopolitica* (2004), Feltrinelli, Milano 2009, p. 81.

Slowly, in particular after World War II, in a small part of the Western world, the «democratic movement» apparently succeeded in the creation of a majority composed of more or less homogenous living conditions. There will always be wealthy and poor people. The greatest part of the population, however, should belong to a widespread, economically homogeneous, middle class. Therefore, even if a pluralist public space (*Öffentlichkeit*) must be considered as a necessary precondition for a sound democracy and a constitutional value,<sup>41</sup> the middle class, from this perspective, may represent an element in fostering political stability.<sup>42</sup>

The new compromise between capitalism and democracy, traditionally defined as Keynesian,<sup>43</sup> provided the majority with a chance to improve their economic standard of living by working, progressively offering protection against economic marginalisation through the welfare state at the national level and “embedding liberalism” at the international level.<sup>44</sup> Capitalism and democracy in this light represented the key factors of an unstable compromise between a bearable economic inequality, freedom, equality before the laws, and political stability.<sup>45</sup>

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<sup>41</sup> On the implications of this concept, see P. Häberle, *Verfassung als öffentlicher Prozess*, Berlin, 1996, spec. 121 ss., p. 155 ss. and p. 225 ss.

<sup>42</sup> R. Aron, *La società industriale*, cit., p. 29 ss.

<sup>43</sup> See R. Skidelsky, *Keynes. The Return of The Return of the Master*, London, 2009.

<sup>44</sup> J. G. Ruggie, *International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order*, in *International Organization*, 1982, p. 379 ss. and Id, *Globalization and the Embedded Liberalism Compromise: The End of an Era?*, in *MPIfG Working Paper*, 97/1. Moreover, R. Gilpin, *The Political Economy of International Relations*, Princeton University Press, Princeton, 1987, spec. p. 341 ss.

<sup>45</sup> See G. Therborn, *The Rule of Capital and the Rise of Democracy*, in *New Left Review* 1/103, 1977 on the two paradoxes which govern the relation between capitalism and democracy.

However, the decline of this compromise, which embedded capitalism, potentially foreshadows the crisis of the present democratic order and its social blend of classes. Since the mid-1970s, it has been possible to see «a widening gap between productivity and income», considering that «economic policies have been steadily changing to favour capital interests over the interests of workers».<sup>46</sup> Conflicts, as stated, are not *per se* a guarantee of stability. Rather, as Hirschman affirmed, the fruitful compromise, which transformed conflicts into economic prosperity and democratic stability, occurred for clear historical reasons «specifically to the democratic market societies of the West».<sup>47</sup> The element of instability can be identified in the fact that democracy has significant economic costs for capitalism. This point partially explains the turbulent relationship between capitalism and democracy and its transformative tension and the attempt to overcome the rules of capitalism’s embeddedness. Nowadays, the forms of capitalism’s embeddedness with democracy do not seem completely fit to guarantee an enduring balance, thereby producing political instability and significant democratic backlash.<sup>48</sup> Zielonka affirmed that «we are witnessing a counter-revolution».<sup>49</sup>

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<sup>46</sup> E. Anderson, *The Great Reversal. How neoliberalism turned the economic aspirations of classical liberalism upside down in favour of capital interests*, cit., p. 203-204.

<sup>47</sup> A. O. Hirschman, *Social Conflicts as Pillars of Democratic Market Society*, in *Political Theory*, 1994, p. 203-218, p. 211.

<sup>48</sup> See C. Mudde, *The Populist Zeitgeist*, in *Government and Opposition*, 2004, p. 541 ss. and R. Cuperus, *The Populist Deficiency of European Social Democracy*, in *IPG*, 2003, p. 83 ss., whose idea is that «populist movements react to the downside of modernization», being «a response to social crisis» (p. 84). Moreover see E. Anderson, *The Great Reversal. How neoliberalism turned the economic aspirations of classical liberalism upside down in favour of capital interests*, cit., p. 212.

<sup>49</sup> J. Zielonka, *Counter-Revolution. Liberal Europe in Retreat*, Oxford, 2018, 2, considering that he sees a «democratic malaise», in which the «current counter-

According to Aron, «causes of a slowdown of economic growth are at least partially related to political democracy»,<sup>50</sup> considering that «an efficient economy is not necessarily a just economy» and «a just distribution of goods does not necessarily guarantee the most rapid growth».<sup>51</sup> That is the reason capitalism can be considered potentially incompatible with democracy.<sup>52</sup>

Capitalism and democracy, after all, do not have the same purpose:<sup>53</sup> capitalism's main aim is to accumulate wealth in favour of the owners of means of production, theoretically without taking into consideration the welfare of the working class, rather trying to extract surplus value as far as it is possible. Conversely, the regulative, for example partially governing industrial relations, and redistributive efforts of the state are mainly focused on creating political stability by reducing economic inequality and on fostering the best environment to allow each person to follow his/her own beliefs. From this perspective, the market should be considered a tool to realize, enhance and improve the people's emancipation process and not as an ends in itself.

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revolutionary movement» reacts to the crisis of the «institutional pillars of liberal democracy» (p. 37).

<sup>50</sup> R. Aron, *La società industriale*, cit., p. 265.

<sup>51</sup> R. Aron, *La società industriale*, cit., p. 67.

<sup>52</sup> See W. Merkel, *Is Capitalism Compatible with Democracy?*, in *Zeitschrift für vergleichende Politikwissenschaft*, 2014.

<sup>53</sup> W. Streeck, *How will Capitalism End?*, Verso, London 2016 and Id., *Gekaufte Zeit. Die vertragte Krise des demokratischen Kapitalismus* (2013), it. trans. *Tempo guadagnato. La crisi rinviata del capitalismo democratico*, Milano, 2013. Moreover, R. B. Reich, *Come salvare il capitalismo*, cit., *passim*.

*5. A new Gilded Age and the democratic backlash: is an elephant part of the solution or part of the problem?*

It has been said that for a short period after World War II until the Seventies,<sup>54</sup> in a geographically limited section of the globe, the compromise between capitalism, with its structural economic inequality, and democracy, characterized by political equality, found a balance. Increasing equality of economic living conditions represented something new and unprecedented, at least in Europe, fostered by a not always orthodox, or at least sincere, application of the Keynesian doctrine of full employment at the national level and a precarious economic international order, based on the rules decided at Bretton Woods. Just a few years before, at the end of the nineteenth century, the United States and Europe had experienced the period during which inequalities spread at the highest rate. This epoch, when the liberal order suffered the crisis of the so called *laissez-faire* doctrine and begun its overturn,<sup>55</sup> is known as the *Gilded Age*,<sup>56</sup> when antitrust regulation was still perceived as an «embarrassing dilemma».<sup>57</sup>

Since the 1970's, however, there has been another shift towards inequality. According to Paul Krugman, reviewing Piketty's

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<sup>54</sup> A. O. Hirschman, *Social Conflicts as Pillars of Democratic Market Society*, cit., p. 214-215 acknowledges the capacity to govern conflicts especially in the so-called “Thirty Glorious Years”

<sup>55</sup> See K. Polanyi, *The Great Transformation* (1944), it. trans. *La grande trasformazione*, Torino, 2010. On Polanyi's work, recently, see F. Block, M. R. Somers, *The Power of Market Fundamentalism*, Cambridge, 2014. Moreover, see J. M. Keynes, *The End of Laissez-faire* (1926), London, 1927.

<sup>56</sup> See M. Twain, *The Gilded Age* (1873), it. trans. *L'età dell'oro e altri racconti*, Roma, 1954.

<sup>57</sup> E. S. Corwin, *The Twilight of the Supreme Court* (1934), Londra, 1937, p. 39.

bestseller,<sup>58</sup> looking at long-term trends in inequality, it is now possible to «talk of a second *Gilded Age*».<sup>59</sup> Elizabeth Anderson sees a new «subversion of classical liberalism» similar to that of the nineteenth century.<sup>60</sup> In fact, at the national level, in western countries inequality is exponentially increasing once again and the democratic promise to embed capitalism is becoming a Chimera.<sup>61</sup> To sum up, even if the idea of middle class may differ between Europe and the United States, first of all due to the different role of the welfare state on the two side of the Atlantic Ocean, generally it may be said that in developed western countries, the middle class «is losing ground».<sup>62</sup>

In a similar way, Saskia Sassen underlines how since the Eighties a new kind of capitalism based on finance, and characterized by a higher destructive potential than the former, arose. More specifically, it imposed a new “age of extraction”, bringing with it new forms of economic and social marginalization and new menaces to the

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<sup>58</sup> T. Piketty, *Le capital au 21. Siècle* (2013), it. trans. *Il capitale nel XXI secolo*, Milano, 2015.

<sup>59</sup> P. Krugman, *Why we’re in a New Gilded Age*, in *The New York Review of Books*, 2014 (<https://www.nybooks.com/articles/2014/05/08/thomas-piketty-new-gilded-age/>)

<sup>60</sup> E. Anderson, *The Great Reversal. How neoliberalism turned the economic aspirations of classical liberalism upside down in favour of capital interests*, cit., p. 207 ss.: «Neoliberal policy, far from returning to classical liberal ideas of the 17<sup>th</sup> and 18th centuries, is actually just bringing us back to the 19th century reversal of classical liberalism» (p. 211).

<sup>61</sup> See T. Piketty, *Il capitale nel XXI secolo*, cit., *passim* and A. B. Atkinson, *Inequality* (2015), it. trans. *Disuguaglianza*, Milano, 2015.

<sup>62</sup> See: Pew Research Center, *The American Middle Class is Losing Ground* (9/12/2015): <http://www.pewsocialtrends.org/2015/12/09/the-american-middle-class-is-losing-ground/>. See moreover C. Guilluy, *La società non esiste. La fine della classe media occidentale* (2018), it. trans. *No Society. La fin de la classe moyenne occidentale*, Roma, 2019.

environment.<sup>63</sup> It is interesting to note that according to some scholars, the United States Constitution has been conceived since the beginning as a «Middle-Class Constitution», affirming coherently that «the number one threat to American constitutional government today is the collapse of the middle class».<sup>64</sup> This is a problematic development with significant implications.

However, in the last twenty years, something interesting has been happening and this development requires us to analyse problems related to inequality not only from a national perspective. Branko Milanović explained that worldwide, the patterns of wealth distribution processes are following different logic. For years, the fight against poverty in the southern and eastern regions of the world and the fight against economic instability have been clear political commitments, if not always successfully resolved, of several international organization.<sup>65</sup> Nevertheless, focusing on the per capita

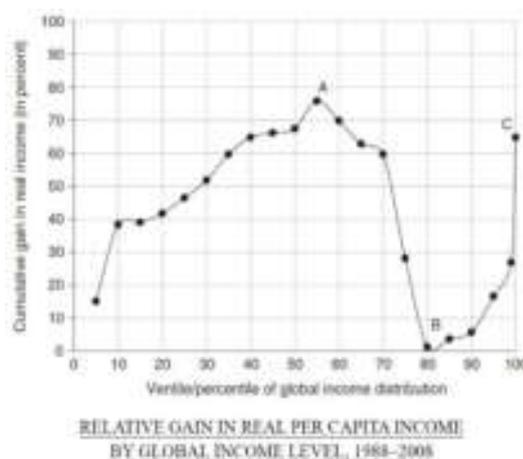
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<sup>63</sup> See S. Sassen, *Espulsioni e complessità nell'economia globale*, cit., p. 7 ss.: «what is usually referred us as economic development has long depended on extracting goods from one part of the world and shipping them to another. Over the past few decades this geography of extraction has expanded rapidly, in good part through complex new technologies, and is now marked by even sharper imbalances in its relation to, and use of, natural resources» (p. 19).

<sup>64</sup> G. Sitaraman, *The Crisis of the Middle-Class Constitution*, New York, 2017, 3. According to Sitaraman, who defines the middle class that «group of people who aren't extremely rich or extremely poor» (p. 13), the United States Constitution is not based like European Constitutions on a «class warfare Constitution», considering «class conflict» as something «inevitable» (p. 4). Rather, the United States Constitution since the beginning «assumes relative economic equality in society; it assumes that the middle class is and will remain dominant» (p. 4). From an economic perspective, see R. J. Gordon, *Rise and Fall of American Growth*, Princeton-Oxford, 2016.

<sup>65</sup> See, on this topic, J. Sachs, *The End of Poverty. Economic Possibilities for Our Time*, London, 2005 who affirms, examining how «extreme poverty can be ended not in the time of our grandchildren, not in *our* time» (p. 3; p. 226 ss.), that «the key factor of modern times is not the *transfer* of income from one region to another [...]. This is not to say that the rich are innocent of the charge of having

index, Milanović demonstrates, drawing an elephant to do so, that in recent years, globalization has improved the living conditions of millions of people in emerging economies. However, at the same time, it has lowered the standards of the western middle classes. Specifically, the trunk of the elephant indicates that simultaneously a worldwide emerging 1% is getting even richer.



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This peculiar effort to take into consideration economic relationships between the northern and southern regions of the world, analysing per capita income, may help to understand a backlash on economies and, therefore, on democracies of western industrial states. It is possible to see, on one side, even though poor countries are still economically very far from rich ones, that a new global middle class in

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exploited the poor. They surely have [...]. However, the real story of modern economic growth has been the ability of some regions to achieve unprecedented long-term increases in total production [...]» (p. 31). For a different and critical perspective, and against this vision, see J. Hickel, *The Divide*, cit., *passim*.

<sup>66</sup> B. Milanović, *Global Inequality: A New Approach for the Age of Globalization*, it. trans. *Ingiustizia globale*, Roma, 2017.

the southern countries of the world has gradually been emerging, claiming a fairer global distribution of riches, a clearer political self-determination, and the end of any forms of neo-colonialism (*via* exploitation of natural resources). On the other side, it is also clearly evident, however, that a new process of «exclusion» of a large number of people is occurring, while at the same time a process of dangerous concentration of global wealth is being denounced.<sup>67</sup>

Looking at this complex scenario, in recent years, the Rawlsian conception of tolerable economic inequality has been criticized, considering the so-called “double-standard” to be a morally weak argument.<sup>68</sup> A new perspective on how to deal with forms of “economic imperialism” towards the southern regions of the world has progressively gotten more attention.<sup>69</sup> This trend cannot be underestimated and must be taken into consideration when addressing inequality as a global constitutional challenge. In a globalized, and in fact, highly economically integrated, world, the paths of inequality are changing, and, at least apparently, they cannot be analysed only by comparing national GDPs.

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<sup>67</sup> See again S. Sassen, *Espulsioni e complessità nell'economia globale*, cit., *passim*: «My thesis is that we are seeing the making not so much of predatory elites but of predatory “formations”, a mix of elites and systemic capacities with finance a key enabler, that push toward acute concentration», while «inequality, if it keeps growing, can at some point be more accurately described as a type of expulsion» (p. 20).

<sup>68</sup> See T. Pogge, *Moral Universalism and Economic Justice*, in *Politics, Philosophy and Economic*, 2002, p. 29-58

<sup>69</sup> On the concept of “accumulation by dispossession”, see D. Harvey, *The New Imperialism* (2003), Oxford, 2005, p. 137 ss. See moreover, Id., *The Condition of Postmodernity* (1990), it. trans. *La crisi della modernità*, ilSaggiatore, Milano, 2015.

Traditionally, the new global balance that arose with the fall of Bretton Woods had dragged down the western “fiscal state”.<sup>70</sup> A new process began: the state tried to cope with a chronic insufficiency of money to finance the general welfare through indebtedness (the “debt state”), opening the door to a new threat of instability due to default risk, and thereby weakening the democratic process (the “consolidated state”),<sup>71</sup> whose crisis, in the southern regions of the world and in Europe as well, had been mainly managed through economic austerity.<sup>72</sup>

In the new context, democracy and popular sovereignty seem to be practically limited not only by traditional Madisonian checks and balances, but also by external technical oversight, apparently lacking any popular political legitimation (external and internal investors). This is why economic inequality must inevitably be considered a global political problem and thus a constitutional challenge from different points of views. Within this framework, according to Rodrik’s trilemma (the so-called impossibility theorem), nation state, democracy, and perfect economic globalization cannot be combined.<sup>73</sup>

It is hard, logically fallacious, and probably anachronistic to think that something exceptional in global history such as the “Thirty Glorious Years” can come back. Democracy and capitalism cannot have the same form of embeddedness that they used to have in the future. Democracy and capitalism, after all, are historical phenomena that can be substituted with new forms of political and economic coexistence. From this point of view, the European Union,

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<sup>70</sup> See C. B. Macpherson, *The Life and Times of Liberal-Democracy* (1977), Don Mills 2012, p. 92.

<sup>71</sup> See W. Streeck, *How will Capitalism End?*, cit., *passim*.

<sup>72</sup> M. Blyth, *Austerity. The History of a Dangerous Idea* (2013), Oxford, 2015.

<sup>73</sup> See D. Rodrik, *The Globalization Paradox* (2011), it trans. *La globalizzazione intelligente*, Roma-Bari, 2015.

notwithstanding its present malaise, seems an interesting experiment.<sup>74</sup> As a matter of fact, the European Union imposes reflection on the transformation of the traditional concept of the nation-state into a new form of state: the member state. It is a gamble, whose goal is paradoxically to rescue the nation-state from itself,<sup>75</sup> limiting national sovereignty to preserve democracy and shaping a new form of a regulated “economic cosmopolitanism”.<sup>76</sup> The European Union could foster, for instance, in the future a fairer taxation at the European level, as Piketty recently proposed in a comparison with the French situation in the aftermath of the Revolution.<sup>77</sup>

A new economic order, not yet precisely determined, is threatening the old (im)balance. If the aim of western countries is to defend liberal democracy and its features, economic inequality must be fought and social conflicts should be employed in a constructive, rather than self-destructive, manner. However, this process must be seen from a more comprehensive point of view, if possible even globally, again contrasting the «reversal of priorities from labour to capital»<sup>78</sup> searching for a new (temporary) balance.

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<sup>74</sup> See J. Zielonka, *Counter-Revolution. Liberal Europe in Retreat*, cit., spec. p. 99 ss. and D. Chalmers, M. Jachtenfuchs, C. Joerges (eds.), *The End of Eurocrats’ Dream*, Cambridge, 2016.

<sup>75</sup> A. S. Milward, *The European Rescue of the Nation-State*, London, 1994. See, for an historical perspective, T. Judt, *Postwar. A History of Europe Since 1945* (2005), it. trans. *Postwar. La nostra storia 1945-2005*, Roma-Bari, 2017.

<sup>76</sup> C. J. Bickerton, *European Integration. From Nation-States to Member States*, Oxford, 2012.

<sup>77</sup> See T. Piketty, *1789, le retour de la dette*, in *Le Monde*, 15.1.2019 (<http://piketty.blog.lemonde.fr/2019/01/15/1789-le-retour-de-la-dette/>).

<sup>78</sup> E. Anderson, *The Great Reversal. How neoliberalism turned the economic aspirations of classical liberalism upside down in favour of capital interests*, cit., p. 212.

According to Walter Scheidel, the only real “Great Levelers” are wars and other forms of shocks<sup>79</sup>. Fearing this outcome, working on a new global, or at least regional, solidarity, for example at the European level, is a necessity. However, it is essential to govern instability and foster a new balance between capitalism and liberal democracy. Without political stability and a sound middle class, open to the flows from the bottom and the top, the Tocquevillian democratic “great experiment” risks having to surrender.

Greedy capitalism is not compatible with global democratic “middle-class constitutionalism”, and thus, with liberal democracy. Unfortunately, this is no longer just a national problem, but a global constitutional challenge, as we are coping with scarce resources and facing a deep transformation of capitalism as a method of production.

**Abstract:** Western liberal democracies are nowadays experiencing the decline of “middle-class constitutionalism”. A growing economic inequality is threatening the contemporary constitutional state and its political stability, eroding social homogeneity considered by Hermann Heller to be a necessary feature for a sound democracy. This process has significant democratic backlashes and political implications. Looking in historical and comparative perspectives at the dynamic balance between economic inequality and political equality, this article is mainly focused on the complex attempt to find a new form of capitalism’s democratic embeddedness within the new global context.

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<sup>79</sup> W. Scheidel, *The Great Leveler. Violence and the History of Inequality from the Stone Age to the Twenty-first Century*, Princeton-Oxford, 2017. According to Scheidel, the “four horses” which have the capacity to defeat inequality are war, revolution, collapse, and plague. His research plan is to establish whether «great inequality has ever been alleviated by without great violence» (p. 22).

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*The Decline of “Middle-Class Constitutionalism” and the Democratic Backlash*

**Keywords:** middle-class constitutionalism, democracy, capitalism, Tocqueville, economic inequality

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