

*Marco Biasi e Giovanni Tuzet*

### **From Judge-made Law to Scholar-made Law? The strange case of Employment-at-Will in the US**

Until 1877, when Horace Gray Wood's *A Treatise on the Law of Master and Servant* was published, the rule in matter of termination of the employment relationship in the US was dismissal with notice, pursuant to the British Common Law tradition. On the contrary, Wood "reckoned" that the US rule in relation thereto was Employment-at-Will, which allowed any of the parties to immediately terminate in any case the employment relationship. Notwithstanding the ungrounded nature of Wood's statement, since then US Courts started to adhere to Employment-at-Will, which became accordingly known as "Wood's rule". This constitutes a puzzle for legal theory, for the rule was "invented" but largely accepted by the legal community: it was, on the one hand, a false statement about the legal system but, on the other, a legal truth once accepted. In the present paper we try to make the puzzle explicit and to present a way-out of it, distinguishing a pre-Wood and a post-Wood context. However, such a way-out does not solve by itself the legitimation issue represented by the shift from the first to the second context.

*Carlo Burelli*

### **Towards a realistic conception of politics. Conflict, order and political realism**

The question that I address in this paper is what makes a political theory realistic. Political realism's dissatisfaction with moralistic liberal theories cannot be reduced

to methodological worries of the sort that concern non-ideal theorists; rather, it involves a different theoretical background. In this paper, I unpack the specific conception of politics that distinguishes political realism from liberal moralism. Drawing on Waldron's account of the circumstances of politics, I argue that politics emerges from the interplay between conflict and order. I provide an analysis of conflict as distinct from pluralism and disagreement. By observing that the presence of conflict is salient only if a need for some cooperative order is presumed, I describe how such need is an essential element of politics. I conclude that while politically realistic theories properly acknowledge both conflict and order, other theories ignore, moralize, or abstract them away. 'Political idealism' fails to acknowledge conflict and focuses instead on disagreement or reasonable pluralism. Theories can also be flawed if they do not properly recognize the need for order: agonism is an example of this 'unrealistic realism'. Finally, there are theories that fail to fulfil both criteria: communitarianism is taken as an example of 'non-political idealism'.

*Giulio Ferraresi*

### **European populism in the 21<sup>st</sup> century: The ideological background of Syriza, Podemos and the 5 Star Movement**

This article aims at singling out the cultural foundations of left-wing populist parties and movements in the contemporary European political arena. Specifically, the focus is on Podemos, Syriza and the 5 Star Movement, three of the most successful populist parties in the EU. It is generally argued that they belong to the radical left political culture, the boundaries of which are however blurred: defining what radical left means and whether such parties belong to it is one task of this paper. In addition, they have been linked to the ideas of Ernesto Laclau, the Argentinian post-marxist political theorist who elaborated on Gramsci's concept of hegemony, so as to propose an alternative to both orthodox Marxism and the New Left. The other goal of this work is to test whether any connection actually holds between their political strategy and Laclau's works.

Laclau's idea is that socialism should stop focusing exclusively on class struggle and the proletariat, in order to comprehend a wider set of social demands. These, in turn, will represent the claims of different segments of the population, each carrying a specific request; various claims and multiple social groups will then be united

under a key concept or principle, that will serve to define the party's identity and its enemy. Populism, in fact, must exploit – or contribute to create – an “internal antagonistic” frontier, which separates the people from ruling élites. The specific way that a “populist” movement will come to have significance will then depend on the circumstances, for populism is, in its essence, the true nature of the political: it expresses the vagueness of the political and societal reality of the moment, while at the same time taking simplification to the extreme – and simplification is the quintessence of political discourse.

All three parties – Syriza, Podemos and the 5 Star Movement – would appear to correspond to at least some of Laclau's ideas, independently of their intention to adhere to his doctrine or not. This is because Laclau's theory is, in its descriptive part, very effective in singling out the features that a populist movement should possess; among these, the lack of a precise ideological content is one of the most distinctive elements of populism. This way, regardless of a party's cultural content, it can be said to match Laclau's doctrine insofar as it displays certain external features.

Therefore, while all parties display some of such features, this does not necessarily imply that they were inspired by Laclau's works. The three parties are actually quite different from one another, and the 5 Star Movement is definitely the most peculiar: some have linked its interest for direct democracy to the works of Rousseau, who is however merely used for symbolic reasons. The point remains that these parties are rather different, even though they are all populist in a “laclauian” sense. Syriza and Podemos come from a radical left-wing political culture, while the 5 Star's alignment on the political spectrum is harder to define.

*Mauro Piras*

### **The basis of liberal democracy: Political not moral? Some critical remarks on Habermas's Principle D**

The dilemma of liberal democracies in the domain of ethical and religious pluralism can be stated as follows: is it possible to define the principles grounding liberal democracy so that they can justify legitimacy and political obligation, without being dependent on particular moral contents?

Habermas's proposal of Principle D is the most ambitious and promising solution to this dilemma of pluralism. It relies strongly on the *non-moral* character of princi-

ple D. But can this point be maintained without contradiction? The article tries to develop the thesis that it is impossible to conceive D as practical, normative and non-moral, as Habermas argues, because: (1) this interpretation generates contradictions within the theory itself; (2) D contains implicitly a reference to the moral point of view, otherwise it couldn't assure an equal consideration of participants; (3) it is probably impossible, in general, to treat persons as equal without treating them as *moral* persons.