

CONTENTS

List of Contributors xiii

Introduction

Martin BELOV 1

PART I. REPUBLICAN CONSTITUTIONALISM: THE ROLE OF PEOPLE IN RADICAL DEMOCRACY

The People and the Lawgiver in Political Foundings

Eoin DALY 13

1. Introduction 13
2. The Incapacity of the People as a Founding Agent 14
3. The Moral Perils of Political Founding 15
4. Political Action and Natural Harmony 19
5. A Contrast with Robespierre's Political 'Melodrama' 24
6. Conclusion 29

Radical Democracy and Revolutionary Reform: Looking for Solutions in Times of Democratic Disruption

Marcin KILANOWSKI 31

1. Introduction 31
2. The People 33
3. Towards Civil Society 35
4. Education 39
5. Institutions 42
6. Concluding Remarks 44

**PART II. REASSESSING CONSTITUTIONAL PRINCIPLES
IN TIMES OF DEMOCRATIC RUPTURES**

**The Invisible Separation of Powers and the Control of the
Central Political Power: Lessons from Hungary, Moldova
and Romania**

Zoltán POZSÁR-SZENTMIKLÓSY..... 49

1. Legal Institutions and Procedures Affecting the Separation
of Powers 49
2. Theory and Practice 51
3. The Separation of Powers as a Complex System..... 52
4. Case Studies 59
5. Conclusions 75

**Rule of Law vs. Democracy: With Special Regard to the Case
of Hungary**

Zoltan J. TOTI 77

1. Introduction..... 77
2. Meanings of the ‘Rule of Law’ 78
3. The Definition and the Content of Democracy 84
4. The Content Elements of Democracy 86
5. Democracy, the Rule of Law and the Constitutional
Court’s Practice 90

**PART III. POPULIST CONSTITUTIONALISM: DEMOCRACY
IN CRISIS**

**The Degeneration of Contemporary Democracies as a
New Phenomenology of Constitutional Transition**

Angela DI GREGORIO 101

1. Definitions and Methodological Problems 101
2. The Doctrine on Illiberal Constitutionalism and Democracy 103
3. The Degeneration of Contemporary Democracies as a
New Phenomenology of Constitutional Transition 108
4. ‘Degraded’ Democracies as an Intermediate Hypothesis
between Democracy and Authoritarianism 110

5. Crisis of Liberal Democracy and Various Meanings of 'Democracy' and 'Constitutionalism' 112

Between Law and Revolution: Is Populism Constitutional?

Gianmario DEMURO 117

1. Introduction 117
2. Populism vs. Constitutionalism and Parliamentary Democracy 121
3. Populism as an Ideology Proliferates in Illiberal Democracies 125
4. Conclusion: European Constitutional Identity has to Limit Populism within the Internal State 127

European Constitutional Order and Populist Legal Revolution: A Challenge for Western Liberal Democracies

Carlo Alberto CIARALLI 129

1. The Rise of Populism in Europe 129
2. European Technocratic Democracy and Populist Direct Democracy 133
3. Populism as a 'Stress Test' for the European Legal Order 137
4. Italy as a Peculiar Case Study of Populism in Government 140
5. Concluding Remarks 143

PART IV. POPULIST CONSTITUTIONALISM FROM THE VIEWPOINT OF EMOTIONS AND CONSTITUTIONAL IMAGINATION

Populism, Constituent Power and Constitutional Imagination

Paul BLOKKER 149

1. Introduction 149
2. Populist Constitutionalism 152
3. Constituent Power 155
4. The Populist Imaginary 157
5. Popular Sovereignty versus Global Legalism 162
6. Legal Resentment or Populist Understandings of the Law 164
7. Concluding Remarks 169

Law and Emotions: Insights for the Study of Anti-Constitutional Populism

Julia WESOŁOWSKA	171
1. Introduction.....	171
2. The Affective in the Legal.....	173
3. The Myth of Irrationality	176
4. Are Constitutions Devoid of Emotions?	179
5. Too Much Emotion, or Not the Right Emotion?	181
6. Conclusion.....	183

PART V. CHALLENGES TO CONSTITUTIONAL DEMOCRACY IN TIMES OF COVID-19 CONSTITUTIONALISM AND BEYOND

The Role of Fear Politics in Global Constitutional ‘Ernstfall’: Images of Fear under COVID-19 Health Paternalism

Martin BELOV	187
1. Introduction.....	187
2. The Concept and Features of COVID-19 Constitutionalism	190
3. The Impact of COVID-19 on Constitutionalism, Constitutional Principles and Human Rights	203
4. Fear and Fear Politics in Constitutional Law and the Reformulation of Normalcy	206
5. Encoding Fear in Contemporary Constitutionalism Through Fear Politics	211
6. The New Paternalistic State: The Health Leviathan	218

Democracy and Human Rights in Illiberal Constitutionalism

Tímea DRINÓCZI and Agnieszka BIEN-KACZAŁA	221
1. Introduction.....	222
2. Illiberal Values and Collective Narcissism.....	223
3. Illiberal Democracy	228
4. Relativisation of Human Rights	236
5. COVID-19.....	242
6. Conclusion.....	249

**PART VI. THE SPREAD OF POPULISM AND ILLIBERAL
DEMOCRACY IN EUROPE**

**Law, Revolution and Populism in Italy: The Path from Constitutional
Resentment to Constitutional Renaissance**

Monica BONINI	253
1. In Search of the Roots of Italian Populism	253
2. After World War II: The Sowing of a Dangerous Seed.	257
3. People and Democracy in the Italian Constitution	263
4. Italian Populism: A Threat to Constitutional Democracy?.....	268
5. Back to Piero Calamandrei: The Time has Come for the 'Promised Revolution'	271

**Polish Constitutionalism under Populist Rule: A Revolution
without a Revolution**

Przemyslaw TACIK.	275
1. Introduction.	275
2. What is a Revolution without a Revolution?.....	279
3. A Revolutionary Project before the Revolution: The 2010 Constitutional Draft	287
4. Effective Suspension of the Constitution.	291
5. A Revolution without a Revolution: Populist Disconnection.	296
6. Conclusions	299

**Representative Democracy in the Times of Populism: The Case
of the Polish Parliament as a Delegated Power**

Agnieszka BIEN-KACAŁA, Anna TARNOWSKA and Wojciech WŁOCH	301
1. Introduction.	301
2. Constructing the 'Chain of Delegation'	302
3. From Representation to Discussion	307
4. From Discussion to Populism	310
5. Dysfunction of the 'Chain of Delegation'	314
6. Conclusion	318

The Roots and Guises of Legal Populism in Russia: The *Narodniki*, Statism and Legalism of Soviet Law and the Political Theology of Ivan Ilyin

Wojciech ENGELKING 319

1. Introduction. 319

2. Russian Populism, the Guise of Ideology and the Anti-Gay Law 322

3. The Material Aspect: The Cult of the *Muzhik* 326

4. The Formal Aspect: Statism and Legalism of Soviet Law 330

5. The Material and Formal Aspect: The Political Theology of Ivan Ilyin 333

6. Conclusion. 337

Bibliography. 339

Index. 377