



Populism as a Disruptive Factor of the EU Social Contract

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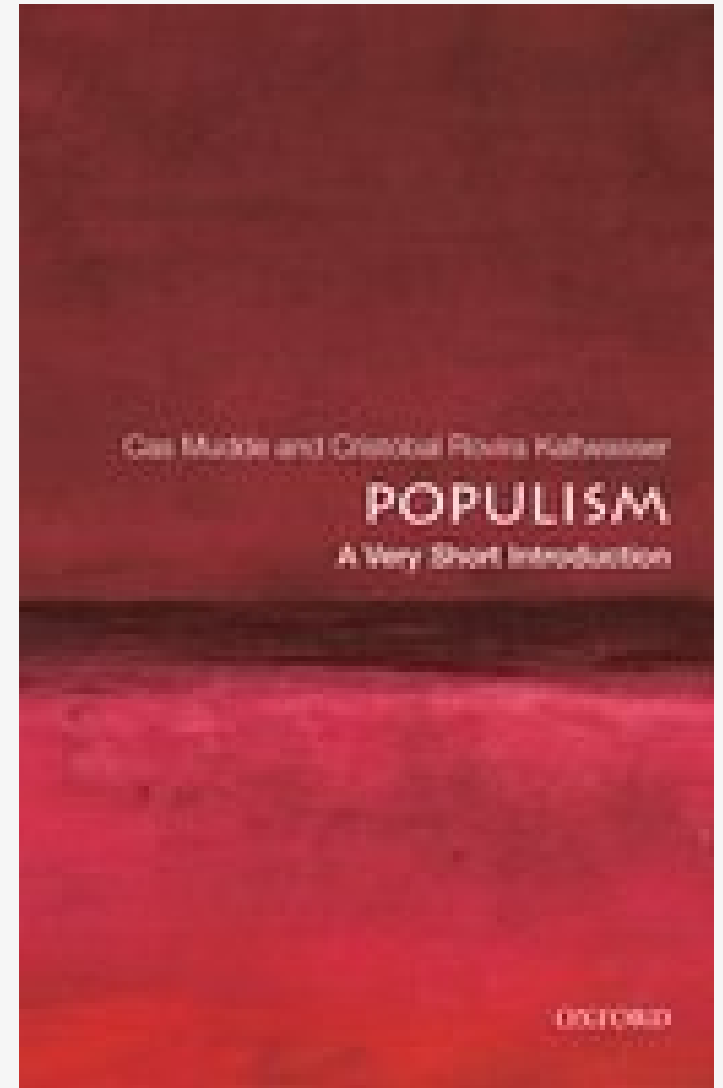
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A Definition

- «Populism is defined as a thin-centered ideology that considers society to be ultimately separated into two homogeneous and antagonistic camps, “the pure people” versus “the corrupt elite,” and which argues that politics should be an expression of the *volonté générale* (general will) of the people» ([Cas Mudde, Cristóbal Rovira Kaltwasser](#))
- Dichotomous, moralistic, anti-elitist



Cinderella Complex

- “Constitutive ambiguity” (Mény, Surel, 2002)
- Berlin “Cinderella complex”. “There exists a shoe – the word ‘populism’ – for which somewhere there must exist a foot. There are all kinds of feet which it nearly fits, but we must not be trapped by these nearly-fitting feet. The prince is always wandering about with the shoe; and somewhere, we feel sure, there awaits it a limb called pure populism. This is the nucleus of populism, its essence” (Berlin, 1967).

CULTURAL BACKLASH

TRUMP, BREXIT, AND
AUTHORITARIAN
POPULISM



PIPPA NORRIS
RONALD INGLEHART

How do we understand populism?

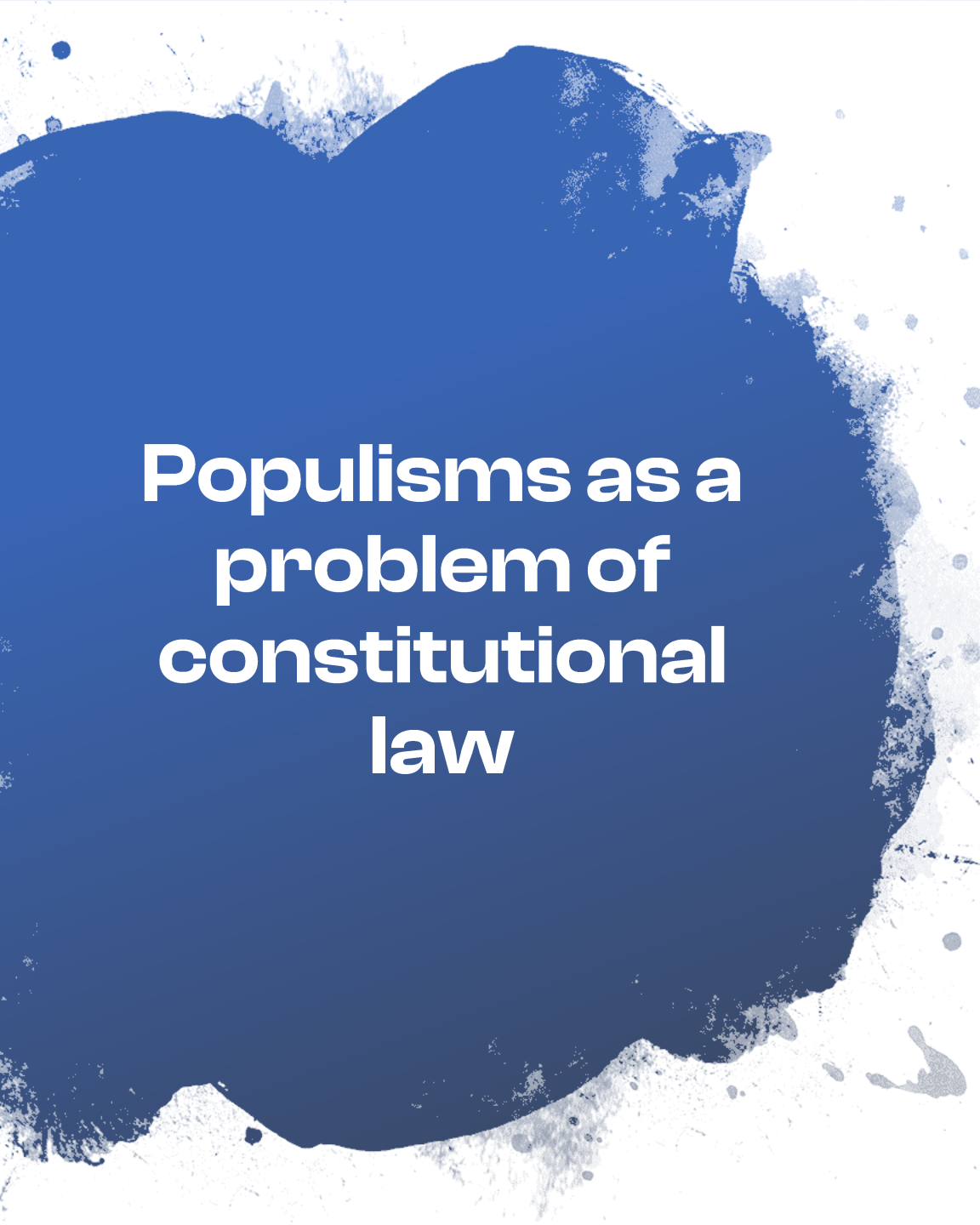
- “The shadow of democracy” ([Canovan](#))
- The Austerity Crisis as a Turning Point
- “Perhaps the most widely-held view of mass support for populism -- the economic insecurity perspective-- emphasizes the consequences of profound changes transforming the workforce and society in post-industrial economies. Alternatively, the cultural backlash thesis suggests that support can be explained as a retro reaction by once-predominant sectors of the population to progressive value change... Overall, we find the most consistent evidence supporting the cultural backlash thesis” ([Inglehart-Norris](#))



“Disruption”

- Disruption and Destruction
- Interruption, disturbance, or significant change to an existing system, process, or order
- “The action of preventing something, especially a system, process, or event, from continuing as usual or as expected”
- The action of completely changing the traditional way that an industry or market operates by using new methods or technology”
- <https://dictionary.cambridge.org/it/dizionario/inglese/disruption>



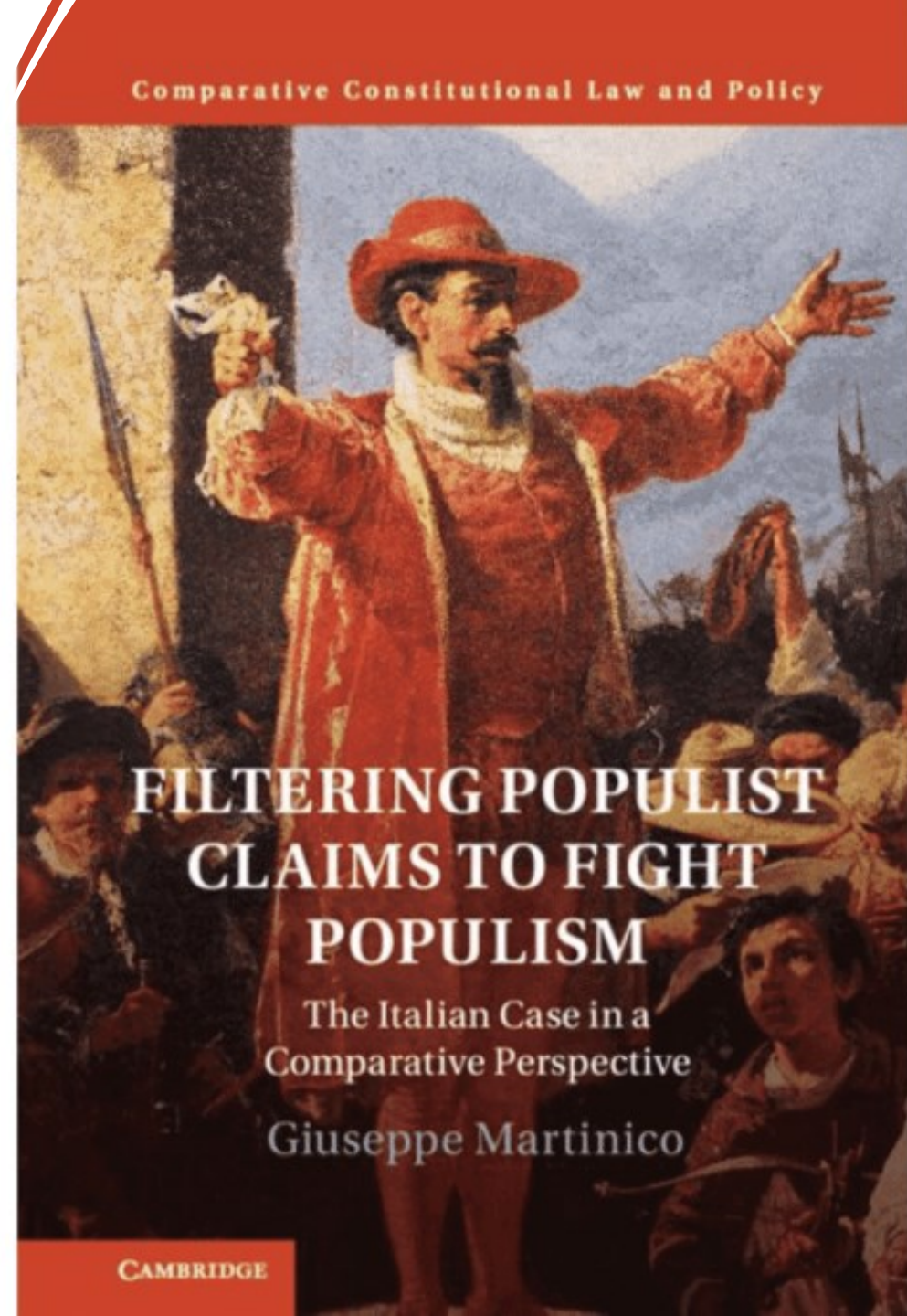


Populisms as a problem of constitutional law

- The neutrality of constitutions.
- The relationship between representative democracy and direct democracy.
- Limits to constitutional amendments.

Our research

- We are interested in how populists in power use categories of constitutional theory (popular sovereignty, democracy, constituent power) and instruments of constitutional law (referendum, constitutional amendment).



What is populism?

- Definition versus identification
- Three aspects
- Extreme majoritarianism
- Identity politics
- «Politics of immediacy» (Corrias)

Extreme Majoritarianism

- Constitutions as straitjackets
- Constitutions as an obstacle to the fulfilment of true democracy
- Opposition between democracy and constitutionalism
- Populisms are allergic to the counter-majoritarian tools of constitutionalism
- Particular tension with post-totalitarian constitutionalism

Weaponisation of constitutional law and Identity Politics

- “The protection of the constitutional identity and Christian culture of Hungary shall be an obligation of every organ of the State”, Art. R 4. of the Hungarian Basic law
- “The Russian Federation, united by thousand-year history...The Russian Federation honors the memory of defenders of the Fatherland, provides protection of the historical truth. Diminution of the heroic deed of the people defending the Fatherland is precluded” Art. 67 Russian Constitution
- “The most common reading of Rousseau takes identity as sameness. It says that when the whole people rules the whole people, the same people are both ruling and being ruled. Populists, too, understand constitutional identity in the sense of sameness” ([Corrias](#))
- Weaponization of constitutional law
- “The Constitutionalised Image of Enemy” ([Antal](#))

NICOLAS
WERTH
POUTINE
HISTORIEN
EN CHEF

Mimetism and Parasitism in Action: Constitutional Court of Hungary, Decision 22/2016

- “According to Article 4 (2) TEU, ‘the Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government.’ The protection of constitutional identity should be granted in the framework of an - informal cooperation with EUC based on the principles of equality and collegiality, with mutual respect to each other, similarly to the present practice followed by several other Member States' constitutional courts and supreme judicial bodies performing similar functions. The Constitutional Court of Hungary interprets the concept of constitutional identity as Hungary's self-identity and it unfolds the content of this concept from case to case, on the basis of the whole Fundamental Law and certain provisions thereof, in accordance with the National Avowal and the achievements of our historical constitution – as required by Article R) (3) of the Fundamental Law. The Constitutional Court establishes that the constitutional self-identity of Hungary is a fundamental value not created by the Fundamental Law – it is merely acknowledged by the Fundamental Law. Consequently, constitutional identity cannot be waived by way of an international treaty – Hungary can only be deprived of its constitutional identity through the final termination of its sovereignty, its independent statehood. Therefore the protection of constitutional identity shall remain the duty of the Constitutional Court as long as Hungary is a sovereign State. Accordingly, sovereignty and constitutional identity have several common points, thus their control should be performed with due regard to each other in specific cases”.

«Politics of Immediacy» (Corrias)

- Non-Mediation and Populism (Mény and Surel)
- The Referendum
- B. Mirkin Guetzévitch, Le référendum et le parlementarisme dans les nouvelles constitutions européennes, in *Annuaire de l'Institut international de droit public*, 1931, II, 285 et seq; R. Carré de Malberg, Considérations théoriques sur la question de la combinaison du referendum avec le parlementarisme, in *Annuaire de l'Institut international de droit public*, 1931, II, 256 et seq ; A. V. Dicey, Ought the referendum to be introduced into England?, in *Contemporary Review*, 1890, 508 et seq.
- The Return of the Imperative Mandate

What does comparative law teach us?

- Democracy is a 'complex' concept
- Democracy is a piece of the constitutional mosaic
- The contextualisation of the referendum is necessary
- The chains of constitutionalism serve to preserve minorities and pluralism

Democracy and minorities

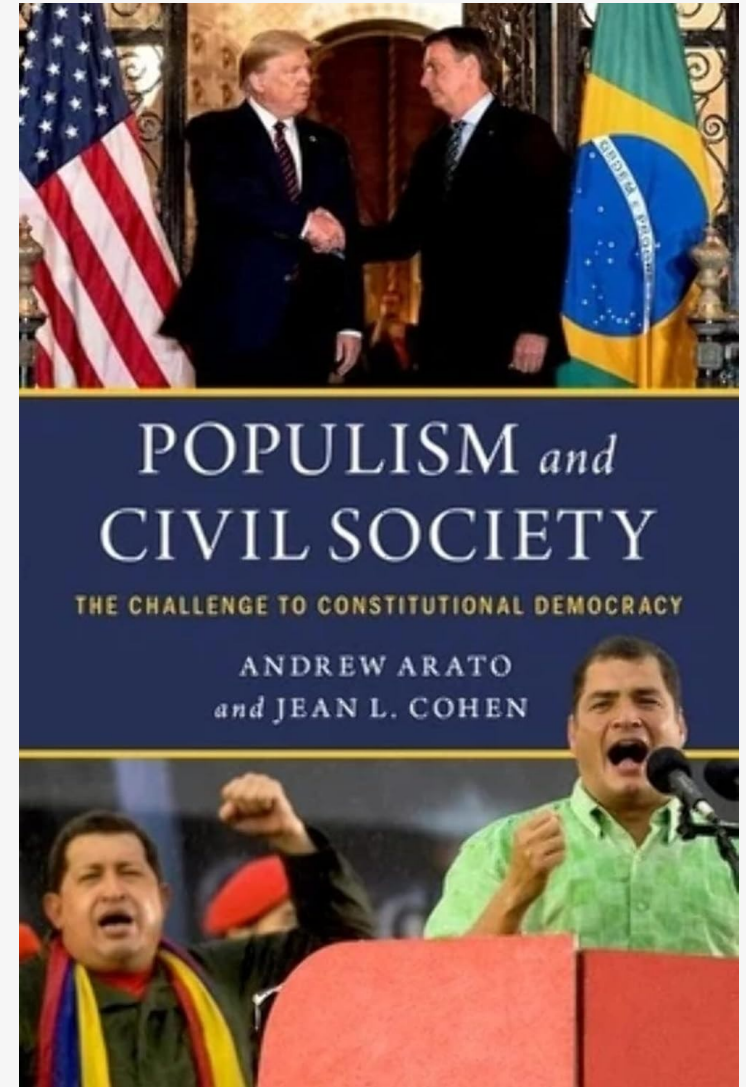
- “Democracy, however, means more than simple majority rule. Constitutional jurisprudence shows that democracy exists in the larger context of other constitutional values” (Supreme Court of Canada, Reference Re Secession of Quebec, 1998, par. 149)

The majority as a political construction

- “A majority is not something you will find in nature. It is an artifact of law. You need legal rules to determine who counts, and in which way. You need legal safeguards of liberty, equality and diversity of opinion. You also need legal rules to determine what the majority will be able to do, which necessarily implies that the majority gets told what she is not allowed to do. In short, you need constitutional law...Power conferred by constitutional law can be turned against constitutional law and erode it from the inside out” (Steinbeis)

Defending the status quo is not enough

- “We doubt that, even in the relatively short run, liberal democracy can be successfully defended by a conservative relation to its contemporary forms, i.e., based on a desired return to liberal parliamentarism or presidentialism as they were in the past. Almost everywhere these are under strain, whether because of internal oligarchic tendencies of representative systems, the decline of party representation, or strong external constraints, due to globalized capitalism, on the ability of democratic states to deliver improvements of social welfare or equal life chances to populations” (Arato-Cohen).



Q and A

- Can we exploit some of the claims made by populists to improve democracy? Only if the core of constitutionalism is preserved.
- Can the referendum be made less primitive and binary?
- Should we abandon the concept of identity?
- Should we rethink the role of the constitutional courts?



THANKS!

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