



Canada-Europe  
Dialogues on Democracy

# Constitutionalism in the Age of Populism

March 6-8th, 2020

II > SUMMARIES



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria | Centre for  
Global Studies



University  
of Victoria | Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria | Humanities  
Social Sciences | Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

The University of Victoria (UVic) is home to the project “**Canada-Europe Dialogues on Democracy (CEDoD)**: Democratic deficit and the rise of populism in Europe”. This project is co-funded by the Erasmus+ Programme of the European Union, housed at the Centre for Global Studies, and carried out under the framework of the EU-Canada Network ([www.eucanet.org](http://www.eucanet.org)) at the University of Victoria.

CEDoD (2018-2020) brings together a core group of multidisciplinary researchers at UVic to create a transatlantic scholarly network designed to facilitate a multilogue between civic society actors, academics and policymakers regarding populism and democracy in the European Union (by enticing and steering a discussion). The key objective is the creation of a vibrant research network focused on knowledge dissemination initiatives and engagement strategies targeting scholars, public policy stakeholders and civil society organizations. The principal idea behind the project is to engage Canada-EU experts in a transatlantic dialogue about European integration through the lens of democracy and populism.

The international conference was a jointly organized by the EUCAnet.org Initiative, the Cedar Trees Institute at the Centre for Global Studies, and the Faculty of Law at the University of Victoria. While the grant of the European Union awarded to Oliver Schmidtke, the Centre for Global Studies infrastructure and the SSHRC Connection grant secured by Jeremy Webber allowed for the base funding of this event, the contributions of the Cedar Trees Institute, the Faculties of Humanities and Social Sciences at the University of Victoria as well as the support of ELTE University and University of New South Wales were crucial for its success.

This report allows the participants and other readers to reflect on the topics that were brought up by scholars from around the world just before the COVID-19 lockdown forced the international exchange into the digital world. A fully accessible video archive is available on YouTube at the following address: <https://www.youtube.com/watch?v=IhNJob2A2ZU&list=PL8ADW6xXt9VXxKUzD7g2l6V7LSWfWOvGv=IhNJob2A2ZU&list=PL8ADW6xXt9VXxKUzD7g2l6V7LSWfWOvG>

June 1, 2020



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria | Centre for  
Global Studies



University  
of Victoria | Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria | Humanities  
Social Sciences | Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

March 6-8th, 2020

# Constitutionalism in the Age of Populism

---

International Conference at the University of Victoria

---

Increasingly, scholars and commentators have voiced concern over the rise of populist politics. A principal focus of this concern has been constitutionalism: the processes, constraints, and foundational understandings of constitutional government. Populists appear to flout these processes, constraints, and understandings, or alternatively harness them to their ends. In response, critics accuse populists of undermining liberal democracy. These arguments frequently focus on the role of the courts in relation to the popularly elected branches of government. Are the courts frustrating the will of the people? Are the judges overstepping their role? These arguments echo longstanding debates in legal and political theory over the justification and limits of judicial review but now voiced with much greater force, as though constitutional democracy itself were at stake.

The “Constitutionalism in the Age of Populism” event brought together scholars from Canada and Europe discussing issues related to constitutionalism and democracy, in light of populist politics. It did so especially in relation to two countries at the heart of the debate (Hungary; Poland) but with comparisons to other contexts in which populism is gaining a foothold. The symposium discussed what we ought to mean by “populism” and what - if anything - is wrong with it (why isn’t populism simply democracy?). It also explored the consequences of that analysis for the theory and practice of a truly democratic constitutionalism.



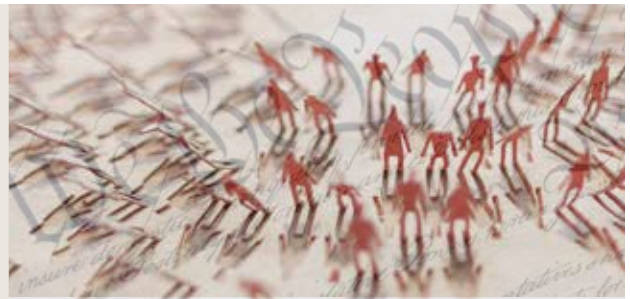
With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

March 6-8th, 2020

# Constitutionalism in the Age of Populism

International Conference at the University of Victoria  
FACULTY OF LAW, THE MURRAY AND ANNE FRASER BUILDING, ROOM 152



---

March 6, 2:30 – 4:30pm

---

*Keynote Address by* **Richard Bellamy**  
University College London, United Kingdom

PART OF THE VICTORIA COLLOQUIUM  
*\* All Welcome \**

When is Democracy Constitutional?  
*On the Relations between Political, Populist and  
Popular Constitutionalism*

*\* Conference Dinner: 6pm Faculty Club, UVic ~ Registration Mandatory \**

---

March 7th, 8:30am – 5:30pm

---

*\* Registration & Continental Breakfast 8:30 to 9am \**

*\* Lunch 12:30 to 2pm \**

SESSION A | 9:00 to 10:30 am

## Understanding the Populist Challenge

*Chair: **Hester Lessard**, Faculty of Law, University of Victoria*

Cutting our Way through the Thicket: Populism,  
its Affinities, its Consequences, and our Responses

**Jeremy Webber** *Faculty of Law, UVic*

Global Responses to Populism and its Causes

**Daniel Weinstock**, *Faculty of Law, McGill University*

Revisiting Spain's Populist Moment:  
Left/Right Populism and Beyond

**Pablo Ouziel** *Department of Political Science,  
Centre for Global Studies, UVic*

*\* Morning Break 10:30 to 11am \**

SESSION B | 11:00 am to 12:30 pm

## Populism, Courts, and the Rule of Law

*Chair: **Donald Galloway**, Faculty of Law, University of Victoria*

Friends or Foes? The Uncertain Relationship of  
Eternity Clauses and Populism

**Silvia Suteu** *Faculty of Law, UCL*

Populism, elections, legal paradigm:  
The interpretative struggle of the Hungarian  
constitutional court in electoral matters

**János Mécs** *Faculty of Law, Eötvös Loránd University (ELTE)*

Between Liberalism and Populism:  
Central-Eastern European States on the Road  
to Post-Conventional Constitutionalism

**Adam Czarnota** *Faculty of Law,  
University of New South Wales (UNSW)*

SESSION C | 2:00 pm to 3:30 pm

## Who is the People in Populism?

*Chair: **Rebecca Nelems**, Graduate Student Fellow at the  
Centre for Global Studies, University of Victoria*

Populism as an Illiberal Response to the  
Crisis of Democracy: Exploring the Link between  
Popular Sovereignty and Liberal Rights

**Oliver Schmidtke** *Department of History and Political Science, UVic*

Populism versus Popular Republicanism  
on the Battleground of Diversity

**Peter Kraus** *Institute for Canadian Studies, University of Augsburg*

Culture Cops and Cancel Cultures:  
Indigenous Peoples & Populism

**John Borrows** *Canada Research Chair in Indigenous Law, UVic*

*\* Afternoon Break 3:30 to 4pm \**

SESSION D | 4:00 pm to 5:30 pm

## Populist Democracy and Supra-National Norms

*Chair: **Keith Cherry**, Graduate Student Fellow at the  
Centre for Global Studies, University of Victoria*

The Role of International Institutions  
in the Protection of Constitutionalism

**Eszter Bodnár** *Faculty of Law, Eötvös Loránd University ELTE*

Populism and the Question of EU Reform

**John Erik Fossum** *ARENA Centre for European,  
University of Oslo (UiO)*

The Democratic Limits of "Anti-Populism"

**Thibault Biscahie**  
*Department of Politics, York University*



\* Continental Breakfast 8:30 to 9am \*

SESSION E | 9:00 to 10:30 am

A Democratic Rule of Law?

Chair: **Kathryn Chan**, Faculty of Law, University of Victoria

Informal, Democratic Structures  
and the Control of the Central Political Power

**Zoltán Pozsár-Szentmiklósy**

Faculty of Law, Eötvös Loránd University ELTE

Jurisdictional Relationships

**Patricia Cochran** Faculty of Law, UVic

The (Im)Possibility of Populist Jurisprudence.

Lessons from Poland

**Michał Stambulski**

Centre for Legal Education and Social Theory,  
University of Wrocław

\* Morning Break 10:30 to 11am \*

SESSION F | 11:00 am to 12:30 pm

Responding to Populism's Democratic Challenge

Chair: **Cindy Holder**, Department of Philosophy,  
University of Victoria

Demos or Demons: Do Populist

Majorities Threaten Democracy?

**Colin Macleod** Department of Philosophy, UVic

Colonialism, Constituent Power and Referendums:  
When is Popular Sovereignty not Populist?

**Hoi Kong** P.A. Allard School of Law, University of British Columbia

Populism, Constitutionalism, and  
the Administrative State

**Kristen Rundle** Law School, University of Melbourne

SESSION G | 12:30 pm to 1:00 pm

Closing Comments

Website: [eucanet.org](http://eucanet.org)

Email: [info@eucanet.org](mailto:info@eucanet.org)

Phone: 250.472.4990

Twitter:

[@CFGS\\_UVic](https://twitter.com/CFGS_UVic) • [@UVicLaw](https://twitter.com/UVicLaw) • [@CdnEurDialogue](https://twitter.com/CdnEurDialogue)

[#DemocracyanditsFutures](https://twitter.com/DemocracyanditsFutures)

Facebook:

[CanadaEuropeDialogue](https://www.facebook.com/CanadaEuropeDialogue) •

[UVicFacultyofLaw](https://www.facebook.com/UVicFacultyofLaw) • [CentreforGlobalStudies](https://www.facebook.com/CentreforGlobalStudies)

Blog: [Blog.eucanet.org](http://Blog.eucanet.org)

March 6-8th, 2020

# Constitutionalism in the Age of Populism

International Conference at the University of Victoria

FACULTY OF LAW, THE MURRAY AND ANNE FRASER BUILDING, ROOM 152



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria

Centre for  
Global Studies



University  
of Victoria

Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria

Humanities  
Social Sciences

Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

## Guest speakers

### Thibault Biscarie

*Department of Politics,  
York University (Canada)*

### Eszter Bodnár

*Faculty of Law,  
Eötvös Loránd University (Hungary)*

### Adam Czarnota

*Faculty of Law,  
University of New South Wales (Australia)*

### Hoi Kong

*P. A. Allard School of Law,  
University of British Columbia (Canada)*

### Peter Kraus

*Department of Political Science,  
University of Augsburg (Germany)*

### János Mécs

*Faculty of Law,  
Eötvös Loránd University (ELTE)*

### Zoltán Pozsár-Szentmiklósy

*Faculty of Law,  
Eötvös Loránd University (Hungary)*

### Kristen Rundle

*Faculty of Law,  
University of Melbourne (Australia)*

### Michał Stambulski

*Centre for Legal Education and Social Theory,  
University of Wrocław (Poland)*

### Silvia Suteu

*Faculty of Law  
University College London (United Kingdom)*

### Daniel Weinstock

*Faculty of Law  
McGill University (Canada)*

## UVic Speakers

### John Borrows

*Faculty of Law*

### Patricia Cochran

*Faculty of Law*

### Colin Macleod

*Department of Philosophy*

### Pablo Ouziel

*Department of Political Science,  
Centre for Global Studies*

### Oliver Schmidtke

*Department of History and Political Science,  
Centre for Global Studies*

### Jeremy Webber

*Faculty of Law*



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria

Centre for  
Global Studies



University  
of Victoria

Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria

Humanities  
Social Sciences

Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

March 6-8th, 2020

# Constitutionalism in the Age of Populism

University of Victoria

## PRE-SEMINARS ROUNDTABLE DISCUSSION

In keeping with the spirit of promoting a fluid and rich discussion between students and faculty, the CEDoD project in collaboration with the Centre for Global Studies, the Cedar Trees Institute and the Faculty of Law, coorganized sessions which graduate students, post-doctoral fellows and junior and senior faculty members to discuss some of the core themes of the conference prior to the actual event.



### Participants

Fazila Mat, Songkrant Pongboonjun, Esteban Vallejo Toledo, David Gill, Rebeca Macias Gimenez, Ryan Beaton Akshaya Chandani, Claire Wood, János Mécs, Renáta Bedő, Benjamín Perrier, Himaloya Saha, Zehra Munshi, Adrienne Stacey, Eva Linde, Zoltán Pozsár-Szentmiklósy, Eszter Bodnár, Oliver Schmidtke, Jeremy Webber, and Pablo Ouziel.

### Organization

Pablo Ouziel *Department of Political Science, Centre for Global Studies*; Eszter Bodnár *Faculty of Law, Eötvös Loránd University (Hungary)*; Oliver Schmidtke *Department of History and Political Science, Centre for Global Studies*; Jeremy Webber *Faculty of Law*, Beate Schmidtke, *Project Manager and Communications Officer for EUCAnet.ca, Project Coordinator for MSEUCA and Centre for Global Studies*.



University  
of Victoria

Centre for  
Global Studies



University  
of Victoria

Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria

Humanities  
Social Sciences

Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

## PRE-SEMINARS

On Monday, March 2nd 2020, faculty members and graduate students from multiple disciplinary backgrounds came together to address the essentially contested nature of populism. The discussion explored different ways of conceptualizing populism. Discussion on geographies, historical legacies, specific conjunctures, left and right family resemblances and alternative ways of constructing the 'us' versus 'them' distinction filled the two-hour seminar.

Following the pre-seminar and working with our partner EUCAnet ([www.eucanet.org](http://www.eucanet.org)), we invited people to continue the pre-seminar discussion online. The meeting was based on a discussion paper drafted by professor Jeremy Webber and circulated to all conference participants <https://blog.eucanet.org/2020/03/03/constitutionalism-in-the-age-of-populism/>

## POST-CONFERENCE DE-BRIEFING SESSION

After the international conference, we organized a debriefing session that was primarily attended by those who also came to the pre-conference session. During this discussion, the group exchanged views on lessons learnt from the conference deliberations. One of the key features of the conference that the participants pointed out was the interactive elements of the event and how it provided an open space for deliberation for the audience and the presenters. The discussions of this post-conference debrief underlined how engaging the event was in particular with respect to the question how academics and citizens should respond to the rise of populism and the challenges it poses to democracy. The participants acknowledged the multiplicity of ways in which people have studied and described the phenomenon of populism and its relationship with constitutionalism. One key finding of the discussion was that in order to be accurately understood, populism needs to be properly historically and geographically contextualized (Eastern, Western, and Southern European ways of witnessing and understanding the phenomenon, Indigenous populisms and Indigenous responses, North American perspectives etc.).



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria

Centre for  
Global Studies



University  
of Victoria

Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria

Humanities  
Social Sciences

Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.



March 6-8th, 2020

# Constitutionalism in the Age of Populism

KEYNOTE ADDRESS

PART OF THE VICTORIA COLLOQUIUM

**Richard Bellamy**

University College London, United Kingdom

When is Democracy Constitutional?

*On the Relations between Political, Populist and Popular Constitutionalism*



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria

Centre for  
Global Studies



University  
of Victoria

Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria

Humanities  
Social Sciences

Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.





Keynote address

## When is Democracy Constitutional?

*On the Relations between Political, Populist  
and Popular Constitutionalism*

Richard Bellamy

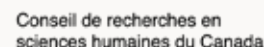
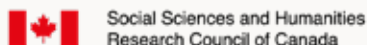
Department of Political Science, University College London

### Abstract

Constitutional democrats tend to argue that the constitutional qualities of democracy are derived from a legal constitutional framework that provides the justiciable foundations for and constraints upon the democratic process. Political constitutionalists have disagreed, arguing instead that a democratic process can be understood as embodying constitutional qualities. However, they have, in turn, been subject to two powerful criticisms. On the one hand, liberal minded constitutional democrats have argued that political constitutionalism encourages populist appeals to the tyranny of the majority which can undermine important constitutional checks on democracy necessary to prevent it undermining both itself and the basic rights of citizens. On the other hand, radical and participatory democrats argue political constitutionalism neglects the role of direct forms of democracy as a means for allowing the people themselves to constitute the democratic process via referendums, and to appeal to the constitution through the courts to contest executive actions that serve the few rather than the many. This piece seeks to defend political constitutionalism against both these criticisms.

Richard Bellamy is Professor of Political Science at UCL. His main research interests are in the History of European Social and Political Theory post-1750 and Contemporary Analytical Legal and Political Philosophy. He has written extensively on the history of both Italian political thought and European liberalism, on Pluralism, Compromise and Public Ethics; Constitutionalism, Rights and the Rule of Law; and Citizenship, Representation and Democracy. His books include *Liberalism and Pluralism: Towards a Politics of Compromise*; *Political Constitutionalism and Citizenship: A Very Short Introduction*. He has edited or co-edited numerous books, including *Victorian Liberalism*; *Constitutionalism in Transformation*; *Pluralism and Liberal Neutrality*; *Citizenship and Governance in the EU*; *Political Concepts*.

Richard Bellamy has recently completed a monograph with Cambridge University Press, entitled *A Republican Europe of States: Cosmopolitanism, Intergovernmentalism and Democracy in the EU*, exploring the democratic legitimacy of Global Governance, with particular attention to the European Union. He is currently engaged on a book on The Democratic Constitution.



With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

March 6-8th, 2020

# Constitutionalism in the Age of Populism

## INTERNATIONAL CONFERENCE

The international conference Constitutionalism in the Age of Populism, held at the University of Victoria, addressed one of the most pressing questions of our time: Do we currently witness a gradual erosion of constitutional democracies and their commitment to legal enshrined rules and rights? To address this question, a multi-disciplinary group of scholars with a strong engagement of graduate students from Law, Political Science, and Public Administration, prepared a series of seminars organized around a discussion paper by Prof. Jeremy Webber. These seminars set the stage for the three-day conference that had a particular focus on the empirical evidence coming from those countries in the European Union where the challenges of populism or nationalism to constitutional democracy are most palpable: Hungary and Poland.

One of the key insights that the conference provided is a realization that populism and its effects on democratic rule and rights-based regimes needs to be understood based on the particular historical, social and political contexts in which it emerges. The nuanced investigation of the Hungarian and Polish cases also opened up debates about the structural shortcomings of liberal democracy contributing to the widespread popular discontent with mainstream actors and institutions in Western democracies. Along the same vein, the conference participants debated what the most promising steps towards reinvigorating democratic practices could be from a comparative transatlantic perspective. The scholarly debates will lead to several publication projects in form of special journal issues.

During the conference the award winner of the Jean Monnet Project CEDoD essay contest “POPULISM: a corrective or a threat to democracy?”, Thibault Bascarie, PhD Candidate at York University, was invited to present his paper: The Democratic Limits of “Anti-Populism”.



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria

Centre for  
Global Studies



University  
of Victoria

Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria

Humanities  
Social Sciences

Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

## Understanding the Populist Challenge

Chair: **Hester Lessard**, Faculty of Law, University of Victoria



### Cutting our Way through the Thicket: Populism, its Affinities, its Consequences, and our Responses

Jeremy Webber,  
Faculty of Law, University of Victoria

#### Abstract

The diversity of the features attributed to populism, and the consequent variety in critiques of populism, are remarkable. It sometimes seems as though people are using the same terms to address very different phenomena. Criticisms of populism sometimes seem to be little more than criticisms of right-wing authoritarianism. One is left wondering whether there is any distinctive meaning to populism, how it relates to the diverse phenomena often associated with the term, and whether and why attention to populism should prompt any particular responses in our theory and practice of democratic constitutionalism.

In this paper, I seek to set the stage for the conversation in the workshop by canvassing the complex phenomena often associated with populism, proposing a set of concerns that should be considered distinctive to populism, suggesting how populism intersects with the concerns with which it is often associated, and suggesting consequences for our normative responses to populist democracy.

Jeremy Webber is Professor of Law at the University of Victoria, Fellow of the Trudeau Foundation and Fellow of the Royal Society of Canada. He held the Canada Research Chair in Law and Society and served as the

Chair and Dean of Law. Prior to joining UVic, he was the Dean of Law at the University of Sydney, and Professor of Law at McGill University.

Jeremy Webber has written widely on constitutional law, Indigenous rights, federalism, cultural diversity, and constitutional theory in Canada and in relation to other countries (especially Australia). He is the author of *Reimagining Canada: Language, Culture, Community and the Canadian Constitution* (1994), *The Constitution of Canada: A Contextual Analysis* (2015), and *Las gramáticas de la ley: Derecho, pluralismo y justicia* (2017).



### Global Responses to Populism and its Causes

Daniel Weinstock  
Faculty of Law, McGill University

Daniel Weinstock is Professor and the Director of the Institute for Health and Social Policy in the Faculty of Law at McGill University. He was a visiting doctoral student at Harvard University, received his PhD at the University of Oxford (DPhil in philosophy) and did his postdoctoral work in the Department of Philosophy at Columbia University. Daniel Weinstock joined the faculty as a Professor of Philosophy at the Université de Montréal, where he held the Canadian Research Chair on Ethics and Political Philosophy and the director of the Research Centre on Ethics at Université de Montréal (CRÉUM). He is a prize fellow of the Pierre Elliott Trudeau Foundation (2004), and a recipient of the André-Laurendeau Prize given by the Association canadienne-française pour l'avancement des sciences. He is also a member of Centre d'études ethniques des universités montréalaises (Université de Montréal).

Daniel Weinstock's research explores the governance of certain types of liberal democracies, and the effects of religious and cultural diversity from an ethical perspective on the political and ethical philosophy of public policy. His areas of expertise include the politics of language and identity, democracy, citizenship, and pluralism.



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria

Centre for  
Global Studies



University  
of Victoria

Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria

Humanities  
Social Sciences

Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

He has published many articles on the ethics of nationalism, problems of justice and stability in multinational states, the foundations of international ethics, and the accommodation of cultural and moral diversity within liberal democratic societies. He has also been an active participant in public policy in Québec, having been a member from 1997 to 1999 of a Ministry of Education working group on religion in public schools, and from 2003 to 2008, the founding director of Québec's Public Health Ethics Committee.

Professor Daniel Weinstock was awarded the 2017 Charles Taylor Prize for Excellence in Policy Research by the Broadbent Institute.

Pablo Ouziel holds a Post-Doctoral Fellowships with the Centre for Global Studies and the Department of Political Science at the University of Victoria and is a visiting fellow at the Universitat Pompeu Fabra in Barcelona, Spain, and the University of Southampton in the United Kingdom. Pablo's research interests include public philosophy, collective presences, horizontality, nonviolence and civic democracy. By standing within the tradition of public philosophy, the core of his work is centred on excavating networks of individuals governing themselves in numerous ways that supersede our current structures of representative government.



## Revisiting Spain's Populist Moment: Left/right Populism and Beyond

Pablo Ouziel  
Centre for Global Studies,  
University of Victoria

### Abstract

In 'For a Left Populism', Chantal Mouffe argues that following the economic crisis of 2008, the neoliberal hegemonic formation has been challenged from both the right and left. She argues this is a new conjuncture that she calls the 'populist moment' in which the type of politics required to recover, deepen and extend democracy is left populism. Practicing public philosophy and thinking along with Mouffe, I will critically analyse Mouffe's populist moment in a Spanish key. Studying the resurgence of contestatory collective presences and left and right populist political parties in post-2008 economic crisis Spain, I will present a sketch of Spain's current political moment. By discussing the left party-movement Podemos, the far-right party VOX, and the collective presence of 15M, I will argue that in Spain, the mode of being of 15M presents a virtuous alternative to VOX, to Podemos, and to the status quo.



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria

Centre for  
Global Studies



University  
of Victoria

Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria

Humanities  
Social Sciences

Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

## Populism, Courts, and the Rule of Law

Chair: **Donald Galloway**, Faculty of Law, University of Victoria



### Friends or Foes? The Uncertain Relationship of Eternity Clauses and Populism

Silvia Suteu, Faculty of Laws,  
University College London

#### Abstract

Eternity clauses are seen by many as the ‘lock on the door’ that can keep enemies of constitutional democracy out, at least for a time. They are adopted so as to help prevent constitutional change that goes against fundamental principles of constitutionalism and to preserve the polity’s core constitutional identity. At the very least, unamendability is thought to raise the price of abusive constitutional reforms by rendering them clearly visible and attaching to them a stigma of unconstitutionality. Unsurprisingly then, eternity clauses have also been invoked as a potential bulwark against populists in power. Unamendable provisions may not have entirely thwarted populist takeovers, the argument goes, but may have delayed them, bought some time for defenders of constitutional democracy to resist, and clearly signalled to the outside world (including supranational institutions such as the European Union) that something was amiss. Scholars in Hungary and Poland, for example, have raised such arguments, the former especially decrying the ease with which the country’s constitutional order has been subverted.

This paper questions such easy assumptions about the nature and operation of eternity clauses, both in general and in a populist context. The paper argues, based on concrete

examples, that unamendability is a tool populists have been just as comfortable wielding as their opponents. For example, the darkside of constitutional identity review includes captured courts defending of many populist reforms would have made them difficult to capture under the often-broad strokes of unamendable principles. Finally, unamendability is a broad church and experience shows that populists in power also resort to constitutional rigidity mechanisms once they have captured state institutions. In other words, eternity clauses may quickly turn into instruments of entrenching the very populist projects proponents of unamendability abhor.

Silvia Suteu is Lecturer in Public Law at the University College London. She was previously a tutor and ESRC Research Fellow at the University of Edinburgh, where she also co-founded and convened the Constitutional Law Discussion Group and acted as Associate Director for Research Engagement of the Edinburgh Centre for Constitutional Law. Her current research interests are in comparative constitutional law and constitutional theory. She is especially interested in the theory and practice of deliberative constitutional change, constitutional entrenchment and democratic theory (in particular eternity clauses), transitional constitutionalism, and gender-sensitive constitution-making. She has also done work in international humanitarian and human rights law. She obtained her PhD in Law from the University of Edinburgh, titled “Eternity and the Constitution: The Promise and Limits of Eternity Clauses” and she will present on this topic at the conference.



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria

Centre for  
Global Studies



University  
of Victoria

Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria

Humanities  
Social Sciences

Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.





## Populism, elections, legal paradigm: the interpretative struggle of the Hungarian constitutional court in electoral matters

János Mécs,  
Faculty of Law,  
Eötvös Loránd University (ELTE)

### Abstract

Elections are devices, through which the abstract concept of representation gains its specified institutional form, therefore they are highly relevant for populists. The presentation examines the illiberal-populist project of redesigning electoral institutions in Hungary after 2010, focusing on the role of the Hungarian Constitutional Court (HCC) in reviewing these institutions and carrying out tasks of electoral adjudication. The question is whether there has been a distinct new legal order put in place that represents the main ideas of populist constitutionalism, and whether the HCC itself came up with new background theories or interpretative tools to back-up the illiberal-populist electoral politics.

It is argued that the Hungarian illiberal-populist regime did not create a new normative world, i.e. illiberal-populist electoral politics did not discard explicitly on the normative level the liberal-constitutional concepts, principles and institutions of elections. It is shown that the system was rather designed and constantly redesigned, misusing the classic institutions of elections in order to have the desired outcome. Moreover, the constitutional court was packed, and other means was applied to ensure that the court does not intervene actively in the electoral reforms and the conduct of elections.

The task was therefore conferred to the constitutional court, to build a coherent case-law, that at the same time supports the populist imagination of representation. The analysis of the case-law of the Hungarian Constitutional Court on

electoral matters shows that the court did not and maybe could not build such background normative theories. The best it could do was to put itself on a liberal-constitutional normative track by citing its old case-law and concepts of liberal-constitutional tradition, and it either exploited the loopholes in this tradition to cover itself with deference, or at one point of the argumentation it abandoned this track, making its political motives conspicuous.

The Hungarian case brings up the more general question whether populism is capable of being the foundation of a new legal order, and whether populist constitutionalism is conceivable. The presentation concludes that Hungarian populism is so thin ideologically that it may be labelled as a political technique, and as such, it contradicts the very foundations of rationally formal law in the Weberian sense. Therefore it is highly questionable whether a coherent legal order and jurisprudence may come into existence that at the same time supports populist ambitions.

János Mécs is a doctoral student at Eötvös Loránd University (ELTE), Faculty of Law



## Between Liberalism and Populism: Central-Eastern European States on the Road to Post-Conventional Constitutionalism

Adam Czarnota,  
Faculty of Law,  
University of New South Wales

### Abstract

Traditional constitutionalism introduced in the CEE region after 1989 was based on the promise of neutrality and impartiality of reason, inclusion, and openness of debate to all arguments, based on the acceptance of formal equality.



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria

Centre for  
Global Studies



University  
of Victoria

Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria

Humanities  
Social Sciences

Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

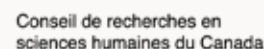
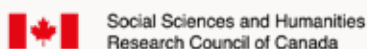
The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

ty. Paradoxically, it led to the exclusion and alienation of the citizens by the systems of experts as for instance in the economic reform or as mention above by expert lawyers deciding on crucial values of the polity.

The first part of the paper investigates recent constitutional changes and processes in Central-Eastern European states. The second part analyses the explanatory theories about them: populist, neo-authoritarian and abusive/stealth constitutionalism interpretations. Through the analyses of the social processes in the last 30 years in the CEE region, I will argue that what we observe is the slow process of institutional changes towards postconventional constitutionalism. In the last part, I will describe the characteristic features of post-conventional constitutionalism.

Adam Czarnota is an Associate Professor at the University of New South Wales in Sydney and is the Co-Director of the Network for Interdisciplinary Studies of Law and Co-Chief Investigator of the research group, 'Constitutional Populism: Friend or Foe of Constitutional Democracy'. Dr. Czarnota has detailed knowledge of central European societies and their history and lived experiences in turbulent times with scholarly endeavours in socio-legal studies during his collaboration at the Faculty of Law at the University of Warsaw in Poland and the International Institute for the Sociology of Law in Oñati, Spain.

His areas of expertise include law and social theory, legal theory, European Union law, and European human rights law and institutions. His current research focuses on what is happening on the ground and the 'new populist' regimes with a balanced perspective on these developments "by casting time in both their positive and negative dimensions."



With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

## Who is the People in Populism?

Chair: **Rebecca Nelems**, Graduate Student Fellow at the  
Centre for Global Studies, University of Victoria



### Populism as an Illiberal Response to the Crisis of Democracy: Exploring the Link between Popular Sovereignty and Liberal Rights

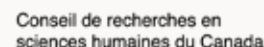
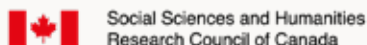
Oliver Schmidtke  
Departments of History and  
Political Science, University of Victoria

#### Abstract

This presentation will explore the political and legal implications of the populist claim to represent the will of the people in a direct, uncompromised way. At a theoretical level, this talk will discuss the illiberal tendencies manifested in the political project of populist-nationalist forces across Europe. In the second part, the conceptual discussion will be complemented with an empirical investigation into how this tension between the plea for populist democratic rule and liberal rights plays out in cases where right-wing populists have succeeded in shaping government practices. More specifically, this contribution will address the following questions: What effects has right-wing populism had on minority rights (immigrants, minorities, LGBTQ) in those countries where right-wing populist political parties are part of government or have a strong parliamentary presence? What trajectory of policy development do we see in this area related to the direct or indirect pressure coming from populist parties?

Oliver Schmidtke is Professor in the Departments of Political Science and History and the director of the Centre for Global Studies at the University of Victoria. Oliver received his PhD from the European University Institute (EUI) in Florence and then taught at Humboldt University in Berlin before moving to North America. He held the Jean Monnet Chair in European History and Politics, was the Director of the European Studies Program at UVic and the president of the European Communities Studies Association in Canada. Oliver has received various awards such as the JF Kennedy Fellow at Harvard University, the Marie Currie Fellowship at Hamburg University and the F. Braudel Senior Fellowship at the European University Institute. Previously to joining UVic Oliver was teaching, a was a visiting scholar at Harvard University.

Oliver Schmidtke's research interests are in the fields of comparative European politics and contemporary history, European integration, the political sociology of migration, integration and ethnic conflict, and the role of identities and collective memory in modern societies. Currently he holds various research grants from the European Union's Jean Monnet action and the Social Sciences and Humanities Research Council of Canada investigating issues of populism, the governance of migration and borders from a comparative transatlantic perspective.



With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.



## Populism versus Popular Republicanism on the Battleground of Diversity

Peter A. Kraus  
University of Augsburg



## Culture Cops and Cancel Cultures: Indigenous Peoples & Populism

John Borrows  
Faculty of Law, University of Victoria

### Abstract

In problematic ways, populism seems to have become a catch-all formula used at discretion to capture all kinds of discontent with democratic politics today. This often implies conflating protest movements that aim at democratic renewal with opposite tendencies whose objective is a reactionary scaling down of democracy. Against this background, and taking the case of Catalan independentism as a starting point for a first comparative approach, the paper will argue that, in the context of the current crisis of liberal democracy, cases of popular republicanism should be carefully distinguished from populism, both for analytic and for political purposes. The distinction becomes particularly relevant with regard to current debates on how to tackle issues of diversity and political integration in Europe and North America.

Peter A. Kraus is a German-Catalan political scientist who deals primarily with topics of political sociology, comparative democracy research and modern democratic theory. He is currently working at the University of Augsburg as Professor of Political Science and Head of the Institute for Canadian Studies at the University of Augsburg (Germany). Previously he has been the chair of ethnic relations at the University of Helsinki, an associate professor of political science at Humboldt University in Berlin, a John F. Kennedy Memorial Fellow at the Center for European Studies at Harvard University, and a visiting professor at the New School for Social Research and at the Universitat Pompeu Fabra in Barcelona.

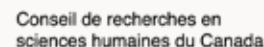
Peter A. Kraus deals with cultural pluralism, nationalism, minority politics and the problems of European integration and European identity. He has published widely and in several languages on cultural diversity and identity politics, ethnicity, nationalism, and migration, the dilemmas of European integration, as well as problems of democratization and democratic theory.

### Abstract

Populist politics often over simplifies what constitutes a ‘community’. Yet it is not possible to identify a single, unambiguous ‘people’ in any polity, and Indigenous peoples are no exception. Despite this challenge, North American governments have long attempted to define what an “Indian” community is, and define the membership of these communities by reference to blood, ancestry, culture or other sociologically flat kinds of references. Unfortunately, Indigenous peoples in some instances have internalized colonial messages about what it means to be an Indigenous community and be a citizen of such a community. The narrowing of Indigeneity based on attenuated markers of belonging is thus part of contemporary politics on some Indigenous reserves and Indigenous urban landscapes. Self-appointed culture cops and social media-driven cancel cultures patrol the borders of community in a populist fashion. I will examine these issues by looking at examples in US Tribal Courts, Sites of Activism like Idle No More, and in Canadian case law.

John Borrows is Canada Research Chair in Indigenous Law and Law Foundation Professor of Aboriginal Law and Justice at the Faculty of Law at the University of Victoria. Prior to joining the Faculty, he was Professor and Robina Chair in Law and Society at the University of Minnesota, Professor in the Faculty of Law at the University of Toronto, Associate Professor and First Nations Legal Studies Director at the Faculty of Law at the University of British Columbia and Associate Professor and Director of the Intensive Programme in Lands, Resources and First Nations Governments at Osgoode Hall Law School at York University.

John Borrows’ expertise is in Indigenous law, environmental law, and constitutional law. His publications include, *Recovering Canada: The Resurgence of Indigenous Law* (2002), *Canada’s Indigenous Constitution* (2011), *Drawing Out Law: A Spirit’s Guide* (2010), *Freedom and Indigenous Constitutionalism* (2016), and most recently, *Resurgence and Reconciliation* (with Michael Asch, Jim Tully, eds.).



With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

## Populist Democracy and Supra-National Norms

Chair: **Keith Cherry**, Graduate Student Fellow at the  
Centre for Global Studies, University of Victoria



### The Role of International Institutions in the Protection of Constitutionalism

Eszter Bodnár  
ELTE Eötvös Loránd University

#### Abstract

The more the rule of law, democracy, and human rights are under stress in several countries, the more attention is given to international law instruments and institutions. Specifically, international human rights protection mechanisms are in the spotlight, both on the universal and regional levels. Other institutions with soft power, like committees, special rapporteurs, and advisory boards, also aim to influence national jurisdictions through reports and recommendations. Citizens in the concerned countries, with an increasing distrust in their own democratic and judicial institutions, await solution from these institutions in their national jurisdiction. This paper examines the ideal scope of the role of international institutions in the protection of constitutionalism, also posing questions about legality, legitimacy, and efficiency.

Eszter Bodnár is an associated professor at the Faculty of Law of University Eötvös Loránd (ELTE) in Budapest, Hungary. She is also a faculty member in the Master of Electoral Policy and Administration program of Scuola Sant'Anna, Pisa and a visiting professor at the University of Victoria. She was awarded the Premium excellency postdoctoral grant of the Hungarian Academy of Sciences for the years 2018-2021. She has been teaching and researching in Canada, Germany, France, the United States, the Czech Republic, Portugal,

Italy, Romania, and Australia. She graduated as a lawyer and worked at the Hungarian Ministry of Justice, and in the Hungarian National Election Office. Her research interest is in comparative constitutional law, international human rights, and European constitutional law. She is an inaugural co-chair of the ICON-S Central and Eastern European chapter.

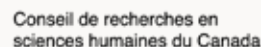
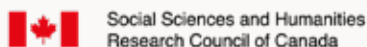


### Populism and the Question of EU Reform

John Erik Fossum  
Faculty of Social Sciences,  
University of Oslo

#### Abstract

The rise of populism corresponds with a debate on the future design and direction of the EU - the world's most prominent attempt at developing some form of transnational or supranational democracy. One of the main characteristics of European-style populism is Euroscepticism or even Europhobia (the former seeking major reforms, the latter seeking to abolish/dismantle the EU). The first part of this paper seeks to provide a short overview of the populists' main problems or qualms with the EU. The overview will focus on three lines of investigation: questions pertaining to lack of or inadequate representation; questions pertaining to identity and recognition; and questions pertaining to fairness and economic redistribution. The first part of this paper thus focuses on the 'demand' side. The second part focuses on the 'supply' side and has two portions. The first is a brief



With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.



assessment aimed at providing a sense of how fitting (or not) these criticisms are for the EU. The second section focuses on how the EU will have to be reformed to address current challenges -both those raised by populists and the challenges posed by populists.

John Erik Fossum is Professor at ARENA Centre for European Studies. He has been professor at the Department of Administration and Organization Theory, University of Bergen and holds a PhD in political science from the University of British Columbia, Canada.

John Eric Fossum's expertise is in political theory, democracy, constitutionalism in the EU and Canada, as well as the Europeanisation and transformation of the nation state. Over the last 20 years, he has contributed extensively to the field of developing and applying federal and democratic theory to the EU as a distinct political system, and comparing the EU with Canada. He is currently the scientific coordinator for the H2020-funded project, 'EU Differentiation, Dominance, and Democracy (EU3D)' that runs for 4 years and has ten partner universities and think tanks throughout Europe.



## The Democratic Limits of "Anti-Populism"

Thibault Biscarie  
Department of Politics,  
York University

### Abstract

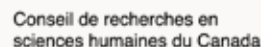
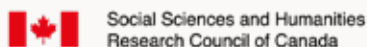
Since the 2008 global financial collapse and the subsequent deep sovereign debt crises and austerity measures experienced in various EU countries, the term "populism" has been widely used to account for the rise of anti-establishment movements across the continent. It has also been widely contested. Indeed, the "populist" epithet tends to amalgamate a myriad of different political tendencies, from the radical-right to the radical-left. This has led some to argue that the term has come to encompass too many political persuasions to remain analytically meaningful. An intense concept-stretching would thus be at play, especially when the term leaves academic circles to be mobilized by pundits,

editorialists and (mostly centrist) politicians. In consequence, this essay argues that there is a clear distinction to be made between the academic understanding of populism – which is not consensual but relies on a prolific and diverse literature – and the far more deficient journalistic and political conceptions of populism, that do not designate a meaningful political category but fall rather within the realm of value judgment.

This essay posits that "populism" does not constitute a threat or a corrective to democracy in and of itself. Instead, whether populist forces threaten or renew democracy eventually depends on the specific socio-cultural context in which they emerge and develop. As the first section of this essay demonstrates, populism can be seen as an ideology, as a discourse, or as a strategy, and this has implications for assessing its effects on the political system. Secondly, against widespread anguish regarding the "populist surge", this essay analyzes the democratic consequences of "anti-populism" as a political discourse, strategy, and ideology in Western European countries, and in particular in France. Referring to one's adversary as a "populist" is always pejorative and aims to discredit, neutralize and delegitimize any political claim that does not conform to the status quo. In that sense, "anti-populism" has detrimental effects on democracy inasmuch as it socially constructs political deviance through simplistic dichotomies and thus places considerable discursive framing limits on what is politically possible on ideological grounds. Ultimately, the populist zeitgeist leads – under the pressure of both "populist" and "anti-populist" political actors – to a symbolic weakening of traditional political cleavages and to their replacement by unhelpful, superficial binary categories such as "nationalists" versus "progressives".

Thibault Biscarie is a doctoral candidate in the Department of Politics at York University (Toronto), where he specializes in political economy, international relations and comparative politics. He holds a Master's degree from Sciences Po Lille and has also studied at the Université du Québec à Montréal and the Université de Provence. He is currently teaching international politics at York University as a Teaching Assistant.

His doctoral research examines the election of Emmanuel Macron through a Gramscian lens and aims to understand the implications of Macron's neoliberal policies and Caesarist governance for France. By extension, this research project also seeks to question the claim that new ideological cleavages have transcended the Left/Right divide in a French and European context.



With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

## A Democratic Rule of Law?

Chair: **Kathryn Chan**, Faculty of Law, University of Victoria



### Informal, Democratic Structures and the Control of the Central Political Power

Zoltán Pozsár-Szentmiklósy,  
ELTE Eötvös Loránd University

Pozsár-Szentmiklósy's expertise is in constitution-making, constitutional reasoning, constitutional interpretation, principle of proportionality, systems of government, direct democracy, comparative constitutional law, and political rights. Most recently, he has published on issues on constitutional law in Hungary in articles including: 'Formal and Information Constitutional Amendment in Hungary' (2019) and 'The Decision of the Hungarian Court on Constitutional Identity' (2018).

#### Abstract

According to the hypothesis of this paper, a number of legal institutions have primary functions which are not explicitly related to the system of the separation of powers but have a significant (secondary) impact on the relations of state organs. Certain tools of direct democracy, internal limits of the legislative power, the application of certain doctrines developed in constitutional interpretation, as well as the judicial enforcement of political rights can limit the sphere of action of state powers, especially the majoritarian political power. The effect of these legal institutions can be considered as 'informal structures of democracy', or 'invisible checks and balances'. This paper combines the theoretical analysis of the impact of these structures on the functioning of a democratic state, as well the related practice from transitional democracies in Central and Eastern Europe. These findings may contribute to a more a comprehensive approach to the classic debates on democracy.

Zoltan Pozsár-Szentmiklósy is an Associate Professor of Constitutional Law at Eötvös Loránd University, Budapest (ELTE). Previously he was the director of the ELTE Bibó István College of Advanced Studies and the Rector's commissioner-general for student affairs and worked as a legal officer of the Hungarian Helsinki Committee, an NGO working for the protection of fundamental rights and the enforcement of the rule of law.



### Jurisdictional Relationships

Patricia Cochran  
Faculty of Law,  
University of Victoria

#### Abstract

In 2016, the Canadian Human Rights Tribunal ruled that the Canadian government's funding of child welfare services on reserves through a series of policies and inter-governmental agreements discriminates against Indigenous children. This case makes visible the importance of attending to the quality of relationships between legal jurisdictions when responding to the challenges of uncertain democratic legitimacy and compromised rule of law.

In this paper, I explore this case example and draw on theorists of jurisdiction and relational law to articulate an idea of jurisdictional justice that is inherently connected to the quality of democratic engagement and centres political, legal and human relationships. I argue that this relational understanding of jurisdiction provides resources for building



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria

Centre for  
Global Studies



University  
of Victoria

Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria

Humanities  
Social Sciences

Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

a sense of legality that supports genuine democratic self-government. It addresses the complexity of both democracy and the rule of law neglected by colonial state administration and sometimes made invisible by populist politics.

Patricia Cochran is an Assistant Professor at the Faculty of law at the University of Victoria. She has received graduate degrees in law and political theory, and continues to teach and research at the intersection of those disciplines.

Patricia Cochran is working on constitutional law, equality and human rights law, statutory interpretation and evidence law. Her research focuses on theories of judgment as a resource for thinking about the demands of law and justice in the context of pluralism, inequality and colonialism. Her book, *Common Sense and Legal Judgment: Community Knowledge, Political Power and Rhetorical Practice* (McGill-Queen's University Press, 2017) is a critical and interdisciplinary engagement with questions of judgment, knowledge and rhetoric.



## The (Im)Possibility of Populist Jurisprudence. Lessons from Poland

Michał Stambulski,  
University of Wrocław

### Abstract

Media discourse and scientific literature tend to agree that populism is challenging contemporary liberal constitutional democracies. Commentators also agree that the 'new' populism makes extensive use of the tools of constitutionalism. The question is whether populist constitutionalism is merely a communitarian correction of liberalism, or whether it is the beginning of a new constitutional order. One of the symptoms allowing us to talk about the emergence of the new legal order would be the establishment of a 'populist' jurisprudence. Such jurisprudence would ensure the operationalization of the populist discourse, i.e. its translation into the daily practice of judiciary (acts of governance).

In order to be jurisprudential, populism needs to introduce some changes in the concept of law. Such changes can be analyzed on three levels: the way the populist government perceives the legislative process, the vision of the international order, and the discourse on rights. The first two levels are already quite well researched. However, it is the third one that seems to be of paramount importance for the operationalization of populism. This is because rights constitute a link between the individual, the community and the state. At the same time, they shape individuality and allow it to act. As pragmatist legal theoretician Michael Sullivan has skilfully captured rights 'are tools by which a society protects its citizens against unwarranted interference from the state or tyrannical majorities' {Sullivan2007 p. 98-99}. Changes in the concept of rights would indicate a change in the political imaginary that defines what a given community is, what its relationship with the individual is, what constitutes a threat to it, and what is perceived as an abuse of power. The more coherent the imaginary, the more theoretically developed the concept of law should be. Despite the fact that at the moment it is not possible to talk about the development of populist jurisprudence doctrine, perhaps a careful analysis of the decisions of the Polish Constitutional Court (the PCC) will allow us to indicate the first signs of its formation.

Since the parliamentary elections in 2015 and the subsequent change in the personal composition of the Polish Constitutional Court, this institution is experiencing a crisis. The PCC, once one of the main guards of the rule of law and a model for the constitutional judiciary in the region of Central and Eastern Europe, is slowly losing its prestige and a privileged position. Criticism coming from both political parties and the media, the decrease in applications for an examination of constitutionality and in the number of decisions issued, coupled with negative appraisal by domestic and international legal scholars, testifies to the ongoing delegitimization of this institution. At the same time, looking at the judgments of the PCC, we can see a desire to translate the discourse of populism into established legal categories. What is at stake in this process is the legitimacy of the emerging populist system of power.

The paper will discuss two rulings of the Polish Constitutional Court. The first case is from 2017 and concerns



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria

Centre for  
Global Studies



University  
of Victoria

Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria

Humanities  
Social Sciences

Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada



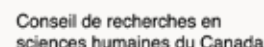
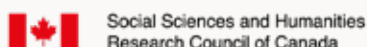
With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

the right of assembly in connection with the introduction of a special category of ‘cyclical assemblies’. The second one, from 2019, regards the so-called ‘printer case’, which concerned the possibility of refusing to provide a service for reasons of conscience (a refusal to print a poster because of opposition to ‘LGBT ideology promotion’). The aim of the analysis is to answer the question of whether the jurisprudence of the current PCC is the breaking or continuation of the previously dominant liberal constitutionalism. I will be particularly interested in whether these decisions introduce any changes at the level of possible rights holders (legal subjects), the introduction of new or changed scope of existing rights and new ways of resolving conflicts between rights. I will also focus on the resistance of legal categories and lawyers to populist discourse. In the face of the ‘new’ PCC, lawyers in Poland have developed resistance techniques that make it possible to undermine and at least temporarily stop the emergence of populist jurisprudence. These techniques are the direct application of the Constitution, the appeal to the European Court of Justice or the creative interpretation of PCC judgments.

Michał Stambulski is an Executive Director at the Centre for Legal Education and Social Theory at the University of Wrocław and Associate Professor at the University of Zielona Góra. He was a visiting scholar at the Oñati International Institute for the Sociology of Law and the Faculty of Law at the New South Wales University. He is a practicing attorney.

Dr. Stambulski conducted empirical research on legal education in Central and Eastern Europe and is also involved in a grant from Polish National Science Centre concerned with the relations between legal and political constitutionalism. He published articles about constitutionalism, democracy, legal theory and education.



With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

## Responding to Populism's Democratic Challenge

Chair: **Cindy Holder**, Department of Philosophy,  
University of Victoria



### Demos or Demons: Do Populist Majorities Threaten Democracy?

Colin Macleod  
Department of Philosophy,  
University of Victoria

Colin Macleod is primarily an expert in contemporary political philosophy, ethics, and philosophy of law. His research focuses on democratic ethics and theory and examines the responsibilities of the various groups that make up a democratic society - citizens, politicians, political strategists and the media and allows him to engage with his students and society on the question what "justice" really means and how we can have a more just society.

#### Abstract

Legitimate democratic politics is supposed to respond to the will of the people who constitute the democratic community. Since democratic communities are comprised of persons who hold a plurality of often diverging views on political matters, there is seldom a complete consensus. Therefore, a well-functioning democracy thus needs fair processes through which outcomes, suitably expressive of the people's will, can be generated and viewed as legitimate even by those who prefer different outcomes. The content of fair democratic processes is a contested but it is clear that groups that gain power through democratic processes can undermine the integrity of democratic processes. Populist movements that espouse intolerance of minority groups and seek to disenfranchise and marginalize vulnerable people seem to represent this very threat to democracy. This paper will consider how the populist threat to democracy should be conceived and what forms of resistance to corrosive populism are themselves democratically legitimate.

Colin Macleod is a Professor at the Department of Philosophy and the Faculty of Law at the University of Victoria. He is one of the founders of the Consortium on Democratic Constitutionalism (DEMCON), an interdisciplinary and international group of legal, political, and social theorists who work on questions of constitutional theory, design, and practice.



### Colonialism, Constituent Power and Referendums: When is Popular Sovereignty not Populist?

Hoi Kong  
Peter A. Allard School of Law,  
University of British Columbia

Professor Hoi Kong is the inaugural holder of The Rt. Hon. Beverley McLachlin, P.C., UBC Professorship in Constitutional Law, which he assumed in 2018. He researches and teaches in the areas of constitutional, administrative, municipal and comparative law, and constitutional and public law theory. Prior to joining the Allard School of Law at the University of British Columbia, Professor Kong was a member of McGill University's Faculty of Law. Professor Kong co-directs with Professor Ron Levy the Project on Deliberative Governance and Law. He is also on the board of directors of the Centre for Interdisciplinary Research on Montreal and the executive editorial board of the American Journal of Comparative Law.



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria

Centre for  
Global Studies



University  
of Victoria

Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria

Humanities  
Social Sciences

Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.





## Populism, Constitutionalism, and the Administrative State

Kristen Rundle

Law School,  
University of Melbourne

theory and public law in its effort to trace the conditions necessary for law to act as a limitation on power. Her interest in interactions between legal forms and human agency has also informed her research into the connections between law and the Holocaust, her work on the legal and institutional attributes of the British child migration program, and her ongoing inquiry into questions of theory and practice arising from the neoliberal redesign of the administrative state, especially with respect to contracted-out public functions.

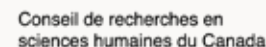
### Abstract

When analyses of populism turn to the phenomenon of alienation from the established institutional order, the target in view is typically parliamentary institutions. Analyses of democratic constitutionalism similarly focus primarily on legislative institutions, with particular attention to their relationship to the courts. The administrative state tends to be an outlier in both analytical contexts.

This paper proposes to examine how trends of institutional design in the contemporary administrative state might be viewed as contributing to the threat posed by populism to democratic constitutionalism. Drawing several of the themes of the colloquium together, this analysis commences from an understanding of the rule of law as a practice of framing governing relationships through the authority of law. Viewed through this prism, certain trends of institutional design in the contemporary administrative state and the conditions of subjectivity they produce might be seen as both a reflection of and as making a specific contribution to wider trends in the decline of democratic legitimacy and the rise of populist forms of political agency.

Kristen Rundle joined Melbourne Law School in 2015 and became the Co-Director of the Centre for Comparative Constitutional Studies in December 2016. Kristen previously held appointments at the London School of Economics and Political Science, the University of New South Wales and the University of Sydney, as well as adjunct, visiting and honorary appointments at the University of Toronto, Erasmus University, the University of Ottawa, and the Whitlam Institute, Western Sydney University.

Kristen Rundle is an expert in administrative law, legal theory, and public law. Her current research is located at the intersection of legal



With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.

# Constitutionalism in the Age of Populism | Organizing Team

## Beate Schmidtke,

*Co-Lead EUCAnet.ca & Project Coordinator,*  
CEDoD, Cedar Trees Institute, Centre for  
Global Studies

## Eszter Bodnár

*Faculty of Law, Eötvös Loránd University ELTE*

## Jennifer Swift

*Finance & Special Projects Manager,*  
Centre for Global Studies,

## Jeremy Webber

*Faculty of Law, Cedar Trees Institute,*  
University of Victoria

## Jodie Walsh

*Operations Director and Research Coordinator,*  
Centre for Global Studies

## Oliver Schmidtke

*Political Science and History, Cedar Trees  
Institute, Director of the Centre for Global  
Studies*

## Pablo Ouziel

*Post-Doctoral Fellow, Department of  
Political Science, Cedar Trees Institute,*  
Centre for Global Studies

*Conference operational team:*

## Danijela Brokovic

*Student, Department of Political Science*

## Salonie Shavdia,

*Social Media Assistant, Centre for Global Studies*

## Stephanie Gruhlke

*Events & Administrative Assistant, Centre for Global Studies*

*Photography:*

## Karen Yen

*Resident Graphic Designer, Cedar Trees Institute,*  
Centre for Global Studies

## Levi Glass

*Video producer, Centre for Global Studies*

*Video series:*

## Beate Schmidtke

*Lead for the CEDoD interviews project*

## Benjamin Perrier

*Postdoctoral Scholar, Cedar Trees Institute,*  
Centre for Global Studies,

## Levi Glass

## Fazila Mat

*PhD Student, Department of Political Science*

Website: [eucanet.org](http://eucanet.org)

Email: [info@eucanet.org](mailto:info@eucanet.org)

Phone: 250.472.4990

Twitter:

[@CFGS\\_UVic](#) • [@UVicLaw](#) • [@CdnEurDialogue](#)

[#DemocracyanditsFutures](#) • [#CEDoD](#)

Facebook:

[CanadaEuropeDialogue](#) •

[UVicFacultyofLaw](#) • [CentreforGlobalStudies](#)

Blog: [Blog.eucanet.org](http://Blog.eucanet.org)



Co-funded by the  
Erasmus+ Programme  
of the European Union



University  
of Victoria

Centre for  
Global Studies



University  
of Victoria

Law



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



University  
of Victoria

Humanities  
Social Sciences

Vice-President  
Research



Social Sciences and Humanities  
Research Council of Canada

Conseil de recherches en  
sciences humaines du Canada

Canada

With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.



With the support of:

The Research Group *Constitutional Populism: Friend or Foe of Constitutional Democracy* at the University of New South Wales, Sydney, funded partially by the Australian Government through the Australian Research Council.