

# TABLE OF CONTENTS

<b>1 Introduction</b>	<b>1</b>
<i>Violeta Beširević</i>	
1.1 What Brings Schmitt to the Title of the Book	1
1.1.1 Schmitt's Decisionism (the Theory of Sovereignty)	2
1.1.2 New Politics of Decisionism	5
1.2 Outline of the Volume	7
<b>Part I The Current Rise of Populism: Deconstructing Issues</b>	
<b>2 Democracy's Deficits</b>	<b>13</b>
<i>Samuel Issacharoff</i>	
2.1 Introduction	13
2.2 Participation: Failing Political Parties	15
2.3 Deliberation: The Weakness of Legislative Branches	21
2.4 Solidarity: The Threats to Social Cohesion	25
2.5 Getting It Done	32
2.6 Conclusion	34
<b>3 Populism – A Notion Rising above Its Content</b>	<b>37</b>
<i>Tibor Várady</i>	
3.1 Some Introductory Remarks Concerning the Use of the Term 'Populism'	37
3.2 An Attempt to Find Some Foothold in Legal Practice	39
3.3 What Is the Opposite of Populism?	44
3.4 What Is Actually Getting Condemned by the Label 'Populism'?	47
3.5 Discovery or Simply Denouncement	50
<b>4 Reflections on the Nature of Populism and the Fragility of Democracy: Democracy in Crisis</b>	<b>53</b>
<i>David M. Rasmussen</i>	
4.1 Introduction	53
4.2 What Is Populism? An Historical Perspective	54

TABLE OF CONTENTS

4.3	What Is Populism? A Normative Perspective	56
4.4	The Fragility of Democracy	59
<b>5</b>	<b>Populism and Nationalism</b>	<b>61</b>
	<i>Nenad Mišćević</i>	
5.1	Introduction	61
5.2	Nationalists of All Countries Unite!	63
5.2.1	Introductory Remarks	63
5.2.2	Patriotism	66
5.2.2.1	The Low-Profile Patriotism	67
5.2.2.2	The High-Profile Patriotism	67
5.2.3	Classical Strong Ethnic Nationalism (Nativism)	68
5.2.4	Moderate Statist Nationalism	71
5.2.5	Liberal Nationalism	74
5.2.6	Communitarianism and ‘Transnational Nationalism’	75
5.2.7	Cosmopolitanism	78
5.3	The Curious Case of Croatia	80
5.3.1	Approaches and Disagreements	80
5.3.2	Some Populist Actors	82
5.3.3	The Riddle: Why Croatia Does Not Have a Strong Right-Wing Populist Party	83
5.4	Conclusion: A New Playground	87
	<b>Part II Comparative Populism: Case Studies</b>	
<b>6</b>	<b>Beyond ‘Illiberal Democracy’: The Case of Hungary</b>	<b>93</b>
	<i>András Bozóki</i>	
6.1	Introduction	93
6.2	Why ‘Illiberal Democracy’ Is Not Democracy	94
6.3	Hungarian ‘Exceptionalism’	98
6.4	Conclusions	104
<b>7</b>	<b>Populism, Free Speech and the Anti-Entrenchment Principle</b>	<b>107</b>
	<i>Adam Shinar</i>	
7.1	Introduction	107
7.2	Israel and the Protection of Speech	108

7.3	The Regulation of Speech Resources in Israel – Public Funding of Private Expression	112
7.4	The Anti-Entrenchment Principle	115
7.4.1	The Difficulty with the Existing Legal Framework	115
7.4.2	State and Government	116
7.4.3	The Anti-Entrenchment Principle	118
7.4.4	How to Apply the Anti-Entrenchment Principle?	122
7.5	Conclusion	124
<b>8</b>	<b>Transforming Populism – From Protest Vote to Ruling Ideology: The Case of Serbia</b>	<b>125</b>
	<i>Dušan Spasojević</i>	
8.1	Introduction	125
8.2	Ideational Understanding of Populism	127
8.3	The Case of Serbian Progressive Party: Once Radical and Now Progressive – Is It the Same Populism?	129
8.3.1	Serbian Progressive Party (SNS) – The Opposition Phase	129
8.3.2	Incumbent Populism – How Does It Work?	133
8.4	Concluding Remarks	137
<b>Part III Courts Under the Populist Challenge</b>		
<b>9</b>	<b>Poland: From Paradigm to Pariah? Facts and Interpretations of Polish Constitutional Crisis</b>	<b>141</b>
	<i>Marcin Matczak</i>	
9.1	Introduction	141
9.2	Facts	142
9.2.1	The First Stage	142
9.2.2	The Second Stage	145
9.3	Interpretations	149
9.3.1	The Historical Explanation	149
9.3.2	The Legal Explanation	152
9.3.3	The Sociological Explanation	156
9.4	Conclusion	159

<b>10 Populism and the Turkish Constitutional Court: From a Game Broker to a Strategic Compromiser</b>	<b>161</b>
<i>Bertil Emrah Oder</i>	
10.1 Introduction	161
10.2 The Constitutional Court in High-Profile Cases and Populism: The Game Broker	163
10.3 The Constitutional Court's Judicial Populism and Popularity	165
10.4 The Fragile Popularity of the Court: Strategically Supportive and Defiant Stances after the Coup Attempt in 2016	167
10.4.1 Constitutional Review of Emergency Decrees	168
10.4.2 Journalism Cases as a Judicial Battle Field	169
10.4.3 Criminal Law on Insulting the President of the State	174
10.5 Conclusion	175
<b>11 Romania: From Constitutional Democracy to Constitutional Decay?</b>	<b>177</b>
<i>Simina Tanasescu</i>	
11.1 Introduction	177
11.2 On Populism and Constitutional Democracy	177
11.3 Romania: A Still Fragile Democratic Transition	181
11.4 Can Constitutional Adjudication Become an Instrument of Judicial Populism?	184
11.4.1 Deriding Fundamental Rights	185
11.4.2 Disdaining Checks and Balances	186
11.5 Concluding Remarks	190
<b>12 If Schmitt Were Alive ... Adjusting Constitutional Review to Populist Rule in Serbia</b>	<b>193</b>
<i>Violeta Beširević</i>	
12.1 Introduction	193
12.2 A Note on Transition in Serbia	195
12.3 A Silent Feature of the Constitutional Court	197
12.4 Constitutional Court in Populist Politics	198
12.4.1 Constitutional Review of Kosovo's Knot: If Schmitt Were Alive...	200
12.4.2 Judicial Endorsement of 'Discriminatory Legalism'	202

12.4.3	Rights Adjudication: What Stands behind the Court's Assertiveness	204
12.5	Conclusion	206