

# **New Trends in Global and comparative Law: A Comparative Constitutional Perspective on Populism**

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## **Presentation**

This course aims at offering a comparative constitutional perspective on the relationship between populism and constitutionalism. It will be argued that the relationship between populism and constitutionalism should not be seen in terms of mutual exclusion and perfect opposition. Indeed, it is possible to say that populism frequently relies on concepts and categories belonging to the language of constitutionalism (majority, democracy, people), trying to reshape them and offering in this way a sort of constitutional counter-narrative. In this sense the populist approach to constitutional categories can be described in light of two concepts: mimetism and parasitism. Both populism and constitutionalism are based on a profound sense of distrust of political power and refer – prima facie – to similar concepts, but analogies cannot be extended further, as we will see in this course. In constructing a constitutional narrative, populism borrows from the radical constitutional tradition, namely from the revolutionary (Jacobin) one, as we will see. I shall look at comparative law in order to explore its incredible anti-populist potential. More in general, as I shall try to explain, the very idea of populist constitutionalism is not consistent with the legacy of post-WWII constitutionalism. If, as said, populism aims at creating a counter-narrative to that employed by constitutionalism, this course will question the possibility of speaking of a “populist constitutionalism”. As will be argued, in fact, accepting the validity of this category would result in denying the counter-majoritarian nature of constitutionalism. Building on this intuition some selected topics will be analysed during this course, which is divided into six parts. The first part will be devoted to some methodological premises that are essential to carry out legal research in a debate characterised by interdisciplinarity. The second, third and fourth parts of the course will explore the relationship between constitutional and populism in conceptual terms. Finally, in the fifth and sixth parts of the course we will see how populists can manipulate some instruments and concepts of constitutional law.

## **Contents**

### **I. Law and Method: Interdisciplinary Research into Law**

M. Siems, “The Taxonomy of Interdisciplinary Legal Research: Finding the Way Out of the Desert”, *Journal of Commonwealth Law and Legal Education*, 2009, 5-17.

R. Hirschl, “The Question of Case Selection in Comparative Constitutional Law”, *American Journal of Comparative Law*, 2005, 125–156.

## **II. Populism and Constitutionalism: A Complex Relationship**

C. Pinelli, "The Populist Challenge to Constitutional Democracy", *European Constitutional Law Review*, 2011, 5

L. Corrias, "Populism in a Constitutional Key: Constituent Power, Popular Sovereignty and Constitutional Identity", *European Constitutional Law Review*, 2016, 6

## **III. Populism and Political/Popular Constitutionalism: What do they share?**

P. Blokker, "Populism as a Constitutional Project", *International Journal of Constitutional Law*, Volume 17, Issue 2, April 2019, Pages 536–553,

M. Alterio, "Reactive vs structural approach: A public law response to populism", *Global Constitutionalism*, 2019, 270

## **IV. Populism and Constitutional Parasitism**

N. Urbinati, "Urbinati, "Democracy and Populism", *Constellations*, 1998, 110

T. Fournier, "From Rhetoric to Action: A Constitutional Analysis of Populism", *German Law Journal*, 2019, 362

## **V. The Case of Referendums**

Reference re Secession of Quebec, 1998, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>

## **VI. The idea of Constituent Power endorsed by Populists**

J. Colon-Rios, *Weak Constitutionalism: Democratic Legitimacy and the Question of Constituent Power*, Abingdon, Routledge, 2012, 1-34.

## **Teaching Methods**

For each class I create activities in order to facilitate student's active learning. For instance, I first present the materials and trigger the discussion with probing questions. The idea behind such discussions is enhance students' learning thought reflection. During classes, I pay attention to the level of the engagement students have with the teaching material. For this reason, I always allocate time for discussion and debates in order to encourage students to express their opinions and to compete with their ideas.

## **Evaluation**

Students are expected to read the materials and actively participate in class. For 60%, the final mark depends on individual participation in class discussions on the basis of the compulsory readings. The remaining 40% of the grade depends on the ability to work in a group. The class will be divided into groups that will be asked to present a paper chosen by the professor.

## **Bibliography and information resources**

