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CHRISTOS PAPASTYLIANOS, COSTAS STRATILATIS (EDS), THE  
PEOPLE'S CONSTITUTION. THE POPULIST TRANSFORMATION OF  
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Por

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The literature on populism, which has been widely discussed by political scientists in the context of policy-making processes and the content of democracy, was in need of evaluation, especially by constitutional lawyers, on the issue of how populism shapes, that is, constitutional law. Filling this gap in the literature in an intersectional and cross-disciplinary context, *People's Constitution* looks at populism, this time by stopping at the stops of constitutional law. The introductory chapter explores the general framework of the relationship between populism and constitutional law. The second part, "*Populist Constitutionalism and Authoritarianism*", examines how populism appears under different authoritarian regimes and situates each case within the broader spectrum of populism. The third part, "*Populism and the Courts*", challenges the typical view of courts as neutral stabilizers by highlighting how they can either resist or collaborate with populist regimes. This section also considers courts as potential populist actors, especially during moments of democratic crisis. The final part, "*Populist Constitutionalism and Representation*", focuses on how populist leaders redefine representation, often reinforcing the 'us vs. them' narrative and reshaping constitutional structures in the process.

In today's climate, where populism appears on the political agenda of nearly every country in one way or another, it is essential to examine the tools with which constitutional law responds to populism—or how it can function as a weapon of populism in creating counter-narratives—in order to understand how populism interacts with the constitution across very different contexts. In the first chapter of the first part, "*How Populism Affects Constitutional Law*", Kaidatzis, Kamtsidou, and Stratilatis begin with the premise that populism cannot be treated as a uniform phenomenon, paving the way for a critique of both

liberal democracy and constitutional orthodoxy.. Importantly, the authors argue that the institutional reformism of populism is not necessarily compatible with constitutionalism. In this way, populism is analysed not only as rhetoric but also as an ideology with its own internal logic. But how does constitutional theory relate to populism in the midst of so many different populist variations and host ideologies? After first outlining the bare minimum of populism as people-centrism and anti-elitism, they show that context-specific constitutional law responds differently to populism under liberal democracies and populism under authoritarian regimes. Authoritarian populism seeks to undermine institutional order, while democratic populism promotes constitutional experimentation by deepening popular participation. With this question, as they attempt to reach the core of populism, they also emphasise the need to identify a minimal constitutional core, which in turn shapes populism's approach to constitutional change. Using examples of constitutional amendments from France, Hungary, and Latin American countries, they argue that in actual political practice, populism tends to align with authoritarianism due to its anti-pluralist and anti-institutional tendencies. The authors analyse the claim that populism is a deadly threat to representative democracy by reading it alongside democratic participation and representative populism. They argue that participation embodies the promise of popular sovereignty, while representative democracy often drifts into oligarchy, where powerful party leaders dominate and citizens are reduced to passive voters. Therefore, populism emerges as a reaction to the democratic vacuum. Challenging the claim that populism is anti-democratic, we can use populism structurally and institutionally without seeing it as an enemy.

In the second chapter, "*Populism and Constitution Making Process*", Christos Papastylanos here focuses on how populist regimes initiate constitution-making processes and adopt replacement constitutions, and how these differ from non-populist processes. In the face of populists who think that constituent power, as the outcome of popular will, can take any form that popular will wishes, he asks the critical question: Is there a criterion that allows us to draw any limits (*demarcation lines*) to populist constitutionalism? Shaping this narrative with three examples, the author takes us to Hungary, Venezuela and Bolivia. Using the example of Hungary's ruling party, FIDESZ, which received 53 per cent of the vote and secured 68 per cent of the seats in parliament, he shows how constitutional amendments were pushed through. This is because the constitution can be amended by a 2/3 majority, whereas another provision stipulates that parliament can replace the constitution by a 3/5 majority. Here we see how the blurred line between amendments and constituent power transforms a limited amendment process into an unlimited one. The example of Venezuela illustrates how Hugo Chávez manipulated the 1961 Constitution in order to bypass its constraints, while in Bolivia, the author examines the case of Evo

Morales. In fact, all these examples show that constitution-making processes based on popular will are not always inclusive and lawful, and that populist leaders can make constitutional replacements in violation of previous rules. It emphasises that constitution-making processes under populist leaders are the result of political mobilisation under a charismatic leader. Focusing on unconventional constitutional changes, the author exemplifies that not every manifestation of popular will can be populist. Here, the author opposes the idea that extra-constitutional constitution making process is identical to populism. The most important challenging question here is whether every constitutional amendment based on popular will is legitimate and whether we have a demarcation line criterion that we can draw for these constitutional amendments. Here the author emphasises the importance of paying attention to the indicators of inclusive, consensual and amendments accepted by the officials without coercion in order to reach safe conclusions.

The first chapter of the second part, *"Populist Constitutionalism and Authoritarianism, is 'False Populists' Abuse of Majoritarianism and Political Constitutionalism"*, begins with Gabor Halmai's challenging and boundary-breaking review of the literature. For Halmai describes the populism of these autocrats as 'false' populism, despite the fact that illiberal regimes present themselves as populist and come with arguments of anti-representation and pro-direct democracy. This is because, Halmai says, the only thing that distinguishes them from non-populist autocrats is that they came to power through democratic elections. Since false populists are not based on political accountability and checks and balances with political constitutionalism, the rhetoric they create is in fact a 'false populism'. Halmai gives the example of the refusal of the Hungarian FIDESZ party led by Viktor Orbán to accept defeat in the 2002 elections, showing the approach that equates the party with the nation in the discourse 'we can't be in opposition because the nation can't be in opposition'. Halmai's basic premise runs along the lines that autocrats' populism is false from its birth because they are just authoritarianism using populist rhetoric. The nomenclature itself, then, deconstructs the literature on populism. Halmai also evaluates the Orbán regime's unlimited emergency powers during the Corona-virus crisis and FIDESZ's violation of even its own illiberal constitution in terms of institutions and concludes that the packed Constitutional Court has no possibility to evaluate the constitutionality of emergency measures. So how does authoritarian populism become legitimate in this case? Halmai's assessment here is i. Majoritarianism and ii. political constitutionalism. However, Halmai, who does not consider majoritarianism and political constitutionalism, which reject judicial review, as populist per se, states that authoritarianism is here disguised as populism and that it is embodied as a misuse of democratic language.

In the second chapter of the second part, Roila Mavrouli, "*An Analysis of Illiberal Democracies. Towards the End of Law*", she argues that illiberal democracy is not only an incomplete democracy but also a regime under ideological and legal transformation. That is why she uses the striking and ambitious argument of the 'end of law' for the erosion of liberal constitutionalism, rule of law and fundamental rights. Mapping the semantics of democracy, Mavrouli also links the crisis of representative democracy to the superficial understanding of the people vs. democracy dichotomy. For here, it is leaders rather than popular will holders who use popular will for autocratic shifts. Mavrouli circulates the discourse of 'democratorship' with a new and creative framework, coined by French literature, again centring on the Orbán regime and explaining how an authoritarian governance under electoral legitimacy erodes checks and balances. Borrowing Joseph Weiler's concept of 'collective democratic self-asphyxiation' for the Orbán regime, the author challenges the reader to reflect on how illiberal democracies have shaken the foundations of liberal constitutionalism, giving birth to a new constitutional condition that in turn inspires new forms of empowerment such as Herculan judicial power.

In the third chapter of the second part, "*From Authoritarian Constitutionalism to Populist De-Constitutionalisation. Transformation of the Turkish State Under Erdoğan*", İlker Gökhan Şen compares the old (statist) regime with the new (populist) authoritarianism in Turkey. By addressing the anti-pluralism and anti-institutionalism elements in the populism of AKP, the ruling party led by Erdoğan. İlker Gökhan Şen critically explores where populism stands within various forms of authoritarianism. He divides his analysis into four parts. First, he compares statist authoritarianism under Turkey's old regime with the populist authoritarianism of Erdoğan's era. Second, he highlights the regime's anti-pluralist and anti-institutional traits. Third, he examines how democracy and human rights are redefined through a populist lens. Finally, he describes how anti-majoritarian institutions and civil society have been gradually colonized. De-constitutionalisation process in Turkey is deserved to spark the attention since it helps us to understand how constitution has been *de facto* repealed by the Government. Thin legality which means minimum formal-legal requirements, the regression of the electoral democracy, defying court decisions and lack of coherent ideology present the volatility of the regime under the legal uncertainty. Şen deeply analyses the Turkish paradigm how populism can be against constitutionalism by taking into account the deterrence of counter-majoritarian mechanisms, erosion of checks and balances, fight against political pluralism and fundamental rights.

In the final chapter of the second part, article titled "*Populist Transformation of Constitutional Law: North Macedonia*", Renata Treneska Deskoska makes an in-depth analysis of interrupted process of democratic consolidation and the transformation of constitutional law in North Macedonia. With its peculiar characteristic, rule of Gruevski during

2008-2017 sheds light on how gradual dismantlement of the checks and balances resulted in domination of executive power and its domino effect on judicial independence. However, clientelism and patrimonialism, state-controlled corruption and decay of competitive elections are other distinctive features of regime. While this is the main element here, the most distinctive element Deskoska shows us is that even after the collapse or dissolution of a populist government, 'undoing' these transformations is not as easy as it seems. The author, who likens Gruevski to a 'pater familias of the country', points out that the key question is not so much the strategies used by the populist regime as the aftermath. By asking the question "Is recovery possible", having addressed the challenges of restoring the system.

The third part of the book focuses on populism and the courts. In the first article of this section, "*The Judge as a Populist Actor*", Lucia Corso deconstructs the court-packing strategies used by populists, focusing on the role that judges and the judiciary sometimes play in the populist war to ensure the consolidation of the populist regime. The author points to the criminal law as a convenient weapon in this regard and explains how criminal accountability has replaced political accountability. Citing the examples of Brazil and Italy, the author emphasises that populist regimes do not strengthen political power in spite of the judiciary, but rather they realise the anti-political vision of populism by strengthening the judiciary. Here, with the conceptualisation of 'penal populism', the writer explains in an interesting way that they both implement a political strategy before the citizens and create judicial purity through the courts.

In the second article of this section, "*Populist Government and Judicial Power in Brazil in Times of the Covid-19 Pandemic: A Conflicting Relationship*", Eleonora Mesquita Ceia explains how the institutional crisis of populism has affected the Brazilian Constitutional Court. Using the case of the Brazilian Constitutional Court during the COVID-19 pandemic as a case study, she also proves that radical right-wing populism is not only based on political antagonism but also offers a neoliberal economic perspective. Centred on the crucial institutional question of whether courts embrace populism or resist it, the author analyses Bolsonaroism as a radical right-wing populism and looks at the cause-and-effect relationship of populism. Pointing out that Bolsonaroism is not the cause of populism, but a consequence of democratic crises in the country, the author shows how Bolsonaro's opposition to the Supreme Court's restrictions on the pandemic as 'encroaching on the Federal Constitution', which issued numerous decrees during the COVID-19 crisis, created legal contestation and political instability.

In the last article of this section "*Rules of Standing and Populist Constitutionalism: The Case of the Greek Council of State*", Dimitrios-Georgios Patsikas shows how even the highly technical issue of locus standi in the Greek case paves the way for populist

constitutionalism debates. This approach is quite interesting because it shapes the case of the Greek Council of State, where a broad interpretation of locus standi rules to include citizens' participation in constitutional matters can be a form of populist constitutionalism. This example, in which not only the Court but also the citizen is taken into account as an actor, brings the concepts of flexibility and public interest to the agenda and even leads to the acceptance of a kind of *actio popularis*. The author evaluates the applications of individual applicants and collective bodies, unions and associations who apply to the court claiming violation of their constitutional rights in the Council of State case and the jurisprudence of the court and looks at the impact of this approach on democracy, which paves the way for public interest litigation.

Finally, the chapter Populist Constitutionalism and Representation offers a great opportunity to understand the premise that democracy is reduced to representation from the perspective of populist constitutionalism. Here Amal Sethi, "*Stopping Authoritarian Populist Projects: Why Constitutionalism Is Not the Sole Answer*" critically and analytically assesses the dilemmas of relying on constitutionalism as the only tool to prevent the emergence of authoritarian populist regimes. Sethi explains that institutional tools such as unconstitutional constitutional amendments, revision clauses, defensive v. militant democracy distinction, accountability and constitutional courts are not enough to prevent and stop these regimes, taking into account global examples and the political meaning of the constitution. With examples from different geographies, such as Honduras, India, Turkey, Sethi states that accountability mechanisms, namely structures such as courts, fourth-branch institutes, cannot stop authoritarian populist regimes because they lack *the power of purse or sword*. As a solution, he turns to the constitutive power of grassroots mobilisation and party alliances and discusses the under-studied actors of coordinated actions of other actors in an intersectional manner.

In the second article of this section "*Populist Constitutionalism and Representation. Reflections on the People in a New 'Social Question' Perspective*", Charalampos Kouroundis analyses the meaning that populist constitutionalism and left-wing political populism attribute to the concept of people as a new social question. The author delves into the literature on left-wing populism and social contract theories and expands the Marx's criticism of liberal democracy by taking an approach beyond liberal democracy as its main axis. Taking a cue from populist constitutionalism's critique of the anti-democratic elements of legal constitutionalism, he focuses on the question of how democracy is deprived of its social content, a question that carries this critique forward. This unlocks the creative power of seeking an alternative to populist constitutionalism as well as liberal democracy.

The third article in this section is an innovative approach by Roberto di Maria, "*Lobbyism vs. Populism: A Brief Comparison U.S.A.-Italy*" because it draws on the experiences of the

U.S.A. and Italy to place lobbying and populism in an inter-related socio-political conceptualisation framework. Drawing a map between lobbying, which is considered as a component of the maturity of the democratic system, and populism, which is said to be in conflict with social and democratic traditions, the author first distinguishes the institutionalisation of lobbying, whose roots can be found in the political organisation of US society, different from that of Europe. Taking the Italian legal system as an example, the author states that the Italian system does not recognise any judicial coverage for lobbying and that the Italian Constitutional Court has never interpreted Article 21, which is based on freedom of speech, as a lobbying genus. However, criticising this as a “hypocrisy” of the Italian system under transparency, the author points out that although the US and Italian systems are different, the problem they share is basically the same: The lack of disclosure and anonymity. How he compares lobbying and populism is an important axis here because he argues that institutions such as parliament, on which the democratic system is based, become devalued under populism; but for lobbying, lobbyists need this parliament and therefore parliament becomes a privileged interlocutor. Analysing lobbying and populism in a similar matrix, the author points to this dilemma with the following question: If populism is socially and politically opposed to professional and institutional lobbying, can lobbying offer a remedy against populism? Or does lobbying function as a prerogative of socio-political and economic elites? Although he does not explicitly answer these questions, the critical convergences he draws between lobbying and populism allow us to develop a new perspective on remedies against populist regimes.

Finally, the last article of People's Constitution, Alberto Nicotina's “*Measuring the Impact of Populism in the Face of EU Multi-level Governance: Politics and Constitutional Change*”, which describes measuring the impact of populism from an empirical perspective in the context of multi-level governance and the EU, brings a model to measure approach to populism alongside studies that place populism only in the context of political strategy or constitutional theory. After explaining the basic building block of populist political strategies in Europe as Euroscepticism, he critically analyses the literature on populism as not only a political phenomenon but also a constitutional project. Placing “Model to Measure” in this context, the author takes an empirical approach to the question of how to measure the impact of populism in representative governments in the context of EU multi-level governance if populism is also embedded in competing constitutional theory. This is done in a first step by i. The support for EU-related referendums as a populist trademark and ii. The parliamentary oversight of the executive on EU affairs as watchdog behaviour. Fundamental features of the populist groups, their political agenda and their constitutional theory has been empirically analysed. In this way, especially testing the positive impact of populism, the author argues that the traditional approach of constitutional law as a brake

against absolutism is now approaching a kind of “amorphous mob”. In both cases, in order to prevent abuses of sovereign powers, he says, it is necessary to protect the “police” from both extreme approaches. His commentary on this positive effect is very useful in this respect, because he states that we can only measure the positive effect of populism if we understand constitutional law as a limit to sovereign powers. The use of EU Multi-level governance as a model to test the tense relationship between populism and constitutional law is based on a creativity that measures the limits of populism beyond nation states.

The book fills an important comparative gap on populism with its broad comparative analysis ranging from Latin America to Europe, however it is fundamentally incapable of explaining how different narratives between these countries create different narratives on populisms. The conceptual ambiguity of populist constitutionalism cannot be separated from the host ideology in which it is embedded, we fail to see how each different example creates a narrative difference between host ideology and populism. The book criticises the over-judicial analysis in the populist constitutionalism literature, however some analysis rely solely on judicial decisions, leaving the potential of grassroots movements and other actors to transform populism unaddressed. Moreover, populist leaders' consolidation of their power by using digital democracy tools (such as digital voting), it has been left incomplete due to too much reliance on the conventional literature on populism.