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Populism and Constitutional Tension



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11th Floor, Academic Conference Room, Cheng Yu Tung Tower, Centennial Campus, HKU

The recent resurgence of populism poses a significant challenge to constitutional law today and to the deeper tradition of modern constitutionalism. Despite resisting formal limitations on their power to represent the ‘true’ popular will, populist regimes nevertheless find instrumental and ideological reasons to endorse their own version of constitutionalism. And despite their nativist commitments, populist leaders across the globe find common constitutional cause and mutual encouragement in their critique of cosmopolitan institutions and values. The distinctiveness of populism’s constitutional orientation rests on its occupation of a space between authoritarian and popular versions of constitutionalism, overlapping both but not reducible to either. There situated, populism involves a reaction against what it condemns as the neglect of the unitary collective particular in the liberal version of modern constitutionalism. Many critical of the inflated narratives and methods of populism nevertheless share some its underlying anxieties. For in an age in which an expanding commitment to the democratic pedigree of our constitutional arrangements has unfolded alongside the increasing transnationalisation and fragmentation of political authority, the very instability of the balance between various constitutional goods - between individualism and collectivism, universal and particular rationalities, and plurality and unity – that fuels populists’ ire, deepens the defining tension of modern constitutionalism and poses a challenge to all who continue to endorse it.

Neil Walker holds the Regius Chair of Public Law and the Law of Nature and Nations at the University of Edinburgh. His main area of expertise is constitutional theory. He has published extensively on the constitutional dimension of legal order at sub-state, state, supranational and global levels. He has also published at length on the relationship between security, legal order and political community. He maintains a more general interest in broader questions of legal theory as well as in various substantive dimensions of UK and EU public law. Previously he was Professor of Legal and Constitutional Theory at the University of Aberdeen (1996-2000), and Professor of European Law at the European University Institute in Florence (2000-8), where he was also the first Dean of Studies (2002-5). He has also held various visiting appointments - including Eugene Einaudi Chair of European Studies, University of Cornell (2007); Distinguished Visiting Professor of Law, University of Toronto (2007), Global Professor of Law, New York University (2011-12), Sidley Austin-Robert D. McLean Visiting Professor of Law, Yale University (2014-5), International Francqui Chair, University of Leuven, (2017) His most recent books are *Intimations of Global Law* (Cambridge, 2015) and *The Scottish Independence Referendum: Constitutional and Political Implications* (co-editor, Oxford, 2016). He is a Fellow of the British Academy and also a Fellow of the Royal Society of Scotland.

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