

Between Autocratic Legalism and Right-Wing Legal Mobilization

WORKSHOP



Place: European University Institute, Florence

Date: May 29, 2024

Scientific organizers: Gráinne De Búrca (EUI), Scott Cummings (UCLA), Karolina Kocemba (EUI), Michał Stambulski (EUR)

CALL FOR PAPERS

The current global wave of right-wing populism differs from its previous historical manifestations in its greater reliance on the legal apparatus (Blokker 2019; Krygier 2022). Once in power, populist movements use their democratic mandate to change public law and introduce institutional arrangements that limit opposition and maximize their chances of victory in the next electoral cycle (Scheppele 2018). This use of law to reform the judiciary and media or undermine civil society challenges the values of liberal constitutionalism, such as the rule of law, freedom of speech, or civic engagement. Analyses of this development, primarily conducted within the comparative constitutional law paradigm under the banner of 'autocratic legalism,' focus on governments and political leaders as the primary agents of populist legal transformations. However, while these agents are central to the changes observed, they do not act alone. They tolerate or actively collaborate with non-state actors (NGOs, alternative media, social media communities, grassroots movements) who share conservative values and the fundamentals of populist ideology, which is based on the dichotomous division of society into an intrinsically good people and corrupt elites (Müller 2016). Conservative legal movements are a special group among them. By interacting with these actors, populist governments gain legal knowledge with additional legitimizing arguments and a pool of professional staff for institutional capture.

Although these actors have been active for some time (Southworth 2008; Teles 2012), the rise of populism creates new opportunity structures, mainly through access to judicial positions and the use of populist institutional design for right-wing legal mobilization. The populist government can financially support the activities of right-wing NGOs through grants and subsidies, thereby increasing their litigation capacities. In addition, by controlling the legislative process and court packing, populism increases the receptiveness of the judicial system to conservative values. Analyzing this phenomenon will help us to recognize and understand the resilience of contemporary constitutional populism and the full extent of the threat it poses to the rule of law and human rights.

During the workshop, we would like to juxtapose studies on the transformative dimension of populism from the perspectives of comparative constitutional law, socio-legal studies, legal theory, or human rights and discuss the following issues:

- How do populism and autocratic legalism create opportunities for bottom-up legal mobilization?
- How do social movements under populist and hybrid regimes use the law to challenge liberal conceptions of human rights and the rule of law?
- In what ways do liberal NGOs engage in legal mobilization under populist regimes, and how does populism impact their actions?
- What are the links (if any) between non-state actors mobilizing the law and populist regimes (e.g., financial, ideological, personal)?
- How do these regimes interact with grassroots movements to gain support and legitimacy?
- What is the transnational impact of domestic right-wing legal mobilizations?

Submissions with a short abstract (up to 400 words) should be sent by March 11, 2024 to Karolina Kocemba (karolina.kocemba@eui.eu).