

## CONTENTS

|  |         |
|--|---------|
| <i>Acknowledgments</i>   | page xi |
| <i>Abbreviations</i>   | xii     |
| Introduction   | 1       |
| 1 Placing Illiberal Democracy: Caesarism, Totalitarian Democracy, and Unfinished Constitutionalism | 18      |
| 1.1 Introduction   | 18      |
| 1.2 “Illiberal Democracy” Is an Appropriate Term   | 23      |
| 1.3 Caesarism and Plebiscitarian Leader Democracy  | 27      |
| 1.4 Illiberal Mass Democracy and Its Totalitarian Potential  | 31      |
| 1.5 Illiberalism in Constitutional Democracies and Its Unfolding                                   | 37      |
| 1.6 Authoritarian Predispositions  | 49      |
| 2 The Emergence of the Illiberal State   | 56      |
| 2.1 Introduction   | 56      |
| 2.2 Constitution-Making and Preconstitutional Changes  | 62      |
| 2.2.1 Venezuela  | 62      |
| 2.2.2 Hungary  | 64      |
| 2.2.3 Turkey   | 65      |
| 2.3 Constitutional (Apex) Courts First to Go, the Rest of the Judiciary to Follow                  | 66      |

|       |   |     |
|-------|---|-----|
| 2.3.1 | Constitutional Courts   | 66  |
| 2.3.2 | The Ordinary Judiciary  | 75  |
| 2.4   | Other Institutional Changes   | 81  |
| 2.4.1 | Changes in Personnel  | 81  |
| 2.4.2 | Broadcasting and the Press  | 84  |
| 2.4.3 | Independent Agencies  | 90  |
| 3.    | Creating Dependence   | 92  |
| 3.1   | Introduction  | 92  |
| 3.2   | Neopatrimonial Patronage  | 93  |
| 3.3   | Reducing Autonomy   | 105 |
| 4.    | They, the People  | 112 |
| 4.1   | Introduction  | 112 |
| 4.2   | The People and Its Sovereignty  | 114 |
| 4.2.1 | Meanings of People  | 114 |
| 4.2.2 | People's Authority and Legitimacy                                     | 117 |
| 4.2.3 | Popular Sovereignty   | 119 |
| 4.3   | The Use of the People in Victorious<br>Populism                       | 123 |
| 4.3.1 | People's Unity: Homogeneity   | 124 |
| 4.3.2 | Unity Is Identitarian   | 131 |
| 4.3.3 | The (Relative) Majority as People: The Rule of the Part as<br>a Whole | 137 |
| 4.3.4 | The Democratic Legitimacy of Populist Popular<br>Sovereignty          | 140 |
| 4.3.5 | The People of the Leader and Total (Unbound) Popular<br>Sovereignty   | 143 |
| 4.4   | Populism as Democracy?  | 150 |
| 5     | Constitutional Structure  | 153 |
| 5.1   | Introduction  | 153 |
| 5.2   | The Spirit of Constitutionalism and Its<br>Absence                    | 155 |
| 5.2.1 | Constitutional Background Assumptions                                 | 155 |
| 5.2.2 | Illiberalism as a Consequence of Identity<br>Politics                 | 160 |

|       |   |     |
|-------|---|-----|
| 5.3   | Majoritarianism, Anti-institutionalism, and Instrumentalism   | 170 |
| 5.3.1 | How Populism in Power Tries to Solve the Problem of Democracy | 170 |
| 5.3.2 | Instrumentalism   | 172 |
| 5.4   | From Separation of Powers to Executive Domination             | 175 |
| 5.4.1 | Constitutional Courts   | 183 |
| 5.4.2 | Parliament without Deliberation                               | 185 |
| 5.4.3 | Electoral Law   | 191 |
| 5.4.4 | Referendum  | 194 |
| 6     | The Fate of Human Rights                                      | 198 |
| 6.1   | Introduction  | 198 |
| 6.2   | Diminishing International Respect (Authority) of Human Rights | 200 |
| 6.3   | The Many Sources of Delegitimation                            | 204 |
| 6.4   | Substantive Changes in Human Rights and Ensuing Difficulties  | 207 |
| 6.4.1 | From Vulnerability to Security                                | 208 |
| 6.4.2 | The Cult of the Local   | 213 |
| 6.5   | Inflation, Overreach, Abuse                                   | 214 |
| 6.5.1 | Inflation and Overextension                                   | 214 |
| 6.5.2 | “Human Rightism”  | 216 |
| 6.6   | Direct Attacks  | 217 |
| 6.7   | Fundamental Rights and Illiberalism                           | 218 |
| 7     | Profiting from the Rule of Law                                | 237 |
| 7.1   | The Ambiguity of the Rule of Law                              | 237 |
| 7.1.1 | What Is the Rule of Law Good For?                             | 240 |
| 7.1.2 | What Is the Rule of Law?                                      | 243 |
| 7.1.3 | How Far Does the Rule of Law Go?                              | 246 |
| 7.2   | Populist Antilegalism   | 247 |
| 7.2.1 | The Early Fervor  | 251 |

|       |  |     |
|-------|--|-----|
| 7.2.2 | Duality and Ambiguities in Caesar's Legal System   | 252 |
| 7.2.3 | Material (Substantive) vs. Formal Justice  | 258 |
| 7.3   | Fundamental Precepts of the Rule of Law, and Their (Ab)use in Illiberal Democracies                  | 260 |
| 7.3.1 | Generality of the Law and Ad Hominem Laws, and Interpretations Favoring the Powers That Be           | 261 |
| 7.3.2 | Honesty and the Application of the Law   | 265 |
| 7.3.3 | Selective Impunity: The Principles of <i>Nullum Crimen</i> , <i>Nulla Poena</i> and Nonretroactivity | 268 |
| 7.3.4 | How (If at all) Does the Illiberal Regime Fit into the Rule of Law Paradigm?                         | 272 |
| 8     | Cheating: The Legal Secret of Illiberal Democracy  | 279 |
| 8.1   | The Moral and Cognitive Problem of Cheating  | 279 |
| 8.1.1 | Defining Cheating  | 280 |
| 8.1.2 | The Meaning of Cheating in Law   | 283 |
| 8.2   | Abuse as a Constant of (Constitutional) Law: Limiting Techniques                                     | 291 |
| 8.2.1 | Objective Difficulty of Identification   | 294 |
| 8.3   | Cheating in Illiberal Democracy  | 300 |
| 8.3.1 | Techniques of Legal Cheating   | 302 |
| 8.3.2 | Cheating as a System   | 321 |
| 8.4   | The Consequences of Cheating   | 323 |
|       | <i>Index</i>   | 328 |