

Contents

<i>List of illustrations</i>	viii
<i>Foreword</i>	ix
<i>Acknowledgements</i>	xii
I Introduction: Ambitions and comparison	1
I <i>Ambitions</i> 1	
II <i>Why Hungary and Poland?</i> 4	
1 Differences 5	
2 Similarities 10	
III <i>Insight into the book</i> 13	
II Terms: Constitutionalism, illiberal(ism), and constitutional democracy	17
I <i>Constitutionalism in the term "illiberal constitutionalism"</i> 17	
1 The need for a new term 17	
2 Entangling or disentangling 21	
3 Words disentangled 23	
4 Conceptual differences 25	
II <i>Illiberal(ism)</i> 35	
1 Illiberal polity and constitutionalism 35	
2 Illiberal in the term "illiberal constitutionalism" 36	
3 The term "illiberal(ism)" in the economic and social sphere 40	
III <i>Constitutional democracy</i> 42	
1 Substantive constitutional democracy 42	
2 Formal constitutional democracy and illiberal constitutionalism 44	
III Identity: Unbalanced constitutional identity: emotions and values	46
I <i>Historical and emotional trajectory</i> 47	
1 Framework of investigation 47	

2 Hungarian national identity – more than a stereotype	49
3 National identity and Poland	55
II <i>Post-communist past and beyond</i>	60
III <i>Possible root cause: the combination of the above</i>	64
1 Populism – playing with emotions	65
2 Collective narcissism and collective victimhood	68
IV Limits: Comparative perspective	71
I <i>The emergence of illiberal constitutionalism</i>	71
II <i>A comparative perspective – looking for constraints</i>	73
III <i>Contextualization: the European Rule of Law as a constraint on public power</i>	83
1 Rule of Law as a context-related notion	83
2 “European” in the term “European Rule of Law”	85
3 “Rule of Law” in the term “European Rule of Law”	90
4 The European Rule of Law – a rudimentary concept	94
V Limits: Constraints in constitutional design and identity	96
I <i>Illiberal legality</i>	96
1 The term	96
2 Legal features of illiberal legality	98
II <i>Illiberal democracy</i>	108
1 The term	108
2 Electoral democracy – illiberalization	111
3 Procedure in parliament	115
III <i>Illiberalization of human rights</i>	124
1 Steps towards illiberalization and common challenges	124
2 Struggling with international and supranational obligations	127
3 The illiberal vision of human rights	132
4 Emerging new understanding of human rights (third phase of illiberalization)	148
VI Stability: How “illiberal limits” emerge and work	150
I <i>Capturing constitutions and constitutionalism, and creating invisible constitution</i>	150
1 Bird’s-eye view of 1989–2020: dismemberments, replacements, formal, informal, and abusive amendments	151
2 Formal constitutional changes	153
3 Informal unconstitutional constitutional changes	157

4	The paradox of unconstitutional formal and informal constitutional amendments	169
5	Capturing key positions	171
II	<i>Illiberal judicialization of politics</i>	173
1	Bird's-eye view of legal constitutionalism and juristocracy, so ...	175
2	... illiberal constitutionalism is not about political constitutionalism but ...	179
3	... illiberal judicialization of politics	180
III	<i>Pushing the limits and bouncing back</i>	184
1	Rules	184
2	Techniques	185
IV	<i>Defeating exit strategies from the hollowed-out constitutional democracy</i>	190
1	Militant democracy	190
2	The multi-tiered amendment designs and references to transnational norms	192
3	Application of the doctrine of unconstitutional constitutional amendments – and a paradox	193
4	Empowering citizens	194
5	Emergency judicial power	194
6	Other ...	195
VII	Conclusions	197
1	<i>Constitutionalism does not necessarily have to be liberal</i>	197
2	<i>Illiberal constitutionalism is a deterioration from liberal constitutionalism towards authoritarianism but has not reached that point yet</i>	197
3	<i>In an illiberal constitutional identity, the liberal and non-liberal or illiberal value orientation of the population can intermittently prevail</i>	198
4	<i>Illiberal constitutionalism is a coherent theory in its illiberal and weakly constrained manner</i>	198
5	<i>Lessons learned, mostly, for others ...</i>	199
	<i>Bibliography</i>	200
	<i>Index</i>	220