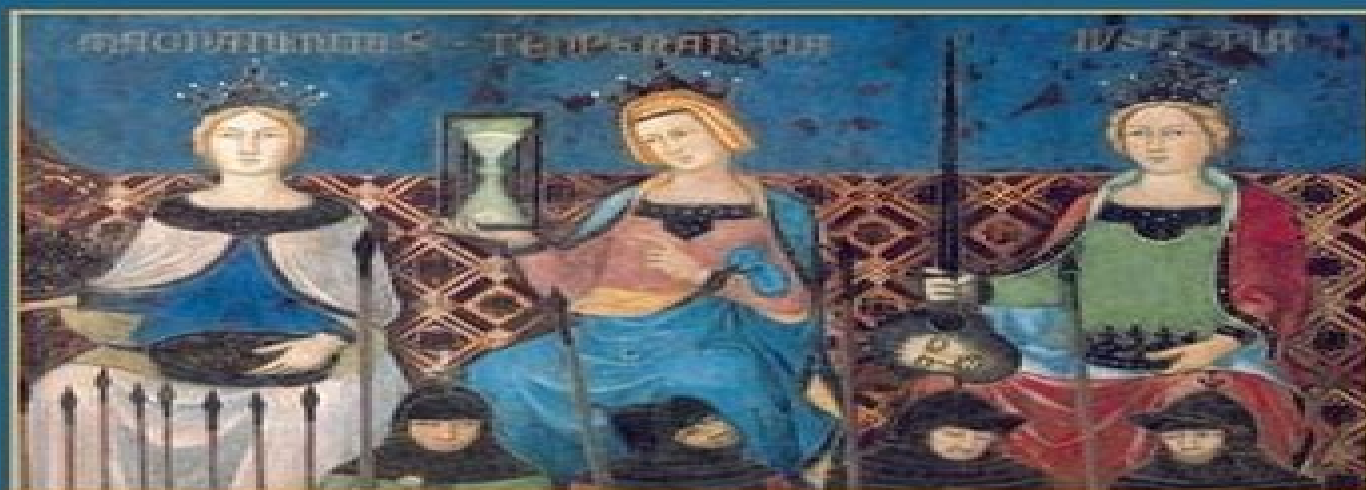


# Rethinking *the Rule of Law* after Communism



*Edited by Adam Czarnota, Martin Krygier  
and Wojciech Sadurski*

# Rethinking The Rule Of Law After Communism

**Viera Pejchal**



## **Rethinking The Rule Of Law After Communism:**

*Rethinking the Rule of Law After Communism* Adam Czarnota, Martin Krygier, Wojciech Sadurski, 2005 This book is concerned to assess and to draw some of the implications of the legal developments of these last dozen or so years specifically as they speak to issues of constitutionalism dealing with the past and the rule of law Introduction [The Politics of the Rule of Law in the EU Polity](#) Ramona Coman, 2022-04-23 This book analyses the challenges facing the European Union through the frame of the rule of law It shows how over the last decades the increased dissensus and contestation of the rule of law has given rise to heightened tensions between national and EU institutions leading to the establishment of new soft and hard policy tools to safeguard it at the supranational level The book proposes a comprehensive and multifaceted analysis of the current state of debates by exploring how EU institutional actors seek to uphold the Union's values It shows that European integration in core state powers is the outcome of the clash between liberal and anti liberal ideas between dissensus and contestation over how collective problems should be solved in a community of voices featuring assent and dissent all of which give democracy its substance Beyond the analysis of the emerging EU's rule of law policy the book will help readers to better understand the EU's fragilities and resilience and the potential challenges for the future of EU integration **The Legal Doctrines of the Rule of Law and the Legal State (Rechtsstaat)** James R. Silkenat, James E. Hickey Jr., Peter D. Barenboim, 2014-05-28 This book explores the development of both the civil law conception of the Legal State and the common law conception of the Rule of Law It examines the philosophical and historical background of both concepts as well as the problem of the interrelation between the two doctrines The book brings together twenty five leading scholars from around the world and provides both general and specific jurisdictional perspectives of the issue in both contemporary and historical settings The Rule of Law is a legal doctrine the meaning of which can only be fully appreciated in the context of both the common law and the European civil law tradition of the Legal State Rechtsstaat The Rule of Law and the Legal State are fundamental safeguards of human dignity and of the legitimacy of the state and the authority of state prescriptions **Relocating the Rule of Law** Gianluigi Palombella, Neil Walker, 2008-12-18 In this set of interdisciplinary essays leading scholars discuss the future of the Rule of Law a concept whose meaning and import has become ever more topical and elusive Historically the term denoted the idea of government limited by law It has also come to be equated more broadly with certain goods suggested by the idea of legality as such including the preservation of human dignity and other individual and social benefits predicated upon or conducive to a rule based social order But in both its narrow and broader senses the Rule of Law remains a much contested concept These essays seek to capture the main areas and levels of controversy by relocating the Rule of Law not just at the philosophical level but also in its main contemporary arenas of application both national and increasingly supranational and international **Central and Eastern Europe After Transition** Wojciech Sadurski, 2016-04-08 How have national identities changed developed and reacted in the wake of

transition from communism to democracy in Central and Eastern Europe Central and Eastern Europe After Transition defines and examines new autonomous differences adopted at the state and the supranational level in the post transitional phase of the post Communist area and considers their impact on constitutions democracy and legal culture With representative contributions from older and newer EU members the book provides a broad set of cultural points for reference Its comparative and interdisciplinary approach includes a useful selection of bibliographical resources specifically devoted to the Central Eastern European countries transitions The Impact of European Institutions on the Rule of Law and Democracy Matej Avbelj, Jernej Letnar Cernic, 2020-04-30 Since 2010 the European Union has been plagued by crises of democracy and the rule of law which have been spreading from Central and Eastern Europe CEE catching many by surprise This book argues that the professed success of the 2004 big bang enlargement mirrored the Potemkin villages erected in the new Member States on their accession to Europe Slovenia is a prime example Since its independence and throughout the accession process Slovenia has been portrayed as the poster child of the New Europe This book claims that the widely shared narrative of the Slovenian EU dream is a myth In many ways Slovenia has fared even worse than its contemporary constitutionally backsliding CEE counterparts The book s discussion of the depth and breadth of the democratic crises in Slovenia should contribute to a critical intellectual awakening and better comprehension of the real causes of the present crises across the other CEE Member States which threaten the viability of the EU and Council of Europe projects It is only on the basis of this improved understanding that the crises can be appropriately addressed at national transnational and supranational levels **Constitutionalism and the Rule of Law** Maurice Adams, Anne Meuwese, Ernst Hirsch

Ballin, 2017-02-02 An exploration of how rule of law and constitutional ideals inform and are informed by political realities

Rethinking Legal Scholarship Rob van Gestel, Hans-W. Micklitz, Edward L. Rubin, 2017-02-02 Although American scholars sometimes consider European legal scholarship as old fashioned and inward looking and Europeans often perceive American legal scholarship as amateur social science both traditions share a joint challenge If legal scholarship becomes too much separated from practice legal scholars will ultimately make themselves superfluous If legal scholars on the other hand cannot explain to other disciplines what is academic about their research which methodologies are typical and what separates proper research from mediocre or poor research they will probably end up in a similar situation Therefore we need a debate on what unites legal academics on both sides of the Atlantic Should legal scholarship aspire to the status of a science and gradually adopt more and more of the methods quality standards and practices of other social sciences What sort of methods do we need to study law in its social context and how should legal scholarship deal with the challenges posed by globalization

Multiple Democracies in Europe Paul Blokker, 2009-12-04 This book provides an in depth discussion and analysis of democracy in Europe with a focus on the new EU member states and makes an important and original contribution to the debate on the future of European democracy Author Paul Blokker seeks to provide a critical reconceptualization of the notion

of democratic political culture by developing a multiple democracies theoretical approach. He draws on debates in democratization theory and normative political theory and presents a cultural sociological approach for the analysis of democratization and democratic regimes. This approach emphasizes the historical and cultural embedment of democracy, identifies a potential variety of ethics of democracy that underpin democratic political cultures, and points to the significance of democratic imagination in the interpretation and recombination of such ethics. The book explores the relevance of this approach by analysing multiple political cultures and their role in the emergence of democratic regimes in three new member states: Hungary, Poland, and Romania, providing a detailed description and analysis of political cultures by means of the analysis of constitutional politics, constitutional texts, and political elite discourses, and the identification of distinct politico-cultural elements that distinguish these societies from each other. It will be of interest to students and scholars of democracy, European studies, post-communist studies, political theory, and comparative politics.

**Constitutionalizing Economic Globalization** David Schneiderman, 2008-03-27. Are foreign investors the privileged citizens of a new constitutional order that guarantees rates of return on investment interests? Schneiderman explores the linkages between a new investment rules regime and state constitutions between a constitution-like regime for the protection of foreign investment and the constitutional projects of national states. The investment rules regime, as in classical accounts of constitutionalism, considers democratically authorized state action as inherently suspect. Despite the myriad purposes served by constitutionalism, the investment rules regime aims solely to enforce limits both inside and outside of national constitutional systems beyond which citizen-driven politics will be disabled. Drawing on contemporary and historical case studies, the author argues that any transnational regime should encourage innovation, experimentation, and the capacity to imagine alternative futures for managing the relationship between politics and markets. These objectives have been best accomplished via democratic institutions operating at national, sub-national, and local levels.

**Norbert Elias in Troubled Times** Florence Delmotte, Barbara Górnicka, 2021-08-02. This edited collection brings together texts that discuss current major issues in our troubled times through the lens of Norbert Elias's sociology. It sheds light on both the contemporary world and some of Elias's most controversial concepts. Through examination of the current affairs, political and social contemporary changes, the authors in this collection present new and challenging ways of understanding these social processes and figurations. Ultimately, the objective of the book is to embrace and utilise some of the more polemical aspects of Elias's legacy, such as the exploration of decivilizing processes, decivilizing spurts, and dys-civilization. It investigates to what extent Elias's sociological analyses are still applicable in our studies of the developments that mark our troubled times. It does so through both global and local lenses, theoretically and empirically, and above all by connecting past, present, and possible futures of all human societies.

**From Old Times to New Europe** Agata Fijalkowski, 2016-04-22. *From Old Times to New Europe* considers the post-totalitarian legal framework in today's Europe, arguing that the study of

totalitarianism and post totalitarianism continues to be significant as ever Drawing mainly on the Polish experience this analysis focuses on the significant part played by history in the development of the region s identity and preferences concerning the role of the state in public and private life It examines the political socio economic and legal aspects of key events and draws comparisons with other CEE states whilst implementing key socio legal theories to explain trends and strains in this post Communist and post totalitarian period With the benefit of access to archival sources in Poland and Russia this book will be of interest to students and researchers of European law law and society and international criminal justice

**Constitutional Review in Europe** Maartje De Visser, 2014-07-18 Constitutions serve to delineate state powers and enshrine basic rights Such matters are hardly uncontroversial but perhaps even more controversial are the questions of who should uphold s the Constitution and how constitutional review is organised These two questions are the subject of this book by Maartje de Visser which offers a comprehensive comparative analysis of how 11 representative European countries answer these questions as well as a critical appraisal of the EU legal order in light of these national experiences Where possible the book endeavours to identify Europe s common and diverse constitutional traditions of constitutional review The raison d tre jurisdiction and composition of constitutional courts are explored and so too are core features of the constitutional adjudicatory process Yet this book also deliberately draws attention to the role of non judicial actors in upholding the Constitution as well as the complex interplay amongst constitutional courts and other actors at the national and European level The Member States featured are Belgium the Czech Republic Finland France Germany Italy Hungary the Netherlands Spain Poland and the United Kingdom This book is intended for practitioners academics and students with an interest in European constitutional law

*The Max Planck Handbooks in European Public Law* Armin von Bogdandy, Peter Huber, Christoph Grabenwarter, 2020-03-12 The Max Planck Handbooks in European Public Law describe and analyse public law of the European legal space an area that encompasses not only the law of the European Union but also the European Convention on Human Rights and importantly the domestic public laws of European states Recognizing that the ongoing vertical and horizontal processes of European integration make legal comparison the task of our time for both scholars and practitioners the series aims to foster the development of a specifically European legal pluralism and to contribute to the legitimacy and efficiency of European public law The first volume of the series began this enterprise with an appraisal of the evolution of the state and its administration offering both cross cutting contributions and specific country reports The third volume the second in chronological terms continues this approach with an in depth appraisal of constitutional adjudication in various and diverse European countries Fourteen country reports and two cross cutting contributions investigate the antecedents foundations organization procedure and outlook of constitutional adjudicators throughout the Continent They include countries with powerful constitutional courts jurisdictions with traditional supreme courts and states with small institutions and limited ex ante review In keeping with the focus on a diverse but unified legal space each report also details

how its institution fits into the broader association of constitutional courts that through dialogue and conflict brings to fruition the European legal space Together the chapters of this volume provide a strong and diverse foundation for this dialogue to flourish     Hate Speech and Human Rights in Eastern Europe Viera Pejchal,2020-04-03 Hate Speech and Human Rights Democracies need to understand these terms to properly adapt their legal frameworks Regulation of hate speech exposes underlining and sometimes invisible societal values such as security and public order equality and non discrimination human dignity and other democratic vital interests The spread of hatred and hate speech has intensified in many corners of the world over the last decade and its regulation presents a conundrum for many democracies This book presents a three prong theory describing three different but complementary models of hate speech regulation which allows stakeholders to better address this phenomenon It examines international and national legal frameworks and related case law as well as pertinent scholarly literature review to highlight this development After a period of an absence of free speech during communism post communist democracies have sought to build a framework for the exercise of free speech while protecting public goods such as liberty equality and human dignity The three prong theory is applied to identify public goods and values underlining the regulation of hate speech in the Czech Republic and Slovakia two countries that share a political sociological and legal history as an example of the differing approaches to hate speech regulation in post communist societies due to divergent social values despite identical legal frameworks This book will be of great interest to scholars of human rights law lawyers judges government NGOs media and anyone who would like to understand values that underpin hate speech regulations which reflect values that society cherishes the most     **The Palgrave Handbook of the History of Human Sciences** David McCallum,2022-08-27 The Palgrave Handbook of the History of Human Sciences offers a uniquely comprehensive and global overview of the evolution of ideas concepts and policies within the human sciences Drawn from histories of the social and psychological sciences anthropology the history and philosophy of science and the history of ideas this collection analyses the health and welfare of populations evidence of the changing nature of our local communities cities societies or global movements and studies the way our humanness or human nature undergoes shifts because of broader technological shifts or patterns of living This Handbook serves as an authoritative reference to a vast source of representative scholarly work in interdisciplinary fields a means of understanding patterns of social change and the conduct of institutions as well as the histories of these ways of knowing probe the contexts circumstances and conditions which underpin continuity and change in the way we count analyse and understand ourselves in our different social worlds It reflects a critical scholarly interest in both traditional and emerging concerns on the relations between the biological and social sciences and between these and changes and continuities in societies and conducts as 21st century research moves into new intellectual and geographic territories more diverse fields and global problematics     *Eternity Clauses in Democratic Constitutionalism* Silvia Suteu,2021 Comparative constitutional law has a long and distinguished history in

intellectual thought and in the construction at public law Political actors and the people who create or modify their constitutional orders often wish to learn from the experience and learning of others This cross fertilization and mutual interaction has only accelerated with the onset of globalization which has transformed the world into an interconnected web that facilitates dialogue and linkages across international and regional structures Oxford Comparative Constitutionalism seeks to publish scholarship of the highest quality in constitutional law that deepens our knowledge of local national regional and global phenomena through the lens of comparative public law Book jacket Populist Challenges to Constitutional Interpretation in Europe and Beyond Fruzsina Gárdos-Orosz,Zoltán Szente,2021-05-03 This book explores the relationship between populism or populist regimes and constitutional interpretation used in those regimes The volume discusses the question of whether contemporary populist governments and movements have developed or encouraged new and specific constitutional theories doctrines and methods of interpretation or whether their constitutional and other high courts continue to use the old traditional interpretative tools in constitutional adjudication The book is divided into four parts Part I contains three chapters elaborating the theoretical basis for the discussion Part II examines the topic from a comparative perspective representing those European countries where populism is most prevalent including Austria Croatia the Czech Republic Greece Hungary Italy Poland Romania Spain and the United Kingdom Part III extends the focus to the United States reflecting how American jurisprudence and academia have produced the most important contributions to the theory of constitutional interpretation and how recent political developments in that country might challenge the traditional understanding of judicial review This section also includes a general overview on Latin America where there are also some populist governments and strong populist movements Finally the editors closing study analyses the outcomes of the comparative research summarizing the conclusions of the book Written by renowned national constitutional scholars the book will be essential reading for students academics and researchers working in Constitutional Law and Politics Chapter 1 of this book is freely available as a downloadable Open Access PDF at <http://www.taylorfrancis.com> under a Creative Commons Attribution Non Commercial No Derivatives CC BY NC ND 4.0 license Globalizing Transitional Justice Ruti G. Teitel,2014-04-02 Among the most prominent and significant political and legal developments since the end of the Cold War is the proliferation of mechanisms for addressing the complex challenges of transition from authoritarian rule to human rights based democratic constitutionalism particularly with regards to the demands for accountability in relation to conflicts and abuses of the past Whether one thinks of the Middle East South Africa the Balkans Latin America or Cambodia an extraordinary amount of knowledge has been gained and processes instituted through transitional justice No longer a byproduct or afterthought transitional justice is unquestionably the driver of political change In Globalizing Transitional Justice Ruti G Teitel provides a collection of her own essays that embody her evolving reflections on the practice and discourse of transitional justice since her book Transitional Justice published back in 2000 In this new book Teitel focuses on



the ways in which transitional justice concepts have found legal expression especially through human rights law and jurisprudence and international criminal law These essays shed light on some of the difficult choices encountered in the design of transitional justice criminal trials vs amnesties or truth commissions domestic or international processes peace and reconciliation vs accountability and punishment Transitional justice is considered not only in relation to political events and legal developments but also in relation to the broader social and cultural tendencies of our times

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