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The *New Politics of Decisionism* volume, edited by Violeta Beširević, Professor at the Union University Law School in Belgrade and Associate Researcher with the Central European University in Budapest, is a follow-up to the conference co-organized under the same name by the University of Belgrade Faculty of Political Sciences and Faculty of Law in November 2017. The book has three parts, preceded by the editor's introduction.

The editorial introduction outlines the volume, also explaining its title, namely how Carl Schmitt's decisionism relates to modern populist tendencies. It argues that modern populist regimes, just like Schmitt's version of illiberal democracy, rely on democratic legitimacy, but do not necessarily protect liberal values, which could supposedly undermine the capacity to resist the enemies of the state. Such new politics of decisionism do not discard democracy as a rule of majority, rather they discard representative democracy since it can easily set aside individual rights and institutions protecting them. As such, they are a hybrid phenomenon, a grey zone lying between democracy and dictatorship, but surely closer to the authoritarian pole of modern politics. New populisms, just like Schmitt's decisionism, grant political power implying exclusive competencies to pass the most important decisions—that state of exception exists—which cannot be based on deliberation and the rule of law, but on the leader's personal judgment.

Part I of the book, "The Current Rise of Populism: Deconstructing Issues" (pp. 11–90), focuses on definitional and conceptual issues. In order to define the phenomenon of populism, this chapter explores key notions and discusses relevant terminology. However, instead of positive definitions, its four contributions offer an analytical groundwork, trying

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to discern the specific place and role that populism has had in modern political practice and patterns of its discursive use.

The chapter opens with Samuel Issacharoff's contribution entitled "Democracy's Deficits", which considers the four central institutional challenges to democracy, as the main social conditions for the rise of populist movements. The author begins with the accelerated decline of political parties, described as a tendency of political fragmentation: dissolution of discipline and internal diffusion of power, shifting from party leadership to individual party members and officeholders. Issacharoff recognizes another two political causes *stricto sensu*: the paralysis of the legislative branches and the decline of state competencies—but also a social one: losing the sense of social cohesion, described as a significant erosion of collective solidarity that provided the historic glue for the common project of democratic governance. Speaking of this, the author focuses on the two most representative current challenges: immigration and the massive, plunging decline of the living standard of the population. "There is not a populist movement in a Western democracy at present that does not play to both xenophobia and economic insecurity" (p. 27), since the laboring backbones of advanced industrial countries find themselves challenged by rapidly changing demographics, as well as by pressures on their living standards and wealth that is markedly shifting to other parts of the world (p. 30).

However, Issacharoff does not question other aspects of modern *Humana condition*. He mentions the relevance of technological changes, ease of modern communication and transportation, the globalization that exerts pressure on broad horizontal organizations, whose prime advantage has been providing access to economic or political markets, but does not further investigate these aspects that might turn to be the crucial points in further evolution of populist engagements. Instead, he concludes his paper with an optimistic prognosis, predicting a forthcoming decline of populism for four reasons: "First, waves of populist anger tend to be conjunctural [...] Second, democratic states abound in civil society institutions that resist the anti-liberalism of caudillo politics [...] Third, democratic societies develop thick legal institutions bounded by the rule of law. Moments of populist passion confront constitutional constraints and the restraining force of constitutional courts..." (p. 35)

Knowing that "it is simply not possible to find an uncontroversial scholarly definition of populism" (p. 44), Tibor Várady's contribution "Populism – A Notion Rising Above Its Content" raises the question "whether the understandable urge to use the term populism did or did not prevail over its content; in other words, whether the label 'populism' is a matching one, which also provides sufficient explanation." (p. 39) In order to give an answer, Várady turns to analysis of contemporary political

discourse hoping that “the identification of an opposite notion may contribute to the formation of a frame of reference and to the clarity of the concept,” (p. 44) yet arrives at a conclusion that “in public discourse, the term “populism” is becoming more and more reduced to a rhetoric weapon that can be used against all kinds of opponents for the purpose of denouncement.” (p. 51) Unsurprisingly, this uncritical overuse of the term “populism” with the aim to qualify or disqualify a wide range of targets in the current political discourse is followed by the absence of a clear juxtaposition with an antipode. This explains the plausibility of Várady’s starting concern of “what could (and should) be perceived as the opposite of populism?” (p. 39)

David M. Rasmussen’s study “Reflections on the Nature of Populism and the Fragility of Democracy: Democracy in Crisis” tries to expand on the issue that Várady identified by offering an analytical overview of the populist discourse. After a brief historical overview of the use of the term “populism” from Ancient Rome to the great 18<sup>th</sup>-century declarations on rights and liberties, he points out that “populism thrives on dividing the democratic population into a binary opposition, generally between elites and non-elites, the authentic and the inauthentic, the good and the bad” aimed at generating “a legitimation crisis continuing to delegitimize legitimate members of the democratic order as well as the institutions they represent.” (p. 57) In this model, it is irrelevant who the elite are. What matters is how this reduction of political order structures a populist discourse and its consequential political action. According to Rasmussen, the outcome is always the same: “[...] by an act of simplification populism undercuts the legitimate diversity of democratic society by claiming to represent only those who fit within its narrow ideological perspective. As such populism chooses unity over equality hence departing from a core ingredient of modern democracy. By granting membership rights only to the majority of the chosen, it undercuts a universal commitment to equality that must be the basis of any democratic order. As such it materializes the collective into a single actor much in the way Lefort thought about totalitarianism.” (p. 58)

The last of the four papers in part I, entitled “Populism and Nationalism”, by Nenad Mišćević, starts with the same structural analysis of the populist discourse considering society as being ultimately divided into two homogeneous and antagonistic groups, “the pure people” as opposed to “the corrupt elite”. The author profounds it by denouncing “two ways of characterizing ‘the people’: either in terms of social status (class, income level, etc.) or in terms of ethnic and/or cultural belonging.” (p. 63) In fact, Mišćević’s contribution is less an analytical and more an empirical study further examining the conditions conducive to populist success. After briefly reflecting on predominantly left-wing populism,

stressing the social nature of the above-mentioned contrast, Mišćević focuses on the right wing of the political playground, especially the parties representing so-called “moderate statist nationalism” which, in his opinion, can block far-right populist movements and tendencies. Subsequently, the author offers a case study discussing the Croatian ruling party (Croatian Democratic Union – HDZ) as an example of moderate statist nationalism acting as a barrier to populist solutions. His argumentation is relatively straightforward: “The national-populist option needs a free space, and it cannot find it in the situation in which the ruling team is clearly patriotic, and thus above the accusation of being composed of traitors and where its actions are strictly limited by the rule of law, in particular, by appeal to human rights, in a manner that does not leave open space for populist ‘spontaneity’ of the leader.” (p. 71) As such, it could explain the rise and success of the extreme right in Western Europe, the political playground of which has been deprived of these “soft nationalist” options for a long time.

Mišćević’s text exploring the relationship between closely tied notions of populism and nationalism ends the first part of the book, introducing at the same time its second part, entitled “Comparative Populism: Case Studies” (pp. 91–138), reserved for a series of less optimistic case studies as illustrative empirical verification of the aforementioned theoretical model.

Part II opens with Andras Bozoki’s text “Beyond Illiberal Democracy: The Case of Hungary” trying to demystify the notion of illiberal democracy, a label frequently used by Victor Orbán to describe the political nature of his rule, which is often perceived as a paradigm of today’s modern populism. According to Bozoki’s definition, this hybrid regime, semi-democracy and semi-dictatorship, is a majoritarian, bottom-up, re-politicized democratic alternative to democratic elitism in which working people regain power from the politically correct, yet socially less sensitive elites. The reason why the new authoritarian leaders, like Orbán in Hungary, “like the concept of ‘illiberal democracy’ so much is that it offers an opportunity for them to present themselves as (some sort of) democrats. [...] Despite their own role in destroying the rule of law, they make all efforts to convince everyone that they are elected by the people.” (p. 95) Unlike traditional liberal democracy, this is a dominant party-system with limited competition and elections held without real options, led by the political elite in power who “deliberately rearranges state regulations and the political arena as to grant itself undue advantages.” (p. 94)

Adam Shinar’s paper “Populism, Free Speech and the Anti-Entrenchment Principle” goes beyond a case study. Its starting point is a denouncement of the contemporary rise of administrative power and the growing class of bureaucrats, as the two main causes of populist success.

According to Shinar, “whereas the rise in administrative power in the past led to charges of a democratic deficit, the present populism either minimizes the importance of democracy, or more accurately, puts forward a conception of democracy that views majority rule as its most important and defining characteristic.” (p. 107) However, unlike Bozoki’s general overview of Orbán’s authoritarianism, Shinar describes a specific mechanism by which the elite in power in present-day Israel rearranges state regulations and grants itself undue advantages. Relying on the doctrinal distinction between the negative aspect of free speech (as the duty not to interfere and censor) and the positive aspect of free speech (as the duty to fund and support) in recent years, the Israeli government justifies “selective funding of speech, in particular, supporting speech in line with policies, values and ideas the government wishes to advance.” (p. 109) At first glance, this cannot be an issue since, as Shinar points out, a democratic government is elected precisely to implement the policies its voters wish to promote. The problem begins when the state, run by such a government, grants a privileged status to a certain conception of the good life, namely when “the government equates itself with ‘the people’, it confuses the government and the state...” (p. 117) At this point, the importance of the court as a guardian of liberal democracy becomes obvious. Therefore, Shinar examines the Israeli court doctrine of anti-entrenchment as a successful institutional mechanism of defense: “According to the conventional meaning of this principle, the government may promote the policies for which it was put into office, but it must not act to entrench its power, thus preventing its replacement.” (p. 118) In the specific free speech context, “it stipulates that the government should be prevented from using its allocative power to leverage its positions in a way that will prevent the political minority [...] especially when its speech is critical of government policy.” (p. 121) On the contrary, the government must finance expression directed at promoting democratic society and its values, especially when such expression strives to resist the values and policies of the government itself.

The third and the last contribution in this chapter, Dušan Spasojević’s “Transforming Populism – From Protest Vote to Ruling Ideology: The Case of Serbia”, presents the case of the currently ruling Serbian Progressive Party (SNS), as an illustrative example of how the phenomenon of populism results from progressive “de-ideologization of the mainstream parties and stability of party systems in Europe [that] led to cartelization of politics (or establishment of formal and informal obstacles for the newly emerging parties), which means that new actors on political scene have to be more radical, more provocative and more anti-systematic in order to attract voters’ attention.” (p. 127) In fact, Spasojević questions the idea that the populist parties are per definition primarily protest parties, usually successful when in opposition, but

failing once in the government (p. 128). Throughout the ideological transformation of the Serbian Progressive Party—from a radical populist and nationalistic opposition, without any governing potential, to the ruling, predominantly pro-EU, center-right populist party—his analysis shows that a “longer period in government results in increased level of conflicts and broader scope of actors included in the conflict. In other words, corrupted elites, defined by SNS, are getting bigger and include not only political opponents, but also representatives of oversight and regulatory state institutions, civil society and media.” (p. 137)

The last, third part of the book, entitled “Courts under the Populist Challenge” (pp. 139–207), does not deal as much with the real setbacks to the rise of modern populism from the perspective of preventing its causes, but rather with the resistance coming from a strong institutional framework and democratic culture. This chapter questions the controversial experiences of the post-communist Eastern European democracies with insufficient institutional capacities, thus unable to protect their open societies under construction.

In the opening text “Poland: From Paradigm to Pariah? Facts and Interpretations of Polish Constitutional Crisis”, Marcin Matczak synthesized the three main causes of Polish failure before conservative populism. The first is of a historical nature: “Analyzing the crisis from a historical viewpoint leads to the conclusion that the subjective experience of the rule of law in Poland – in particular the belief that the law is an obstacle on the road to justice – created in the leaders of PiS and their supporters a very peculiar understanding of the relationship between procedural justice and substantive justice (fairness)” where “the redundancy of procedural justice is reflected in the government’s approach to the Constitutional Tribunal and the judiciary: the independence is secondary to the need for it to be composed of people who understand the government’s sense of justice...” (p. 151) This historical explanation is followed by a sociological one. Namely, if the Polish populist turnover was possible, it was not caused so much by the strength of the political attack on the rule of law, but rather by an accompanying evident lack of democratic culture of the Polish people who “are ready to provide their elected representatives with an absolute right to change the rules, including the constitutional ones, even without the formal legitimacy to do so.” (p. 157) Finally, there is the third, legal explanation, defined as the weakness of the institutional defense mechanisms, headed by the weakness of the legal culture the “key feature of which is the ability to carry out complex legal reasoning when interpreting legal text and assessing the validity of legal actions.” (p. 155) Instead of it, the preferred form of reasoning of the Polish judicial culture is an isolated interpretation “which enables a misuse of powers” and formalistic argumentation “according to which

formal compliance of one's actions with the law is sufficient basis for their legality" (p. 155)

Matczak's austere conclusion that the immaturity of Polish and, more broadly, Central-Eastern European legal culture, which, not having developed adequate tools to defend itself against recent attacks on the rule of law yet, is confirmed by the Romanian experience described in Simina Tanasescu's contribution entitled "Romania: From Constitutional Democracy to Constitutional Decay". Although similar to the Polish one, the Romanian case seems to be even more compelling, stressing an evident defeatism of national courts in their opposition to populist tendencies. According to Tanasescu, the power of judges "resides as much in the rationality of the legal arguments which support a judicial decision as in the people's consent to obey the law." (p. 181) However, if "judges cannot afford to ignore or disrespect law even more than public opinion and that confronts them with a choice – which should not be considered difficult – between legality and populism," (p. 181) it is precisely the danger of the court supporting populist views, through its decisions, that characterizes the particularity of transitional or fragile democracies, and casts doubt on the courts' independence and systemic integrity. This raises the question of the role of the court as related to constitutional democracy and leads to the final conclusion that "through the constant validation of a systematic weakening of checks and balances, the Constitutional Court is contributing to the constitutional capture or constitutional decay of constitutional democracy in Romania." (p. 190)

According to Bertil Emrah Oder's study, however, the approach of the Turkish Constitutional Court towards an ever-stronger populist rule in Erdoğan's Turkey is more ambivalent. In her paper "Populism and the Turkish Constitutional Court: From a Game Broker to a Strategic Compromiser", relying heavily on the Court's recent case law, she explains that, under the populist pressure, the Court has preferred not to clash with presidential preferences in exercising a constitutional review, refraining at the same time from supporting it in a constitutional complaint procedure.

Violeta Beširević's contribution "If Schmitt Were Alive... Adjusting Constitutional Review to Populist Rule in Serbia" is the closing chapter aiming "not to join an open discussion on what populism stands for," but rather to respond to the starting dilemma on "whether courts can confront populism." (p. 193) After reminding the readers that even in developed democracies the highest courts have been known to yield to pressure, like in the case of Trump's controversial travel ban, which "seriously questions the ability of the courts to limit the manoeuvring room for the populists" (p. 194), Beširević turns to the Serbian case which—remarkably, yet unsurprisingly—resembles its Eastern European counterparts, especially

by the modest level of its legal culture, undermining expectations and investing in the authority of the Court. According to Beširević, “the Court had not managed to escape the communist-era legacy of dependency and distance itself from the strategy of strict deference to the ruling power” which “confirmed the Court’s proclivity to rule only when either its decisions became politically irrelevant or when the preference of the ruling majority became manifestly clear.” (p. 198) More specifically, in its rulings regarding the so-called Brussels Agreement, aimed at normalizing relations between Belgrade and Pristina, the government austerity measures and constitutionality of detention orders issued against persons accused of corruption in the privatization cases that Beširević analyzed, “the Court did not officially stay of proceedings, but like in other high-profile political cases, it played its well-known safe strategy, rejected to rule in a timely manner and after a two-year delay, it dismissed the challenge on jurisdictional grounds.” (p. 201) This subjective legal-cultural perception of judge-made law explains the lack of capacity of the Court to contribute to democratic consolidation in Serbia. Instead of a transformative jurisprudence “the judges’ subscription to a narrowly conceived positive jurisprudence, the absence of precedential authority and poor legal reasoning, substantiated the claim that constitutional review in Serbia has not amounted to an effective mechanism of governance.” (p. 198)

These final reflections may also be read as general concluding remarks referring not only to a particular Serbian experience, but equally to most other Eastern European societies in transition, in which the constitutional review has remained discouragingly autistic to the struggle against populism and democratic consolidation. Such a conclusion most certainly overcomes the framework of only the third part of the book, thus encompassing its overall aim. It overarches all the chapters of this book: from illustrating that a constitutional review is not always a viable strategy for confronting populist regimes and relativizing Samuel Issacharoff’s optimism relying on institutional resistance, in its first part, to Adam Shinar’s Israeli case study, in its second part. In fact, it tells that neither is there a strong institutional framework without a strong civil society behind it, nor is there a constitutional judiciary without a juridical culture able to endorse democracy and bridge the gap between the law and society.