

OXFORD
congress/22

Nationalism, populism and identities:
contemporary challenges

*4th, 5th & 6th April 2022
Jesus College, University of Oxford*

Working Group:

Constitutional, Legal and Governance
Questions in the context of Nationalism

Terms of Reference



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Summary

Populists are majoritarians. They are opposed to laws, values and institutions which in their view prevent elected governments from doing what they were elected to do. They contrast the will of the people, which they claim to represent, with what they see as unrepresentative bodies and elites such as the EU institutions and national courts and other agencies such as competition authorities and central banks. Populists seek to put things right by transforming the membership of elite institutions and thereby the values of those institutions.

Sections are organized under three broad headings

- **POPULISM AND EUROPE – MANIFESTATIONS AND RESPONSES**
- **POPULISM AND THE INDEPENDENCE OF COURTS AND INDEPENDENT REGULATORS**
- **POPULISM AND PUBLIC FINANCES**

The Working Group considers the growth of populism in the EU and its Member States, and identifies the EU mechanisms which have been put in place to maintain democracy, human rights and the rule of law. It is too soon to decide how effective these safeguards will turn out to be, but if they are not sufficiently effective, will more have to be done, and if so, what?

Constitutional courts or supreme courts with constitutional jurisdiction (“apex courts”) in the EU and around the world are targeted by populists who wish to control their membership and the judgments which they hand down. The WG considers how to insulate apex courts from populist interference, and how to ensure in a populist and non-populist context the right balance between democratic oversight and non-political input in the selection and removal of judges.

More broadly, the WG considers how the composition of courts and other agencies such as competition authorities and central banks might be separated from party political control while remaining subject to democratic oversight and maintaining high standards of competence in individual appointments.

Public spending is a target of populists of left and right, and one potential risk is of excessive public expenditure and inflation. It is possible to devise safeguards to inhibit excessive debt, such as the Stability and Growth Pact, at EU level, but it has been suspended and there are opposing views as to whether it should return in its current form or be relaxed, with some relaxation being more likely. The WG is aware that public spending is at the heart of political debate whether there are populist elements at play or not.

The WG explores the use of quantitative easing (QE) (“printing money”) by the European Central Bank (ECB) and by national central banks around the world. The ECB has already had cause to reject calls for what would in effect be a populist monetary policy, but both the ECB and national central banks enjoy a considerable discretion to fund government borrowing by printing money. In these days of recovery from a pandemic and the need to fund the battle against climate change, could there be some merit in a little more “populist” monetary theory?

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Questions

1. The growth of populism in Europe and the EU mechanisms which have been put in place to maintain democracy, human rights and the rule of law. Will they be enough?
2. How to insulate courts, and other public bodies like competition authorities and central banks, from populist interference, and how to ensure the right balance between democratic oversight, non-party-political input, and individual merit, in the selection and removal of judges and other public officials.
3. Safeguards against excessive debt such as the Stability and Growth Pact, and the role of the ECB and central banks around the world in printing money to support government borrowing. Should central banks experiment with a little populist monetary theory to encourage a green recovery?

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TERMS OF REFERENCE

Work is to be structured as follows. First, identifying the constitutional, legal and governance features that are the target of populist critique. Secondly, analysing the challenges that populism poses to constitutional systems and the checks and balances that are required to mitigate those threats and, to the extent possible, mitigate populist constitutional crises.

Populists are majoritarians. They are opposed to laws, values and institutions which prevent elected governments from doing what they were elected to do. They contrast the will of the people, which they claim to represent, with one or more “others” who are responsible for crises in society. The “others” may be ethnic minorities or immigrants, or unrepresentative bodies and “elites” within the state itself or within international organisations. The unrepresentative bodies and elites which populists see as potential “enemies of the people” include national and international courts, human rights watchdogs, competition authorities, central banks, EU institutions, the WTO, and the IPCC and the Paris Agreement framework designed to combat global warming.

Populism in European countries has sometimes targeted the EU institutions as an unrepresentative elite and the supremacy of EU law as a value opposed to majoritarian and nationalist aspirations. The principle of subsidiarity was once thought to be a possible safeguard against real or perceived over-reach by the EU institutions, but it has fallen by the wayside as much of the mainstream has championed more rather than less “Europe”. Instead, more targeted mechanisms have come to the fore to confront populists, and in particular EU procedures for enforcing compliance with the Rule of Law and Human Rights.

Public spending is a target of populists of left and right, but public spending is at the heart of political debate whether there are populist elements at play or not. It is possible to devise safeguards to inhibit excessive debt, such as the Stability and Growth Pact, at EU level, though this has been suspended to allow flexibility to deal with the pandemic and there are opposing views as to whether it should return in its current form or be relaxed, with some relaxation being more likely.

Debate about public spending is not necessarily remedied by “safeguards” because the scope of the safeguards is itself subject to democratic control. Should there be minimum levels of expenditure for, say health or education or combatting climate change, set at national or supranational level? All NATO countries have democratically agreed to spend at least 2% of GDP on defence spending, but most countries democratically decide each year to spend considerably less.

Options for public spending are linked to the actions of more or less independent central banks, which can make it relatively more easy or more difficult for governments to borrow and increase public expenditure. The tools used by central banks are control of interest rates, and the ability to use quantitative easing (QE) to print money, buy up government bonds, and thereby substitute debt at bank rate for the bonds and thus to reduce the cost to government of borrowing. The European Central Bank acts in this respect for eurozone countries, but national central banks remain key for non-eurozone EU countries and other countries in Europe and around the world. Is quantitative easing an example of populism, or a filtered version of populism, entering the mainstream?

Pushing back against a populist view of the state, should the independence of judges or other authorities like competition watchdogs or central banks be guaranteed? Should their membership be protected from political control, or is it necessary in democratic societies for elected politicians to oversee and have some safeguard powers over appointments, so that the aim is political balance rather than political neutrality? Is there a risk that political control will mean that, for example, judges or competition authorities or central bankers will see themselves as representatives of the political constituencies which appointed them?

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for

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*** Important note:** All members of the Working Groups and panels participate in an individual, non-institutional capacity, although we reflect each participant with their current position in the different working documents to better identify them.

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RELEVANT LINKS

All the congress' information may be found in our website. Here you may access the Terms of Reference of each of our four working groups (and three sub-groups), as well as relevant information about Jesus College, access details from the main London Airports, a map of Oxford with suitable Hotels and Cafes, amenities and more.

[Visit our website for more information](#)

CONTACT & REGISTRATION

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