

Clarifying Populism

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David Fontana, [Unbundling Populism](#), 65 **UCLA L. Rev.** 1482 (2018).

Professor [David Fontana](#)'s *Unbundling Populism* is a valuable addition to a burgeoning body of comparative constitutional law scholarship on populism. Some scholars have provided helpful typologies of populism. [Mark Tushnet](#), for instance, [distinguishes between different forms of populism](#) and identifies the constitutional implications of right- and left-wing populist policies. Others have adopted working definitions of populism and specified the ways in which populism (so defined) threatens key elements of liberal constitutionalism. [Nicola Lacey](#), for example, claims that there is a general consensus on the conceptual elements of populism and identifies a variety of ways in which [populists have threatened the rule of law](#), ranging from agenda-setting that threatens core rule of law institutions to the flouting of constitutional conventions. Still others have written about populism, while resisting the temptation to seek a workable definition. For instance, [Kim Lane Scheppele](#) turns away from trying ["to define and delegitimize" populism](#) and asks instead why so many liberal constitutionalists are "so obsessed with populism." In the course of answering this question, she identifies threats that populists pose to liberal constitutionalism, often by using the rhetoric of liberalism and democracy.

In his remarkable article, Fontana pulls together several of the above threads in the comparative constitutional law literature on populism. He provides a working definition of populism, offers a novel typology, and warns that if we are imprecise in how we talk about populism, we may delegitimize concerns that are valid in a liberal democracy and we may legitimate leaders with authoritarian tendencies.

Drawing on a variety of sources, Fontana defines populism in terms of style and substance. As a style, populism "values political arguments that are clear, comprehensible and often emotional." (P. 1488.) According to Fontana, the populist political figure rejects the increasingly technical language of political institutions and instead speaks in a way that signals her authenticity and her connection to ordinary citizens. (P. 1489.) In so doing, she distances herself from actors within political institutions who claim to hold "specialized expertise" that gives them "jurisdiction" over those institutions. (P. 1488.) Fontana argues that populism is not, however, merely a style, for it advances a policy agenda the goal of which is "to rectify injustices that empowered elites created for the rest of the people." (P. 1489.) Fontana finds examples of this agenda in sources as diverse as [Federalist Nos. 10](#) and [52](#), [Thomas Piketty's Capital in the Twenty-First Century](#), and legal scholarship which has found that "experts—in law and otherwise—can be even more biased in application of their skill than lay people." (P. 1491.)

Fontana contrasts this version of populism, which he labels "unbundled populism" with another version, which links the anti-establishment orientation of unbundled populism to "conceptually distinct authoritarian and xenophobic world views." (P. 1494.) Fontana labels this version "bundled populism." The authoritarian and anti-pluralist dimensions of bundled populism emerge when its proponents define "the people" as a homogenous and virtuous collective who have been subject to the predations of a malign elite, and in whose name a single political faction can rule. According to Fontana, the bundled populist views those who fall outside his definition of the "morally legitimate" people as threats to be warded off. (P. 1495.) For right wing populists, the threat comes in the form of immigrants, and for left-wing European populists, it takes the guise of elites who have "coopted the social democratic state." (P.

1495.)

The reader might reasonably ask what is at stake in distinguishing these two forms of populism. Fontana provides us with two sets of answers, one conceptual and one political. If we fail to tend to this distinction, Fontana tells us, we might use the term “populism” as a kind of shorthand for bundled populism. As a result, we would give the impression that the populist dimension of bundled populism, rather than its authoritarian or xenophobic dimensions, is the *cause* of specific instances of bundled populism or is their most significant aspect. (P. 1497.) Furthermore, argues Fontana, by availing ourselves of this shorthand, we may mistakenly presume a unique and particularly significant causal relationship between anti-establishment views and intolerance. Fontana notes, however, that it is polarization that “generates powerful ingroup and outgroup mechanisms” and that polarization can arise along many kinds of ideological cleavages. (P. 1497.) Fontana cites to empirical evidence showing that “[s]upermajorities of Americans of both parties would be disinclined to hire someone from the opposing political party.” (P. 1498.) It is not clear, then, that the populist is especially susceptible to defining opponents as “distant and inferior” (P. 1497), nor is it clear that the populist form of polarization is more problematic than others that have arisen in recent history. (P. 1498.)

Fontana argues that, in addition to these conceptual problems, there are political consequences that flow from failing to distinguish between bundled and unbundled forms of populism. In the current media landscape, if populism is generally understood to be synonymous with its bundled version, those who hold only the anti-establishment views of unbundled populism will be called to answer for the authoritarian, xenophobic, and attention-grabbing antics of bundled populism’s adherents. (P. 1499-1500.) Moreover, when no distinction is made between bundled and unbundled populism, the serious concerns of the former are summarily dismissed because they are associated with the deeply unserious views of the latter. As a result, empirically supported arguments about the failure of elites to attend to concerns of the broader public are rejected, Fontana claims, because they are conflated with spurious claims about the purity of the people. (P. 1501.) Finally, Fontana argues that if one fails to distinguish bundled from unbundled populism, one may confer unearned legitimacy on the former. By labelling as a populist *tout court* an authoritarian leader who claims to act for ordinary people against self-interested elites, one implicitly endorses that claim, whether or not it is borne out by his actions. (P. 1502-03.) And by describing such a leader as a “populist” rather than an “authoritarian,” or even an “authoritarian populist,” one risks downplaying the morally objectionable features of his bundled populism. (P. 1503.)

Populism is a complex and contested concept. Fontana’s article will not, of course, resolve all the controversies surrounding this concept but it does encourage us to think about what is at stake in defining populism. And perhaps most especially for those of us who work in the area of comparative constitutional law, Fontana’s insights will spur ongoing discussion, as the challenges to the assumptions and practices of liberal constitutionalism and its institutions spread around the globe.

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