## Contents

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

vi	Contents	
	2 Hungarian national identity - more than a stereotype 49	
	3 National identity and Poland 55	
	II Post-communist past and beyond 60	
	III Possible root cause: the combination of the above 64	
	1 Populism – playing with emotions 65	
	2 Collective narcissism and collective victimhood 68	
IV :	Limits: Comparative perspective	71
	I The emergence of illiberal constitutionalism 71	
	II A comparative perspective – looking for constraints 73	
	III Contextualization: the European Rule of Law as a constraint on	
	public power 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	
VΙ	imits: Constraints in constitutional design and identity	96
	I Illiberal legality 96	
	1 The term 96	
	2 Legal features of illiberal legality 98	
	II Illiberal democracy 108	
	1 The term 108	
	2 Electoral democracy – illiberalization 111	
	3 Procedure in parliament 115	
	III Illiberalization of human rights 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 S	Stability: How "illiberal limits" emerge and work	150
	I Capturing constitutions and constitutionalism, and creating	
	invisible constitution 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 Illiberal judicialization of politics 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 Pushing the limits and bouncing back 184	
1 Rules 184	
2 Techniques 185	
IV Defeating exit strategies from the hollowed-out constitutional	
democracy 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	97
VII Conclusions	//
1 Constitutionalism does not necessarily have to be liberal 197	
2 Illiberal constitutionalism is a deterioration from liberal	
constitutionalism towards authoritarianism but has not reached that	
point yet 197	
3 In an illiberal constitutional identity, the liberal and non-liberal or	
illiberal value orientation of the population can intermittently	
prevail 198	
4 Illiberal constitutionalism is a coherent theory in its illiberal and	
weakly constrained manner 198	
5 Lessons learned, mostly, for others 199	
o Lessons with hour, mostly, for white 177	
	00