

Contents

Part I Populism and International Law

1	Populism and International Law: What Backlash and Which Rubicon?	3
	Janne E. Nijman and Wouter G. Werner	
	1.1 Introduction	4
	1.2 Populism and International Law	5
	1.3 Historical Perspective	11
	1.4 Papers Introduced and Summarised	13
	References	16
2	Trump, International Trade and Populism	19
	Lukasz Gruszczynski and Jessica Lawrence	
	2.1 Introduction	20
	2.2 Populism, Neoliberalism and Construction of Truth	22
	2.3 Trump and International Trade Governance	26
	2.4 Trump's Neoliberal Populism	35
	2.5 Conclusion	43
	References	43
3	Populist Paranoia and International Law	45
	Aaron Fichtelberg	
	3.1 Introduction	46
	3.2 A Genealogy of Populism in the USA	49
	3.3 Populism and International Relations	50
	3.4 The Constitution, Populism, and International Law	52
	3.5 Trumpian Populism and International Law	55
	3.6 Paranoia and International Law	59
	3.7 Towards a Populist International Law?	63
	References	65

4	Is There a ‘Populist’ International Law (in Latin America)?	69
	Alejandro Rodiles	
4.1	Introduction	70
4.2	Latin American ‘Classical Populism’ at the International Level – Between Pragmatic Self-assurance and Proactive <i>Tercermundismo</i>	75
4.2.1	Peronismo’s Third Position or Semi-peripherical Pragmatism	76
4.2.2	Mexico’s Populist Foreign Policy in the 1970s: The Promotion of a New International Economic Order (NIEO)	80
4.3	The ‘New Latin American Left’: Attempts at Decolonising Global Law	82
4.3.1	The Counter-Coalition Called ‘ALBA-TCP’	83
4.3.2	Evo Morales and the Emergence of a Global Law of Nature	85
4.4	Conclusion	90
	References	92
5	Populism, International Law and the End of <i>Keep Calm and Carry on Lawyering</i>	97
	Christine Schwöbel-Patel	
5.1	Introduction	98
5.2	Internationalists versus Populists: A View from Above	101
5.3	International Lawyers as the Elites: A View from Below	105
5.4	International Legal Organisations: A Structural View	106
5.5	Unsettling Populist versus Internationalist Binaries	110
5.6	Populism as a Tactic for a Multilateralism of Solidarity	114
5.7	Conclusion	118
	References	119
6	People, Politics and Populism in International Criminal Law: The Mungiki as Kenyan <i>Ethnos</i> and Kenyan <i>Demos</i>	123
	Edwin Bikundo	
6.1	Introduction	124
6.2	People in the United Nations Charter and International Criminal Law	128
6.3	Female Circumcision and the Politics of Patriarchy	130
6.4	The Faustian Pact, Political Violence and Law	134
6.5	Conclusion	140
	References	140

7 Populism and Human Rights	143
Veronika Bílková	
7.1 Introduction	144
7.2 The Concept of Populism and the Populist View(s) on Human Rights	145
7.2.1 Overview of the Studies of Populism	146
7.2.2 Characteristics of Populism	148
7.2.3 Populism in Today's World	151
7.2.4 Populist View(s) on Human Rights	153
7.3 Arguments Used by Populists to Criticize Human Rights	155
7.3.1 Security Argument	156
7.3.2 Legitimacy Argument	161
7.3.3 Democracy Argument	166
7.4 Concluding Remarks	171
References	172
8 Reclaiming the Keys to the Kingdom (of the World): Evangelicals and Human Rights in Latin America	175
Rene Urueña	
8.1 Introduction	176
8.2 Protestantism in Latin America	178
8.3 'Evangelicals' Enter the Picture	179
8.4 Evangelicals and the 'Private' Mindset: Chile (1970s) and Colombia (1990s)	184
8.4.1 Chile, 1970s: Evangelicals and Faith as a Private Matter	185
8.4.2 Colombia, 1990s: Evangelical Rights and Neo- constitutionalism	189
8.5 The Public Mindset: LGBTI Rights and 'Gender Ideology' . . .	192
8.6 Conclusion: Reclaiming the Keys to the Kingdom (of the World)	200
References	203
9 Addressing Economic Populism Through Law – A Case Study of the World Development Report 2017	209
Lys Kulamadayil	
9.1 Introduction	210
9.2 The World Bank's Engagement with Law	212
9.3 Populist Economic Nationalism	215
9.4 Interactions of Populist Economic Nationalism with the Domestic and International Legal Institutions	217
9.5 Conclusion	219
References	219

Part II Dutch Practice

10 Climate Action as Positive Human Rights Obligation: The Appeals Judgment in <i>Urgenda v the Netherlands</i>	223
Laura Burgers and Tim Staal	
10.1 Introduction	224
10.2 The Admissibility of Urgenda's Claims	226
10.2.1 Direct Applicability of the ECHR	226
10.2.2 Future Generations and People Abroad	228
10.2.3 Uptake	228
10.3 Articles 2 and 8 ECHR's Duty of Care to Protect Against Dangers of Climate Change	229
10.3.1 The Strasbourg Standard for the Prevention of Future Environmental Dangers	230
10.3.2 Climate Change: A Real Threat Resulting in Serious Risk	232
10.3.3 Preventing Infringement 'as Far as Possible'	233
10.4 Law, Facts and Civil Procedure	234
10.4.1 25% as the Unassailable Minimum	234
10.4.2 Negative Emissions	235
10.4.3 Dismissal of the State's Other Objections	236
10.5 Separation of Powers	238
10.5.1 The Courts' Considerations	238
10.5.2 Did the Court Overstep the Separation of Powers by Misinterpreting the Law?	240
10.5.3 Should Courts Sometimes Refrain from Delivering Legally Correct Decisions?	241
References	243
11 Pursuing Justice for MH17: The Role of the Netherlands	245
Marieke de Hoon	
11.1 Introduction	246
11.2 Developments: 2014–2018	247
11.3 The Legal Case Against Russia	251
11.3.1 Involvement in Shooting Down MH17	252
11.3.2 Duty to Conduct Effective Investigations	258
11.3.3 Bringing a Case Against Russia	260
11.4 The Legal Case Against Ukraine	265
11.5 The Dutch Pursuit for Justice	268
References	270

Contents	xiii
12 What a Drag(net): Dutch Surveillance Laws in the Light of European Union Data Protection Law	271
Mistale Taylor	
12.1 Introduction	272
12.2 Background	274
12.3 Content of the New Law	275
12.4 A Referendum and Subsequent Court Action	276
12.5 The ISS Act 2017 and EU Data Protection Principles	278
12.5.1 Lawful Processing	278
12.5.2 Purpose Specification and Limitation	279
12.5.3 Data Quality	279
12.5.4 Fair Data Processing	282
12.6 Conclusion	283
References	283
Table of Cases	285
Index	291