

Constitutional Strategy for a Polarized Society: The Case of Poland and the Social Contract Incubator

2021 ICON•S Mundo Forum

Session IV, July 6, 2021, 14:00–15:30 CEST / 12:00–13:30 UTC / 8:00–9:30 am ET

Conveners

Maciej Kisilowski, Associate Professor of Law & Strategy, Central European University,
& Vice-President, The Social Contract Incubator
(Polish: *Inkubator Umowy Społecznej* or IUS)

Peter Lindseth, Olimpiad S. Ioffe Professor of International and Comparative Law,
University of Connecticut School of Law

Kim Scheppele, Laurance S. Rockefeller Professor of Sociology and International Affairs,
Princeton University, (chair)

Anna Wojciuk, Associate Professor of Political Science, University of Warsaw
& President, The Social Contract Incubator (IUS)

Motivation

This panel will discuss the work of the Social Contract Incubator (IUS; <https://zdecentralizowanarp.pl/about>), as a case study in addressing, in constitutional terms, the pervasive challenge of social, political, cultural, and economic polarization that is increasingly prevalent on both sides of the Atlantic, indeed globally. The proposed forum will explore IUS's proposals as a micro-case in constitutional imagination to provoke participants to tackle broader problems of constitutionalism after the “end of the end of history.”

By way of background, IUS is a multidisciplinary group of scholars across the Polish political spectrum that has introduced an ambitious vision for constitutional reform, aiming at breaking the intractable legal and political deadlock that the country is facing. Recognizing the geographic dimension of Poland's political cleavages (with the country's South-East being much more conservative than the North-West), IUS proposed—in more than 70 press commentaries¹, conferences, and other events organized throughout

¹ See e.g. Antoni Dudek, Maciej Kisilowski, Anna Wojciuk, "Silna Polska, mądrze zdecentralizowana" ["Strong Poland, Wisely Decentralized"], *Rzeczpospolita*, Mar. 19, 2019 [<https://www.rp.pl/Publicystyka/303189912-Silna-Polska-madrze-zdecentralizowana.html>]; Maciej Kisilowski, Paweł Lisiewicz, "Jak zmniejszyć intensywność konfliktu politycznego? Zdecentralizujmy Polskę" ["How to De-Escalate Our Political Conflict? Let's Decentralize Poland"], *Gazeta Wyborcza*, Apr. 2, 2019 [<http://wyborcza.pl/7,75968,24606277,jak-zmniejszyc-intensywnosc-konfliktu-politycznego-podzielmy.html>]; Ryszard Balicki, Maciej Kisilowski, Fryderyk Zoll, "Jak ocalić Polskę przed autorytaryzmem? Projekt na miarę 3 Maja" [How to Save Poland from Authoritarianism? Project with the May 3rd Ambition], *Gazeta Wyborcza*, May 2, 2019 [<http://wyborcza.pl/7,75968,24742543,jak-ocalic-polske-przed-autorytaryzmem-projekt-na-miare-3-maja.html>]. English-

2019—a new constitutional settlement around the idea of “strategic decentralization”: a deep devolution of policy areas of acute partisan conflict combined with continued centralization of economic redistribution. Unlike in the model of traditional federalism, IUS also wants to entwine regional authorities in central governance, especially in re-creating and protecting the country’s independent institutions.

IUS’s work may be understood as part of a broader international trend in which actors have experimented with constitutional design as a means of addressing increased polarization and political fracturing. The forum will discuss the aspects of IUS’s proposals most relevant to that broader trend: mutually accepted institutions (the “fair deal”), national cohesion, human rights, and the fiscal constitution. A pair of IUS members from different parts of the political spectrum will address each topic, followed by a comparative perspective offered by international commentators.

Agenda

1. Introduction: Constitutional Dilemmas in Crumbling Democracies:

Kim Scheppelle (Princeton University), The Forum’s Chair

2. In Search of a Nonpartisan Constitution: Defining the “Fair Deal”

Case Study: Maciej Kisilowski (Central European University), Wojciech Przybylski (Visegrad Insight) and Anna Wojciuk (Warsaw University)

Commentary: Paul Blokker (University of Bologna)

3. National Cohesion

Case Study: Krzysztof Iszkowski (European Commission), Sylwia Sysko-Romańczuk (Warsaw University of Technology) and Fryderyk Zoll (Jagiellonian University)

Commentary: Peter Lindseth (University of Connecticut)

4. Human Rights

Case Study: Helena Chmielewska-Szljajfer (Kozminski University), Tomasz Pietrzykowski (Silesian University) and Arkadiusz Radwan ((Vytautas Magnus University & Polish Academy of Sciences’ Scientific Center in Vienna)

Commentary: TBA

5. Fiscal Constitution

Case Study: Maciej Bukowski (WiseEuropa), Jacek Giedrojć (Center for European Studies, Harvard University) and Agnieszka Chłoń-Domińczak (Warsaw School of Economics)

language summary was presented in Maciej Kisilowski & Wojciech Przybylski, “Democratic Lessons from the EU,” *Project Syndicate*, May 14, 2019: <https://www.project-syndicate.org/commentary/poland-democratic-deficit-european-union-by-maciej-kisilowskiand-wojciech-przybylski-2019-05>.

6. Conclusion: Key Lessons from the Discussions

Kim Scheppele

Reading List

(available at <https://zdecentralizowanarp.pl/about>)

1. IUS: Concept Paper. Principles. Voivodship Charter.
2. Kim Lane Scheppele, Autocratic Legalism, The University of Chicago Law Review vol. 85, pp. 545–583 (2018)
3. Peter Lindseth, The Democratic Disconnect, the Power–Legitimacy Nexus, and the Future of EU Governance, in EU Law in Populist Times: Crises and Prospects (Francesca Biglami, ed., Cambridge University Press, 2020)
4. Maciej Kisilowski, Constitutional Strategy for a Polarized Society, in: Revolutionary Constitutions (Richard Albert ed., Hart 2020)
5. Maciej Kisilowski & Wojciech Przybylski, Democratic Lessons from the EU, Project Syndicate (May 19, 2019)
6. Editorial: On the Decentralization of Poland, Visegrad Insight (May 31, 2019)

Participants

1. Paul Blokker is Associate Professor at Department of Sociology and Business Law, University of Bologna; <http://apps.eui.eu/Personal/Researchers/pblokker/>
2. Maciej Bukowski is President of the Wise Europa Think Tank in Warsaw; <https://wise-europa.eu/en/about-us/board/maciej-bukowski-president-of-wiseeurope/>;
3. Agnieszka Chłoń-Domińczak is Associate Professor of Economics at Warsaw School of Economics, Former Deputy Minister of Labor and Social Policy and IUS member; http://uczelnia.sgh.waw.pl/en/university/research/groups/ppg/Pages/agnieszka_chlon-dominiczak.aspx;
4. Helena Chmielewska-Szlajfer is Assistant Professor of Sociology at Kozminski University and IUS member: <https://www.kozminski.edu.pl/en/facultyresearch/faculty-search/faculty/?id=4597>;
5. Krzysztof Iszkowski works at the European Commission, Directorate–General for Employment, Social Affairs and Inclusion and is a IUS member. Participates in the Forum in personal capacity. The views expressed may not, under any circumstances, be interpreted as stating an official position of the European Commission; [iszkowski \[at\] gmail.com](mailto:iszkowski[at]gmail.com)
6. Jacek Giedrojć is Affiliate at Center for European Studies at Harvard University and IUS member; he is Chairman of Warsaw Equity Group: <https://ces.fas.harvard.edu/people/jacek-giedrojcz>;

7. Maciej Kisilowski is Associate Professor of Law & Strategy, Central European University, and IUS vice-president, [kisilowski \[at\] ceu.edu](mailto:kisilowski@ceu.edu); https://people.ceu.edu/maciej_kisilowski
8. Peter Lindseth is Olimpiad S. Ioffe Professor of International and Comparative Law, University of Connecticut School of Law; <https://www.law.uconn.edu/faculty/profiles/peter-l-lindseth>;
9. Tomasz Pietrzykowski is Chair of Legal Theory and Philosophy of Law and Vice-President of University of Silesia in Katowice and IUS member; https://www.cbpr.us.edu.pl/en/The_team;
10. Wojciech Przybylski is the Editor-in-chief of Visegrad Insight, president of the Res Publica Foundation and co-chair of the IUS Supervisory Board; <https://visegradinsight.eu/author/wojciech>;
11. Arkadiusz Radwan is Professor of Law at Vytautas Magnus University, Kaunas, Lithuania, Director of Polish Academy of Sciences' Scientific Center in Vienna and IUS board member; <https://teise.vdu.lt/en/lecturers>;
12. Kim Scheppele is Laurance S. Rockefeller Professor of Sociology and International Affairs, Princeton University; <https://lapa.princeton.edu/people/kim-lane-scheppele>;
13. Sylwia Sysko-Romańczuk is Associate Professor of Education Policy & Management at Warsaw University of Technology Business School, Former Deputy Minister of Education and IUS board member: <https://www.business.edu.pl/wykladowcy/sysko-romanczuk-sylwia,109>;
14. Anna Wojciuk is Associate Professor of Political Science, Warsaw University and IUS president, [anna.wojciuk \[at\] ius.org.pl](mailto:anna.wojciuk@ius.org.pl); <http://www.ism.uw.edu.pl/en/prof-anna-wojciuk>
15. Fryderyk Zoll is Professor of Law at Jagiellonian University in Kraków & University of Osnabrueck and IUS member: <https://www.ejcl.org/cv/cv-zoll.html>.