Transnational Networking and Elite Self-Empowerment
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Studies of the fate of Judiciaries in post-Communist Central and Eastern Europe (CEE) have been rare and attempts at causal explanation rarer. This study found that interlocked transnational networking empowered a minority of elite Judiciary revisionists to entrench their institutional template in Eastern European constitutions, setting these transitional democracies on a trajectory toward a global trend of the judicialization of politics. The first, crucial step in that process is traced: the formal disempowerment of democracy through Judiciary revisions that ordinary people and politicians in Central and Eastern Europe little heeded. The causal nexus converging on this outcome is explained. Why it matters is because the revisionist template reorients that most venerable of non-majoritarian institutions beyond adjudication of the guilt or innocence of subjects of state power under legal certainty – the classical role of modern courts – toward the improvisation of public policy, with or without the consent of the majority of the governed, by ‘finding’ it in constitutions; the unique legitimacy of which derives from the prior ratification of a supermajority. The question of who shall have the final disposition of contested constitutional meaning – the Executive, Legislature, Judiciary, the People, or All of these – implicates sovereignty itself and whom it shall rest on: the last word is sovereign for practical purposes. The interdisciplinarity of this study will appeal to a wide audience: scholars of law and politics and socio-legal studies, social scientists researching elite transnationalism and European integration beyond the EU, even institutional design practitioners.
This chapter analyses the origin and evolution of the Network Community’s transnational Judiciary design Template, which has now become settled public policy in post-Communist Central and Eastern Europe, and beyond. Consisting of the Constitutional Court, the Judicial Council, and the Magistrates’ Training Academy, the Template is rooted in US Judiciary practice insofar as judicialization in the USA inspired contemporary paradigmatic thinking in Europe. The Template has maximally empowered the Judiciaries of CEE with the attributes of supremacy and autonomy, whilst disempowering all other political actors to make public policy in defiance of judicial preferences, even on issues that do not touch the essential judicial values of the guilt or innocence of those subject to State power. The long-term goal is the anti-majoritarian revision of public policy and society. Yet the Template enjoys little popular legitimacy, having been propagated into post-Communist CEE to practically no resistance from people and nations unsure how to govern themselves. Since then, the Network Community has shown zero tolerance of national movements to revisit the Template.

Conclusions
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This chapter concludes the volume. In normative terms, the Judiciary revisions imposed on CEE since 1989 (and now the West) exhibit an unmistakable pattern: they transfer political power away from majoritarian institutions to non-majoritarian ones, from elected officials to judges; exclude the ‘sovereignty people’ from a voice in the Judiciary’s make-up; and insulate judges from accountability and liability to democratic boundaries. This Template amounts to the Americanization
of the European Judiciary, and reflects the Network Community’s ambition to rule through the Judiciary (in Europe, but perhaps globally). In causal terms, a nexus was discovered explaining the Template’s puzzling ubiquity: the agency of a class of transnational elites sharing a collective identity and solidarity; their paradigmatic assumptions about the Judiciary’s role in democracy, and the coerciveness of their hegemonic discourses, which the public is unable to fathom or negotiate. The Network’s motivation is not solely the aspiration to solve mankind’s problems, but the all-too-human will to the power to arbitrate between all other political actors. A crucial but ‘invisible’ causal factor was the omission by the main veto players, elected representatives in parliaments, to forestall their own disempowerment.