

PART IV

Conclusions: Pandemics,
Populism and Power



The Pandemic and Illiberal Constitutional Theories

GÁBOR HALMAI

I. Emergency Measures by Illiberal Regimes

I use ‘illiberalism’ in this chapter as a critical reaction to liberalism. The main theoretical objects of this illiberal critique are the values of political liberalism: human rights, justice, equality and the rule of law, its commitment to multiculturalism and tolerance, ideas of Isaiah Berlin’s ‘negative liberty’, Karl Popper’s ‘open society’, John Rawls’ ‘overlapping consensus’, or Ronald Dworkin’s equality as the ‘sovereign virtue’. From an institutional point of view, and this will be more visible in the legal reactions to COVID-19, illiberalism challenges liberal democracy, which is not merely a limit on the public power of the majority, but also presupposes rule of law, checks and balances, and guaranteed fundamental rights.

No one reasonably disputes that emergency situations, like the coronavirus pandemic, require special legal and constitutional measures even in fully-fledged liberal democratic systems.¹ These measures have to take into account various aspects, among them health and economic considerations, which can lead to different balancing outcomes between certain legitimate public interests, like public health, public order, security and fundamental rights, such as right to human dignity, right to life, freedom of movement, right to education, freedom of information and expression, privacy, etc. Even decisions of democratic legislators and governments potentially reviewed by independent judicial bodies can lead either to ‘under-’ or ‘overreaction’ to the pandemic.

¹Among the very few exceptions are Slavoj Žižek, Giorgio Agamben and Peter Sloterdijk, who even warned of the dangers of any emergency power in stable liberal democracies. J. Joffe, ‘Die Corona-Krise offenbart auch eine Krise der Meinungsmacher: Ihnen fällt nicht allzu viel Kluges ein’ (2020) *Neue Zürcher Zeitung* 11.04, www.nzz.ch/feuilleton/die-corona-krise-ist-auch-eine-krise-der-intellektuellen-ld.1551336. Agamben in his fear of every kind of emergency power went as far as to call the coronavirus a ‘supposed pandemic’ and suggested that emergency measures were ‘absolutely unwarranted’. See A. Berg, ‘Giorgio Agamben’s Coronavirus Cluelessness’ (2020) *CHRON. HIGHER. ED.*, www.chronicle.com/article/Giorgio-Agamben-s/248306.

As Francis Fukuyama argues, the type of regime involved does not determine why some countries have done better than others in dealing with the crisis so far.² Some democracies have performed well, but others have not, and the same is true for autocracies. Therefore, Fukuyama considers the factors responsible for successful pandemic responses to have been state capacity, social trust, and leadership.³ Indeed, one can think of old democracies, such as the US and the UK, which did not perform well due to lack of state capacity and/or effective leadership. That being said, all the states he mentions which have used the crisis through overreaction to give themselves emergency powers, thus moving them still further away from democracy, happen to be non-democracies. Tom Ginsburg and Milla Versteeg, after surveying 106 countries in the world to see whether the executive is bound by either judicial, legislative or supranational oversight in their pandemic responses, came to the conclusion that in no fewer than 82 per cent of the countries in their data at least one of these checks and balances could be observed.⁴ They found that only in six democratic countries out of the 106 surveyed could no oversight be detected: Australia, Botswana, Jamaica, Switzerland,⁵ Peru, and Guyana. Of course, this does not necessarily indicate that the executive's reactions have been problematic, and conversely the formal oversight by non-independent bodies does not exclude the misuse of executive power in non-democratic regimes. This is because the lack of independence means the executive power is not bound by the oversight bodies. This is why the unbound character of the executive power cannot be equally assessed in democratic and autocratic systems.⁶ The overall positive picture of the Ginsburg-Versteeg survey was not confirmed by the report of Freedom House, which found that since the start of the pandemic, the state of democracy

² F Fukuyama, 'Pandemic and Political Order' (2020) *Foreign Affairs*. www.foreignaffairs.com/articles/world/2020-06-09/pandemic-and-political-order.

³ Of course one can think of many other important factors Fukuyama fails to mention, such as the cultural traditions of societies. For instance, in Asia, certain social behaviours already require distancing and the experience with different viruses in the last decades has also led to further preventive concepts in Africa. The age composition of the population also seems to be a crucial factor, as does the possibility to seal off the country (eg, New Zealand).

⁴ In 52% of the countries (68% of democratic and 30% of autocratic ones) the legislatures, in 41% of them the judiciary (in 55% of the democracies, compared with 27% of autocracies) and in 34% (in 40% of democracies as compared with 28% of autocracies) subnational bodies have become involved in the decisions of the executive. See T Ginsburg and M Versteeg, 'The Bound Executive: Emergency Powers During the Pandemic' (2020) 52 *Virginia Public Law and Legal Theory Research Paper*. University of Chicago, Public Law Working Paper No 747, 26.

⁵ See O Ammann and F Uhlmann, 'Switzerland: The (Missing) Role of Parliament in Times of Crisis', in this volume.

⁶ Another comparative constitutional study comparing four European liberal democracies' (Germany, France, the UK and Italy) efficiency in tackling the pandemic comes to the conclusion that the main difference is not between bound or unbound executives, between Madisonian or Schmittian models, but rather whether the 'compulsion to legality' triggers virtuous or vacuous circles. See A Golia, L Hering, C Moser and T Sparks, 'Constitutions and Contagion. European Constitutional Systems and the COVID-19 Pandemic' (2020) *Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No 42*, papers.ssrn.com/sol3/papers.cfm?abstract_id=3727240. But how can this comparison possibly prove that the unbound character of the executive does not play any role in the efficiency of the reaction if none of the four selected countries has ever implemented the Schmittian model?

and human rights, which tells us a lot about the unbound character of the executive, has worsened in at least 80 countries out of the 192 nations surveyed by them.⁷

In addition to the lack of oversight, authoritarian regimes in Bangladesh, Belarus, Cambodia, China, Egypt, El Salvador, Syria, Thailand, Turkey, Uganda, Venezuela and Vietnam have all detained critics, health workers, journalists and opposition members, and implemented strong tools against the pandemic, including harsh censorship and even criminal sanctions against social media posts related to COVID-19, as an excuse to grab more power.⁸ On the other hand, countries with competent governments which performed well in containing the virus can be considered as stable democracies, such as Australia, New Zealand, Germany, Japan or Taiwan.⁹ Some democracies have managed to adapt faster. For instance in South Korea the disease was tamed by extensive tracing and widespread surveillance of possible carriers, because the regime there had recent experience to draw on from its handling of the Mers outbreak of 2015, an event which also shaped the collective memory of the citizens. But it is true that COVID-19 infected the world with an ultimate uncertainty at a time in which democracy was already under threat. As David Runciman argues, the distinction between democracies and authoritarian regimes has been blurred: 'Under the lockdown, democracies reveal what they have in common with other political regimes: here too politics is ultimately about power and order'.¹⁰

One of Tom Daly's four categories of how governments deal with COVID-19 is preserved for 'autocratic opportunists', such as the Hungarian Government. The second one, the 'fantasists' who denied the scientific facts of the pandemic, consists of autocracies, like China, illiberal states, such as Brazil, and traditional democracies with huge leadership problems, like the US.¹¹ His two remaining categories of country are rather considered as democracies: the 'effective rationalists', like New Zealand, and the 'constrained rationalists', such as South Africa, whose constraint has been their limited state capacity.

Given the importance of strong state capacity and action to slow the pandemic, it is hard to argue against greater state involvement during a national emergency.

⁷'Democracy Under Lockdown. The Impact of COVID-9 on the Global Struggle for Freedom, Special Report 2020', Freedom House, freedomhouse.org/report/special-report/2020/democracy-under-lockdown?utm_campaign=wp_todays_worldview&utm_medium=email&utm_source=newsletter&wpsrc=nl_todayworld.

⁸See an overview of these countries' emergency measures: 'Would-be Autocrats Are Using COVID-19 as an Excuse to Grab more Power' (*The Economist*, 23 April 2020) www.economist.com/international/2020/04/23/would-be-autocrats-are-using-covid-19-as-an-excuse-to-grab-more-power.

⁹See L. Diamond, 'Democracy Versus the Pandemic, The Coronavirus Is Emboldening Autocrats the World Over' (*Foreign Affairs*, 13 June 2020) www.foreignaffairs.com/articles/world/2020-06-13/democracy-versus-pandemic.

¹⁰See D Runciman, 'Coronavirus has not suspended politics – it has revealed the nature of power' (*The Guardian*, 27 March 2020) www.theguardian.com/commentisfree/2020/mar/27/coronavirus-politics-lockdown-hobbes?CMP=Share_iOSApp_Other.

¹¹T Daly, 'Democracy and Global Emergency – Shared Experiences, Starkly Uneven Impacts' (*Verfassungsblog*, 15 May 2020) verfassungsblog.de/democracy-and-the-global-emergency-shared-experiences-starkly-uneven-impacts/.

According to Ivan Krastev and Mark Leonard, the virus also strengthened rather than weakened national sovereignty.¹² Interestingly enough, challenges to the state's 'pandemic power' have come from groups and movements, ranging from far-right populists or radical ecologists to wellness fanatics and left-wing populists, all united by claims to 'personal sovereignty', 'bodily autonomy' and 'bodily rights'.¹³ Even the Dutch Prime Minister Mark Rutte described the Netherlands as a 'grown-up country', whose citizens did not need to be treated like children 'to behave responsibly', unlike in other European countries.¹⁴ But despite these rather minority views, most governments have assumed executive powers considered to be broadly necessary to contain the health crisis, and it remains uncertain whether these will entail long-term restrictions on democratic rights.¹⁵ Ivan Krastev calls it one of the coronavirus-paradoxes that, when people realise the threat to fundamental rights, they are rather inclined to reject authoritarian rule.¹⁶ This was the case in Belarus, where one of the reasons for the 'Revolution of Dignity'¹⁷ which started in the summer of 2020 was that the people realised that absolute power did not provide security against COVID-19, but rather posed a threat to their lives.

The 'semi-liberal'¹⁸ constitutional system of Israel has an in-built 'overreach' element, because a state of emergency already existed before the COVID-19 crisis: in Israel, the Basic Law. The Government states that the Knesset 'may, of its own initiative or, pursuant to a Government proposal, declare that a state of emergency exists'. This state of emergency was declared upon the establishment of the State of Israel, and has been extended yearly ever since. Using the pandemic crisis, the government sought to employ surveillance technology to track those who tested positive for coronavirus. But unlike in more authoritarian illiberal systems, the Supreme Court in Israel blocked measures, which disproportionately limited fundamental rights.¹⁹

¹² I Krastev and M Leonard, 'Europe's pandemic politics: How the virus has changed the public's worldview' (*ECFR*, 20 June 2020).

¹³ See L Bialasiewicz and HL Muehlenhoff, "'Personal sovereignty" in pandemics: or, why do today's "sovereignists" reject state sovereignty?' (*openDemocracy*, 30 June 2020) www.opendemocracy.net/en/can-europe-make-it/personal-sovereignty-in-pandemics-or-why-do-todays-sovereignists-reject-state-sovereignty.

¹⁴ See L Bialasiewicz, 'National stereotypes in times of COVID-19: the "frugal four" and the "irresponsible South"' (*openDemocracy*, 13 July 2020) www.opendemocracy.net/en/can-europe-make-it/national-stereotypes-in-times-of-covid-19-the-frugal-four-and-the-irresponsible-south/.

¹⁵ cf a report of Carnegie Europe, carnegieeurope.eu/2020/06/23/how-coronavirus-tests-european-democracy-pub-82109.

¹⁶ I Krastev, 'Sieben Corona-Paradoxien – es ist nicht leicht zu begreifen, was das Virus mit unserer Welt gemacht hat, während wir in unserem Zuhause festsassen' (*Neue Zürcher Zeitung*, 16 June 2020) www.nzz.ch/meinung/sieben-corona-paradoxien-was-das-virus-mit-uns-gemacht-hat-ld.1557102?reduced=true.

¹⁷ See this phrase used by Adam Michnik. See S Sierakowski, 'Belarus's Revolution of Dignity, Interview with Adam Michnik' (*Project Syndicate*, 21 August 2020) www.project-syndicate.org/onpoint/belarus-revolution-of-dignity-by-adam-michnik-and-slawomir-sierakowski-2020-08.

¹⁸ Gila Stopler defines the state of the current Israeli constitutional system as 'semi-liberal constitutionalism'. cf G Stopler, 'Constitutional Capture in Israel' (2017) *Int'l J. Const. L. Blog* www.iconnectblog.com/2017/08/constitutional-capture-israel.

¹⁹ See a detailed report: TH Brandes, 'Israel's Perfect Storm: Fighting Coronavirus in the Midst of a Constitutional Crisis' (*Verfassungsblog*, 7 April 2020) verfassungsblog.de/israels-perfect-storm-fighting-coronavirus-in-the-midst-of-a-constitutional-crisis/.

In illiberal regimes, all reactions can be motivated by the rulers' authoritarian pursuits, in other words they can use the crisis situation as a pretext to strengthen the autocratic character of their systems. In some cases this needed an 'underreach', like the extreme ignorance of the virus expressed by President Bolsonaro of Brazil, or in the United States, where President Trump, after his first failed claim to have 'absolute power', responded insufficiently and incompetently with 'executive underreach'²⁰ to the pandemic. This meant that the US had an appalling lack of emergency measures deployed at federal level. Similarly, the illiberal Polish government insisted on the presidential election taking place despite the health risks, since it was important to entrench the power of the governing party's incumbent.²¹

In many more illiberal states, an 'overreach' has served the purpose of power grabbing, like in India, where the Modi Government used the pandemic chaos to suppress nationwide protests against the efforts of the Hindu Nationalist ruling party to marginalise religious minorities, which had been held two months before the coronavirus broke out, an example of these protests being the peaceful sit-in spearheaded largely by Muslim women in the Shaheen Bagh section of Delhi.²² There was also a new law restricting foreign NGOs from giving money to Indian ones, which had the potential to get rid of civil organisations providing checks on the increasingly authoritarian government.²³

II. Hungary as a Model Case: From 'Illiberal Democracy' to Autocracy

Hungary represents a special case.²⁴ Since the landslide victory of Viktor Orbán's Fidesz party in the 2010 parliamentary election, the country, according to Prime Minister Orbán's own definition, has become an 'illiberal democracy',²⁵ with a new

²⁰ See the term used by J Gould and D Pozen, 'How to Force the White House to Keep Us Safe in a Pandemic' (*Slate*, 6 April 2020) slate.com/news-and-politics/2020/04/nancy-pelosi-white-house-covid-19-supplies.html. Kim Lane Scheppelle uses the term 'underreaction' to describe the same phenomenon, KL Scheppelle, 'Underreaction in a Time of Emergency: America as a Nearly Failed State' (*Verfassungsblog*, 9 April 2020) verfassungsblog.de/underreaction-in-a-time-of-emergency-america-as-a-nearly-failed-state/. See also the joint study of D Pozen and KL Scheppelle, 'Executive Underreach, in Pandemics and Otherwise' (2020) *American Journal of International Law* forthcoming (posted on SSRN 15 July).

²¹ See T Drinóczi and A Bien-Kacala, 'Illiberal Constitutionalism at Work' (*Verfassungsblog*, 31 March 2020) verfassungsblog.de/illiberal-constitutionalism-at-work/.

²² theconversation.com/coronavirus-versus-democracy-5-countries-where-emergency-powers-risk-abuse-135278.

²³ See A Kazmin, 'Indian charities battle for survival after government crackdown' (*Financial Times*, 30 September 2020) www.ft.com/content/41e65a46-1ca3-4cfa-b1db-c7a1b7273996.

²⁴ The previously quoted Ginsburg-Versteeg survey also distinguishes Hungary among the 106 countries surveyed, with measures there violating all three rule of law principles (temporally limited responses, judicial and legislative oversight, non-discriminatory application). See Ginsburg and Versteeg (n 4) 51.

²⁵ Based on Fareed Zakaria's use of the term 'illiberal democracy' (F Zakaria, *The Future of Freedom. Illiberal Democracy at Home and Abroad* (WW Norton and Company, 2003)) it was PM Orbán of

constitution motivated by the 2008–09 financial crisis, and enacted with the exclusive votes of the governing party. In 2015, at the height of the migration crisis, the Parliament bestowed upon the government the power to declare a ‘state of migration emergency’ which allowed authorities to hunt down and detain asylum seekers, punish those who assisted them and to use draconian new standards for rejecting asylum claims. The 2015 emergency law included sunset conditions that should have ended the state of emergency when the flow of refugees stopped. But some five years later with hardly a new refugee in sight, these emergency powers are still in place, with the government having renewed them continuously up to the present day. Since both the 2014 and the 2018 parliamentary election results renewing Fidesz’s two-thirds majority were manipulated, some scholars have started to question even the formal democratic character of the regime.²⁶

This is the political background against which Hungary hit by COVID-19. After the very first cases of contagion, in a clear overreaction to the actual danger, the government introduced an unlimited emergency power. To make matters worse, the legal presumption on which both the initial emergency decree 40/2020 and the subsequent emergency statute (the Enabling Act) rest itself violated even Fidesz’ own illiberal constitution, the Fundamental Law of 2011, because it did not provide constitutional authorisation either for the decree or for the Enabling Act. The Enabling Act was not even needed either to cope with the crisis, since the existing ordinary laws would have provided ample powers for dealing with a pandemic. The Parliament again unconstitutionally authorised the government to define the end of the pandemic, and limited its own power to control the government’s power of decree.²⁷ There was also no chance that the Constitutional Court would have questioned the constitutionality of the emergency measures, which discredited local governments and opposition parties, and limited freedom of expression, data protection, freedom of information and labour rights.²⁸

Hungary who first proudly characterised his regime as such in his speech at the 28th Bálványos Summer Open University and Student Camp, 28 July 2018. Tusnádfüredő (Báile Tuşnad), www.miniszterelnok.hu/prime-minister-viktor-orbans-speech-at-the-29th-balvanyos-summer-open-university-and-student-camp/.

²⁶ Larry Diamond, for instance, called the Hungarian system a ‘pseudo-democracy’. See L Diamond, ‘How Democratic Is Hungary?’ (2019) *Foreign Affairs*. Similarly, Steven Levitsky and Lucan Way argued that ‘Orbán’s Hungary is a prime example of a competitive autocracy with an uneven playing field’. S Levitsky and L Way, ‘How autocrats can rig the game and damage democracy’ (*The Washington Post*, 4 January 2019). See also A Bozóki and D Hegedűs, ‘An externally constrained hybrid regime: Hungary in the European Union’ (2018) *Democratization* 1173. In 2015, Hungary was also reclassified from a consolidated democracy to a semi-consolidated democracy by Freedom House’s Nations in Transit report, freedomhouse.org/sites/default/files/2020-02/FH_NIT2015_06.06.15_FINAL.pdf. In its 2020 report, Freedom House went further, declaring that Hungary had sunk from the status of a semi-consolidated status to that of a hybrid regime of democracy and authoritarianism, < freedomhouse.org/country/hungary/freedom-world/2020.

²⁷ The Italian Government did exactly the opposite: without having such a ruling in the constitution, it adopted a new decree law that included important safeguards, such as an obligation to report to Parliament every two weeks.

²⁸ Concerning the details of the emergency measures of the Hungarian Government, see, in addition to the Hungarian chapter of this book, G Halmai and KL Scheppelle, ‘Don’t Be Fooled by Autocrats!

However, in mid-June 2020, the Hungarian Parliament repealed the law that gave outsized powers to the government, allowing it to override laws by decree with no time limit. The Hungarian Government was facing EU budgetary sanctions so it gave way. But on the same day that Parliament repealed the law giving the government those extraordinary powers, it passed another law that gave back the same powers, with even fewer constraints.²⁹ With these regimes still being in force on 3 November 2020, after the severe second wave of the pandemic hit the country, the government again declared the state of danger,³⁰ and a week later Parliament adopted Enabling Act III, unconstitutionally providing authorisation for future governmental decrees until 22 May 2021.³¹ On 19 May 2021 the Parliament adopted an amendment to the Enabling Act III.³² According to this the emergency measures will be in force until September 2021.

Even a less destructive outbreak of COVID-19 in Hungary provided a pretext for the Orbán Government to dismantle the remnants of democratic character in its already 'illiberal' state. In this rather autocratic state, the government seems also to have the power to suspend parliamentary elections, or change their rules at will as long as the emergency lasts. And if there are no regular and fair elections, then we cannot talk in terms of a democracy and must refer instead to 'institutionalised uncertainty', a political system in which parties can lose elections.³³ Together with losing its democratic character, the system, while violating its own constitution, made huge rhetorical efforts to maintain its 'authoritarian legalist'³⁴ image.

Assessing the reactions of the Hungarian Government to the challenges of the pandemic, the European People's Party (EPP) President and former Polish Prime Minister Donald Tusk was right when he claimed that Adolf Hitler's jurist and prominent Nazi legal scholar Carl Schmitt would be proud of Hungarian Prime Minister Viktor Orbán.³⁵ Carl Schmitt famously defended Hitler's emergency

Why Hungary's Emergency Violates Rule of Law' (*Verfassungsblog*, 22 April 2020) verfassungsblog.de/dont-be-fooled-by-autocrats/?fbclid=IwAR1y2QoJktMihGxcp5G5QGkR8NZ9WerG6z3fHj808QDiHMPPym1XEB-x3cM and G Halmi and K L Scheppele, 'Orbán Is Still the Sole Judge of his Own Law' (*Verfassungsblog*, 30 April 2020) verfassungsblog.de/orban-is-still-the-sole-judge-of-his-own-law/?fbclid=IwAR03paK8fBl6pkRyUFCDKJBUInyP3q7dEGK30jErSxNeJqHCMfoUxuQOEAO.

²⁹ See a detailed analysis of the new emergency power written by KL Scheppele, G Mészáros and G Halmi, 'From Emergency to Disaster' (*Verfassungsblog*, 30 May 2020) verfassungsblog.de/from-emergency-to-disaster/?fbclid=IwAR3gVwvcgZ9NEzd8B67YHIUWL_s1ZA_RdULDSsS-N4R3EzvB-C3y86z7Nd2c.

³⁰ ejf.hu/hireink/a-kormany-4782020-xi-3-korm-rendelete-a-veszelyhelyzet-kihirdeteserol.

³¹ See G Halmi, G Mészáros and K L Scheppele, 'So It Goes - Part I' (*Verfassungsblog*, 19 November 2020). verfassungsblog.de/so-it-goes-part-i/.

³² Act XL of 2021 on amending the Act I of 2021 on Protecting against the Global Pandemic, the text of the law in the National Gazette: <https://magyarkozlony.hu/dokumentumok/131c0a0d4454de6ee3ae55d11a26ea9b47ddac05/megtekintes>.

³³ See this epigrammatic definition of democracy in A Przeworski, 'Some Problems in the Study of the Transition to Democracy' in GA O'Donnell, P-C Schmitter and L Whitehead (eds), *Transition from Authoritarian Rule: Comparative Perspectives* (The John Hopkins University Press, 1986) 58.

³⁴ See the term used by KL Scheppele, 'Autocratic Legalism' (2018) 85 *University of Chicago Law Review* 545.

³⁵ rmx.news/article/article/hungarian-government-outraged-after-donald-tusk-claims-prominent-nazi-would-be-proud-of-pm-orban.

measures by saying: ‘The Führer protects the law. And that situation has been introduced by Viktor Orbán’s Ermächtigungsgesetz.’³⁶ This does not mean a completely lawless situation, since the constitution and laws are still in force, just as the Weimar Constitution was not formally abolished during the Nazi era.³⁷

III. Old and New Normative Justifications for Authoritarian Use of Emergency Power

The authoritarian illiberal Hungarian and Polish constitutional systems were based on Carl Schmitt’s critique of liberal constitutionalism and its conception of the rule of law even before the pandemic, ever since coming to power in 2010 and 2015 respectively.³⁸ Although Schmitt never used the terms ‘illiberal’ or ‘illiberal democracy’, he did merely consider liberalism as an indecisive parliamentary system, and his anti-pluralism and the concept of homogeneity as a precondition for a plebiscitarian, charismatic democracy (Führerdemokratie) is very similar to the idea of ‘illiberalism’ à la Viktor Orbán.

As David Dyzenhaus convincingly proves, Schmitt argued prior to 1933 that in times of fractious pluralism and political partisanship, only the chief executive can rise above the political fray, excluding the ‘enemies’ and governing by law which is loyally interpreted by a homogeneous group of judges. In his *Political Theology*, written in 1922, Schmitt famously argues that ‘the sovereign is: He who decides on the exception.’³⁹ This exception seemed to be law-governed.⁴⁰ In another publication from the same year, Schmitt differentiates between ‘sovereign’ (legally unbound) dictatorship and ‘commissarial’ (legally bound) dictatorship.⁴¹ Two years later, he specified the commissarial dictatorship with Article 48, the emergency powers section of the Weimar Constitution, by arguing that the president could not violate the essential organisational structure of the constitution in

³⁶ G Halmai, ‘How COVID-19 Unveils the True Autocrats: Viktor Orbán’s Ermächtigungsgesetz’ (2020) *Int’l J. Const. L. Blog* at www.icconnectblog.com/2020/04/how-covid-19-unveils-the-true-autocrats-viktor-orbans-ermachtigungsgesetz/.

³⁷ See Jiri Priban’s interview after the start of the coronavirus crisis: www.e15.cz/rozhovory/období-prosperity-ceske-spolecnosti-prave-konci-mini-sociolog-jiri-priban-1369589.

³⁸ As Heiner Bielefeld demonstrates, Carl Schmitt systematically undermines the liberal principle of the rule of law. See H Bielefeld, ‘Deconstruction of the Rule of Law. Carl Schmitt’s Philosophy of the Political’ (1996) 82 *Archiv für Rechts- und Sozialphilosophie* 379–96.”

³⁹ ‘Souverän ist, wer über den Ausnahmezustand entscheidet’: C Schmitt, *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität* (Berlin, 1990).

⁴⁰ See D Dyzenhaus, *Legality and Legitimacy. Carl Schmitt, Hans Kelsen, and Hermann Heller in Weimar*, (OUP, 1997) 44.

⁴¹ C Schmitt, *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (Berlin, 1989). The term ‘commissarial dictatorship’ originates from the Roman Republic, which is also the basis of Machiavelli’s description of dictatorship, later used by Jean Bodin. See J Bodin, *On Sovereignty: Four Chapters from the Six Books of the Commonwealth*, edited and translated by JH Franklin (CUP, 1992). Quoted by Z Bretter, ‘Carl Schmitt, “Az illiberális demokrácia kottája” [The Music Sheet of Illiberal Democracy], Manuscript with the author.

exercising this power, because he is not a legislature.⁴² In his book on Constitutional Theory (*Verfassungslehre*) published in 1928, he is still talking about the concept of law based on rule of law (*rechtsstaatlicher Gesetzesbegriff*) and sharing of powers (*rechtsstaatliche Gewaltenunterscheidung*) between the legislature and the executive, where the former is responsible for general law-making, and the latter is in charge of implementation of the law (*Massnahmenhandel*).

It was only in 1932, right before the collapse of the Weimar Republic, that Schmitt in 'Legality and Legitimacy' (*Legalität und Legitimität*) raised the possibility of an anti-liberal democracy, in which the President, the dictator or the Führer may legitimise breaches of legality with political realisation of right.⁴³ This political stance, on which such a legal order is based, was based on the distinction between friends and enemies elaborated in *The Concept of the Political*, also written in 1932.

In other words, during the Weimar period, Schmitt respected 'authoritarian legalism', though this ended on 24 March 1933, when Hitler's Ermächtigungsgesetz was enacted. In August 1934, Schmitt published his infamous article 'Der Führer schützt das Recht' retroactively legalising the murders of Hitler's rivals in the Nazi Storm Troopers (SA) during the Night of the Long Knives on 30 June 1934. One of the most important sentences says that 'in a Führerstate other than in a liberal state governed by the rule of law, the legislator, the executive and the judiciary cannot distrustfully control each other'.⁴⁴

The question is whether the described distinction between the legally bound 'commissarial dictatorship' and the unbound 'sovereign dictatorship' represents a change in Schmitt's concept, or whether he merely reacted to the different stages of German development from the Weimar era until Hitler's Nazism. I agree with David Dyzenhaus that there is an essential continuity in Schmitt's work dating roughly from 1922 onwards.⁴⁵ This applies from his already mentioned anti-pluralism and homogeneity concept to his consequent Hobbesian decisionism. Prior to 1933, he saw the role of the law and the constitution differently. The idea in his *Verfassungslehre* that the core of the constitution should not be subject to constitutional amendments was even instrumental in introducing an eternity

⁴² 'Der Reichspräsident ist kein Gesetzgeber'. C. Schmitt, 'Die Diktatur des Reichspräsidenten nach Artikel 48 der Weimarer Verfassung' (first published in 1924).

⁴³ C. Schmitt, 'Legalität und Legitimität' in *Verfassungsrechtliche Aufsätze* (Berlin, 1958). See R. Mehring, 'Carl Schmitt und die Pandemie. Teil II.' (*Verfassungsblog*, 12 May 2020) verfassungsblog.de/carl-schmitt-und-die-pandemie-teil-ii/.

⁴⁴ 'In einem Führerstaat, in dem Gesetzgebung, Regierung und Justiz sich nicht, wie in einem liberalen Rechtsstaat, gegenseitig misstrauisch kontrollieren.' C. Schmitt, 'Der Führer schützt das Gesetz' (1934) *Deutsche Juristen-Zeitung* 1. László Kövér, co-founder of Fidesz, speaker of the Hungarian Parliament has spoken several times in a similar vein by saying that the 'concept of checks and balances is a nonsense' (index.hu/belfold/2019/10/23/kover_laszlo_valasztas_ellenzek_rendszervaltas/) and 'the judiciary cannot be independent from the state' nepszava.hu/3033652_kover-laszlo-a-biroi-fuggetlenseg-napjan-kovetelt-engedelmesseget-a-biroktol.

⁴⁵ See Dyzenhaus (n 40) 39.

clause to the 1949 Grundgesetz, though from the publication of his *Political Theology* he stood by his conviction that the basis of law is the sovereign's decision, which can always result in a new constitution. The aim of this work is not to answer the question raised by many scholars, about whether Schmitt was an eternal Nazi or just an opportunist. His concept of homogeneity of the people certainly changed in 1933 and again after 1945: before and after these dates, he considered homogeneity as a political requirement, while during the Nazi era he also saw it as a racial one. One can even interpret his support of the Führer against the SA as his way of greeting the abandonment of the 'second', social revolution earlier promised by Hitler. On the other hand, some people argue that behind the friend-enemy dichotomy can be detected his well-known anti-Semitism.⁴⁶ In this matter I also tend to agree with David Dyzenhaus, who argues that it is a mistake to describe Schmitt as a 'Nazi legal theorist', because his most important contributions were made during the Weimar Republic, when he was allied to conservative forces deeply opposed to the Nazis.⁴⁷

Even though Carl Schmitt's sovereignty concept is not based on the emergency situation related to the Spanish flu,⁴⁸ it is no surprise that his ideas about the executive branch as being the proper locus of sovereignty emerge again in the time of the recent emergency situation, and that there are new followers of him who use his concepts to normatively legitimise authoritarian misuse of the pandemic. Maybe Schmitt's truest believers are Eric Posner, a professor at the University of Chicago Law School, and Harvard Law professor Adrian Vermeule, who articulated the descriptive and normative theory of 'unbound executive' in times of emergency (at least in the US, but also beyond) in several of their works.⁴⁹

It is certainly no coincidence that Adrian Vermeule published an article with an argument in keeping with post-1933 Schmittian ideas the day after Viktor Orbán's Parliament enacted his version of the Enabling Act.⁵⁰ Vermeule presents his concept of a 'substantive moral constitutionalism' as an alternative to 'left-liberal' constitutionalism, which prefers 'an illiberal legalism that is not "conservative"

⁴⁶ See R Gross, 'The "True Enemy": Antisemitism in Carl Schmitt's Life and Work' in J Meierheinrich and O Simons (eds), *The Oxford Handbook of Carl Schmitt* (OUP, 2017).

⁴⁷ D Dyzenhaus, 'Lawyer for a Strongman' (*Psyche*, 12 June 2020) aeon.co/essays/carl-schmitts-legal-theory-legitimises-the-rule-of-the-strongman.

⁴⁸ R Mehring, 'Carl Schmitt und die Pandemie' Teil I. (*Verfassungsblog*, 11 May 2020). <<https://verfassungsblog.de/carl-schmitt-und-die-pandemie-teil-i/>> accessed 1 May 2021.

⁴⁹ Their first joint book is *Terror in the Balance* (2007), which brought Schmitt's insights into the context of the contemporary American war on terror, while the second is *Executive Unbound: After the Madisonian Republic* (2011), which inspired Tom Ginsburg and Milla Versteeg's comparative study on emergency powers during COVID-19. In their critique they refer to the theory of Posner and Vermeule as 'neo-Schmittian'. See Ginsburg and Versteeg (n 4) 26. 5.

⁵⁰ A Vermeule, 'Beyond Originalism. The Dominant Conservative Philosophy for Interpreting the Constitution Has Served its Purpose, and Scholars Ought to Develop a More Moral Framework' (*The Atlantic*, 31 March 2020) www.theatlantic.com/ideas/archive/2020/03/common-good-constitutionalism/609037/.

at all, insofar as standard conservatism is content to play defensively within the procedural rules of the liberal order.' In other words, Vermeule considers liberalism as a set of purely destructive tools and procedures. The central aim of this 'common-good constitutionalism' is not to 'protect liberty' as an end in itself, but to promote good rules, and 'police power', which 'despite its misleading name refers to the general power of state governments to protect health, safety, order, and public morality'. In another essay titled 'Integration from Within', published in 2018 in the conservative journal *American Affairs*, Vermeule dreams of a world in which we will 'sear the liberal faith with hot irons' in order 'to defeat and capture the hearts and minds of liberal agents'. For this purpose, he asserts, 'coercion' ought to be on the table.⁵¹ As David Dyzenhaus rightly points out, it is a mystery why Vermeule thinks that one can have an illiberal legalism that is not 'content to play within the procedural rules of the liberal legal order', and abandons the constitution altogether as an agreed basis for legal arguments.⁵² Viktor Orbán did violate his own 'illiberal' Fundamental Law while introducing the unlimited emergency power, because under Article 53.3 of Hungary's current constitution, decrees issued in a state of emergency lose their legal force after 15 days unless Parliament affirmatively approves their continuation. But in the Enabling Act, the Parliament relinquished that power. But Orbán still attempted to appear to be constrained, because Schmitt's unbound sovereign is so clearly recognised as a danger now, especially within the European Union, a value community of liberal democracies.

IV. Conclusion

As has been shown, beyond the choice between economic and health considerations also applied in liberal democratic countries, which have led either to 'under-' or 'overreaction' to the pandemic, certain illiberal regimes have used the crisis situation as a pretext to strengthen the autocratic character of their systems. In some cases, this required an 'underreach', such as in Poland, where the authorities insisted on the presidential election taking place in order to entrench the power of the governing party's incumbent, despite the health risks. Elsewhere an 'overreach' has served to increase the government's power, a good example being Hungary, where unlimited emergency powers for the government were introduced after the very first cases of infection. Based on Carl Schmitt's critique of liberal democracy, new theories on the 'unbound executive' or 'common good constitutionalism' have emerged to legitimise the necessity of authoritative rule by (wannabe) autocrats.

⁵¹ See this interpretation of Vermeule's essay: J Chappel, 'Nudging Towards Theocracy: Adrian Vermeule's War on Liberalism' (*Dissent*, spring 2020) www.dissentmagazine.org/article/nudging-towards-theocracy.

⁵² See D Dyzenhaus, 'Schmitt in the USA' (*Verfassungsblog*, 4 April 2020) verfassungsblog.de/schmitt-in-the-usa/.

The measures taken by illiberal governments as pretexts for further power grabs have demonstrated that liberalism in these cases is not besieged by democracy run amok,⁵³ or by populism for that matter, but rather by simple authoritarianism. Hence, neither the concept of ‘illiberal democracy’ nor that of populism can serve as an analytical tool to understand the motivations of those would-be autocrats using COVID-19 for their own interests.

Let me start with ‘illiberal democracy’, which is an oxymoron, because there is no democracy without liberalism, and there also cannot be liberal rights without democracy.⁵⁴ In this respect, there is no such thing as an ‘illiberal or anti-liberal democracy’, or ‘democratic illiberalism’⁵⁵ for that matter. Those who perceive democracy as liberal by definition also claim that illiberalism is inherently hostile to values associated with constitutionalism, as an institutional aspect of liberal democracy: separation of powers, constraints on the will of the majority, human rights, and protections for minorities. Therefore, the equally oxymoronic ‘illiberal’ or ‘populist’ constitutionalism⁵⁶ is necessarily authoritarian in character.⁵⁷

⁵³ See D Luban, ‘Among the Post-Liberals’ (*Dissent*, winter 2020) www.dissentmagazine.org/article/among-the-post-liberals.

⁵⁴ cf J Habermas, ‘Über den internen Zusammenhang von Rechtsstaat und Demokratie’ in U Preuss (ed), *Zum Begriff der Verfassung. Die Ordnung der Politischen*, (Fischer, 1994) 83–94. For the English version, see J Habermas, ‘Rule of Law and Democracy’ (1995) *European Journal of Philosophy* 3. Also Juan José Linz and Alfred Stepan assert that if governments, even those freely elected, violate the rights of individuals and minorities, their regimes are not democracies. See JJ Linz and A Stepan, ‘Toward Consolidated Democracies’ (1996) 7(2) *Journal of Democracy* 14, 15. Similarly, János Kis claims that there is no such thing as non-liberal democracy, or non-democratic liberalism. See J Kis, ‘Demokráciából autokráciába. A rendszertipológia és az átmenet dinamikája’ [From Democracy to Autocracy. The System-typology and the Dynamics of the Transition] (2019) 1 *Politikatudományi Szemle* 45–74. Those critics who argue that liberalism, as a 300-year-old concept, predates liberal democracy forget that not only democracy but also liberalism presupposes general and equal suffrage.

⁵⁵ Takis S Pappas defines modern populism as democratic illiberalism, and calls the current Hungarian regime an ‘illiberal democracy’. TS Pappas, ‘When Populists Come to Power’ (2019) 30(2) *Journal of Democracy* 70.

⁵⁶ For instance, Paul Blokker considers ‘populist constitutionalism’ as an alternative, conservative understanding of the constitutional order, which is, among other things, a reaction to injustices resulting from liberal democratic politics, to unbalanced emphasis on formalistic liberal institutions, rights, and norms, and an aggressive institutionalisation of a liberal understanding of law in the post-1989 transformation. See P Blokker, ‘Populist Constitutionalism,’ in C de la Torre (ed), *Routledge Handbook of Global Populism* (Routledge, 2018); P Blokker, ‘Populism As a Constitutional Project’ (2019) 17(2) *ICON*. Using Isaiah Berlin’s terminology on ‘false populism’ I argue elsewhere that this ‘authoritarian populist constitutionalism’ is only a rhetoric, and not a real populist appeal to the ‘people’. See G Halmai, ‘Populism, Authoritarianism and Constitutionalism’ (2019) 20(3) *German Law Journal*.

⁵⁷ Following Juan José Linz’s classical categories, authoritarianism lies in between democratic and totalitarian political systems. See JJ Linz, *Totalitarian and Authoritarian Regimes* (Lynne Rienner, 2000). Writing about Franco’s Spain, Linz has already outlined the following four main characteristics of authoritarianism: limited, not responsible political pluralism, without elaborate and guiding ideology, without political mobilisation, and with formally ill-defined, but quite predictable limits of power. See JJ Linz, ‘An Authoritarian Regime: the Case of Spain’ in E Allard and Y Littunen (eds), *Cleavages, Ideologies and Party Systems* (Helsinki, 1970). About the constitutional markers of authoritarianism as a pretence of democracy, such as the lack of procedural rights, institutional guarantees and public discourse, see GA Tóth, ‘Constitutional Markers of Authoritarianism’ (2018) *Hague Journal on the Rule of Law*, published online 10 September 2018.

What the coronavirus has done is to make the autocrats show their authoritarianism more openly.⁵⁸

But using an undifferentiated concept of populism does not help us understand all governmental reactions to COVID-19 either.⁵⁹ For instance, the Italian Government, led by the populist Five Star Movement (after a terrible start due mostly to the regions of Lombardy and Veneto led by the far-right League party) has been successful in flattening the curve and containing the pandemic.⁶⁰ Not all populists are autocrats who abhor restraints on the political executive;⁶¹ moreover, economic populism can be justified against discretionary monetary policy or beneficial treatment of foreign investors without democratic deliberation by both national and transnational executives.⁶² For the same reason, blaming the people cannot help us understand the crisis of democracy also deepened by COVID-19.⁶³

In his recent book, *The Tyranny of Merits* (2020), Michael Sandel argues that populism is a reaction to the liberal left's pursuit of meritocracy. In an interview, he claims that the only way out of the crisis to dismantle the meritocratic assumptions that have morally rubber-stamped a society of winners and losers. Referring to the COVID-19 pandemic, he believes that the new appreciation of the value of supposedly unskilled, low-paid work offers a starting point for renewal: 'This is a moment to begin a debate about the dignity of work; about the rewards of work both in terms of pay but also in terms of esteem. We now realise how deeply

⁵⁸ Similarly, J-W Müller, 'One Damn thing After Another. The Long Roots of Liberal Democracy's Crisis' (*The Nation*, May 18/25 2020) www.thenation.com/article/culture/sheri-berman-adam-przeworski-democracy-dictatorship-crisis-book-review/.

⁵⁹ See such a view in A Weale, 'Anti-Populist Lessons of Coronavirus' (2020) 13(62) *Global-e* www.21global.ucsb.edu/global-e/september-2020/anti-populist-lessons-coronavirus?fbclid=IwAR0l4PdngkjfyFk67yoTEHTC0LjHFJAr2WdDlos-7cGBxH1m9zVCCChrV4uw.

⁶⁰ Paul Krugman compared the Italian success in weathering the coronavirus with the failure of the US to do the same. See P Krugman, 'Why Can't Trump's America Be Like Italy?' (*The New York Times*, 23 July 2020).

⁶¹ Among the many critics of anti-populism, see the book by T Frank, *The People, NO, A Brief History of Anti-Populism* (Metropolitan Books, 2020), which praises the 'real' populism of the American People's Party in the 1890s, as well as FDR's New Deal in the 1930s. He argues that the 'empty culture-war fight' of the GOP and Trump (or Fidesz and Orbán in Hungary for that matter) is 'false populism'. See an interview with him: P MacDougald, 'What's the Matter With Populism? Nothing' (*The Intelligencer*, 1 September 2020) nymag.com/intelligencer/2020/09/whats-the-matter-with-populism-nothing.html?fbclid=IwAR1CJYiPF_6uFalCGgHB9TKIDTk-ppcu3ZFnfAPpyoZYxGaSE5ccpugcCnw.

⁶² See D Rodrik, 'In Defense of Economic Populism' (*Social Europe*, 18 January 2018) www.social-europe.eu/defense-economic-populism.

⁶³ See Eric Posner's book, *The Demagogue's Playbook*, which blames the American people for Trump's rise, criticised by Yale Law School historian, S Moyn, 'The Guardians. Does "The Resistance" Actually Want More Democracy or Less' (*The Nation*, 24 August 2020) www.thenation.com/article/culture/eric-posner-demagogues-playbook/. Similarly, Joseph Weiler blamed the Hungarian people for supporting Orbán. JHH Weiler, 'Editorial' (2020) 18(2) *ICON* [www.iconconnectblog.com/2020/08/icon-volume-18-issue-2-editorial/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A%20I-CONnect%20\(I-CONnect%20Blog\)&fbclid=IwAR1CJYiPF_6uFalCGgHB9TKIDTk-ppcu3ZFnfAPpyoZYxGaSE5ccpugcCnw](http://www.iconconnectblog.com/2020/08/icon-volume-18-issue-2-editorial/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A%20I-CONnect%20(I-CONnect%20Blog)&fbclid=IwAR1CJYiPF_6uFalCGgHB9TKIDTk-ppcu3ZFnfAPpyoZYxGaSE5ccpugcCnw). See a critique by V Kazai, 'Blaming the People is not a Good Starting Point' (*Verfassungsblog*, 8 August 2020) verfassungsblog.de/blaming-the-people-is-not-a-good-starting-point/?fbclid=IwAR1CJYiPF_6uFalCGgHB9TKIDTk-ppcu3ZFnfAPpyoZYxGaSE5ccpugcCnw.

dependent we are, not just on doctors and nurses, but delivery workers, grocery store clerks, warehouse workers, lorry drivers, home healthcare providers and childcare workers, many of them in the gig economy. We call them key workers and yet these are oftentimes not the best paid or the most honoured workers.⁶⁴

It is also misleading to distinguish between antidemocrats, nativists and populists, as the main challengers of political liberalism and liberal democracy.⁶⁵ The illiberals are all antidemocrats who delegitimise representative democracy's normative foundation, nativists who protect the interests of the native-born or established inhabitants against those of immigrants, and they are populists, referring to the 'pure people' against the 'corrupt elite', or during the pandemic crisis against experts, like virologists.⁶⁶ As Rogers Brubaker convincingly argued in 2017, several independent crises, like the financial crisis, the refugee crisis, the security crisis caused by terror attacks, and lately the crisis of public knowledge of fake news and alternative facts – and today we can add the coronavirus crisis – have converged and created a 'perfect storm' conducive to populism.⁶⁷ But autocrats' populism is 'false'⁶⁸ and they only use populist rhetoric, which does not necessarily correspond with populists' practice.⁶⁹ In other words, we can answer the

⁶⁴ www.theguardian.com/books/2020/sep/06/michael-sandel-the-populist-backlash-has-been-a-revolt-against-the-tyranny-of-merit?CMP=Share_iOSApp_Other.

⁶⁵ See TS Pappas, 'The Specter Haunting Europe: Distinguishing Liberal Democracy's Challengers' (2016) 27(4) *Journal of Democracy* 22–36.

⁶⁶ While in my view all illiberals nowadays are populists, not all populists are necessarily illiberals, for instance some of the left populists are not. Even in East-Central Europe the populism of the Czech Prime Minister, Andrej Babis, is lacking strong illiberal components. Contrary to my understanding, Andrew Arato and Jean Cohen, analysing the normative theory of left populism by Ernesto Laclau and Chantal Mouffe respectively claim that left populism also cannot avoid illiberal authoritarianism inherent in the strategy and logic of populism despite the inclusionary and democratising projects of the left-wing movements it attaches to and despite the democratic socialist rhetoric of left populist leaders and their organic intellectuals. See A Arato, 'Political Theology and Populism' (2013) 80(1) *Social Research* and JL Cohen 'What's Wrong with the Normative Theory (and the Actual Practice) of Left Populism?' (2019) *Constellations* 26. In my view it is certainly true for Latin American populists from Peron, Morales and Correa through to Chavez and Maduro, but not necessarily for European left populist parties, such as Podemos, the Five Star Movement and Syriza. The last two did not even show serious illiberal pursuits while in power.

⁶⁷ R Brubaker, 'Why Populism?' (2017) 46 *Theor. Soc.* 357–85.

⁶⁸ The term 'false' populism was used by Isaiah Berlin defining 'the employment of populist ideas for undemocratic ends'. See I Berlin, *To Define Populism*, The Isaiah Berlin Virtual Library, 1968, The Isaiah Berlin Literary Trust 2013. Posted 14 October 2013. 6. berlin.wolf.ox.ac.uk/lists/bibliography/bib111bLSE.pdf.

⁶⁹ Concerning the use of populist rhetoric by Viktor Orbán and his government, see a more detailed description in G Halmai, 'Populism, Authoritarianism and Constitutionalism' (2019) 20 *German Law Journal* 296–313. Similarly, Gáspár Miklós Tamás argues that the Orbán government is 'an ingenious old-new form of flexible and non-murderous dictatorship, but why is it "populist"?', GM Tamás, "'The mystery of Populism' finally unveiled' (*openDemocracy*, 24 February 2017) www.opendemocracy.net/wfd/can-europe-make-it/g-m-tam-s/mystery-of-populism-finally-unveiled. Based on Hannah Arendt's republican conception, Camila Vergara also distinguishes populism from proto-totalitarianism, arguing that populism aims to increase the welfare of the plebeian masses, and therefore its relation with liberal democracy appears to be one of reform, while totalitarian movements, even if using populist rhetoric, want to destroy liberal democracy and constitutionalism altogether. See C Vergara, 'Populism as Plebeian Politics: Inequality, Domination, and Popular Empowerment' (2020) 28(2) *The Journal of Political Philosophy* 222–46.

question about whether it is the groundswell of popular discontent in Europe and the Americas that is really threatening democracy⁷⁰ in the negative. Paraphrasing James Carville's bon mot we should say: It's the authoritarianism, stupid, which is behind illiberal and populist reactions to COVID-19. Let us hope that after all the other crises we have faced, and now after this pandemic, we will not face 'the crisis of the crisis of capitalism'⁷¹ but the restoration of capitalism, and that democracy with it will still be possible.

⁷⁰S Hahn, 'The Populist Specter. Is the Groundswell of Popular Discontent in Europe and the Americas What's really Threatening Democracy?' (*The Nation*, 28 January–4 February 2019) www.thenation.com/article/archive/mounk-galston-deneen-eichengreen-the-populist-specter/.

⁷¹This is the main claim of the recent book by A Albanova, *Capitalism on Edge* (Columbia University Press, 2020).

