

The Hungarian Authoritarian Populism and Exceptional Governance Before and After the Outbreak of the Pandemic²

Abstract

This paper examines how the authoritarian populism in Hungary started to use the framework of exceptional governance before the pandemic and how the use of these extraordinary tools has been perpetuated upon the case of COVID-19. It has been argued here that the concept of constitutional dictatorship proved to be a constitutional and political framework for Orbán's authoritarian populist regime to introduce the exceptional measures. First, the theoretical considerations behind the rise of authoritarian populism have been investigated here. After that, it has been emphasized how the regime itself started to be constitutionalized and how exceptional governance has become the main political framework for authoritarian populism. The paper explores how exceptional governance began to be institutionalised before the pandemic and how COVID-19 accelerated it. The Hungarian case shows that neoliberalism facilitates authoritarian populism to use the tools of exceptional governance.

Keywords

Hungary, Orbán regime, Authoritarian populism, Neoliberalism, Exceptional Governance, COVID-19

1 The Emergence of Authoritarian Populism in Eastern Europe³

There is a deep tradition of autocracy which can be unfolded within liberal and illiberal, democratic or formally democratic and non-democratic frameworks. The success of neoliberalization of the Western part of the Euro-Atlantic world in the 1980s and of the former Soviet bloc in the 1990s generated a situation very similar to the 1920s and 1930s. This is a new Weimarization.⁴ Far from being equal with anti-statism, neoliberalization requires massive state regulation in conjunction with liberalization, free trade and investments, and a suitable legal framework for capitalist labour. The closeness and collusion of neoliberalism and authoritarian populism can be justified by the fact that the term "authoritarian populism" was used by Stuart Hall when analysing Thatcherism already in the late 1970s. In his edited volume *Critical Theory and Authoritarian Populism*, Jeremiah Morelock argues that the term of authoritarian populism basically refers to prejudice focused mostly on Nazism, but that it has a broader meaning and "refers to the pitting of 'the people' against 'elites' in order to have the power to drive out, wipe out, or otherwise dominate Others who are not 'the people.'" Generally,

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³ This part of the paper is based on my previous investigation on authoritarian populism in Hungary: Attila Antal, *The Rise of Hungarian Populism: State Autocracy and the Orbán Regime* (Bingley: Emerald Publishing, 2019), 17–23.

⁴ Jeremiah Morelock, "Introduction: The Frankfurt school and authoritarian populism – A historical outline," in *Critical theory and authoritarian populism*, ed. Jeremiah Morelock (London: University of Westminster Press, 2018), xxviii.

this involves social movements fuelled by prejudice and led by charismatic leaders that seek to increase governmental force to combat difference.”⁵ In other words, authoritarian populism is about how to use biopolitics – analysed in the following section – to create permanent enemies and exceptional situations based on prejudice and led by a charismatic leader. The analysis of authoritarian populism dates back to the classical critical theory of the Frankfurt School to address the critique on fascism. Theodor W. Adorno and his colleagues published their seminal piece *The Authoritarian Personality* in 1950⁶. Their project was about creating the sociological and psychological profile of the “potentially fascistic individual” in the American society. Ever since this analysis has been a starting point when studying fascism and authoritarianism in U.S. politics. According to the so-called “F-scale” (Fascist-scale) the institutional and globalized framework of late capitalist societies contributed to regression and authoritarianism. As Samir Gandesha summarized, “massification and the corresponding foreshortened space for individual initiative and judgment contributed to a propensity towards authoritarianism in the form of a relatively undisciplined Id, an overdeveloped Super Ego, and Ego weakness. Authoritarianism expressed itself, therefore, in an obsequious relation to authority and excessive cruelty towards those with comparatively less social power.”⁷ Norris and Inglehart⁸ make very similar observations and investigate authoritarian populism in conjunction with professed and declined values. They argue that authoritarian populists represent the deep cultural cleavages and opposing the values of libertarian populists: post-materialist values, social liberalism, individual autonomy, and tolerance of multicultural lifestyles. Authoritarian populists are in favour of social conservatism, order, customary traditions, deference to strong leaders, and social stability.⁹

As Harvey argues, we have seen it in conjunction with neoliberal autocracy that neoliberalism encompasses accumulation by dispossession, deregulation, privatization, and upward redistribution of wealth.¹⁰ There is a strong collusion between neoliberalism and authoritarian populism because the right-wing populist forces use the opportunity made by neoliberal economic insecurity and cultural anxiety via creation of surplus peoples, rising global inequality, and threats to identity.¹¹ Moreover, the contemporary surge and fertile ground of authoritarian right-wing populism in Eastern Europe is based on the fact that populism and nationalism has undoubtedly remained an integrated part of the Eastern European political spheres even after the regime changes. Stanley argues that the democratic transition period was an opportunity both to radical and to centrist populist parties.¹² After the regime changes all the populist parties were nationalists at the same time and nationalist forces based their politics on populist discourse. Stanley interestingly applies the category of *political entrepreneur* to populism and states that “political entrepreneurs had clear incentives to create populist ideologies in the search for electoral support, rather than simply rely on a particular mode of political appeal”.¹³ He adds that “... the top-down nature of transition reforms and the multiple resentments and uncertainties generated by those reforms gave others the opportunity to create

⁵ Ibid., xiv.

⁶ Theodor W. Adorno, Else Frenkel-Brunswik, Daniel J. Levinson and Nevitt Sanford, eds., *The Authoritarian Personality* (New York: Harper and Row, 1950)

⁷ Samir Gandesha, “Understanding right and left populism,” in *Critical Theory and Authoritarian Populism*, ed. Jeremiah Morelock, 61.

⁸ Pippa Norris and Ronald Inglehart, *Cultural Backlash. Trump, Brexit, and Authoritarian Populism* (Cambridge: Cambridge University Press, 2019).

⁹ Ibid., 78.

¹⁰ David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005).

¹¹ Gandesha, “Understanding right and left populism,” 62.

¹² Ben Stanley, “Populism in Central and Eastern Europe,” in *Handbook of Populism*, ed. Cristóbal Rovira Kaltwasser, Paul Taggart, Paulina Ochoa Espejo and Pierre Ostiguy (Oxford: Oxford University Press, 2017), 140–60.

¹³ Ibid., 140.

simple and compelling narratives of blame, solidarity, and moral solace. Populism's conceptual structure is ideal for the articulation of such narratives, and its simple, easily communicable message about politics made it an attractive entrepreneurial strategy for politicians aiming to make an immediate impact upon a politically fluid and relatively unsophisticated electorate".¹⁴ In Eastern Europe *populist entrepreneurs* could easily use populism to simplify politics and nationalism to act like the representatives of communities while at the same time these populist and nationalist assumptions are deeply rooted in the political history of the 20th century.

There are two concepts in conjunction with the nature of Eastern European populism: radical and centrist populism. Political transitions in Eastern Europe were elitist projects, given the fact that regime changes can be characterized with anti-populism and have been extended to liberal democracies. The theory of radical populism claims that the reaction of the people against elites was likely to happen. According to the theory of *centrist populism*, populism is an inherent part of Eastern Europe's politics: the historical "legacies created a potentially fertile opportunity structure for populism at the centre of the party system. Parties which had not yet been tainted by participation in government... could appeal to the people against allegedly corrupt and incompetent mainstream elites. These parties would emphasize the need to reform political institutions and create new channels for democratic expression, tackle corruption, replace inefficient and incompetent elites, and offer new political actors the opportunity to govern."¹⁵.

2 The Theoretical Framework of Constitutionalized Dictatorship¹⁶

Investigating the exceptional governance structure of contemporary authoritarian populist regimes, a remarkable tendency is shown¹⁷: they use the concepts of police and penal state and regulate human life, and this creates a permanent state of exceptions. The fusion of police and penal state has produced some kind of exceptional government, which met with the penal populist/nationalist tendencies. In the state of exception-based authoritarian populist regimes "[a] formal state of exception is not declared, and we see instead that vague non-judicial notions – like the security reasons – are used to install a stable state of creeping and fictitious emergency without any clearly identifiable danger"¹⁸. According to Agamben there is a seminal transformation in conjunction with the idea of government, "which overturns the traditional hierarchical relation between causes and effects. Since governing the causes is difficult and expensive, it is safer and more useful to try to govern the effects"¹⁹ Authoritarian populist regimes have started to manage the effects of the crisis made by them and this is a considerable change, not just in the concept of government, but also in penal politics. Agamben described this situation in the following way: "The ancient regime aimed to rule the causes; modernity pretends to control the effects. And this axiom applies to every domain, from economy to ecology, from foreign and military politics to the internal measures of police. We must realize that European governments today gave up any attempt to rule the causes, they only want to govern the effects."²⁰ The exceptional or the putative exceptional situations offer the authoritarian populist regimes a convenient place to criminalise political groups and claim that these groups are enemies. This is permanent state of exception, and it can be seen as an abusive use of exceptional governance.

¹⁴ Ibid., 142.

¹⁵ Ibid., 144.

¹⁶ This part of the paper is based on my previous work: Antal, *The Rise of Hungarian Populism*, 35–39.

¹⁷ Antal, *The Rise of Hungarian Populism*, 28–30.

¹⁸ Giorgio Agamben, "From the State of Control to a Praxis of Destituent Power," *ROAR Magazine*, February 4, 2014, <https://roarmag.org/essays/agamben-destituent-power-democracy/>.

¹⁹ Ibid.

²⁰ Ibid.

As Agamben²¹ puts forward, the theory of the state of exception's first and isolated appearance was Carl Schmitt's book of *Dictatorship* published in 1921.²² A debate was unfolding on the state of exception during the time of collapsing European democracies between 1934 and 1948. This led to a discourse on the state of exception within the framework of constitutional dictatorship. Article 48 of the Weimar Constitution granting emergency powers to the president of the Reich maintained this debate. In the Schmittian sense, the state of exception and constitutional dictatorship are inseparable. In 1926 Schmitt summarised his definition of dictatorship: "Dictatorship is the exercise of state power freed from any legal restrictions, for the purpose of resolving an abnormal situation – in particular, a situation of war and rebellion. Hence two decisive elements for the concept of dictatorship are on one hand the idea of a normal situation that a dictatorship restores or establishes, and on the other, the idea that in the event of an abnormal situation, certain legal barriers are suspended in favour of resolving this situation through dictatorship."²³

Schmitt distinguishes the two types of dictatorship in conjunction with regulation on the state of emergency – on the one hand a dictatorship that, despite all its extra-legal authorisation, remains within the prescriptions of "a constitutional order and in which the dictator is constitutionally mandated (commissary dictatorship); and on the other hand a dictatorship in which the whole existing legal order is rendered obsolete and a completely new order is intended (sovereign dictatorship)"²⁴ If commissary dictatorship is about the continuous extension of state of exceptions, sovereign dictatorship prevails now as the constitutional system grabbed and institutionalised by a sovereign dictator. Schmitt argues in his *Political Theology* that "sovereign is he who decides on the exception"²⁵; in this sense ultimate sovereignty means a constitutionalised dictatorship. Contemporary authoritarian populist leaders are convinced that there is a core need to reformulate and acquire political sovereignty by them. Schmitt's approach inspired many others theorising dictatorship as a state of exception. One of the well-known authors, Clinton Rossiter, seeks to justify constitutional dictatorship. He argues that "democratic regimes work under normal circumstances, in time of crisis a democratic, constitutional government must temporarily be altered to whatever degree is necessary to overcome the peril and restore normal conditions. This alteration invariably involves government of a stronger character; that is, the government will have more power and the people fewer rights"²⁶

Agamben convincingly argues that we witnessed that the twentieth century was about "legal civil war" and his seminal example is the Nazi State.²⁷ After Hitler took power, he proclaimed on 28 February 1933 the Decree for the Protection of the People and the State by which the parts of the Weimar Constitution concerning personal liberties were suspended. Given the fact that the decree was never repealed, the Third Reich could be seen as a continuously extended state of exception that lasted for 12 years. Agamben states: "modern totalitarianism can be defined as the establishment, by means of the state of exception, of a legal civil war that allows for the physical elimination, not only of political adversaries, but of entire categories of citizens who for some reason cannot be integrated into the political system"²⁸.

²¹ Giorgio Agamben, *State of Exception* (Chicago: The University of Chicago Press, 2005).

²² Carl Schmitt, *Dictatorship. From the Origin of the Modern Concept of Sovereignty to Proletarian Class Struggle* (Malden: Polity. Press, 2014), 6.

²³ Michael Hoelzl and Graham Ward, "Introduction," in *Dictatorship*, ed. Carl Schmitt, x–xxix.

²⁴ *Ibid.*, xxiv.

²⁵ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: University of Chicago Press, 2005), 5.

²⁶ Clinton L. Rossiter, *Constitutional dictatorship: Crisis government in the modern democracies* (New York: Harcourt Brace, 1948), 5.

²⁷ Agamben, *State of Exception*, 2.

²⁸ *Ibid.*, 2.

The political system what Schmitt desired as sovereign dictatorship is not the Third Reich, but contemporary authoritarian populist regimes. In fact, Schmitt was not able to accept that Hitler's sovereign dictatorship had never been established. Moreover, he could not accept that the state of exception was wholly confused with the rule. In *Dictatorship* he had already stated that arriving at a correct concept of dictatorship is impossible as long as every legal order is seen "only as a latent and intermittent dictatorship" (Agamben 2005, 58). In this sense, the Third Reich was based on the mixture of rule and state of exception, and Hitler pursued the organisation of this 'dual state', that is why a new constitutional system was never created. At the same time, contemporary authoritarian populist regimes are constantly transforming themselves into constitutional dictatorships.

As it has been argued²⁹, the Orbán regime can be seen as an authoritarian populist regime and given the fact that these kinds of systems are much more autocratic than democratic, it is more precise to say that the Hungarian regime after 2018 (when super-majority in the parliament elections was gained for the third time) has increasingly become constitutional dictatorship. In my view, such constitutionalised dictatorships are far from being anti-capitalist systems, capitalism plays a crucial role in making these regimes evolved and stabilised instead. From 1929 the Great Depression brought the era of ruin for the old liberal economic order and new forms of state-centric capitalism in Europe were established.³⁰ After the financial crisis of 2008, very similar processes took place by the recent surge of authoritarian populism. In 1941 Friedrich Pollock described his theory on state capitalism. In his words, "advanced industrial societies were converging in basic structure, toward a durable state-controlled market"³¹. According to Pollock,³² state capitalist systems can be both democratic and authoritarian; he subsumed Nazism, Soviet communism, and the New Deal under this category. Morelock described that the Frankfurt School was split on the state capitalism theory: Pollock's assumptions were backed by Horkheimer and opposed by Neumann, Kirchheimer, and Gurland.³³ Neumann and Kirchheimer argued Hitler's Germany was still monopoly capitalism. Neumann "showed monopoly capital was very much operative in Nazi Germany, and the class structure – far from being eradicated – sharpened ... instead of 'state capitalism' offered the term 'totalitarian monopoly capitalism'"³⁴. We can accept either theory, the debate between Pollock and Neumann only shows the capitalist nature of authoritarian populism. Bloom³⁵ also argues that the critical scholarship emphasised the function of the state in maintaining capitalist relations in the sense that "governments worked in conjunction with dominant capitalist classes to ensure elite rule, facilitating political authoritarianism both informally and at times formally"³⁶. There is a core and embarrassing collusion between market and state autocracy. Wolfgang Streeck, investigating Heller and Schmitt's concepts, analyses the distinction between the idea of total state and authoritarian state elaborated by Schmitt.³⁷ The Schmittian total state can be identified with the pluralist democracy of Weimar, which was maintained by several social groups, especially the organised working class. Streeck argues that what Schmitt called authoritarian state "was a liberal-authoritarian state, one that was, in the classical liberal way, strong and weak at the same time: strong in its role as protector of 'the market' and 'the

²⁹ Antal, *The Rise of Hungarian Populism*.

³⁰ John Abromeit, "Frankfurt School Critical Theory and the Persistence of Authoritarianism in the United States," in *Critical Theory and Authoritarian Populism*, ed. Jeremiah Morelock, 7.

³¹ Morelock, "Introduction," xviii.

³² *Ibid.*

³³ *Ibid.*, xviii.

³⁴ *Ibid.*, xix.

³⁵ Peter Bloom, *Authoritarian Capitalism in the Age of Globalization* (Northampton: Edward Elgar Publishing, 2016).

³⁶ Bloom, *Authoritarian Capitalism*, 3.

³⁷ Wolfgang Streeck, "Heller, Schmitt and the Euro," *European Law Journal* 21, no 3 (2015): 362.

economy' from democratic claims for redistribution ... and weak in its relationship to the market as the designated site of autonomous capitalist profit-seeking"³⁸.

3 Exceptional Governance Before and After the Outbreak of the COVID-19

3.1 Exceptional Governance and Constitutionalized Dictatorship Before the Pandemic

Since 2010, the second and third Orbán governments have regularly relied on the tools and governance techniques of the state of exception in the Agambenian sense. The government is constantly building up images of the enemy (the communists and their successors, the financial institutions of global capitalism, the European Union, refugees, foreign-funded NGOs, George Soros and his international network of institutions) stigmatising and scapegoating various social groups (the homeless, people who are impoverished through no fault of their own), and by producing constant identity politics struggles, it is trying to keep its own voter base in line and at the same time to keep its political opponents in political and social quarantine. The implementation of these strategies is not only and primarily delivered by communication strategies; the Orbán regime has essentially started to build a constitutional dictatorship. As it has been argued previously, contemporary authoritarian populism can be seen as the true embodiment of the Schmittian state of exception and constitutional dictatorship, since the exceptional governance instituted in authoritarian populist regimes is not merely temporary, not continuously prolonged, but gradually becoming the core base of constitutional dictatorship. At the first glance, one might think the opposite of the Orbán regime since the “emergency caused by mass immigration”, first introduced locally and then nationally, has been extended several times between 2015 and 2022.³⁹ The Orbán regime is committed to perpetuating exceptional governance (and thus constitutional dictatorship): this is evident from the fact that it maintains exceptionalism in contravention of its own legal framework. Furthermore, even after the refugee crisis, the government recreated the moral panic itself through discursive means and hate politics⁴⁰, in which hatred of refugees and immigrants was turned towards domestic political enemies. Finally, the “emergency caused by mass immigration” introduced in the Immigration Act in 2015 was only a kind of first step towards the introduction of the “state of terrorist threat” created by the Sixth Amendment of the Fundamental Law in 2016. Although the Orbán regime has chosen to introduce the state of exception on the basis of an immigration crisis, it is ready to apply the state of terrorist threat, which itself carries a myriad of dangers, on the basis of its practice of confusing immigration and terrorism.

The constitutional basis for exceptional politics and governance was established by the introduction of a new special legal order named “state of terrorist threat” introduced by the mentioned Sixth Amendment of the Fundamental Law (14 June 2016). The state of terrorist threat (Article 51/A) was intended to put effective tools in the hands of government to deal with non-state conflicts and challenges. According to the regulation, in the event of a significant and direct threat of a terrorist attack or in the event of a terrorist attack, the Hungarian National Assembly shall, at the initiative of the government and by the two-thirds of the Members of the National Assembly, declare a state of terrorist threat for a fixed period of time, and shall simultaneously authorise the government to introduce extraordinary measures. The Government is entitled to introduce measures – by decree – derogating from the acts concerning the organisation, the operation and the performance of activities of public administration, the Hungarian defence forces, the law enforcement organs and the national security services. At

³⁸ Ibid., 362.

³⁹ Attila Antal, “The Climate and Ecological Emergency in the Era of a State of Exceptions,” *Graz Law Working Paper* 12, no. 7 (June 2021), <http://dx.doi.org/10.2139/ssrn.3865589>.

⁴⁰ Antal, *The Rise of Hungarian Populism*, 116–121.

the same time the executive branch shall continuously inform the President of the Republic and the standing committees of the National Assembly vested with its relevant functions and powers. The Fundamental Law ensures some legal guarantee, given the fact the introduced exceptional measures shall remain in force until the decision of the National Assembly on the declaration of a state of terrorist threat but for no longer than fifteen days. In addition, the Fundamental Law also gives a very general power of extraordinary legislation, which goes beyond the possibilities mentioned above: during a state of terrorist threat the government is entitled to adopt decrees by means of which it may suspend the application of certain acts, derogate the provisions of acts and take other extraordinary measures. In the case of this emergency legislation, the aforementioned rule setting a time limit does not apply, but government's extraordinary decrees remain in force until the terrorist emergency itself. That is why the scope of state of terrorist threat is essentially in the hands of the government, since it is the legislature that decides on this at the initiative of the government.

It is not at all clear from the provisions of the Fundamental Law (and this is not at all surprising, since one of the main purposes of exceptional governance is to perpetuate uncertainty) when and under what circumstances the government determines the risk of terrorist attack, and what guarantees are there for governmental discretion (since a government that sees a national security risk in NGOs that manage foreign funds presumably has its own standards for assessing the changed security challenges of our postmodern reality). Furthermore, it is questionable why it is necessary to speak of an "treat" in the case of a terrorist attack that has already occurred since the fact that the attack has occurred makes the actual danger obvious, and the constitutionalist would have had the possibility to adapt the rules to an already existing special type of law (e.g., a state of emergency) in a secure environment with asymmetric dangers. Without denying that the detection of terrorism, and above all of the preparation of terrorist acts, does indeed necessitate a discourse on states of exception and their transformation for national security purposes, it is highly doubtful that the introduction of a terrorist emergency in the Hungarian Fundamental Law would serve more than the Agambenian objectives indicated above (i.e., the governance of consequences instead of prevention).

Such exceptional governance tools pose a fairly high risk given the fact that in Hungary, the executive and the legislature are practically merged in terms of public law and politics: in the sense of public law, since most members of the government are also members of parliament, and in political terms, since all government legislative initiatives pass through parliament without debate or dissent, the government has maximum legislative dominance and control over the legislature. According to the "Hungarian unitary executive theory"⁴¹ the Hungarian Prime Minister, as the head of the executive power under both normal and exceptional circumstances, is considered supreme sovereign and all-powerful.

3.2 The COVID-19 Crisis and the Overlapping State of Exception⁴²

The global pandemic crisis has thoroughly rewritten Orbán's original political plans for the next general election of 2022.⁴³ The Orbán regime did not expect such a crisis to evolve and spread as it has. Orbán was able to change his political strategy and started to take the pandemic seriously. At first, given the fact that Orbán did not know exactly how devastating the crisis

⁴¹ The Unitary Executive Theory (UET) is a political and public law theory in United States which argues that the US Constitution created a "unitary executive" in which all executive authority is centralized in the President. See Ahmad Chehab, "The Unitary Executive and the Jurisprudence of Carl Schmitt: Theoretical Implications for the 'War on Terrorism'," in *Proceedings of The National Conference on Undergraduate Research (NCUR)*, Dominican University of California, 2007, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1746966.

⁴² In this section I relied on my previous paper: Antal, "The Climate and Ecological Emergency".

⁴³ Attila Antal, "Orbán's Enabling Act: Ruling the Post-Pandemic World," *In historical thunder and lightning*, April 7, 2020, <https://www.brexitblog-rosalux.eu/2020/04/07/orbans-enabling-act-ruling-the-post-pandemic-world/>.

would be, the regime tried to continue the exceptional measures enacted for the refugee situation. On 6 March 2020, Orbán spoke of migration and the coronavirus as equal challenges⁴⁴, moreover on 10 March he argued “there is a clear link between illegal migration and the coronavirus epidemic”⁴⁵ After that there was a tipping point, because Orbán and his communication strategists perceived the fear of the Hungarian people and the fractions behind the government, and this has proven to be crucial, because people recognized there was indeed no link between immigration and the epidemic. Nevertheless, Orbán found the political potential of the epidemic and started to manage it in a military and policing way. The Prime Minister has seen higher political risk in economic and less in epidemiological consequences, that is why the measures he introduced are about protecting the economy rather than the workers. Orbán argued that “We should fight against this crisis by not giving up our goals... the workfare economy and the possibility of a proud life”.⁴⁶ The main explanation of the new state of exception is the class compromise behind the Orbán regime.

In line with the waves that have unfolded since the outbreak of the COVID-19 crisis, the Hungarian government has declared three states of exception due to the coronavirus situation: 11 March 2020 (decree of government 40/2020), 3 November 2020 (decree of government 478/2020), 8 February 2021 (decree of government 27/2021). Each extraordinary period was associated with the so-called Empowerment Laws which are special authorizations of the incumbent Hungarian government by the Parliament, an authorization to implement long-term governance by decrees. The Fundamental Law otherwise provides the government with the possibility of governing by decree, but this is severely limited in time: decrees are only valid beyond the 15-days period if the Parliament authorizes the government to extend the decrees before the expiration of the 15 days. The Empowerment Laws eliminate these constitutional limitations. The first Empowerment Law (act XII of 2020) ensured unlimited access to governing by decree and it has been repealed 18 June 2020. A time limit has been incorporated to the second and third laws (act CIX of 2020; act I of 2021) and they granted special rights for 90 days to the government. Due to this empowerment the government is entitled to suspend the application of certain laws, deviate from statutory provisions, and take other extraordinary measures (restricting mass events or visits to institutions, increasing border control). Moreover, during the first wave of the pandemic the government proclaimed the special form of state of exception called *health crisis emergency* which was in force (from withdrawal of the first Empowerment Law) until 18 December 2020, but then not re-promulgated.

In times of the first period of coronavirus-related state of exception it has become obvious that the government would have all the political power and control over legal instruments by the renewal of the state of exception. Instead of this Orbán made a “trap” and chose the emergency power without any restrictions and ruling by decrees, while the opposition was blamed for the lack of national unity in the meantime. The Enabling Law was necessary for Orbán, not only for the restriction of the opposition, but also for maintaining the class compromise of the regime.⁴⁷

⁴⁴ Viktor Orbán, “Order is the basis of freedom,” *Hungarian Government*, March 6, 2020, <https://2015-2019.kormany.hu/en/the-prime-minister/news/order-is-the-basis-of-freedom>.

⁴⁵ Viktor Orbán, “Prime Minister Viktor Orbán informed his EU counterparts about situation in Hungary,” *Hungarian Government*, March 10, 2020, <https://2015-2019.kormany.hu/en/the-prime-minister/news/prime-minister-viktor-orban-informed-his-eu-counterparts-about-situation-in-hungary>.

⁴⁶ Viktor Orbán, “Let’s not give up our goals,” *Hungarian Government*, April 2, 2020. <https://2015-2019.kormany.hu/en/the-prime-minister/news/let-s-not-give-up-our-goals>.

⁴⁷ Antal Attila, “The Orbán Administration’s Class Politics and the Spread of COVID-19,” *Berlin Journal of Critical Theory* 5, no. 1 (2021): 131–49, https://www.bjct.de/files/Issues%20of%20the%20BJCT/BJCT_1-2021.pdf.

4 Neoliberalism and State of Exception

4.1 State of Exception as the Legal Form of Neoliberalism

The state of exception is one of the main tools of neoliberal hegemony, as it can be a response to, as Rafael Valim noted, the most diverse crises of our time, such as the regulatory crisis of the legal system, the constitutional crisis, the social injustices around the world, the rise of fascism and intolerance, or the crisis of legitimation and depoliticization of parliamentary systems.⁴⁸ After the terrorist attacks of September 11, 2001, the crisis management logic began to permeate the USA and European societies more than ever before and in the framework of “war on terror” freedoms were increasingly sacrificed in the name of perceived threat to security.

The real problem is that the state of exception is a reaction to the aforementioned crises, but in fact it creates even deeper crises by seriously violating the principles of popular sovereignty and democratic legitimacy, since it fundamentally calls into question the legitimacy of the branches of power and political actors, which are reduced to popular power. In other words, the state of exception gives room to the voluntarism of the concentration of power, typically originating from the executive, and represents a huge democratic deficit.⁴⁹ According to Agamben, the exceptional state is created at the borderline between democracy and absolutism.⁵⁰ Valim points out that, contrary to Carl Schmitt's approach, the state of exception is far from being a repoliticizing strategy, as it is extremely depoliticizing since it relies law and politics at the same time.⁵¹ Under the circumstance of neoliberal capitalism, these problems are compounded as market actors begin to influence governments and citizens almost without limit, without any democratic legitimacy. In other words, neoliberal capitalism prolongs an exceptional situation where the legal order established by the state is formally maintained but the market interests exert a very strong formal and informal influence on the development of the regulations (e.g., the abolition of rules protecting workers, the weakening of legal measures protecting the employment relationship and thus the subordination of workers to employers). That is why neoliberal capitalism is interested in the state under economic control and regulated by market interests, but this does not mean that the state is unnecessary for neoliberal rationality⁵²; in fact, it is precisely the exceptional condition that best shows how neoliberal capitalism needs to have a political hinterland based on the strong state. We can even go further and using Schmitt's thesis – that it is the sovereign who decides on the state of exception – , we can say that in neoliberal capitalism it is the market itself that decides on the state of exception on behalf of the invisible financial elite. Neoliberal power needs the state of exception, and vice versa: market interests determine political enemies against whom the state will fight.⁵³

4.2 Neoliberalization of the Pandemic Management

The direct help for the working people is far from being the priority for Orbán's regime.⁵⁴ The main explanatory factors behind this are the aforementioned workfare concept and the neoliberalization of public services of the past years. This neoliberalization goes hand in hand with the ultimate political power, because the emergency power is required to maintain the neoliberal agenda which characterizes the Orbán regime.⁵⁵ As it has been argued here, the

⁴⁸ Rafael Valim, “State of Exception: The Legal Form of Neoliberalism,” *Zeitschrift für Politikwissenschaft* 28, no. 4 (2018): 415.

⁴⁹ *Ibid.*, 412.

⁵⁰ Agamben, *State of Exception*, 3.

⁵¹ Valim, “State of Exception,” 413.

⁵² *Ibid.*, 414.

⁵³ *Ibid.*, 415.

⁵⁴ Antal, “The Orbán Administration's Class Politics and the Spread of COVID-19,” 142–44.

⁵⁵ Antal, *The Rise of Hungarian Populism*.

Orbán regime has always been much more afraid of the economic consequences of the crisis than of its epidemiological ones. The neoliberal and state-capitalist approaches have always been decisive after 2010: strengthening the private health sector, a huge withdrawal of funds from public health, downsizing the epidemiological administration, and a significant part of Hungarian doctors and nurses working abroad. In addition, the regime began to dismantle the universal insurance system and expelled the poorest from the healthcare services. These are well-known phenomena and reveal how neoliberalism intensify deep social-economic problems.

The “embedded” neoliberal atmosphere remained essential from the outbreak of the coronavirus crisis and most of the government’s economic measures are about to save employers and capital, instead of protecting workers. This attitude has already resulted in the hopelessness of people who had lost their jobs due to the coronavirus. Moreover, the government introduced a new “Slave Act” in the event of an epidemiological emergency by providing employers with a freely ordered 24-month working time frame (meaning that anyone can be required to work overtime in telework at any time). Meanwhile, the national bourgeoisie gained huge amounts of public money and the regime started to carry out its neoliberal healthcare reforms. Before the epidemic peaked, the regime emptied nearly 36,000 hospital beds and pushed seriously ill people and their families in a hopeless place.

Upon the second wave of the COVID-19 crisis, strong restrictions have been introduced: curfew in force between 8pm and 5am, restricted opening hours for shops and other businesses, digital education for universities and secondary schools above eighth grade, closing of restaurants, sporting events being held behind closed doors.⁵⁶ The Orbán regime maintained the neoliberal crisis management and did not provide significant aid to working people suffering from the coronavirus crisis. Instead, the government continued the cultural war against the University of Theatre and Film Arts,⁵⁷ envisioning the latest amendment to the Fundamental Law, which is a clear attack on LGBTQ communities, and proposed the same-sex and single parents adoption ban.⁵⁸

The Hungarian government relied on the exceptional legal regime even when all epidemiological measures could have been imposed under normal circumstances. Introducing the exceptional measures, Orbán argued in favour of the agenda mentioned before: “We should fight against this crisis by not giving up our goals ... the workfare economy and the possibility of a proud life.” (Orbán 2020c). Nevertheless, Orbán has by now discovered the political potential of the pandemic and started to manage it using military and policing methods. State of emergency put new powers into the hands of Orbán and at the same time this would also offer new opportunities in conjunction with the climate and ecological debates. Orbán recognized the political opportunities of the exceptional governance in terms of overlapping crises and used the experience from the migration crisis to address the COVID-19 crisis.

5 Conclusion

In this paper, the relationship and interconnection of authoritarian populism and exceptional governance have been investigated in the framework of the Orbán regime. Even before the pandemic, it was clear that in the Orbán regime there was a dual tendency: on the one hand, it was key for the government to create the constitutional basis for authoritarian populism

⁵⁶ The Mayor, “Hungary reintroduces State of Emergency,” *The Mayor*, November 4, 2020, <https://www.themayor.eu/en/a/view/hungary-reintroduces-state-of-emergency-6285>.

⁵⁷ Euronews, “Hungarian students blockade university in protest against Orban reforms,” *Euronews*, September 4, 2020, <https://www.euronews.com/2020/09/04/hungarian-students-blockade-university-in-protest-against-orban-reforms>.

⁵⁸ BBC, “Hungary government proposes same-sex adoption ban,” *BBC*, November 11, 2020, <https://www.bbc.com/news/world-europe-54902048>.

(describing this constitutional dictatorship has been used in this paper); and on the other hand, both constitutionally and politically, the normal state was suspended, and the era of exceptionalism began. All these processes have been accelerated by COVID-19 and it has become clear that authoritarian populism and neoliberalism are interdependent in framework of exceptional governance.

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