

ARTICLE

The opportunism of populists and the defense of constitutional liberalism

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(Received 30 January 2019; accepted 14 February 2019)

Abstract

Liberal constitutionalism is under attack from a new breed of autocrats broadly classified as populist. These populists understand the weaknesses of constitutional liberalism and attack their opponents with criticisms that take advantage of internal weaknesses of the theory. But a closer analysis of theoretical framework used by populists to substitute for constitutional liberalism reveals that they are not really committed to populism in any serious sense. Instead, they have abandoned liberalism in the quest for raw power. Focusing on Viktor Orbán of Hungary and his chief ideologist András Láncki, this article shows how their public critique of liberalism has attempted to wrong-foot their critics and how their recipe for gaining and wielding political power is only populist to the extent that these leaders are determined to (and often succeed in) winning elections. By peeling back the cover of populist ideology to look at the theories of legitimation under which they rule, however, we can see that the new breed of autocrats aims at primarily constitutional deconstruction through the concentration of political power in one leader. This sort of challenge to liberal constitutionalism is easily countered.

Keywords: constitutional liberalism; illiberal theory; Christian democracy

The world is awash in populism these days. Leaders who are described by the breathless press and by our concerned academic colleagues as “populist” keep winning elections or come scarily close to doing so. On the right, we see Orbán in Hungary and Kaczyński in Poland. On the left, we find Chávez/Maduro in Venezuela and Correa in Ecuador (though populism is not necessarily forever!). Hard to pin down politically, but considered populist in any event, are Putin in Russia and Erdoğan in Turkey. And then there is the new wave of populists who have scored major electoral victories by surprise: Trump in the US, the Brexiters in the UK, and Bolsonaro in Brazil. Many others who are feared to be populist stand just off the stage auditioning for a turn in government: Le Pen in France; the AfD in Germany; Geert Wilders and his party of one¹ in the Netherlands; True Finns, Sweden Democrats and the Danish People’s Party in Nordic countries, and on and on. Suddenly populism is everywhere. And anti-populists are sounding the alarm.

In this article, I will first turn the camera around from focusing on the populists so that I can instead focus on those of us in the academic world who are worried about the phenomenon. What is it about populism that has us so alarmed? Many of us concretely justify our interest in the

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¹Geert Wilders’s Party for Freedom has only one member: himself. James Traub, *The Geert Wilders Effect*, FOREIGN POLICY, March 13, 2017, at <https://foreignpolicy.com/2017/03/13/the-geert-wilders-effect/>.

phenomenon by saying that populism has harmful real-world effects, but if our concern were primarily with the damage populism has done to actually existing democratic governments, the ink spilled on the phenomenon would have tracked more closely the actual places where populism has done the most harm. Something else is going on.

In my view, populism has become the obsessive focus of many of us academics precisely because the criticisms of liberal constitutionalism made by the populists hit us where we live. Populists expose the vulnerabilities in the theories that our profession has taken for granted, and those of us who have defended the democratic integrity of liberal constitutionalism have been surprised by the way that populists have deployed theoretical arguments and high-powered technical legal tools in ways that are hard for us to counter. Populists are a challenge to the political systems in which they operate, but they are also a challenge to those of us who believe in the normative defensibility of liberal constitutionalism.

Populists exploit the debates that liberal constitutionalists have with each other over normative foundations. They mirror and mimic the language of constitutional liberalism in order to undermine it in practice. We—the constitutional liberals—can't turn away because we recognize ourselves in the criticisms that the populists offer. That is why we focus so intensely on populism. They are getting under our skin.

But what do the populists offer in response? In addition to the negative case they make against constitutional liberalism, some populists have begun to develop what appears to be a sophisticated theoretical framework of their own. If liberalism is full of contradictions and abstractions, then illiberalism offers a simpler theory of political will asserted as power in the world. This theory is not populist; “the people” have virtually no place in this theory save as the cheering section for a game played almost entirely without their active engagement. In other words, at least some of new populists are simply autocrats. They counter liberal constitutionalism with an assertion of the justified power of the singular leader. In the ideological battle taking place between constitutional liberals and populists, the democratic engagement of a constitutionally constituted people is a casualty in both. But only the liberals imagine that such engagement is possible and necessary.

To show how this battle of ideologies works in a concrete case, I will take Hungary as my central example, both because I know it well and because the theoretical attacks on liberal constitutionalism as well as the public justifications of illiberalism are visible in plain sight. If we look at other populist governments, particularly those in places that value intellectualism, I am confident that we will see other illiberal theorists in serious arguments with constitutional liberals over the weaknesses of constitutional liberalism as well as the assertion of alternative bases of political legitimation. Once we untangle the theoretical arguments that at least one set of “populists” makes for their own legitimation, we will see that they are opportunists, taking advantage of the moment to press a self-interested case. Hungary provides Exhibit A and so I will start there.

A. The populist critique of constitutional liberalism

Populists are claiming a democratic mandate as they attack constitutional liberalism. By constitutional liberalism, I mean to identify the family of political theories that simultaneously defends a) the rights of individuals, b) limited and checked state powers, and c) a government responsive to shifting democratic majorities. Constitutional liberals of different stripes have typically attempted to justify limiting what democratic publics can do in real and concrete instances by claiming that broader constraining principles (like liberty and equality or separation of powers) must be given priority over the demands of temporary democratic majorities (who may want to limit free speech or expel people who don't “belong here,” or who would rather that a president act decisively than wait for a complex legislative process to play itself out). Populists have figured out that there are serious ambiguities and tensions baked into the theory of liberal constitutionalism, because democratic publics—even informed democratic publics—may well be convinced in

particular instances to overthrow constitutional constraints on government in the name of doing something concrete that they take to be more important than abstract principles. In fact, any two of the three elements of constitutional liberalism—rights, structural constitutional constraints and democracy—can conflict with each other in particular concrete instances and the populists know it. And, pointing to the success of their electoral appeals, they use these contradictions to their advantage.

In general, liberal constitutional theorists have assumed that publics in constitutional democracies will always support liberal constitutionalism over the long haul, perhaps most famously because that is what rational, ideal publics would do.² And, if democratic publics fail in practice to support liberal answers to tough questions, then liberal constitutionalists typically argue that it is because the ideal conditions of democratic decision-making were not met—for example, because of a lack of pluralistic media to properly inform a public or because of an irrational panic seizing the public mind at a time of emergency. Otherwise, good democrats are presupposed to be liberal, all things considered. And if good democrats are not in fact liberal in particular instances, it is because something is wrong with the system. Or maybe even with the democratic public. In short, if reality doesn't comply with the normative theory, so much the worse for reality.

The populists have learned how to take advantage of liberal constitutionalism's reality problems by questioning the constitutionalists' assumptions that only liberal solutions would be stably supported by democratic majorities. The populists also score points by pointing to the way that constitutional liberals rely on ideal conditions and factually impossible situations to generate their theories. The populists point instead to the evident illiberalism enthusiastically supported in actual elections—juxtaposing real or apparent facts to the theoretical remoteness of liberal normative arguments. In short, in response to the liberal constitutionalists' theoretical arguments that liberalism wins every time in constitutional democracies properly-so-called, populists forward the counter-evidence that actually existing democratic publics do not in fact support liberalism in specific cases. By now, there are many such specific cases. Hence constitutional liberals' nervousness about populism.

The populists' challenge means that constitutional liberals must address more convincingly our own inability to understand both why democratic publics seem to be rejecting liberalism and how the populists have been able to gain the upper hand in elections. Is it not enough for constitutional liberals to argue that democratic publics who support illiberalism are simply misguided. We must provide better answers to explain why liberal constitutionalism should take priority over what democratic majorities have said that they want to do at any given moment. But such arguments ring hollow against the hard reality of facts. This, I believe, is why populism has such a hold on those of us who reject populism, even if we don't know what populism is, exactly.

When confronted with real-world problems, constitutional liberals tend to classify, theorize and try to manage the onslaught conceptually. Thus, we have collectively produced a cottage industry of writings decrying populism in recent years. Some of us attempt to define the phenomenon by narrowing it conceptually: Populists channel the masses through a singular leader who speaks for the nation.³ Others of us try to sort the populists into manageable categories: We can distinguish left and right populists in order to show that the right populists are more dangerous than left populists.⁴ Still others try to trace populists' distinctive profile of substantive

²Perhaps it is unfair to paint John Rawls with this particular brush, but given that most of his readers assume that decisions made by ideal people behind a veil of ignorance do not simply approve the basic principles of the system but also justify particular decisions of governments or courts, Rawls has become the *locus classicus* for this proposition. JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

³JAN-WERNER MÜLLER, *WHAT IS POPULISM?* (2016).

⁴Mark Tushnet, *Comparing Right-Wing and Left-Wing Populism*, in *CONSTITUTIONAL DEMOCRACY IN CRISIS?* 639 (Mark Graber, Sanford Levinson, & Mark Tushnet, eds. 2018), and Mark Tushnet, in this issue.

commitments which includes a reliance on majoritarianism,⁵ the (anti-)liberal use of the idea of constituent power⁶ and the intolerant critique of liberal constitutionalism.⁷

Those who reject the temptation to define populism as an ideology typically transform populism from substance to form. Mudde and Kaltwasser suggest that we retreat from definitions that are ideologically and substantively based to an examination of tactics. Populism, in their view, is a set of particular strategies that are used to achieve power and manage governance.⁸ They are not the only ones to see populism as a style of discourse and action⁹ more than as an ideology of well-worked-out substantive commitments. Populists are sometimes identified by the way they seek to radically change what went before them, as if by their methods you shall know them. Populism on this account is more about what populists do than about what they say.

I am not the first to suggest that, by covering too much or by cabining the discussion of populism with a definition that doesn't track the way that populism is used in the wild, the very idea of populism melts into air. Some have thrown their hands up into that air and proposed giving up the idea altogether.¹⁰ When a problem becomes intractable or simply too hard to define, my temptation is to change the question that we are asking. Instead of focusing exclusively on the populists to try to define and de-legitimize them, then, what if we turned the camera lens around to do an academic selfie? Instead of asking "who are these populists?," why don't we instead ask: "Why are so many of us so obsessed with populism?"

Academics and other elites are loudly sounding the alarm about populism as a general problem in the world, which seems strange given that populism cannot be defined with any agreed-upon precision. Populism clearly generates anxiety among those of us who thought (with a little bit of ironic distance) that history had ended with the widespread acceptance of liberal constitutionalism among truly democratic governments¹¹ and who had learned from our colleagues that consolidated democracies would never come truly unraveled?¹² Obviously, those of us who thought that liberal constitutional democracies could never be transformed into autocracy from within through the ballot box were wrong. Perhaps our anxiety about populism is related to this because, as it turns out, the people we call populists have learned quite a lot from liberals and are taking advantage of the inconsistencies and tensions in liberal democratic constitutional thought to turn the tables on us.

Take, for example, the more-or-less official regime philosopher in Hungary, András Láncki. From 2010–2016, Láncki was the head of *Századvég*, the principal think tank for Fidesz, the governing party of Prime Minister Viktor Orbán. In 2016, Láncki became Rector of Corvinus University in Budapest which has since become a showcase for regime projects. After Orbán's 2018 re-election with the third constitutional majority in a row, Láncki published in the *Hungarian Review* (in English, so it was meant for outsiders) a theoretical defense of Orbán's most recent victory.¹³ (Never mind that Orbán's supermajorities after 2010 depended entirely on the deft manipulation of electoral rules.¹⁴) Láncki's argument in the *Hungarian Review* applied the

⁵Paul Blokker, in this issue.

⁶Julian Scholtes, in this issue.

⁷Gábor Halmai, in this issue.

⁸CAS MUDDE & CRISTÓBAL ROVIRA KALTWASSER, *POPULISM: A SHORT INTRODUCTION* (2017).

⁹BENJAMIN MOFFITT, *THE GLOBAL RISE OF POPULISM: PERFORMANCE, POLITICAL STYLE, AND REPRESENTATION* (2016).

¹⁰Roger Cohen, *It's Time to Depopularize 'Populist'*. NY TIMES, July 13, 2018, at <https://www.nytimes.com/2018/07/13/opinion/populism-language-meaning.html>.

¹¹Francis Fukuyama, *The End of History?*, 16 NAT'L INTEREST 3 (Summer 1989).

¹²Juan Linz & Alfred Stepan, *Toward Consolidated Democracies*, 7 J. DEM. 14 (1996).

¹³András Láncki, *The Renewed Social Contract—Hungary's Elections, 2018*, IX HUNGARIAN REV., May 2018, at http://www.hungarianreview.com/article/20180525_the_renewed_social_contract_hungary_s_elections_2018.

¹⁴Kim Lane Scheppele, *Hungary: An Election in Question*, PAUL KRUGMAN'S CONSCIENCE OF A LIBERAL BLOG, Feb. 28, 2014, Part I <https://krugman.blogs.nytimes.com/2014/02/28/hungary-an-election-in-question-part-1/>, Part II <https://krugman.blogs.nytimes.com/2014/02/28/hungary-an-election-in-question-part-2/>, Part III <https://krugman.blogs.nytimes.com/2014/02/28/hungary-an-election-in-question-part-3/>, Part IV <https://krugman.blogs.nytimes.com/2014/02/28/>

general theory he developed in his earlier writings, in particular through his key book *Political Realism and Wisdom*, which was published in English in 2015.¹⁵

In justifying Orbán's third consecutive victory with a two-thirds legislative majority, Láncki began with a critique of liberalism, in which he drew parallels between liberalism and communism. Liberalism and communism, in his view, share a reliance on utopianism for normative justification:

[T]he spiritual and intellectual relationship between Communism and today's liberal democracy is closer than the liberals would be ready to accept. . . . [O]ne might consider Communism and liberalism as related in spirit.

Similarities in intellectual mentality are as follows: you are in possession of the meaning and secret of progress (history for the Communists, unlimited economic and social development for the liberals; global state without internal boundaries; equality should be seen as absolute). Thus, people are equal in terms of economics and politics . . . this is what liberals call political correctness by referring to the norms of pluralism and tolerance.

From a realist point of view, both types of ideology . . . [allow] utopian thought to occupy practical and applicable grounds . . . [A]ll modern regimes . . . consider themselves from the vantage point of the future, thus celebrating the priority of the would-be to any other forms of existence. Both Communism and liberalism are not just utopian ideologies, but by changing the meaning of knowledge they claim to know what is to come and therefore what is to be done.

In drawing out the parallels between communism and liberalism, Láncki asserts that both have relied on the desirability of some imagined future world as a normative template for defining the state and its central tasks in the present, on the argument that the present should lead instrumentally to this ideal future and whatever does that is right. With eyes firmly set on this utopian future ("ideal theory"), the liberal constitutionalist thus waves away the views of actually existing democratic citizens who may prioritize the present over the future or who may disagree with the desirability of the utopia that the liberal theorist has taken as the normative lodestar. Utopia triumphs over the views of ordinary people in the here and now. But constitutional liberals also value democratic self-government, which one would imagine would make liberals care about what actually existing people think—and it is in reconciling actual democratic practice with the utopian vision of an ideal normative polity that liberals' arguments weaken.

Láncki is onto something. Many liberal political theorists ignore actually existing people in order to define what is politically desirable in a utopian paradise that dictates the path to its own realization. Think of the various fictions that provide a normative foundation for consent-based regimes: the social contract, the veil of ignorance, constituent power. In any given real political regime, there was never a factual agreement or an actual moment when people did not know who they would be when deciding whether or not to support a constitution. The conjuring of such a hypothetical state of affairs is not meant as an empirical demonstration! So then what is the point of a thought experiment to justify any particular regime or type of regime? Láncki argues that behind the drive to discover a normative ideal is the drive to enlighten and persuade those who do not yet know that they are living in the best of all possible worlds, or some reasonable approximation of one. Once the political theorist devises the ideal polity, the theorist then educates others about what sort of regime it would be rational to support.

hungary-an-election-in-question-part-4/, Part V <https://krugman.blogs.nytimes.com/2014/02/28/hungary-an-election-in-question-part-5/>. See also Kim Lane Scheppele, *Legal but not Fair*, PAUL KRUGMAN'S CONSCIENCE OF A LIBERAL BLOG, Apr. 13, 2014, <https://krugman.blogs.nytimes.com/2014/04/13/legal-but-not-fair-hungary/>.

¹⁵ANDRÁS LÁNCKI, *POLITICAL REALISM AND WISDOM* (2015).

Lánczi sees in this normative project the assertion of a fundamental inequality despite the egalitarian first premises of liberal theory:

Today's naïve liberals still believe that their program is designed to "enlighten" man, to boost his perfection, thus enabling him to distinguish between what is right and what is false. These liberals mistake man's rational capabilities with the necessary, internal structure of power. The action of enlightening someone unavoidably creates a hierarchical or natural situation between the "enlightener" and the one to be "enlightened." The process of enlightenment does not abandon the structure of existence in which the one who knows more will necessarily gain more power over the one knowing less. And since knowledge cannot be evenly distributed, there will always be a few who would know more and better, thus forming a power construct whether they want it or they do not. The master is superior to the pupil in terms of power . . . This leads to tyranny, both theoretically and practically.¹⁶

Lánczi's argument draws parallels between those who have been educated at the hands of communists (his generation in Hungary) and those who have been educated at the hands of liberals (the generation after his). Both sets of teachers argued that they knew where history was headed and therefore what normative ideals lay at the end of that history. The inequality of teacher and pupil is thus built into both systems, Lánczi claims. The liberal may claim to believe in equality in the end, but so did the communist. The radiant future of equality only serves to justify inequality as the means to that end.

That said, it is easy to criticize Lánczi from within the liberal paradigm. Lánczi persistently refuses to separate is and ought, so what "what is" has an outsized effect on "what ought to be." His realism looks more like a rejection of normativity as contemporary normative theorists know it than creating an alternative normative paradigm. Also, as every liberal political theorist knows because it is cooked into our training, the present and the preferences of actually existing people should have no particular moral weight. But that is precisely what Lánczi is challenging: he argues that the preferences of actual people should matter in the here and now which, in his view, is the only horizon of politics. He wants to banish utopian thinking from the project of political legitimation. In response, liberal theorists respond that the world as we know it is contaminated by interests and contingency, so the present should have no normative pull at all. Lánczi may appear to have flunked Political Theory 101 in refusing to extricate himself from contamination of particular cases.

Of course, when a justificatory theory requires that everyone discard their own experience and values, then it is no wonder that it doesn't seem very democratic, if by democratic, one means that one should give some weight to how people, in the present, actually want to be governed. Here is where Lánczi is onto something politically with that move. Insofar as liberal normative theory gives precisely no weight to what actual people think in any specific political moment, it doesn't seem to honor the very people whose views are to be taken as decisive in democratic determinations. Hence, squaring the circle that joins rights (which recognize the irreducible dignity in every person), constitutional structures (that limit and channel the power of political leaders) and democracy (that allows people to be self-governing) has historically required turning one's back on the actually existing people in whose name the theory is developed.

Constitutional liberals disagree among themselves about what constitutes the proper foundation of normative argument, so liberalism as a family of political theories offers a wide array of choices of where to start and how to argue. But this, too, seems odd given the other things that liberalism values. Shouldn't liberal theory start from a point of consensus (because, after all, everyone counts equally and therefore a simple majority alone is not a justification for overriding others on matters central to basic dignity)? If liberal theory then builds arguments out from a starting

¹⁶Lánczi, *supra* note 16, at 50.

point in a rational consensus, it seems internally inconsistent that liberal theory has so many different starting points. Taking advantage of this cacophony, Láncki argues that modern liberalism no longer has a central agreed-upon foundation which, in his view, shows liberalism's hypocrisy. He claims that the idea of justice itself has come loose from its prior singular grounding in the idea of natural rights:

After the Second World War the most influential moral philosophy was John Rawls's *A Theory of Justice*. This book and the underlying ideas have served to justify the welfare-state redistribution practices by focusing on the concept of justice while ousting utilitarian ethics and highlighting equality that can be harmonised with the priority of freedom. Today, the Rawlsian "justice as fairness" together with the most cherished idea of human rights serves to spread the moral foundations of liberal democracy.

At least until the 2008 [financial] crisis this moral system had no viable alternative . . .

The moral confusion as to what is right and what is wrong seems to have reached its climax in Western civilisation. The key issue is the idea of rights and/or law. Political arguments are supposed to be based on the idea of rights. The idea of rights used to have a natural law/rights background up until high modernity. Today nobody believes any more that the idea of rights should be justified by the traditions of natural law/rights . . . ¹⁷

Never mind that arguments for the moral centrality of rights within liberal political thought has never been based solely on natural law. Also, some people are evidently still natural lawyers. It's enough for Láncki to point to the fact that the anti-foundationalism of many liberals has created a kind of theoretical vertigo in finding the starting point for a normative theory.¹⁸ Each major liberal theorist has a different starting point and strategy of argumentation, and the vibrancy of the liberal tradition is precisely in the debates that these differences generate.

Liberalism identifies a family of theories and a set of debates. It does not provide a set of single right answers. To anti-pluralists like Láncki, however, this very diversity appears to be a weakness. What good is a normative theory if it doesn't provide single right answers? This absence provides an opportunity: To a general public that would find it difficult to follow the ins and outs of the internal debates among liberal constitutionalists, the plurality of answers can be quite easily portrayed as a weakness rather than as a strength.

Populists' critiques of liberalism echo Charles Dickens' critique of humanitarianism in *Bleak House*.¹⁹ Dickens provided a memorable account of one Mrs. Jellyby who was obsessively devoted to foreign causes while her neglected family suffered all around her. It is not a crazy critique to point out that liberal constitutionalists might be accused of creating people who make ideal decisions about ideal institutions using their ideal rights, while ignoring the real people all around them. Liberal constitutionalists have their answers to these critiques, but they don't play well for general audiences.

So what bothers liberal constitutionalists about populists? It may be that the populists identify the reasons why our theoretical justifications seem to ring hollow as soon as we leave the circle of our own fellow travelers. Constitutional liberals know that we are vulnerable when we have to justify their own theoretical apparatus to an audience that has not already been socialized into it. Populism, on the other hand is much more easily understandable in virtually all versions. And that's part of its point. And part of its appeal.

¹⁷Láncki, *supra* note 14.

¹⁸DON HERZOG, *WITHOUT FOUNDATIONS* (1985).

¹⁹CHARLES DICKENS, *BLEAK HOUSE* (1852–53).

B. The assertion of illiberalism under liberal cover

Amid the confusion in the academic literature about defining populism or pinpointing what is worrisome about it, it was fascinating to see the evident relief among critics when Viktor Orbán made his famous speech at Băile Tușnad, Romania to the Fidesz party faithful in 2014. In that speech, he owned up to the ambition of creating an illiberal state. If one of the leading populists could articulate that he was up to precisely what many feared he might be, then his own words could be used against him without the need for academics to struggle in categorizing and classifying the sort of regime he was building. Orbán said he was not appealing to some novel form of liberalism, but rejecting it altogether.

But what precisely did Orbán mean by claiming to be illiberal? It is worth quoting Orbán's coming-out-as-an-illiberal speech at length:

[W]hat is happening today in Hungary] can be interpreted as an attempt of the . . . political leadership to harmonize [the] relationship between the interests and achievement of individuals . . . with interests and achievements of the community and the nation. Meaning, that Hungarian nation is not a simple sum of individuals, but a community that needs to be organized, strengthened and developed, and in this sense, the new state that we are building is an illiberal state, a non-liberal state. It does not deny foundational values of liberalism, as freedom, etc.. But it does not make this ideology a central element of state organization, but applies a specific, national, particular approach in its stead

As the state is nothing else but a method of organizing a community, a community which in our case sometimes coincides with our country's borders, sometimes not, . . . the defining aspect of today's world can be articulated as a race to figure out a way of organizing communities, a state that is most capable of making a nation competitive. This is why . . . a trending topic . . . is understanding systems that are not Western, not liberal, not liberal democracies, maybe not even democracies, and yet . . . successful. Today, the stars of international analyses are Singapore, China, India, Turkey, Russia. And I believe that our political community rightly anticipated this challenge We are searching for (and we are doing our best to find ways of parting with Western European dogmas, making ourselves independent from them) the form of organizing a community, that is capable of making us competitive in this great world-race

In order to be able to do this . . . , we needed to courageously state a sentence, a sentence that, similar to the ones enumerated here, was considered to be a sacrilege in the liberal world order. We needed to state that a democracy is not necessarily liberal. Just because something is not liberal, it still can be a democracy. Moreover, it could be and needed to be expressed, that probably societies founded upon the principle of the liberal way to organize a state will not be able to sustain their world-competitiveness in the following years, and more likely they will suffer a setback, unless they will be able to substantially reform themselves.²⁰

Orbán's speech made clear that the test of a well-organized state was its economic success, not the realization of the rights or the ability to meet the aspirations of its citizens. The goal of organizing a political community to achieve economic competitiveness clearly required a proactive and unconstrained state – which is precisely what makes Orbán's views illiberal. But of course, as in the communist regimes before Orbán's, prioritizing economic development over all other state goals could well require authoritarian political organization.

²⁰Viktor Orbán's Speech at Băile Tușnad (Tusnádfürdő), July 26, 2014, at <https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/>.

Almost immediately, however, the “illiberal state” of Orbán’s speech was converted in the hands of those who quoted him into an “illiberal democracy”²¹ to emphasize the serious challenge that Orbán was making to the grounds on which democracy could be built. Illiberal democracy was then attacked as a contradiction in terms.²² It even made the headlines. At a joint press conference with Viktor Orbán on a visit to Hungary, German Chancellor Angela Merkel said in response to a reporter’s question: “Honestly, I can’t understand what is meant by illiberal when it comes to democracy.”²³

But there was nothing contradictory about what Orbán actually said. He wanted to create an illiberal state which, he later clarified, meant a state where the values and achievements of the community were considered to be at least as important—if not *more* important—as the rights-based claims of individuals. Just as the rights of some individuals had to be limited to protect the rights of other individuals in liberal theory, Orbán’s illiberal theory added the values and ambitions of the community as another significant limit on the realization of those rights. He was not proposing to abolish elections – rather the reverse. Orbán uses elections to make himself bulletproof to outsiders because he can claim the support of the people for his illiberal plans. But after a while, when a leader fails to put the well-being of his own people first, those elections have to be carefully staged and managed to produce the proper result.

After his third consecutive election victory in 2018, when the pretenses of a free and fair election were self-consciously abandoned,²⁴ Orbán again returned to Băile Tușnad to speak to the party faithful. The 2018 speech, by contrast with the 2014 speech, linked Orbán’s preoccupation with global competitiveness to a cultural argument in which he asserted that Europe had once been a great civilization but it had fallen in the global competition precisely because it had turned its back on its Christian origins. At the time he gave this speech, he had just narrowly escaped being thrown out of the European People’s Party—the Europarty linking Christian Democratic parties across the continent—because he had weakened the rule of law in Europe.²⁵ So he wanted to emphasize Christian values to demonstrate both that his normative project was shared by other states within the European Union and to launder his illiberalism as something familiar and non-threatening.

Orbán’s argument about why Christian democracy is necessarily illiberal is also worth quoting at length:

Now we should ask ourselves why the European elite—which today is exclusively a liberal elite—has failed

The answer to this question—or at least this is where I look for the answer—is that first of all it has rejected its roots, and instead of a Europe resting on Christian foundations, it is building a Europe of “the open society”. In Christian Europe there was honour in work, man had dignity, men and women were equal, the family was the basis of the nation, the nation was

²¹ARCH PUDDINGTON, FREEDOM HOUSE, *BREAKING DOWN DEMOCRACY: GOALS, STRATEGIES, AND METHODS OF MODERN AUTHORITARIANS*, Chapter 5 (2016); William Galston, *The Populist Challenge to Liberal Democracy*, 29 J. DEM. 5 (2018), at https://www.brookings.edu/wp-content/uploads/2018/04/04172018_gs_galston-democracy.pdf.

²²Jeffrey Isaac, *Is There Illiberal Democracy?* EUROZINE, Aug. 8, 2017, at <https://www.eurozine.com/is-there-illiberal-democracy/>.

²³Adam Halasz, *Merkel Clashes With Orban on Meaning Of 'Democracy'*, EU OBSERVER, Feb. 3, 2015, at <https://euobserver.com/beyond-brussels/127468>.

²⁴As the Office of Democratic Institutions and Human Rights’ electoral observation mission concluded, the Hungarian 2018 parliamentary elections “were characterized by a pervasive overlap between state and ruling party resources, undermining contestants’ ability to compete on an equal basis. Voters had a wide range of political options but intimidating and xenophobic rhetoric, media bias and opaque campaign financing constricted the space for genuine political debate, hindering voters’ ability to make a fully-informed choice.” ODIHR, *Hungarian Parliamentary Elections 8 April 2018*, ODIHR Limited Election Observation Mission Final Report, at <https://www.osce.org/odihr/elections/hungary/385959?download=true>.

²⁵Ryan Heath, *Viktor Orbán Cements Place in Europe’s New Center Right*, POLITICO.EU, June 21, 2018, at <https://www.politico.eu/article/viktor-orban-epp-hungary-reshapes-european-center-right/>.

the basis of Europe, and states guaranteed security. In today's open-society Europe there are no borders; European people can be readily replaced with immigrants; the family has been transformed into an optional, fluid form of cohabitation; the nation, national identity and national pride are seen as negative and obsolete notions; and the state no longer guarantees security in Europe. In fact, in liberal Europe being European means nothing at all: it has no direction, and it is simply form devoid of content. Furthermore, Ladies and Gentlemen, liberal democracy has undergone a transformation . . . into liberal non-democracy. The situation in the West is that there is liberalism, but there is no democracy . . .

Having got to this point, there is just one trap—a single intellectual trap—which we must avoid . . . The bait for this trap is hanging right in front of our noses: it is the claim that Christian democracy can also, in fact, be liberal. I suggest we stay calm and avoid being caught on that hook, because if we accept this argument, then the battle, the struggle we have fought so far will lose its meaning, and we will have toiled in vain.

Let us confidently declare that Christian democracy is not liberal. Liberal democracy is liberal, while Christian democracy is, by definition, not liberal: it is, if you like, illiberal. And we can specifically say this in connection with a few important issues—say, three great issues. Liberal democracy is in favour of multiculturalism, while Christian democracy gives priority to Christian culture; this is an illiberal concept. Liberal democracy is pro-immigration, while Christian democracy is anti-immigration; this is again a genuinely illiberal concept. And liberal democracy sides with adaptable family models, while Christian democracy rests on the foundations of the Christian family model; once more, this is an illiberal concept.

. . . Thirty years ago we thought that Europe was our future. Today we believe that we are Europe's future.²⁶

With this speech, Orbán set up a new populist frame: Liberal European society had failed at democracy because its basic values no longer resonated with the public. But Christian Europe—Hungary, centrally—was rising, and it was democratic but not liberal. Christian Europe would support the demands of the people for a Christian, closed community in which traditional beliefs and ways of life would be preserved. Orbán's third electoral victory with a constitutional majority was proof that illiberalism had won.

Based on this newly refined worldview, Orbán could therefore logically reject the international bankers (like George Soros) who made their fortunes skimming profit off the backs of naïve countries (whose currencies were hacked) and others (like the EU and IMF) who eagerly advanced policies that would undercut the wages of workers when lower-paid immigrants came from a massive global underemployed labor force to take their jobs. To a Christian Democrat, as Orbán claimed he was, free-market liberals who used capitalism to make themselves more powerful than countries would be barred from imposing their multiculturalism and cosmopolitanism on those who wanted the comfort of national unity. That sort of "illiberalism"—rejecting the arbitrariness and inequality of free markets—is not a stranger to many academic debates over liberalism, which Orbán—a one-time Hayekian who experienced the open society with a Soros fellowship at Oxford—surely knew.²⁷

But never mind the complexity of explaining why not all forms of liberalism valorize free markets over all other things: once Orbán owned up to illiberalism, his opponents latched

²⁶Prime Minister Viktor Orbán's speech at the 29th Bálványos Summer Open University and Student Camp, July 28, 2018, Tusnádfürdő (Báile Tuşnad), at <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-speech-at-the-29th-balvanyos-summer-open-university-and-student-camp>.

²⁷Elizabeth Zerofsky, *Viktor Orbán's Far Right Vision for Europe*, NEW YORKER, Jan 14, 2019, at <https://www.newyorker.com/magazine/2019/01/14/viktor-orbans-far-right-vision-for-europe>.

onto it because illiberalism as such placed the battle on the terrain of ideology. If populism were simply an unreasonable ideology, then liberals knew how to fight it, given the experience with 20th century authoritarianisms that had also foregrounded ideology.²⁸ Orbán's identification with illiberalism therefore made him a familiar sort of enemy—one who could be fought on the grounds of his evidently wrong beliefs.

But once Orbán appeared illiberal in his own words and had gotten into trouble with the European party that had so far protected the Hungarian Fidesz government against European sanctions, he then tacked back to a familiar criticism of liberalism in appealing to “Christian democracy” as an acceptable cover for intolerance. The claim to religious freedom, asserted robustly as a practice of communities, can be liberal up to a point. Rights conflicts and how those conflicts are resolved within a liberal frame depend on the context, the constitutional framework and the theory of liberalism being employed. But a defense of Christian democracy is not in general harmful to the cause of liberalism. That is why Orbán chose to hide behind its protective walls.

That said, the sheer variety of ways of doing liberalism is often used by liberalism's opponents to attack constitutional liberals, and Orbán's political rhetoric takes advantage of the opportunity whenever he finds it. We can see this most clearly in Orbán's use of the term “political correctness” which started in liberal circles as an ironic way of criticizing those within the left who had become too doctrinaire.²⁹ Political correctness is easily turned on its head to make it sound like liberals are intolerant within their own camp, violating one of their own first principles. Orbán perfected this sort of argument to claim the high ground on liberal freedom: “[P]olitical correctness transformed the European Union into a kind of royal court where everybody must behave well . . . Liberalism today no longer stands for freedom but for political correctness, which is antithetical to freedom.”³⁰

Éva Balogh, a keen observer of Viktor Orbán for many years, usefully summarized the evolution of Orbán's uses of “political correctness”. In 2012, Orbán blamed political correctness for blocking discussion of “things that are essential to the very core of our civilization.” Then a year later, he said that “the long-term decline of Europe” could not be “debated openly” due to political correctness. By 2014, Orbán identified political correctness with liberal democracy, which he said was “a political system riddled with taboos.” In 2015, he said that political correctness was responsible for Europe's inability to defend itself against the incoming wave of refugees. And then he claimed that the entire Hungarian public was politically incorrect, thus backing his appeal to illiberal democracy: “The Hungarian people by nature are politically incorrect, i.e., they haven't lost their sanity. They are not interested in bullshit [duma], they are interested in facts. They want results, not theories.”³¹

Of course, it is not just Orbán who uses apparently liberal ideas against liberals. His fellow illiberals do the same thing. One of the Kremlin's favorite journalists, Dmitry Kiselev, wrote: “East and west appear to be trading places. In Russia we now take full advantage of freedom of speech, whereas in the west political correctness, or political expediency in the name of security, have become arguments against freedom of speech.”³² Donald Trump in the US has also famously decried political correctness while saying things that are insulting to vulnerable minorities,

²⁸Péter Krekó and Zsolt Enyedi, *Explaining Eastern Europe: Orbán's Laboratory of Illiberalism*, 29 (3) J. DEM. 39 (2018).

²⁹For the origins – and uses by the right – of the term political correctness, see Moira Weigel, *Political Correctness: How the Right Invented a Phantom Enemy*, THE GUARDIAN, Nov. 30, 2016, at <https://www.theguardian.com/us-news/2016/nov/30/political-correctness-how-the-right-invented-phantom-enemy-donald-trump>.

³⁰Éva Balogh, *Trump and Orbán on Political Correctness*, HUNGARIAN SPECTRUM, Dec 2, 2016, at <http://perma.cc/76NF-DXGL>.

³¹Id.

³²Dmitry Kiselev, *Russia and the West Are Trading Places on Freedom of Speech*, THE GUARDIAN, Apr 10, 2014, at <http://perma.cc/GK6K-Q8XF>.

claiming the need to speak the truth.³³ Social psychologists have shown that Donald Trump’s popularity in the 2016 American election was magnified by his rejection of “political correctness” because his apparent appeal to the liberal value of free speech made him more acceptable to moderates.³⁴ Something similar must be going on in these other places as well. Appealing to liberal ideas in theory while undermining them in practice is practically now a political brand.

Mimicking the language of liberalism disguises the hard edges of illiberalism, however. Within constitutional liberalism, the conflict between two liberal values—freedom of speech and respect for the dignity of others—does not cause a fatal contradiction because it is not illiberal to consider the human dignity of vulnerable people as a limit to protected speech, but neither it is illiberal to claim that there can be no restrictions like this on free speech. People like Orbán and his fellow-travelers³⁵ on the right often invert phrases that came to have a meaning in the context of debates within liberalism and use them to pillory liberals for their apparent contradictions. This tactic reveals a deft understanding of the tensions within liberalism itself while simultaneously poisoning those ideas so that they can no longer be used the same way by liberals again. Illiberals often hide in liberal language, the way that wolves hide in sheep’s clothing. The new populism marries an illiberal core with a liberal cover.

C. The normative defense of illiberalism

If attacking liberals in their own language is the negative part of the way that illiberals construct a worldview, what is the positive logic in illiberal thought? We have seen what illiberals are *against*; now we can ask what they are *for*.

In fact, Orbán’s speeches do have an affirmative argument to make, one that is fed in the background by Lánctzi’s theory of “practical realism.” The Orbán regime rejects liberal utopianism in favor of a theory that appears to take seriously what actual democratic citizens experience and value in the present. But, along with this “realism” in the recognition of actually existing people by channeling their fears, comes a realist justification for a single vector of power and the elimination of future political debate.

The first step in this positive defense of illiberalism is the assertion of a moral community as an entity whose interests are defined and whose fate is guided by the state. As Lánctzi explained after the 2018 election:

The Hungarian PM has been aware of the philosophical abyss underneath the issue [of liberal justification]. But being a politician he has had to make a choice expressed in the plain language of plebeian politics . . .

Orbán’s answer was this: in a mixed moral environment we must resuscitate the traditionally binding moral ties in the face of outside challenges . . . What makes us a moral community? . . . [T]he unity of the community [occurs] when the individuals can trust each other to an acceptable extent.

³³For a catalogue and a criticism, see Chris Cilizza, *The Dangerous Consequences of Trump’s All-Out Assault on Political Correctness*, CNN.COM, Oct. 30, 2018, at <https://edition.cnn.com/2018/10/30/politics/donald-trump-hate-speech-anti-semitism-steve-king-kevin-mccarthy/index.html>.

³⁴Lucian Gideon Conway III, Meredith A. Repkea and Shannon C. Houck, *Donald Trump as a Cultural Revolt Against Perceived Communication Restriction: Priming Political Correctness Norms Causes More Trump Support*, 5 J. SOC. POL. PSYCH. 244 (2017).

³⁵I suppose I am doing the same thing here that those on the right do with “political correctness”, since the term “fellow traveler” was used first by Leon Trotsky to describe people who were somewhat sympathetic to communism. But since these sympathizers were not of the proper class origin to be true communists, they always generated some doubts about how far they were willing to support the cause. DAVID CAUDE, *THE FELLOW TRAVELERS: INTELLECTUAL FRIENDS OF COMMUNISM* 2 (1973).

In my understanding, Orbán discovered the system of the meritorious moral relationships You have rights, but first you have to fulfil your obligations. Without your personal merits, your community cannot stand by you when you need it, community assistance is not unconditional The central moral virtues are obligation and responsibility. Individual rights are dependent on them—that is the secret of an “illiberal” morality.³⁶

Orbán’s illiberalism, then, enforces a norm of reciprocity within a moral community. The individual has no rights unless she first fulfils her obligations. The individual who rejects this condition of membership in the moral community has no claim to be protected by the state.

If the mutual recognition of obligations and rights binds members of the moral community together in Orbán’s theory, the leader of that moral community is governed by a different logic altogether. Láncki argues that one should replace the utopian fantasies of liberalism—in which ideal citizens develop their ideal polity—with the wisdom of “political realism”:

In the focus of political realism, there is political action—no lofty theories, no large-scale or covering conceptions, and no analytical laws, only insights grounded on direct perceptions. The guiding line of political action is power—its acquisition and preservation

Anyone concerned with political action should also be concerned with the success of political action Political reality, that is, what happens in politics and by whom, is the point of departure of all analysis about what the political is and what we can achieve by political means

By practical or realist thinking, . . . all we can say is that our basic experience is that strife seems eternal and peace is only casual or transitory, and even periods of peace are full of strife, conflicts and enmities Strife is unavoidable or ineradicable due to constant minor changes in the world in and around us.³⁷

Láncki defines the political as the sphere of action, not of ideas. Idealized conceptions have no place in this space. Instead, politics is driven by the conflict caused when settled expectations are unsettled by the inevitable forces of change. Constant strife provides the background against which the political leader struggles to acquire and deploy power. The only criterion for the assessment of whether power is legitimate is whether it succeeds in channeling that strife.

Láncki continues:

But strife is only the first element of political realism. The second is necessity Necessity is a trump in various contexts where someone wants to explain why a particular action has to be carried out

Conflict that is often mentioned as a characteristic of political realism unites these two basic concepts: strife and necessity.³⁸

If, for Láncki, politics are the struggle for decisive and successful action, then the focus of this action must necessarily be on “acquisition” which settles conflicts and achieves what is required by necessity.³⁹ In short, the acquisition of power, fueled by strife and guided by necessity, ultimately settles all issues.

Láncki’s formulation of political realism makes sense as the guiding philosophy behind a speech by Viktor Orbán before his momentous election in 2010. In a speech given in 2009 at Kötscse, Orbán portrayed politics as constant strife among contending positions that could be quelled by the acquisition of power in a “central power field.” Here’s Orbán:

³⁶Láncki, *supra* note 14.

³⁷Láncki, *supra* note 16 at 3–6.

³⁸Láncki, *supra* note 16, at 6–7.

³⁹*Id.* at 9–12.

Let us take a look at the party power structure of Hungarian politics. A dualist party power system [in which political power rotates between two large and opposing blocs] has emerged now in Hungary. This dualist system has naturally affected the culture There are no common values or common goals in this dualist structure which both sides would accept, but instead there are constant battles on the most fundamental questions

I propose that, instead of a politics designed for constant battles, we choose a politics based on perpetual governance. Our thinking should not be defined by the constant struggle with the other side but by the representation of certain national affairs with convincing force. Naturally, there will be competition, and ultimately the voters will decide. The question is what we offer as an alternative. Do we offer the continuation of a two-party system with a dual power space and constant cultural arguments? Or do we direct those diverse interests to the appropriate marginal location and then represent, in the public, the goals of a political force that strives for permanent governance through a large governing party?⁴⁰

Obviously, from what we know now, Orbán put in place a plan for perpetual governance. Láncki's book on political realism, ostensibly a work of political theory, nonetheless describes quite well what Orbán did in practice to achieve this power. As Láncki argues, to acquire power, the leader [must first identify an enemy, whether real or invented:

In most cases we are born to have an enemy, we inherit our enemies from the past and ancestors. But in politics it is very common to appoint an enemy which is part of the foundation of political aims. My political aim is much more accentuated and understandable if I can present the enemy, thus forging unity among my supporters.

. . . But the enemy is much more than a hated rival politician or party. The enemy is an important justification why we are doing what we do Without an enemy, you have only a limited identity of your own. If there is nothing to oppose your own way of defining yourself—you are nothing; you hardly exist as a political agent.⁴¹

The Schmittian overtones of this argument are hard to miss.⁴² But the prominent interlocutors in this part of Láncki's argument are Machiavelli, Hobbes, and most notably Leo Strauss and his favored Greek sources. Láncki's vision of politics is clearly agonistic and anti-utopian—and anti-liberal in almost every sense. Politics is a struggle for power against an enemy who may not even be real but who serves the function of defining who the protagonist is by contrast. In this sort of politics, the only standard is success.

As Láncki elaborates this theory of practical realism in his theoretical treatment, his primary enemy is none other than the liberal-in-chief John Rawls:

Today, it is a mainstream belief that modern political philosophy begins with Rawls's book, *A Theory of Justice*, published in 1971. This categorization enjoys any validity only if we accept the identification of political philosophy with political thought opposed to political reality. As political realism is primarily concerned with what has a historically justifiable reality, this . . . philosophy represented by Rawls only expresses a direction in the long list of utopian political philosophies. In the vocabulary of Rawlsian terms, there is no place for strife, necessity or acquisition and the like The real issue is not the ideological character of Rawls's work, but whether it is not a complete failure of modern political science to separate political action from political thought⁴³

⁴⁰Viktor Orbán Speech at Kötöcsé, September 2009, HIREXTRA Feb. 17, 2010, <http://www.hirextra.hu/2010/02/18/megorizni-a-letezes-magyar-minoseget-orban-kotocsei-beszede-szorol-szora/>.

⁴¹Láncki, *supra* note 16, at 13–14.

⁴²CARL SCHMITT, *THE CONCEPT OF THE POLITICAL* [1932] (trans. G. Schwab, 2007).

⁴³Láncki, *supra* note 16, at 44.

Lánczi therefore dismisses Rawls as yet another utopian who can say nothing to actually existing politics. But attacking utopians lays the groundwork for the defense of realism.

Back in the world of action, the enemy of the Hungarian people was being actively constructed by Orbán, following Lánczi's prescriptions. As it turned out, Orbán picked as his designated enemy another cosmopolitan American (though one who was born in Hungary): George Soros. In his speech to the party faithful in November 2017, Orbán explained the threat that the enemy poses:

Today an empire is threatening us once again. We stand in the way of a plan which seeks to eliminate nations, and seeks to create a Europe with a mixed population. We stand in the way of a financial and political empire which seeks to implement this plan—at whatever cost.

Let's not beat about the bush: in order to implement the "Soros Plan", across the whole of Europe they want to sweep away governments which represent national interests – including ours. In recent years Soros's NGOs have penetrated all the influential forums of European decision-making. They are also present in the backyards of some Hungarian parties. They operate like the activists of the Department for Agitation and Propaganda of the old Soviet Communist Party. We old war horses recognise them by their smell. Although the Soros troops use somewhat more refined methods, they nonetheless want to tell us what to do, what to say, what to think – and even how we should see ourselves

So when we say that we must defend Hungary, we declare that we must defend work, our families, security, the authority of our laws, our achievements and Hungarian culture. And we must also defend our future. What we did not tolerate from the Soviet Empire we shall not tolerate from the Soros Empire. We shall defend our borders, we shall prevent implementation of the Soros Plan, and eventually we shall win this battle.⁴⁴

In unifying his forces before a common enemy, Orbán was following the Lánczi script.

But, returning to the theoretical defense of practical realism, once the enemy is chosen, what does Lánczi counsel next on how the victory of political power could be achieved? Just as the leader is not bound by the norm of reciprocity that links citizens with each other (and conditions the acknowledgement of each person's rights on their fulfillment of obligations), the leader must also promote an ideology for the masses by which he himself is not bound. Instead, the leader must remain free of the constraint that might come from either existing rules or mass ideology. Here's Lánczi:

Ideologies offer visions of how we should live, and they compete in an arena of mind-created reality—a virtual world capable of producing change of behavior What we call modern democracy is grounded on the ideas of certain liberal ideas institutionalized by human rights Progressives believe that human rights are at the same time proofs of human progress In that, they are victims of the mirage of their own fundamentalism.

Political action can be limited, say, by regular elections, but if a political agent wants to be successful, he or she will have to storm these limits Real political agents consider the role of ideologies but do not ensure a special place for them.⁴⁵

In this passage, Lánczi becomes Orbán's Machiavelli—advising the prince that ideology may be useful to sell a cause to a public, but the leader—the "real political agent"—cannot be limited by anything. The leader thus has permission to do whatever is necessary regardless of the constraints

⁴⁴Prime Minister Viktor Orbán's speech at the 27th Congress of Fidesz – Hungarian Civic Union, Nov. 12, 2017, AT <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-speech-at-the-27th-congress-of-fidesz-hungarian-civic-union>.

⁴⁵Lánczi, *supra* note 16, at 32–33.

set by law or ideology. What matters for political power is the success of the endeavor, which provides its own legitimation.

Analyzing Orbán's most reflexive speeches to his party faithful and reading his court advisor Láncki as the political theorist who has provided a theoretical rationalization for Orbán's vision of the world, we can see that Hungarian "populism" is not populism at all. Nothing in this theory foregrounds the people and their needs, desires and preferences. Rather the reverse: the people are part of a landscape against which the unconstrained leader plays out his plan to achieve singular power. No truth is owed to this people, who are the audience for invented enemies and insincere ideology. Nothing in this theory privileges democracy as a state form at all. Rather the reverse. Since power is all that matters, "storming the limits" on the part of the leader is completely permissible.

Populism, then, might be the least of our worries, when it comes to Viktor Orbán. If he actually attempted to govern under some limits from popular approval, he would be less dangerous than he is. But Orbán's public valorization of democratic victories and his public display of conspicuous legality through the detailed attention to legal forms and constitutional change are just for show. When Orbán proudly claims to be an illiberal, his illiberalism goes far deeper than the label of "populist" would indicate. If Orbán appears to court the masses by promising to make Hungary great again, his political strategies belie that. Orbán appeals to the people only to provide a cover for his drive for power. "Populist" is used by Orbán opportunistically. In Orbán's world, power is all that matters.

D. The revival of constitutional liberalism

How should constitutional liberals respond to these fundamental challenges to our theories of the legitimation of political power?

First, we shouldn't allow ourselves to be wrong-footed by the attacks of the illiberals. Yes, we know that we have deep arguments among ourselves about the meaning of democracy, constitutionalism and liberalism and we know that the tensions among the three concepts and their entailments mean that we are constantly proposing fixes here, adjustments there, patches in one place and new definitions in another. In our literatures, there are many waves of the hand to reconcile the conflicts that we know are unsatisfactory. All solutions that seamlessly weave constitutionalism, democracy and liberalism together have jerry-rigged bits, loose threads, ad hoc distinctions whose unseemliness we try to minimize. But even if we are not united in how we defend liberal constitutionalism, we can surely stand united when we see something that opposes every form of liberal constitutionalism there is.

Populists justify what they do by successful appeals to democratic publics and many of the populists are savvy enough to build their anti-liberal structures and arguments under cover of liberal ideas. I think this is one reason for the agitated obsession that liberals have with populism. Insofar as populism appeals to actually existing democratic publics, it is hard for the democrats among us to deny that the populists have something going for them. But our examination of the theory animating the Hungarian case should allow us to see that the rhetoric of populism disguises the creeping ambition of autocracy. Populists can be very adept at deploying the tools of liberal legitimation (e.g. "political correctness") to make themselves sound more liberal than liberals. But we can call them out on this, as I have tried to do here, by pointing to the ways that their apparent liberalism disguises their truly disturbing ideas.

Populists—or at least the cleverest among them—have confronted many of us with a crisis of evidence and classification when they win elections and then change the law. What can we say that is fundamentally critical about a leader who touts his own election victories and then changes the constitution by legal means to please his constituents? Elections in democracies are supposed to have consequences! If the law cannot be changed because the constitution doesn't permit it, then a

big enough election victory should provide permission to change the constitution, shouldn't it? How can we object to a leader who claims to speak for the people, then does what he claims that they want him to do and then is rewarded with reelection? Isn't that how democracies are supposed to work? Lurking behind this worry about populism is the uncomfortably close connection between what the people want and what democracy is supposed to deliver. The people seem to speak and the populists seem to listen. Or maybe it is the other way around.

But, as I have shown here, populism may not be what some of the populists are claiming at all. Instead, what we may find beneath the surface is the drive for power, plain and simple. Populists may appear to valorize elections, but underneath they have no intention of leaving office. Instead of giving the people what populist ideology promises (all power to the people!), populists are crashing their constitutional democracies instead. The giveaway here is the race by populists to change the election laws in their first terms in office so that later elections pose no risk to their continued tenure.⁴⁶ While the pivotal election that brought a populist to power may have been tolerably free and fair, later elections are a different story.

While many populists spout nationalist ideas, their methods are often cosmopolitan, which may throw off course at least some of us in criticizing what they do. Some of the new populists have liberally (!) borrowed liberal ideas and legal forms from other democratic governments in consolidating their power—which means that they use cosmopolitan methods of legal transplantation while flying the flag of nationalism. The Orbán government in particular has proven itself to be expert at comparative constitutional law, borrowing worst practices from pretty good democracies and stitching them together to form what I have called elsewhere a Frankenstate.⁴⁷ This may be another reason for liberal discomfort. Doesn't it make us squirm a bit to see our own arguments in the mouths of those with whom we couldn't disagree more?

The populists may have sussed out liberal insecurity, but despite our disagreements about the affirmative case for constitutional liberalism, we know what we all stand against. We can unanimously oppose the concentration of power in the hands of a single political force that refuses to stand aside when the views of the public change. Tyranny may have its origins in a democratic flourish—the autocrat was elected! Over and over!—but this apparently democratic origin of an autocratic regime does not diminish the unjustifiable oppression when democratic publics want to throw the bums out and find they can't. Many of us have been concerned about populism because we see democratic publics discarding their last opportunity to change their governments, believing the ideology that the autocrats have thrown before them for their consumption, while the autocrat feels bound by precisely nothing.

Objecting to the election of opportunistic populists may make us look like the anti-democrats, the ones who are not willing to live with what our fellow citizens—or even more paternalistically the citizens of other countries—have said they want. Of course, those of us who study democracies have to confess that, though we may believe in democracy, we hate being outvoted, just as those who voted in the populists have hated being in the political minority themselves and have basked in the victories they finally won. If that's all that is going on, where groups that were used to winning have become sore losers when the democratic majorities shift, then criticism of populism comes pretty close to complaining about sour grapes.

This is why it is important to look more closely at those who fly the flag of populism. If the authoritarians of the 20th century came cloaked in nefarious ideologies with which they whipped up support for action without limits, the autocrats of the 21st century come wrapped in democratic pretense, holding out the promise that they will provide precisely what their voters want and that

⁴⁶Pippa Norris, *Why Populism Is a Threat to Electoral Integrity*, LSE EUROPP BLOG, May 16, 2017, at <http://blogs.lse.ac.uk/europpblog/2017/05/16/why-populism-is-a-threat-to-electoral-integrity/>.

⁴⁷Kim Lane Scheppelle, *The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work*, 26 GOVERNANCE 559 (2013).

they will give voters what they want by legal means.⁴⁸ By grounding their legitimacy to rule in election victories and legal change, populists occupy the turf of democrats who can't quite figure out what is wrong with this picture.

But while proper democrats see democracy as an end in itself and not just a means to other ends, populists see election victories and popular approval only as a means to a different and far less democratic end. Populists, in short, are opportunists who, in practice, put themselves and their eternal hold on power above any democratic appeal that they may have in particular moments. For the opportunistic populist, democratic rhetoric is the way to disable critics, by appearing to be more liberal than liberals. This is why constitutional liberals have to rise to their own—and others'—defense.

⁴⁸Nancy Bermeo has made this argument for the leaders who bypass elections by launching coups. She has documented the rise of “promissory coups” in which the coup leader immediately promises to restore democracy as soon as possible. Nancy Bermeo, *On Democratic Backsliding*, 27 J. DEM. 5 (2016).