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Gábor Attila Tóth

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A. Definitions

1. Core Meanings

1. Modern authoritarianism, a form of government (→ *forms of government*), is multifaceted. As a broad term, authoritarianism refers to arbitrary governmental authority. The common feature of authoritarian states is the enforcement of obedience to a central authority at the expense of personal freedoms, → *rule of law* and other constitutional values and principles (*Oxford English Dictionary*; Linz (2001) 57; Ginsburg and Simpser).

2. In other words, authoritarianism can be characterized by chronic shortcomings: narrowed political pluralism, absent or inadequate democratic institutions, denied or unenforceable → *fundamental rights*, lack or shortfall of constitutional → *checks and balances*, and oppression of non-governmental-organizations.

3. As a normative concept, authoritarianism is one of the opposites of both liberal democracy and constitutional democracy, two perspectives from which the same entity can be approached (Kis (2003) ix–x). In this context, the term liberal democracy puts the emphasis on a set of values and principles (liberty, equality, autonomy, collective self-governance, equal participatory rights in political decision making; → *liberalism*), whereas authoritarianism prefers either rival values (such as official ideology, or traditional norms of a certain religion) or pragmatic decision making (the bureaucratic mentality of military systems). Concerning institutional preferences, constitutional democracy typically indicates that as a legal norm, the constitution enjoys the highest rank both procedurally and substantially, free and fair → *elections* are held periodically, elected representatives make laws, governmental powers are constrained, and judicial institutions enforce bills of rights. In authoritarian systems, however, the executive is favoured typically with unconstrained and indefinite competences, either by constitutional text or in an unwritten way.

4. From a broader perspective, as regards contemporary institutional systems, there is a distinction between democracy and autocracy; and within the latter a difference can be drawn between authoritarian and totalitarian systems (Linz (1975); Linz (2000); → *totalitarianism*). While identifying a totalitarian system (Arendt 565) seems straightforward (a ruler with total power, coercion imposed through violence, strong mobilizing ideology, people are fully subservient to the state, single-party regime, and militarism), authoritarianism, as a weaker form of autocracy, is difficult to separate from incorrect forms or practices of democracy (Borejsza and Ziemer). Authoritarians historically murdered or violently suppressed opponents, imprisoned journalists, suspended legislation, and abolished courts. Although contemporary authoritarians have not given up the complete mechanism of their ancestors, authoritarianism has been undergoing a modification. Many of the authoritarian incumbents are elected leaders who adopt constitutions and laws that apparently correspond to legal systems in democratic countries. This is why anti-democratic tendencies are more difficult to discover and assess properly (Varol).

5. In reaction to unsettling constitutional developments, with the decline of global freedom and re-emergence of authoritarianism in many regions, a new wave of transitology studies have emerged, examining not only transformations toward but also away from liberal democracy. Scholars encounter difficulties when attempting to label emerging authoritarian systems and their counterparts. The systems apparently still belong to constitutional democracies, but it might be said that these kinds of quasi-democracies are majoritarian rather than consensual, populist instead of elitist, nationalist as opposed to cosmopolitan, or religious rather than neutral. There are many expressions in use: hybrid systems (Karl), mixed systems (Bunce and Wolchik), defective democracies (Merkel; Merkel et al), semi-authoritarianism (Olcott and Ottaway; Ottaway), competitive authoritarianism (Levitsky and Way (2002); (2010)), electoral authoritarianism (Schedler), stealth authoritarianism (Varol), abusive constitutionalism (Landau), and authoritarian constitutionalism (Somek; Tushnet).

6. As an alternative interpretation, authoritarian, but not totalitarian, constitutional systems are also labelled as 'illiberal democracies' or 'liberal autocracies'. Regimes of the former type are legitimized by regular and semi-competitive elections, but power-holders systematically violate the constitutional rights of the people they represent: the executive curtails freedom of the press, individual liberties and institutional guarantees of constitutional principles (Zakaria). 'Liberal autocracy', in varied ways, openly rejects free and fair elections but allows some room for enjoyment of privacy and property rights.

7. The decay of liberal democracy and the rise of authoritarianism are often associated with populism spreading across the globe. Contrary to conventional wisdom, populism—as political concept and worldwide tendency—is not only anti-elitist or anti-liberal but also anti-democratic. Rejecting political pluralism, deliberative procedures of democracy and institutional checks, populist leaders claim exclusive moral representation of the people. If a populist achieves the desired aim, a strong executive power unhindered by legal constraints, the system will end up an authoritarian state (Müller).

2. Methodology

8. Authoritarianism may be distinguished from constitutional democracy on the one hand, and totalitarian systems on the other. Many types of conceptual and empirical studies have dealt with manifestations of non-democratic rule. Several studies have adopted a comparative approach and a range of collected sets of information have become available to constitutional and political scholars (Köllner and Kailitz). There is no consensus, however, on the conceptual criteria for distinguishing authoritarian constitutional systems from others.

9. One group of analyses creates subcategories—eg rule of law, electoral process, political participation, form of government, fundamental rights, civil society—evaluated as separate entities. An independently designed threshold level should be exceeded in each subcategory, otherwise the system is considered authoritarian. Thus, depending on the scores, systems above the thresholds are democratic to a certain extent, but in cases where the characteristics of at least one subcategory are below the threshold, the system is, to a degree, authoritarian (Lauth).

10. In order to show the transformations of a system as a whole—eg when scores for different subcategories move to opposite directions—some studies apply aggregate rating process. For example, Freedom House uses a three-tiered rating system, consisting of scores, ratings, and status. Here countries are also awarded points for several indicators in each subcategory. But, unlike the pure sub-categorical analyses, the results are weighted according to the importance of the different sub-categories, then each score is converted to rating, rates are aggregated, and finally the status of the country—free, partly free, not free—is calculated according to a combined average of the ratings (Freedom House, 'Freedom in the World Report 2016').

11. Since aggregate rating process in itself cannot explain when and why democracy ends and where autocracy begins, a further, systematic analysis is also offered, which combines empirical descriptive and comparative methods with a normative, interpretive approach to constitutionalism, differentiating among normal, defective and unstable democracy, transitional systems from democracy to authoritarianism, and authoritarian systems. In systematic analysis, the threshold depends not only on aggregated ratings, but also on the reasoning that a given system with authoritarian tendencies can systematically preserve itself (Kis (forthcoming 2017)).

3. Defining Elements

12. Although authoritarian constitutional systems vary enormously in terms both of their political background and legal features, some common elements, relevant from a comparative constitutional point of view, can be detected.

(a) Ruler(s)

13. In the same way that 'Hitlerism' and 'Stalinism' are the tags of political principles and policies of the totalitarian regimes of the Nazi Germany and the Soviet Union, autocratic systems can be frequently identified with the name of the person exercising dominion. The standards and strategies advocated by the authoritarian Spanish military leader and dictator General Francisco Franco is described under the name 'Francoism'. 'Maoism' refers to the communist political thoughts stemming from the doctrines of Mao Zedong, founding father of the single-party People's Republic of China (→ *communism*). 'Peronism' is the label of the political policies and movements associated with Juan Domingo Perón, military leader and three-time president of Argentina. Similarly, 'Kemalism' and, in more recent terminology, 'Atatürkism' are the names of secular, once progressive, still authoritarian ideology championed by Mustafa Kemal Atatürk, founder of the Turkish Republic, whose surname 'Atatürk', given by the Parliament, means 'father of the Turks'.

14. At the dawn of the twenty-first century, many potentates controlled constitutional systems across the globe. Examples of states which are frequently depicted as authoritarian systems include Azerbaijan under İlham Aliyev, Belarus under Alexander Lukashenko, Hungary under Viktor Orbán, Russia under Vladimir Putin, Syria under Bashar al-Assad, Turkey under Recep Tayyip Erdoğan, Zimbabwe under Robert Mugabe. However, in Poland Jarosław Kaczyński, the authoritarian leader of the governing Law and Justice Party and *de facto* leader of the country, occupies no key position with constitutional competences.

15. The empirical legitimacy of this kind of personalized regimes can be easily associated with the Weberian charismatic authority based on the force of personality of the leader, as opposed to rational legal authority or traditional authority. Charismatic domination rests on the general belief that the leader is endowed with exceptional powers or qualities, not accessible to the ordinary person. Public officials are required to show personal devotion to the ruler (Weber Chapter III, para 10).

16. In contrast to the personalistic rule of authoritarian individual leaders, a new type, the bureaucratic-military authoritarianism has emerged in Latin America since the 1960s: first in Brazil and Argentina, then in Chile and Uruguay. The main feature of these systems was that the military as an institution led the country, frequently by a rotation of presidency (O'Donnell (1999); Collier). This type of system lacks the dominion of ideology or nationalism, but entails fierce repression. The bureaucratic-military system has its roots—with personalistic supremacy—in the interwar period Poland (Józef Piłsudski, First Marshal) and Hungary (Miklós Horthy, Admiral and Regent) as well as in Francoism. Secular military-led authoritarianism also appeared strikingly in Greece, the Middle-East, North Africa, and the Asia-Pacific region. Although bureaucratic-military authoritarianism had almost vanished in South America by the early 1990s, new secular, populist authoritarian systems sometimes with military leadership have appeared in many regions of the world.

17. Another type of authoritarianism exists in the People's Republic of China, a 'socialist state under the people's democratic dictatorship led by the working class', where the rule of the country can be coupled with the Communist Party instead of a certain commanding person (Constitution of the People's Republic of China: 4 December 1982, amended on 14 March 2004, Art. 1 (China)). Finally, the authority of the Kim dynasty, three generations of rulers in North Korea, is closer to totalitarianism, a stronger form of autocracy, than to authoritarianism. The Preamble of the text mentions the 'great leader Comrade Kim Il Sung' sixteen times (Socialist Constitution of the Democratic People's Republic of Korea, as amended on 1 April 2013, Preamble (N Kor)) (Xin He).

18. In detail the leadership of authoritarian system is complex, but in essence two subtypes and their amalgam can be differentiated. One of them is charismatic authority—apparently exceptional personal superiority qualifies a politician as the ultimate leader of a state. Under certain circumstances another subtype can be traditional authority—institutionalized practices (eg dynastic succession, actual balance of power within the Politburo) allocate the public power to the

leaders. What is common in all authoritarian leadership is that they are a long way from normative features of legitimacy.

(b) Façade Constitution

19. In contrast with constitutional democracies, standard authoritarian constitutions remain solely paper constitutions called 'semantic camouflage' (Loewenstein 149) or 'façade constitutions' (Sartori 841). The constitutional rules and institutions in authoritarian systems are often not fundamentally different from those to be found in constitutional democracies. A good example might well be the Syrian Constitution, which reads as follows: '1. Freedom shall be a sacred right and the state shall guarantee the personal freedom of citizens and preserve their dignity and security' (Constitution of Syria: 27 February 2012, Art. 33(1) (Syria)) (Adams, Ballin and Meuwese 8).

20. As regards key legislative, executive and judicial bodies, authoritarian constitutions typically do not serve as normative benchmarks; they are only descriptive maps of powers. Moreover, in authoritarian systems the constitution may be only a paper facade, because all political power, including that of revising the constitution, resides with the leader(s) of the ruling party. It is thus political practice rather than the constitutional regulation as such which distinguishes the one from the other: eg the extensive way in which an elected president makes use of his power to legislate by (emergency) decree (→ *executive order*), and the unwillingness of the legislature and the courts to check this practice, the broad interpretation of constitutional limits to free speech to prosecute journalists etc. For instance, the 1993 Russian constitution is not fundamentally different from the 1958 French constitution (whose presidential form of government it has adopted), but functions very differently. As a consequence, in order to understand how an authoritarian system is really governed, the actual political exercise must be examined in addition to and in contrast with the constitutional text.

21. Besides being a descriptive map of powers, the constitution of an authoritarian system—if not technocratic—indicates ideological or religious commitments. It may find its foundations in religious considerations. The constitution of Iran is illustrative: it declares that the 'official religion of Iran is Islam and the Twelver *Ja'farî* school (*in usul al-Dîn* and *fiqh*), and this principle will remain eternally immutable' (Constitution of the Islamic Republic of Iran: 3 December 1979, amended on 28 July 1989, Chapter 1, Art. 12 (Iran)). Similarly, the constitution of Egypt points out that 'Islam is the religion of the state', and 'the principles of Islamic Sharia are the principle source of legislation' (Constitution of Egypt 18 January 2014, Chapter 1, Art. 2 (Egypt); → *constitutions and Sharia provisions*). The Hungarian constitution mentions that 'we are proud that ... our country become part of the Christian Europe', and 'we acknowledge the nation-preserving role of the Christian faith' (Fundamental Law of Hungary: 25 April 2011, National Creed (Preamble) (Hung)). Such a declaration does not simply remember the historical role of religion, but expresses that the constitution is based upon a traditional faith. Consequently, it identifies itself with the moral and political foundations of a certain faith, in spite of the fact that citizens may be divided by ethical and religious disagreements.

22. Moreover, the constitution may mirror racial or ethnic preferences. The constitutional concept of the nation, the very subject of a constitution, may be identified as an intellectual and spiritual community in many instances. As an example, the South African Constitution under apartheid ensured fundamental political, liberty, and equality rights not for all but for certain racial groups only (Republic of South Africa Constitution Act: 23 September 1983 (S Afr)). A different characteristic can be that the constitutional text insists that there is one single ethnic nation that belongs together, regardless of the habitual residence and effective link to the state, while those resident citizens who belong to national minorities of the given state are not included in the category of nation. These concepts of the nation diverge from those egalitarian constitutional standards that admit that modern → *nation states* are multi-ethnic societies (→ *egalitarianism*).

23. It is not unusual for a constitutional narrative of history to refer to a mythical account of

history. It can be read in a constitution that the country was, on the one hand, a hero fighting invaders over the centuries, or indeed that it was the victim of the occupying forces. Yet the text does not reflect on the tragic failures of that nation (Fundamental Law of Hungary: 25 April 2011, National Creed (Preamble) (Hung)). In this way, history narratives are replaced by ideological agendas and a sense of victimization (Michnik).

(c) Hegemonic Voting Praxis

24. Modern authoritarian systems rarely reject decision-making processes by which the people choose individuals to be members of legislative bodies or hold other public offices. On the contrary, many contemporary authoritarianisms legitimize themselves as ‘democracies’ through elections. However, voting practice in authoritarian constitutional systems is hegemonic in its nature. This means that such a system is without, or deficient in, many constituting elements of fair, competitive and free elections required by both international law and principles of constitutionalism. As a result, authoritarian heads of government may keep the process and outcome of the vote under control (→ *heads of state and government*).

25. ‘Elections without choice’ are commonly associated with harsh authoritarianism. For example, Soviet-type East Central European countries were characterized by a single-party system (eg Hungary, Romania) or a dominant-party system (eg Czechoslovakia, Poland) without the possibility of competitive elections. Citizens with voting rights were allowed to vote but only for the candidates of, or a party-list dominated by, the ruling party. As for contemporary constitutional systems, the People’s Republic of China’s constitution proclaims that the country is ruled ‘under the leadership of the Communist Party of China’ (Constitution of the People’s Republic of China: 4 December 1982, amended on 14 March 2004, Preamble, Art. 59, Art. 99 (China)). The parliament of China, the highest level of constitutional institutions, is meant to be the National People’s Congress, which is not an elected body, but made up of delegates from provinces, autonomous regions, municipalities, and the armed forces. Only Local People’s Congresses at the lowest level are elected directly by the voters (Constitution of the People’s Republic of China: 4 December 1982, amended on 14 March 2004, Art. 59, Art. 99 (China)). Although apparently China is a multi-party state, in reality minor parties and independent candidates cannot form a democratic opposition because of governmental intervention.

26. Many authoritarian systems constitutionally retain multi-party elections and provide scope for activities of opposition movements, although legal norms and practices ensure the dominance of the ruling party. The governing party may enjoy undue advantage because of partisan changes in election law, unequal → *suffrage*, gerrymandering of → *electoral districts*, rise of electoral threshold, restrictive campaign regulations (→ *political candidates and campaigns*), far from independent assessment of the election, and biased media coverage that blurs the separation between political party and the state. Modification of voter identification and registration laws may result in *de facto* disenfranchisement (eg in Zimbabwe, under President Mugabe). Electoral laws may unfairly promote voting by the diaspora (eg Senegal), or hinder the voting ability of émigrés (eg in Venezuela, under Chavez).

27. Authoritarianism often goes hand in hand with populism. In many countries the relative popularity of the ruling party stems from the global trend that a populist leader exploits popular anti-system and anti-establishment sentiments; but it is also the case that an immense part of the mass media is *de facto* captured, including *de iure* takeover of public media, and the general public is systematically manipulated by the government. Leaders of the opposition parties and → *social movements* are frequently characterized as betrayers or agents of external powers. As a consequence, while many authoritarian systems appear to be majoritarian backed by the electorate (popular vote, referendum), they might be based on one-sided modifications to the constitution and electoral laws, and subsequently, unfair elections.

(d) Shortfall of Institutional Checks

28. Although the constitutional structures of authoritarian states inevitably consist of the composition and competences of the three main parts, the legislative, the executive and the judicial branches of government, they are not based upon the principles of → *separation of powers* and the rule of law. Modern authoritarianism may establish the entire set of formal institutions associated with constitutional democracy, yet these serve as either a tool of authoritarian imposition, or a façade of representation (Schedler 54–61).

29. Structurally or in practice, constitutional powers are utterly unbalanced. The executive branch—especially the head of the executive: the monarch (eg in Saudi Arabia), the *generalísimo* (eg in Spain under Franco), the president (eg in Turkey under Erdoğan) or the prime minister (eg in Hungary)—is superior in power. Moreover, formal and actual power may differ significantly (eg in Russia under the presidency of Medvedev). The authoritarian ruler can expand his authority as ‘the guardian of the Constitution’. From boundless presidential aspirations to military command, vindicating real power as the depository of national sovereignty is sometimes a result of savage struggles. Additionally, formal governmental dominance may be subordinate to informal party dominance (eg in the People’s Republic of China). A typical example of this is the far-reaching influence of the politburo, the principal policymaking body of the communist party (eg Soviet-type communist regimes).

30. Authoritarian systems of course do not tolerate the → *independence of the judiciary*. To some extent they have an attribute of the dual state (*‘Doppelstaat’*), describing originally the Nazi state (Fraenkel) and later the Stalinist Soviet Union (Sharlet). This means that politically sensitive cases are judged in an arbitrary manner (*Maßnahmenstaat*), while private parties in conventional legal disputes, eg property and contract, may gain fair judicature, occasionally even against oppressive institutions (*Normenstaat*).

31. Populist authoritarian leaders often undercut constitutional judiciary, the institutional safeguard to protect the rule of law and individual freedoms, in the name of the ‘will of the people’. Less legal ties mean, however, that not only judiciary but also other democratic institutions are subverted. Representative government becomes avoidable if the popular will is not legally constructed or channelled; rather, the leader echoes it. As a result, populist authoritarian leadership emerges at the expense of not only constitutional judiciary but also of parliamentarism.

32. As an alternative to → *representative democracy*, several authoritarian forms of government prefer corporatism to competitive multi-party systems. Although authoritarianism has never availed itself exclusively of a corporatist model, and corporatism has never been exclusively an authoritarian attribution, in many cases non-democratic constitutional systems grant large interest groups such as business corporations, trade → *unions*, professional organizations, churches, or universities a representative constitutional function (Malloy).

(e) Restricted Individual and Collective Rights

33. Many authoritarian constitutions formally declare fundamental rights, but these are not legally enforceable. First, they typically recognize certain fundamental rights but only to the extent these rights serve the interests of the ruling political group or class. The constitutional catalogue of fundamental rights is apparently built on the international standards stemming from the → *Universal Declaration of Human Rights (1948)* of the United Nations and regional Human Rights treaties. However, several paragraphs are in collision with international human rights law.

34. Although criminal prosecution is still a tool for authoritarianism, political leaders often sue journalists and civil rights activists for → *defamation* to silence dissent, instead of prohibition or suppression of journals, books, films, websites (→ *censorship*) or imprisonment. Freedom of speech and press can be denied or restricted in the name of the ruling class, the dominant religion, or

protection of the head of state (defamation laws).

35. Similarly, racial or ethnic exclusions as well as repression of civil society are among the characteristics of authoritarian constitutional systems (Cavorta). Although civil society organizations are rarely prohibited, many regimes from Algeria to Venezuela have adopted discriminatory, inflexible and costly requirements for registration and reporting of civil society groups. Likewise, 'foreign agent' laws have been used as a tool of authoritarianism; their primary aim is to curb cooperation between international and domestic NGOs (Belarus, Israel, Russia). Moreover, in many regimes government-organized non-governmental organizations ('GONGOs') have been set up and/or financed by the executive in order to imitate civil society, promote authoritarian interests, and hamper true NGOs (Egypt, Hungary, Russia, Syria, Turkey) (Varol 1713).

36. Given the lack of legal importance and applicability of many authoritarian constitutions, which are political declarations only, existing institutional checks within the constitutional system are illusory. Constitutional courts, for example, may play a legitimizing role instead of fulfilling the task of final guardians of fundamental rights. Decisions of the constitutional justices, appointed according to the will of the authoritarian leader, may contribute to the reinforcement of the system. In the illustrative case of Russia, Vladimir Putin deployed constitutional review to help centralize and consolidate his authoritarian power. Moreover, authoritarians occasionally tolerate painful judgments to build a facade of constitutionalism, provided that judiciary does not threaten the core of authoritarian institutional design (eg the judiciary in Egypt under President Mubarak) (Varol 1689).

B. Origins

37. The term 'authoritarianism' comes from 'authority' (in Latin, *auctoritas* from *auctor*). It refers to political correlations where, on the one side, superior power, and on the other side, forced obedience coexist. This means that authority is a special kind of power referring to coercive ability. Some social scientists have identified the roots and main characteristics of authoritarian personality as well as authoritarianism within the family (Adorno et al 482–484). Even if authoritarianism as political system has its sources in oppressive and submissive family relations, a special focus is necessary on the moral and structural division between individuals and political institutions (Hobsbawm).

38. Traditionally, authoritarianism—or broadly, autocracy—as political system meant nothing more than the limitless and arbitrary powers of a single ruler. The power-holder is not constrained either by legal norms, institutional checks or the will of citizens via ballots. There might, however, be *de facto* limits such as tyrannicide, coup, revolt or foreign intervention.

39. Distinguishing three foremost types of government: monarchy, or power held by one; aristocracy, or power held by a few; and polity, or power held by many, Aristotle emphasized that each type can be perverted by abuse of power. Monarchy may turn into tyranny when the authority is wasted in a single ruler who does not use but misuses power (Aristotle). Similarly, Kant labelled forms of states as autocracy, aristocracy, and democracy according to those persons who possess the sovereign power. In this context, autocracy can be characterized, respectively, as the power of a monarch. Moreover, Kant also distinguished according to the manner of administration exercised over the people by the power-holder. In this respect government is either republican or despotic. While → *republicanism* means representative and limited government, in despotism the public will is administered by the ruler as his own will (Kant).

40. It is argued that legal historical roots of authoritarianism can be found in the history of medieval political thought being largely a history of the conflict between 'ascending' and 'descending' conceptions of legal authority. In ascending theory of authority, power is located in

the people itself and its communities. Following ancient Greece, republican Rome, and Germanic communities, the centuries of the Middle Ages created 'liberties,' though feudally distributed, as the organizing principle of society. In a peculiar way the concept of corporative-feudal 'political society' (*populus seu societas civilis*) was divided from the concept of state. The alternative to this theme is the descending conception of authority, according to which original power is located in divinity, the source of public and private powers. Within this theme, rulers are not representatives but delegates of the supreme Ruler; consent plays no role in making public law decisions; and society remains inferior to the authoritarian leader both in practice and in principle (Byzantium, Islam, Russian domains etc) (Szűcs; Ullmann; Füredi 138–140).

41. In comparison with its despotic or tyrannical predecessors, modern authoritarianism also has many varied aspects. The twentieth century gave birth to totalitarianism, a new type of autocracy, first in the Nazi Germany and the Stalinist Soviet Union. At the same time, pre-totalitarian regimes emerged in Europe and Asia, like authoritarianism in Austria led by Engelbert Dollfuss (May 1934 Constitution), and Fascist Italy headed by Benito Mussolini. Among long-standing twentieth century authoritarian systems can be found Spain under Franco and Portugal under Salazar, both enacting new authoritarian constitutions (In Spain: Fundamental Laws of the Realm, between 1933–1978 (Spain); in Portugal: Constitution of the Portuguese Republic, between 1933 and 1976 (Port)). From the mid-1980s, the post totalitarian Soviet-type regimes in East Central European countries relaxed their control but did not allow free elections. The only negative exception was Romania under the dictatorship of Nicolae Ceaușescu. As another type of authoritarianism, bureaucratic-military dictatorships emerged in Latin America. In addition to those already mentioned, examples of twentieth century dictators include Idi Amin Dada (Uganda), Fidel Castro (Cuba), Saddam Hussein (Iraq), and Ferdinand Marcos (Philippines).

C. Comparative Constitutional Framework

1. From Authoritarianism to Constitutional Democracy

42. Modern constitutionalism imposes limits on the performance of authority by the power-holder. The birth and evolution of constitutions are conventionally seen as the emancipation of a country from autocratic government (Barendt 2–3).

43. First, post-colonial constitutions are advised by lessons from a despotic past. An initial example of this kind of constitution was the Articles of Confederation (1777), eventually superseded by the Constitution of the United States of America (1787). As the text of the Declaration of Independence (1777) puts it,

when a long train of abuses and usurpations ... evinces a design to reduce (the people) under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States.

44. Since then, it has become common practice that, on achieving independence and legitimate government, liberated countries adopt their own constitutions, as have India (1950) and Nigeria (1963).

45. Second, many constitutions are adopted as a consequence of a → *revolution*, which presupposes the existence of authoritarianism. Revolutionary constitutional change is radical transformation in a relatively short time-frame, with a representative body in its centre. A classic

case of this type is the French revolutionary constitution (1791), abolishing absolute monarchical rule. Contemporarily, revolutions have returned in a dramatic manner in the Arab world and the Andean republics of Latin America. Plenty of empirical evidence from the last three centuries demonstrate, however, the adverse outcomes of revolutionary ruptures: revolutions often culminate in terror, returning to autocracy, like the Jacobin and the Bolshevik dictatorships (Arato (2016)).

46. Third, democratic constitutions may represent a fresh start following the defeat of a totalitarian regime. This was the case after the Second World War in Germany (Basic Law of 1949), Italy (Constitution of 1947) and Japan (Constitution of 1946) (Barendt 3). As the Basic Law puts it, the German people were 'inspired by the determination to promote world peace as an equal partner in a united Europe', and for this reason inviolable human dignity is the foundation of the system of basic rights (Basic Law for the Federal Republic of Germany: 23 May 1949, Preamble, Art. 1(1) (Ger)).

47. Fourth, a new model of post authoritarian constitutional change has emerged in several countries. First, in Spain and Portugal, negotiations and compromises between reformist incumbents and the opposition led from authoritarian regimes to constitutional democracies. Following these experiences, the peaceful, negotiated constitutional transformations in East Central Europe, together with the unification of Germany and the disintegration of the Soviet Union, belonged to the new model of regime change. The historical turning point for the transformation from authoritarian regime to democracy in this part of the world was 1989. Similarly to these, South Africa replaced its white supremacist constitution of 1983 with an Interim Constitution of 1994 which in turn led to the Constitution of 1997. In this way the coordinated post authoritarian transitions were composed of two stages. In the first stage, a roundtable agreement determined the rules for preparing and holding free elections. Subsequently, as a second stage, freely elected representatives replaced the reformed constitutions with new ones (Arato (2012); Kis (1995)). After periods of bureaucratic-military regimes, countries in Latin America and the Republic of Korea also went through peaceful democratization processes, frequently creating new constitutions (O'Donnell and Schmitter).

2. From Constitutional Democracy to Authoritarianism

48. As opposed to waves of democratization all over the globe, authoritarian tendencies have led to the disintegration of constitutional democracies. Numerous thinkers warn that the twenty-first century could become a century of authoritarianism due to the institutional erosion of constitutional democracy (Diamond, Plattner and Walker). The cases of Turkey, several former Soviet republics, Poland, Hungary and some other countries represent such a scenario, where we do not witness constitutional transformation towards, but rather away from constitutional democracy. Briefly, the indicators of the standard activity of a developing authoritarian government may include degrading parliament by reducing it to decorative status; attacking the independent judiciary; limiting the constitutional court; curtailing civil liberties and freedom of the press; and introducing arbitrary emergency measures by referring to financial crisis or terrorism.

49. Cases from Azerbaijan and Belarus to Turkey and Venezuela demonstrate that when a populist leader gains concentrated power, a reshaped constitution may serve authoritarian aspirations. Clearly, constitutional democracy may take various institutional forms. It may be a monarchy or a republic; it may have a presidential or a parliamentary system; it may be a federal or a unitary state. Nonetheless, comparative surveys of governmental systems reveal that some → *presidential systems* have difficulties sustaining democratic practices. Under a range of cultural and social conditions, a parliamentary system is better than a presidential one. Depending on political traditions, culture, and the electoral system, the transformation of the executive and the legislative branch into presidential architecture might slip into authoritarianism (Lipset and Lakin 38–48). To give an example: although both the 1958 French and the 1993 Russian constitutions were seen as reactions to the parliamentary paralysis, with aspirations of a strong executive, the French

political and constitutional practice managed to maintain constitutional democracy in the long run; by contrast, constitutionalism in Russia has moved in that direction quite dramatically since the relatively liberal beginnings in the Jelzin era to arrive at the authoritarian practice of government of the present era, with minimal changes to the constitutional text itself.

50. With regard to constitutional regulation, an important stepping stone to authoritarianism seem to be broad and/or ill-defined powers, including emergency powers, of the executive, and the possibility of unlimited re-election of the chief executive, especially in presidential systems. In a constitutional democracy the emergency optimally provides only the temporary conditions for exercising otherwise legitimate power. A temporarily modified constitutional democracy means that some constitutional rights are restricted, but the main purpose of the state of emergency is to restore the democratic legal order and the full enjoyment of human rights (→ *types and effects of emergency*). In a regime distancing itself from liberal democracy, the ruler's emergency claims institutionalize an arbitrary executive power unhampered by legal constraints thus creating a long-standing special power beyond the rule of law. As the Turkish constitutional developments show, by referring to terrorist threat and other imminent dangers the head of the executive can successfully initiate an extensive constitutional amendment leading to, in a Schmittian fashion, a sovereign-led authoritarian system (Historically, the Weimar Constitution was amended by the 1933 Enabling Act or *Ermächtigungsgesetz*).

51. Some transforming systems reportedly replace the role of constitutional judiciary with → *parliamentary sovereignty*. In practice, constitutional and statutory regulations as well as constitutional conventions are changed. The modifications may have an effect on the personal composition ('court packing'), competences, institutional and financial independence of the constitutional court. To give examples, this is how the Hungarian and the Polish Constitutional Courts were neutralized. As the record of the Russian Constitutional Court demonstrates, altered but not abolished tribunals may serve as a tool of authoritarian imposition. The only exception is Kyrgyzstan, where the Constitutional Court was abolished with the adoption of the Constitution of 2010 and some of its powers were transferred to the Supreme Court (Constitution of the Kyrgyz Republic: 27 June 2010, Art. 97(1) (Kyrg)). A typical explanation of this kind of change is that the representative government gives the majority of people what they want instead of the former counter-majoritarian activity, indeed time-to-time zealotry, of an unelected constitutional court. However, the aim behind the constitutional changes is to safeguard and promote the interests of a particular political force without constitutional balances.

52. Constitutional transition to democracy means recognition of the rights of politically weak and vulnerable minorities. Conversely, constitutional transitions away from democracy often represent ethnic or religious exclusions, or nationalist tendencies. In general, the stronger a nation-building policy is, the more minorities are affected by discrimination. Constitution-making procedures and reshaped constitutional texts may mirror the dichotomy between the inclusive political/sociological and the exclusive ethnic/cultural conceptions of the nation.

53. Democratic transitions go hand in hand with recognition of constitutional liberties. As a representative case, the protection of individual rights and democracy demands more and not less free speech after a successful constitutional transformation. Comparatively, authoritarian leaders tend to restrict it by capturing media. This way the general public is subject to systematic manipulation by the government. Moreover, on the basis of comparative examples, it seems clear that where restrictions on free speech protect the ruler(s) in particular or the executive in general, or members of the majority (eg dignity of a nation, a country, a dominant ethnic group) instead of members of vulnerable social groups, these regulations may constitute a part of authoritarian tendencies (Tóth 205–213). The prospects of constitutional democracy in risk of retrogression depend not only on institutional checks and balances but also on the qualities of civil society (Aziz and Ginsburg).

3. Authoritarianism-To-Authoritarianism

54. More than half of the countries in the world are far from normal constitutional democracy. Many of them are under authoritarian governments or even tyrants. Moreover, one third of the population of the globe have never experienced constitutional democracy with open and free societies (Freedom House, 'Freedom in the World Report 2016'). According to comparative analyses, more than half of all transitions between 1946 and 2010 resulted in new authoritarianism as a replacement of a previous authoritarian leadership (Geddes, Wright and Frantz). In the post-Cold War era, where social, economic and political ties to democratic countries were limited, external democratizing pressure was weak and authoritarian countries rarely democratized (Levitsky and Way).

55. In solid authoritarian systems, a typical form of transformation of power is the constitutional right to inherit the supreme position. The illustrative Basic Law of Saudi Arabia points out that 'the dynasty right shall be confined to the sons of the Founder, King Abdul Aziz bin Abdul Rahman Al Saud (Ibn Saud), and the sons of sons' (Basic Law of Saudi Arabia: March 1992, amended in 2013, Art. 5b (Saudi Arabia)). A dynastic succession can also be a customary norm without written constitutional authorization as in North Korea.

56. Far beyond constitutional order, many authoritarian systems fall as a consequence of violence. Tyrannicide, military coup, revolt, foreign intervention are among the typical authoritarian regime changes. Constitutional transformations are closely associated with personal consequences. Authoritarian heads of states not only lose their constitutional power and political influence but also their personal freedom through imprisonment or exile, or their lives through murder or execution. From Thailand to Latin American republics, various countries have experienced a series of military coups. Since an absolute monarchy was abolished in Thailand in 1932, twenty constitutions have been adopted. A junta repeatedly comes into conflict with a particular powerful family in order to run government. The current constitution, approved by popular vote in 2016, points out that the military manages, to a certain degree, the state of affairs under its supervision. A junta-appointed senate with seats reserved for military commanders checks the powers of elected lawmakers.

57. Many states considered to be on the road from authoritarianism to constitutional democracy, appear to be turning back toward authoritarian architecture. For example, Russia, having given up implementing parliamentary design after the collapse of the Soviet Union, became a solid presidential autocracy. As a different example, in Turkey, following Kemalism and a chapter of secular, military coups, a set of institutions associated with constitutional democracy were implemented. Recently, however, the country has been turning toward authoritarianism with some attributes of religious fundamentalism (Isiksel; Özbudun; → *extremism and fundamentalism*). In the Arab world, in line with revolutionary methods of constitution making, secular dictatorships were not replaced by democratic constitutionalism, but by regimes close to religious fundamentalism.

58. Pretending to be normal constitutional democracies, many sub-types of authoritarian regimes legitimize themselves by popular elections and referenda. What makes them distinctive is that the vote does not allow fair chances for opposition candidates. Many authoritarian leaders—or their parties—are elected even by a landslide; however, from manipulation of the public by mass media (Russia) to open election frauds or delay of scheduled elections (Lebanon), many tools may be at the disposal of the incumbents to gain advantage or avoid adverse results.

59. The constitutional struggle against authoritarianism particularly in Africa and Latin America in recent decades has often focused on the introduction of presidential term limits, and the attempts of autocrats to have these term limits removed, by constitutional reform and/or by reinterpretation of the term limit by the constitutional court (eg Peru). This scheme has been used in Burundi and Rwanda, where controversial third terms entrenched the position of the incumbent presidents (In Burundi, according to a contra-textual interpretation of the Constitution of Burundi: 2005, Art. 96

(Burundi); Constitution of the Republic of Rwanda: 26 May 2003 Art. 101 (Rwanda)). The Economic Community of West African States has been trying to introduce a mandatory limit of two presidential terms for its member countries in order to strengthen the vulnerable democracy in the region (and is now one vote short of unanimity on this issue). In many cases, constitutions are changed so as to extend the terms in office of heads of states.

D. Comparative Assessment

60. Theoretically, as a form of autocracy, an authoritarian constitution can be positioned between totalitarianism and democratic constitutionalism. However, the main features of authoritarianism are arguably incompatible with the values and principles of democratic constitutionalism and of limited constitutional government.

61. Comparatively, the most important new feature of authoritarianism is that under a façade constitution it claims to be democratic. Authoritarian constitutional systems, however, prefer either official ideology (eg a certain religion) or pragmatic decision making (eg bureaucratic militarism) without the possibility of genuine elections. In such systems, the seemingly democratic legal norms are merely protective camouflage, they create systematic advantages for the incumbents. Running rival political parties is either hypothetical or restricted. In an authoritarian state citizens cannot choose freely and fairly among various competitors in elections. Authoritarian leaders typically exercise their constitutional power arbitrarily and disrespect both other branches of government and independent civil organizations. Therefore authoritarian power holders are difficult to replace in a democratic way.

62. Even though the countries in Europe are today considered to be the most democratic constitutional systems, during the past century this continent experienced the most inhuman, totalitarian forms of autocracy. What is more, after many waves of democratic transitions, authoritarian tendencies have appeared again in Europe.

63. The birth of the confederal United States of America, subsequently replaced by a federal but constitutionally limited government, is seen as a reaction to European monarchical and church-based authoritarianisms. Nevertheless, the democratic system of the United States institutions has not been perfectly immunized against the occasional occurrence of authoritarian political ideas and exercises.

64. The constitutional record of Latin America may be accompanied by both bureaucratic-military authoritarianism and peaceful ways out of it. At the present time, some states in the region, such as Venezuela, illustrate that populist heads of government can misuse the constitutional system so as to remain illegitimately in power.

65. Given the constitutional structures and practices of Azerbaijan, Belarus, Russia, Tajikistan and some other post-Soviet states, much of Eurasia constitutes an authoritarian stronghold. There is a long-standing authoritarian constitutional regime in China under the rule of the Communist party, while a different ideology-based authoritarianism, theocracy, has been established in the Islamic Republic of Iran.

66. Authoritarianism also prevails in the Middle East, where Islamic absolute monarchy means hereditary autocracy along Islamic lines, for example in Saudi Arabia. Although North Africa also seems to gravitate towards religious fundamentalist authoritarianism, certain kinds of authoritarianism cannot be found to correlate closely with geographical regions. For example, since the collapse of the Ottoman empire, Turkey has experienced a variety of authoritarian regimes such as religion-based monarchy, secular republic under authoritarian rule, transitory democracy interrupted by a series of military coups, and subsequently, religion-based authoritarian presidentialism. Yet despite empirical evidence of authoritarian tendencies on each continent, it is

also clear that peaceful transformations from authoritarianism to constitutional democracy can occur.

Select Bibliography

- Adorno, TW, Frenkel-Brunswik, E, Levinson, D, Sanford, N, *The Authoritarian Personality* (Harper and Brothers 1950).
- Arato, A, 'Conventions, Assemblies and Round Tables' (2012) 1(1) *Global Constitutionalism* 173.
- Arato, A, *Post Sovereign Constitution Making: Learning and Legitimacy* (OUP 2016).
- Arendt, H, *The Origins of Totalitarianism* (Schocken 2004).
- Aristotle 'The Politics' and 'The Constitution of Athens' (Everson, S, (ed), CUP 1996).
- Adams, M, Ballin, EH, and Meuwese, A, 'Constitutional Possibilities for Bridging the Ideal and the Real: an Introduction' in Adams, M, Meuwese, A, and Ballin, EH, (eds), *Constitutionalism and Rule of Law: Bridging Idealism and Realism* (CUP 2017).
- Aziz, Z, and Ginsburg, T, *How to Lose a Constitutional Democracy* (SSRN 2016), available at <https://ssrn.com/abstract=2901776> (13 March 2017).
- Barendt, E, *An Introduction to Constitutional Law* (OUP 1998).
- Borejsza, JW, and Ziemer, K, (eds), *Totalitarian and Authoritarian Regimes in Europe: Legacies and Lessons from the Twentieth Century* (Berghahn 2007).
- Bunce, VJ, and Wolchik, SL, *Defeating Authoritarian Leaders in Postcommunist Countries* (CUP 2011).
- Cavatorta, F, (ed), *Civil Society Activism under Authoritarian Rule* (Routledge 2013).
- Collier, D, 'Bureaucratic Authoritarianism' in Krieger, J, (ed), *The Oxford Companion to Politics of the World* (2nd edn OUP 2001) 93.
- Diamond, L, Plattner, MF, and Walker, C, (eds), *Authoritarianism Goes Global: The Challenge to Democracy* (The Johns Hopkins University Press 2016).
- Fraenkel, E, *Der Doppelstaat* (Europäische Verlagsanstalt 1974).
- Furedi, F, *Authority: A Sociological History* (CUP 2013).
- Geddes, B, Wright, J, and Frantz, E, 'Autocratic Breakdown and Regime Transitions: A New Data Set' (2014) 12.2 *Perspectives on Politics* 313.
- Ginsburg, T, and Simpser, A, (eds), *Constitutions in Authoritarian Regimes* (CUP 2014).
- Hobsbawm, E, *The Age of Extremes: A History of the World, 1914–1991* (Pantheon 1995).
- Kant, I, *Toward Perpetual Peace and Other Writings on Politics, Peace, and History* (Kleingeld, P, (ed.) Yale UP 2006).
- Karl, TL, 'The Hybrid Regimes of Central America' (1995) 6.3 *Journal of Democracy* 72–86.
- Isiksel, T, 'Between Text and Context: Turkey's Tradition of Authoritarian Constitutionalism' (2013) 11 *International Journal of Constitutional Law* 702.
- Kis, J, 'Between Reform and Revolution: Three Hypotheses about the Nature of Regime Change' (1995) 1.3 *Constellations* 399.
- Kis, J, *Constitutional Democracy* (CEU Press 2003).
- Kis, J, *A Topography of Authoritarianism* (manuscript, forthcoming 2017).
- Köllner, P, and Kailitz, S, 'Comparing Autocracies: Theoretical Issues and Empirical Analyses' (2013) 20.1 *Democratization* 1.
- Landau, D, 'Abusive Constitutionalism' (2013) 47 *UC Davis Law Review* 189.
- Lauth, H-J, 'The Matrix of Democracy' (2015) 6 *Würzburger Arbeitspapiere für Politikwissenschaft und Sozialforschung* 1.
- Levitsky, S, and Way, LA, 'The Rise of Competitive Authoritarianism' (2002) 13.2 *Journal of Democracy* 51.
- Levitsky, S, and Way, LA, *Competitive Authoritarianism: Hybrid Regimes after Cold War* (CUP 2010.)
- Lipset, SM and Lakin, JM, *The Democratic Century* (University of Oklahoma Press 2004).
- Loewenstein, K, *Political Power and the Governmental Process* (1957; 2nd edn University of

Chicago Press 1965).

Linz, JJ, 'Totalitarian and Authoritarian Regimes' in Greenstein, FI, and Polsby, NW, (eds), *Handbook on Political Science*, vol. 3 (Addison Wesley 1975) 175.

Linz, JJ, *The Breakdown of Democratic Regimes: Crisis, Breakdown and Reequilibration. An Introduction* (The Johns Hopkins University Press 1978).

Linz, JJ, *Totalitarian and Authoritarian Regimes* (Lynne Rienner Publishers 2000).

Linz, JJ, 'Authoritarianism' in Krieger, J, *The Oxford Companion to Politics of the World* (2nd edn OUP 2001).

Malloy, JM, (ed.), *Authoritarianism and Corporatism in Latin America* (University of Pittsburgh Press 1977).

Merkel, W, Defective Democracies, 'Democratization', 11.5 (2004) 33.

Merkel, W, Puhle, HJ at al, *Defekte Demokratien*. Band I: Theorie (Taschenbuch, 2003).

Michnik, A, *The Trouble with History: Morality, Revolution, and Counterrevolution* (Yale UP 2014).

Müller, JW, *What is Populism?* (University of Pennsylvania Press 2016).

O'Donnell, G, *Counterpoints: Selected Essays on Authoritarianism and Democratization* (Notre Dame 1999).

O'Donnell, G, and Schmitter, PC, (eds), *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (The Johns Hopkins University Press 2013).

Olcott, MB, and Ottaway, M, 'Challenge of Semi-Authoritarianism' Carnegie Paper No 7 (Carnegie Endowment for International Peace 1999).

Ottaway, M, *Democracy Challenged: The Rise of Semi-Authoritarianism* (Carnegie Endowment for International Peace 2003).

Özbudun, E, 'Problems of Rule of Law and Horizontal Accountability in Turkey: Defective Democracy or Competitive Authoritarianism' in Erişen, C, and Kubicek, P, (eds), *Democratic Consolidation in Turkey* (Routledge 2016) 144.

Sartori, G, *Democratic Theory* (Wayne State 1962).

Somek, A, 'Authoritarian Constitutionalism: Austrian Constitutional Doctrine 1933 to 1938 and its Legacy' in Joerges, C, and Ghaleigh, NS, (eds), *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism over Europe and its Legal Traditions* (Hart 2003) 361.

Schedler, A, *The Politics of Uncertainty: Sustaining and Subverting Electoral Authoritarianism* (OUP 2013).

Sharlet, R, 'Stalinism and Soviet Legal Culture' in Tucker, RC, (ed.), *Stalinism: Essays in Historical Interpretation* (WW Norton 1977) 155.

Szücs, J, 'Three Historical Regions of Europe' in Keane, J, (ed.), *Civil Society and the State* (Verso 1988).

Tóth, GA, *A jogok törvénye Értékezés az alkotmányos szabadságokról [The Law of Rights: Essays on Constitutional Liberties]* (Gondolat 2014).

Tushnet, M, 'Authoritarian Constitutionalism' (2015) 100 Cornell Law Review 391.

Ullmann, W, *Principles of Government and Politics in the Middle Ages* (Routledge 2010).

Varol, OO, 'Stealth Authoritarianism' (2015) 100 Iowa Law Review 1673.

Weber, M, *Wirtschaft und Gesellschaft, Grundriß der verstehenden Soziologie [Economy and Society—An Outline of Interpretive Sociology]* (JCB Mohr 1922).

Xin He, 'The Party's Leadership as a Living Constitution in China' in Ginsburg, T, and Simpser, A, (eds), *Constitutions in Authoritarian Regimes* (CUP 2014).

Zakaria, F, 'The Rise of Illiberal Democracy' (1997) 76.6 Foreign Affairs 22.