The 'Insecurity Toolbox' of the Illiberal Regime
Rule by Law and Rule by Exclusion

Ákos Kopper, ELTE
Zsolt Körtvélyesi, HAS CSS / ELTE
Balázs Majtényi, ELTE
András Szalai, ELTE / CEU

Introduction

Mr. N. G. claims he faces persecution in his home country where he was charged with corruption and was sentenced to two years in prison. He communicated his claim to authorities in Hungary, a country neighbouring his home country. Before his claim is assessed in the framework of an asylum procedure, Hungarian diplomats escort him all the way to Serbia and enters Hungarian territory through the border crossing station at Röszke at 5 am on November 12, 2018. Upon arrival in Hungary, his claim is summarily examined, and within a week, he is recognized as a refugee. He has been enjoying Hungary's protection ever since.

Mr. A. D. claims he faces persecution in his home country. He lived in a war-torn area and fled both sides' violent attempts at making him a soldier. He paid smugglers to enter Europe, travels through the Balkans route, and reaches the Hungarian border with an early wave of asylum seekers. Discouraged by fellow travellers' accounts of beatings and dog bites when pushed back from within Hungary after crossing the border by cutting through the fence, he decides to go through the regular procedure: he waits for two years to enter at one of the 'transit zones' Hungary has established. When he enters this area (that only one person can enter each day), he is refused food, a practice that changes later with the decision of the Strasbourg Court. His application for refugee status is dismissed, holding that Serbia, through which the protagonist of our first story arrived in Hungary, is a safe third country. A.D. is sent back to Serbia in 2018, a state with a practically non-functioning asylum system.

The arbitrary use of the law applied in the two cases might be shocking, nevertheless they neatly represent the extent to which in today's Hungary it is not the rule of law that governs, but the government's momentary political will. In the above stories, N.G. stands for Nikola Gruevski, former prime minister of Macedonia, while A.D. is a fictional character illustrating the experience of many refugees arriving at Hungary's southern border. While for a friendly ex-prime minister asylum is readily available – even transport across borders is provided by Hungarian diplomats, as acknowledged by the minister of foreign affairs[1] – ordinary refugees' well-founded asylum claims are rejected in bulk, with the false pretense that there is a safe third country that will deal with all such claimants; asylum seekers are detained and may be subject to inhuman treatment. The cases illustrate two important features of the Hungarian illiberal regime that this article assesses in more detail: firstly, the government's political will trumps human rights and rule of law guarantees, and secondly, the friend – enemy distinction (actual or alleged political loyalty) largely determines how individuals are treated.

In this article, our aim is to demonstrate how the regime operates by distorting law and securitizing more and more aspects of its residents' everyday life, with rule of law and normal politics gradually losing their meaning. We place securitization in relation to creating and maintaining exclusion and uncertainty and argue that the three aspects work to reinforce each other making it extremely hard to

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[1] DA, "Szijjártó: Igen, magyar diplomaták hozták át a Balkánon Gruevszkit" ["Minister Szijjártó: Yes, Hungarian diplomats escorted Gruevski through the Balkans"], *Index,* November 21, 2018, https://index.hu/belfold/1970/01/01/szijjarto_igen_magyar_diplomatak_hoztak_at_a_balkanon_gruevszkit/.

challenge incumbents. Securitization is not specific to particular issues but is an underlying feature of the government's politics in general, giving the impression of urgency and legitimacy around illiberal measures. In our view, Orbán's illiberal regime is neither a democracy nor an authoritarian regime, but a mixture in which creating insecurities and exclusion is part and parcel of the way it creates legitimacy and discourages dissent.

First, by turning almost all daily political issues into concerns of *security,* the government maintains the atmosphere that it is in a constant fight – against the IMF, EU, Soros, migrants, and civil society – therefore calls for national unity to legitimize its grab on power for whatever it presents as necessary to win the fights. Here the narrative of securitization becomes permanent. Given the government's two-thirds majority in parliament, technically it does not need a 'state of exception', as with such majority the government can pass any law at will without special authorization, especially as the regime has eliminated or domesticated all possible veto players/functional actors, such as the opposition, the independent media or independent courts.[2]

Second, the government creates *insecurities* for all actors that may challenge its legitimacy, particularly civil society organizations and autonomous institutions. Instrumental law-making and the arbitrary application of the law turns into a governmental device to discourage dissent. Instead of realizing the principle of the rule of law, the regime rules by law. Even where laws are made in formally proper procedures, they are often less than general, reflecting the government's momentary interests, challenging the notion of a legal norm, and undermining rather than securing legal certainty. At times, targeting the regime's perceived opponents is combined with imprecise wording, enabling arbitrary application, as well as dissuasion without application. The constant threat of direct political will retroactively overwrites expectations based on law, which strengthens the chilling effect on the regime's potential opponents. Admittedly, it is natural that law embodies political will. What is striking is that law is often completely taken over by ad hoc decisions and that it ceases to be a refuge for dissent. Illiberal measures result in political exclusion, most often justified through the language of security, which reaches a point where it consumes the system and undermines its earlier democratic and constitutional features. The resulting uncertainty means that guessing political preferences of the government but, more precisely, those of Prime Minister Viktor Orbán, works as a better predictor than reliance on actual law; the phenomenon of ruling by law undermines rule-of-law expectations. While the phenomenon that certain regimes use democracy, human rights and the rule of law as a façade is not exceptional.[3] However, it is shocking that this is happening within the European Union. This requires fake compliance, ~~i.e.~~ i.e., pretending to comply with international and European norms – as the EU is in a sense 'sponsoring' the regime with the funds it transfers to the country that, in turn, provide resources for the regime to pay its clients. Thus, the regime tries to keep the façade of democracy and the rule of law, while hollowing out democratic institutions.

Security thereby plays out very differently than in the logic of the Copenhagen School. It is not used for dismissing normal procedures in order to cope with urgent security concerns, as there are no meaningful constraints on what the government can do. It is the regime that becomes the source of insecurity from the perspective of those that the regime refuses to see as decent members of the 'nation'. The combination of these two aspects of (in)securities together is what we call the illiberal regime's *'insecurity toolbox'.* This toolbox includes elements of securitization, with Orbán and his

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[2] See Watson, *The Securitization of Humanitarian Migration*, chaps. 1–2.
[3] See the burgeoning literature on hybrid regimes, electoral / competitive autocracies, illiberal regimes. For an insightful study of how the legitimizing function of holding elections is combined with hollowing out democratic institutions, see Andreas Schedler, *The Politics of Uncertainty: Sustaining and Subverting Electoral Authoritarianism* (Oxford: Oxford UP, 2013).

regime continually identifying new fights against enemies of the nation. This suggests not only that there is a constant need to be on the alert, but that there is also the need for a strong leader. This is the classic type of insecurity that is part and parcel of any securitization, calling on citizens to rally around the flag and to support the nation's leader and the national cause. At the same time, the toolbox also contains insecurities created by the instrumental use of law. This arbitrariness plays a crucial role in discouraging domestic dissent. The toolbox builds on the exclusion and stigmatization of those who question these ideals. Finally, it is also important that uncertainty is present not only for those who challenge the regime but also for those who work within it. Key supporters of the regime sometimes fall out of favour, as it happened to long-time Orbán ally, former Fidesz treasurer and key oligarch Lajos Simicska [4] if their loyalty is doubted. Permanent securitization and the instrumentalization of law create fertile ground not only for constructing enemies, both domestically and internationally, but also for sustaining mobilization among regime supporters, all the while discouraging dissent.

Our paper assesses these elements in the following structure. We first discuss how in Hungary securitization serves purposes other than the legitimation of emergency measures. Second, we present the way Hungary's illiberal regime is using the migration threat as a meta-frame to link up and justify all its policies, with every threat the nation is facing explained as ultimately being about migration. Next, we turn to three aspects of the regime: exclusion (dividing the world into the 'worthy' and the 'unworthy' and those belonging to 'us' and the 'others'), instrumental law making (leading to a regime that does not rely on the rule of law, but rules by law), and the instrumentalization of uncertainty (using examples from the way the regime dealt with the migration crisis to show the meaning of the arbitrary application of the law in practice). Finally, we discuss fake compliance, ~~i.e.~~i.e., the way the regime maintains the façade of complying with democratic norms and European standards.

The role of securitization in the illiberal setting

In its classical formulation by the Copenhagen School, securitizing theory hinges on the separation between normal and emergency politics.[5] The classical conceptualization rests on (a) the liberal assumption that the two are clearly separable, (b) a normative preference for democratic governance and (c) a Western, Eurocentric understanding of state – society relations. Though contemporary securitization theory successfully highlights the importance of the socio-linguistic context in assessing the shape and success/failure of securitization attempts, it mostly limits itself to instances where securitization is aimed mainly at legitimizing emergency action against a perceived threat.[6] It thereby glosses over cases where securitization also serves purposes other than the legitimization of emergency measures, and its language has more to do with everyday life than with existential threats.

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[4] András Pethő and András Szabó, "Inside the fall of the oligarch who turned against Viktor Orbán", *Direkt36,* January 14, 2019, https://www.direkt36.hu/en/feltarul-simicska-bukasanak-titkos-tortenete/.
[5] Waever, "Securitization and Desecuritization"; Buzan, Wæver, and de Wilde, *Security: A New Framework for Analysis*.
[6] Thierry Balzacq, "Three Faces of Securitization: Political Agency, Audience, and Context," *European Journal of International Relation* 11, no. 2 (2005): 171–201.

In order to remedy these shortcomings, various attempts have been made both to apply the theory beyond a Western, democratic setting[7]; and to work around theoretical limitations.[8] An increasing number of studies show how securitization may unfold in authoritarian contexts.[9] These studies on the one hand successfully transfer the logic of securitization to new locales, on the other hand they forward the theoretical discussion rather than following a narrowly empirical 'add securitization and stir' logic. One of the key findings of this body of work is that since in authoritarian contexts there are no working democratic limits on government action, or the role of elections differs from that in democratic polities, securitization cannot mean the suspension of democratic rules and practices. Securitization in these systems *serves purposes other than the legitimation of emergency measures:* for ~~instance~~instance, rituals of belonging aimed at supporters, mobilization for specific issues or control over dissent.[10]

We suggest that illiberal regimes lie in-between the archetypes of liberal democracies and autocracies. Since illiberal regimes still hold free — though not fair — elections, they still require legitimacy from the electorate, which thereby retains some of its agency in the securitization process. Democratic institutions are still largely present, though they are constantly under attack or hollowed out by the regime. Securitization and uncertainty, we argue, play a pivotal role in the dismantling of democracy. Through the rhetoric of existential threats, the elite is gradually expanding the realm of emergency, subsuming ever more aspects of normal politics under the security narrative. Through securitization, control over society is increased, but the regime still needs legitimacy in regular elections that, theoretically, could end its hold on power. Although it can pass any laws at will in normal procedures without special authorization, it needs to maintain the façade of a working democracy. A corresponding pattern is confirmed by Guittet, who argues that even in the context of the Franco regime, which had ample tools to crack down on opponents, the state of emergency was used to gain external legitimacy.[11]

The illiberal practices of liberal regimes are well catalogued within securitization theory. These practices flow from the distinction between normal politics and security/emergency politics and imply the suspension of democratic rules. It has been noted multiple times during the evolution of the theory that the above distinction resonates with the realpolitik of Carl Schmitt, most notably his concept of the political as an exceptional decision along the friend – enemy antagonism. However, it would be a

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[7] Claire Wilkinson, "The Copenhagen School on Tour in Kyrgyzstan: Is Securitization Theory Useable Outside Europe?," *Security Dialogue* 38, no. 1 (2007): 5–25; Juha Vuori, "Illocutionary Logic and Strands of Securitization: Applying the Theory of Securitization to the Study of Non-Democratic Political Orders," *European Journal of International Relations* 14, no. 1 (2008): 65–99; Martin Holbraad and Morten Axel Pedersen, "Revolutionary Securitization: An Anthropological Extension of Securitization Theory," *International Theory* 4, no. 2 (2012): 165–97; Roxanna Sjöstedt, "Exploring the Construction of Threats: The Securitization of HIV/AIDS in Russia," *Security Dialogue* 39, no. 1 (March 2008): 7–29; Viatcheslav Mozorov, "Resisting Entropy, Discarding Human Rights," *Cooperation and Conflict* 37, no. 4 (2002): 409–29.
[8] Pinar Bilgin, "Thinking Past 'Western' IR?," *Third World Quarterly* 29, no. 1 (2008): 5–23; Pinar Bilgin, "The 'Western-Centrism' of Security Studies: 'Blind Spot' or Constitutive Practice?," *Security Dialogue* 41, no. 6 (2010): 615–22.
[9] Vuori, "Illocutionary Logic and Strands of Securitization"; Jennifer Carol Heeg, "Seeing Security-: Societal Securitization in Qatar" (Georgetown University, 2010); Holbraad and Pedersen, "Revolutionary Securitization"; Frederic Wehrey, "Saudi Arabia's Anxious Autocrats," *Journal of Democracy* 26, no. 2 (2015): 71–85.
[10] Vuori, "Illocutionary Logic and Strands of Securitization"; Wilkinson, "The Copenhagen School on Tour in Kyrgyzstan".
[11] Emmanuel-Pierre Guittet, "Les recours à l'état d'exception sous le régime franquiste (1956-1975)," *Cultures & Conflits* no. 113 (2019): 89.

mistake to fully equate securitization theory with Schmitt's autocratic politics.[12] As Michael C. Williams notes, while Schmitt's politics of the exception through its friend – enemy distinction (re)produces an exclusionary order, securitization's extraordinary politics in a democratic framework equally highlights the potential of the securitization as "a process of openness and self-determination with democratic potential". [13] Since as speech acts, securitization attempts need to seek discursive legitimation, securitization theory has a strong commitment to communicative action: securitizing acts need to be accepted by a relevant audience. Acceptance can both be coercive and consensual, but securitization always needs to be argued.[14]

Securitization in an illiberal setting, however, is not an opportunity for renegotiating issues in a quest for discursive legitimacy, but a means of constructing extreme antagonisms, uncertainty and the need for decision by a sovereign. Illiberal regimes amplify the Schmittian elements of securitization[15]: they use enemification to (a) construct enemies from political competitors, (b) remove problematic issues from the agenda where the government has little chance of achieving its goals via normal politics, (c) neutralize debate regarding issues that are considered politically harmful, such as corruption scandals or anti-democratic measures, and (d) construct enemies of the nation for patriotic political mobilization.

The framing of the illiberal regime – the migrant threat as the ideal meta-frame

Since the 1990s, migration has been a frequent target of securitization across the world.[16] For a number of reasons, it is a topic extremely suitable for successful securitization[17]. First, migration can be framed in multiple mutually reinforcing ways so that securitization acts resonate better with a diverse audience: migration can be securitized as a hard security threat (terrorism and crime), as an economic threat (job loss and benefit-seeking), and most importantly, as a threat to societal security (identity). Second, migration is a diffuse and remote threat that, due to current geopolitical trends, will be present within European politics in some form for the foreseeable future.

To illustrate securitization in an illiberal regime, we focus on the way the Hungarian government has been elevating the issue of immigration to be the meta-frame and reference point of all its policies.[18] While the regime's operating logic has been essentially unchanged since the Fidesz–KDNP party alliance entered power and adopted with its two-third majority a new Constitution named Fundamental Law in 2011, it was only with the arrival of asylum seekers in the summer of 2015 that

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[12] Michael C. Williams, "Securitization as Political Theory: The Politics of the Extraordinary," *International Relations* 29, no. 1 (2015): 114–20; Michael C. Williams, "Words, Images, Enemies: Securitization and International Politics," *International Studies Quarterly* 47, no. 4 (December 2003): 511–31; Filip Ejdus, "Dangerous Liaisons: Securitization Theory And Schmittian Legacy," *Western Balkans Security Observer* 13 (2009): 9–16.

[13] Williams, "Securitization as Political Theory," 115.

[14] Williams, "Words, Images, Enemies," 523.

[15] Williams, "Securitization as Political Theory"; Williams, "Words, Images, Enemies."

[16] Scott D Watson, *The Securitization of Humanitarian Migration: Digging Moats and Sinking Boats* (New York: Routledge, 2009); Didier Bigo, "Security and Immigration: Toward a Critique of the Governmentality of Unease" *Alternatives* 27, no. 63 (2002); Jef Huysmans, "The European Union and the Securitization of Migration" (2000) JCMS: Journal of Common Market Studies 38, no. 5 (2000).

[17] Bigo, "Security and Immigration"

[18] We don't call it 'master frame' in order to avoid the misconception that this is a substantive cornerstone that informs all policies. This would be the exact opposite of our conclusions, namely that policies largely follow the logic of whatever helps staying in power.

the government obtained *the ideal meta-frame* that is the essential ideological backdrop for its constant references. As a meta-frame, the 'immigration threat' can be applied to policy areas as diverse as tax policies and family policies (presented as demography-centred measures to reject 'the failed' Western model of immigration societies), the EU (as a pro-immigrant force), the academic sphere and NGOs (hiding agents of hostile forces). Thus, although it would be a mistake to claim that immigration issues are in the centre of all governmental policies – even if in the regime's rhetoric almost all issues could be linked up with it (even the corona virus crisis), we can safely use this field to assess the overall logic that permeates the way the illiberal regime generally operates.[19]

This logic is aimed at exerting control over an increasing share of public and private life through securitization. Practically all aspects of politics follow the logic of securitization, with no normal politics left: everything is framed as a fight for survival, where disagreement means opposition to the general national will (the will of the government). This has the corollary that the world is always divided into the worthy (fitting the image of the ideal citizen) and the unworthy (e.g. e.g., refugees, Roma, the poor, the homeless, and liberals), or friends and enemies. The problem with this distinction is not only the mere classification, but the implication of having second-class citizens and even of denying human rights and equality.

The notion of dividing the world into the worthy and the unworthy had already emerged in the wording of the 2011 Fundamental Law, [20] and the 2015 immigration crisis only offered the Schmittean distinction within to be taken to the logical extreme of dividing the world into friends and enemies. Asylum seekers were a godsend for Fidesz that at the time started to struggle in the polls, especially with an extreme-right challenger, *Jobbik*. In combination with other illiberal measures, the harsh anti-immigrant governmental campaign has since helped the government to overcome this challenge coming from the right. Also, internationally, the government has been claiming to be on a crusade against foreign enemies ever since it assumed power long before the immigration campaign, or the attack on Central European University (CEU).[21] Among its first enemies were the IMF (as early as 2011–12), the Norwegian NGO Fund and civil organizations (since 2013),[22] but the EU has also received its fair share of attacks.[23] All these issues, as well as everyday policy problems were framed in the language of security, identifying clear enemies and renegotiating our (Hungarian) identity. Nevertheless, it was only the 2015 refugee crisis that enabled the government to construct the perfect enemy: migrants, refugees and their supporters (e.g. George Soros, the EU, human rights NGO's, and the UN). This narrative offered the most successful framing for packaging a nativist message and emphasizing national sovereignty spiced with xenophobia.

The 'immigration threat' is a convenient frame that can be freely and flexibly exploited, especially since Hungary is not a refugee destination country. It has a shrinking population partly due to the fact that hundreds of thousands have moved to the West, primarily to Austria, Germany, and the United

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[19] Balázs Majtényi, "The Nation's Will as Trump in the Hungarian Fundamental Law," in *European Yearbook on Human Rights 15*, eds. Wolfgang Benedek et al. (Antwerp: Intersentia, 2015), 247–60.

[20] Balázs Majtényi, "The Nation's Will".

[21] CEU is a high ranking American private university accredited in the United States, Hungary, and more recently in Austria, founded by György Soros in 1991 with the aim to "help facilitate the transition from dictatorship to democracy in Central and Eastern Europe and the former Soviet Union." https://www.ceu.edu/about/history

[22] About using enemy images in Hungary, Kopper et al., "Creating Suspicion and Vigilance".

[23] Majtényi, Balázs, Ákos Kopper and Pál Susánszky. "Constitutional othering, ambiguity and subjective risks of mobilization in Hungary: examples from the migration crisis", *Democratization*, 26, no. 2 (2019): 179.

Kingdom.[24] Hungary is a culturally and linguistically relatively homogeneous society where the most numerous immigrant community is ethnic Hungarians. In 2016, less than 1.5 per cent of the population were non-Hungarian citizens, mostly coming from four neighbouring countries, Romania, Serbia, Slovakia, and Ukraine.[25] The fears created around migration remain largely virtual, with government-leaning media still using images from 2015. In the lack of immigrants, playing on xenophobia might sound paradoxical, but in fact it makes the othering process easier. In line with the contact theory, exposure to actual immigrants might reduce prejudice,[26] civil society activism might play on solidarity,[27] and local groups might push for de-securitization,[28] ~~i.e.~~i.e., to a return to normal politics. Maintaining a constant threat that is remote (in fact) and imminent (ever-present, and without government protection may be happening any minute) at the same time makes it impossible to have a normal discourse on the issue; the official propaganda remains predominantly uncontested.

In the Hungarian illiberal regime, as we have discussed before, legitimacy is not needed for introducing emergency measures, as authorities act upon their will with a two-thirds constitutional majority and rewrite the law at governmental will. Nevertheless, securitization still plays an important role in the illiberal context not by countering threats but rather by creating fear. The border fence, for example, is less about stopping immigrants than about a symbolic demonstration of the boundary between the in-group and the out-group, an objectification of the threat, a reminder of the constant looming of the migration menace right on our doorstep.

The topic of migration also helps Orbán play the role of a strong politician on the European level, in contrast with 'impotent' EU politicians in mainstream positions ('supporting immigration'). This framing has allowed the government to present virtually all external criticism of the regime as the workings of 'pro-immigration forces', labelled as the enemy in the Schmittian sense, covering leftist and centre-right critiques, as well as organisations inside and outside the country.

This is not to argue that the framing that subsumes everything under the threat of migration flows from a well-grounded ideological basis. The Hungarian regime is known for its opportunistic politics. Considering the long history of Fidesz as an anti-communist force between 1988 and 2010, Orbán's 1988 public speech against Soviet military presence, as well as dominant historical national narratives on Russian/Soviet interventions in 1848 and 1956 would have made it reasonable to expect a dominant anti-Russian government narrative, like in the Polish case. In fact, however, Russian (partly secret) activity in Hungary seems to be on the rise, and appears to be enjoying government support.[29] While

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[24] Marcell Kovács, ed., *Nemzetközi vándorlás, Mikrocenzus 2016/10* (Központi Statisztikai Hivatal [Central Statistical Office], 2018), 7,
https://www.ksh.hu/docs/hun/xftp/idoszaki/mikrocenzus2016/mikrocenzus_2016_10.pdf.

[25] Kovács, *Nemzetközi vándorlás,* 29; and Marcell Kovács, ed., *Characteristics of the population and dwellings, Microcensus 2016/2* (Hungarian Central Statistical Office, 2018), 12,
http://www.ksh.hu/docs/eng/xftp/idoszaki/microcensus2016/microcensus_2016_2.pdf.

[26] Subject to four conditions, see Gordon W. Allport, *The Nature of Prejudice* (Reading, MA: Addison–Wesley, 1954). For a more recent account, see Thomas F. Pettigrew, "Intergroup contact theory," *Annual Review of Psychology* 49, no. 1 (1998): 65–85.

[27] For an overview of the closer region, see Margit Feischmidt, Ludger Pries, and Celine Cantat, eds., *Refugee Protection and Civil Society in Europe* (Palgrave Macmillan, 2019).

[28] Waever, "Securitization and Desecuritization"; Thierry Balzacq, "A Theory of Securitization: Origins, Core Assumptions, and Variants," in *Securitization Theory: How Security Problems Emerge and Dissolve*, ed. Thierry Balzacq (New York: Routledge, 2011), 1–30; Watson, *The Securitization of Humanitarian Migration: Digging Moats and Sinking Boats*; Rens van Munster, *Securitizing Immigration*, e-Book (Palgrave Connect, 2009).

[29] Dániel Hegedűs, "The Kremlin's Influence in Hungary – Are Russian Vested Interests Wearing Hungarian National Colors?," *DGAPkompakt* no. 8, German Council of Foreign Relations, February 2016,
https://dgap.org/en/article/getFullPDF/27609.

the framing is arbitrary, the practices we are describe are interconnected, as they serve the logic of the system: control.

The constant expansion of the migration threat means that securitized immigration serves as the meta-frame for government actors, where the front lines are pre-established: the government is working for the security of the country, whereas its opponents support migration, therefore are excluded from the in-group. This stark Schmittean friend – enemy division renders any sensible policy debate moot and has turned Hungarian politics essentially single-issue.

Exclusion as the core of the illiberal system

In 2010, the Fidesz–KDNP party alliance won the general elections and, due to the disproportionate Hungarian electoral system, gained over two thirds of the parliamentary seats (a victory they repeated in 2014 and 2018[30]). The governing party alliance quickly moved with its supermajority to adopt a new constitution, the Fundamental Law, in 2011. When it entered into force in 2012, it replaced the liberal constitutional framework established in 1989–90. The Preamble, entitled "National Avowal", provides for a set of values of the political community, such as fidelity, belonging to the Hungarian ethnic nation and to Christianity, i.e.i.e., notions that divide the political community. Discrimination against those who are not loyal to the government, those who are not Christian or those who belong to an ethnic minority appears on the constitutional level, and also sets the stage for direct discriminatory policies and legislations. The narrative of a sole legitimate ruler, that dates back to at least 2002, with Viktor Orbán declaring that "the homeland cannot be in opposition"[31] shows clear signs of what Jan-Werner Müller describes as the diversity-denying nature of populism.[32]

Read together with government practices of identifying enemies of the nation, the constitutionally entrenched othering divides people into 'us' vs. 'them' following an ever-changing political decision to designate who the friends to be favoured and protected are, and who are unworthy of constitutional protection.[33] Creating this unequal status means that the Fundamental Law and the regime differ from the value system of liberal democracies which is based on the equal dignity of all members of the political community.

A key danger of this construction is that it conflates the nation's will with the temporary political preferences of the government, implying that whoever is "in minority cannot be right by definition and presumably is an enemy who turns against the will of the nation".[34] This value system undermines solidarity with those whose values and identity are different from the majority's standards and erodes the political pluralism that can sustain a functioning constitutional democracy. It also opens the way

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[30] In the 2018 elections, approximately every third voter supported the government, one third supported the opposition parties, and one third did not vote.

[31] Repeated more recently, and officially translated using the term 'homeland'. Viktor Orbán, "Prime Minister Viktor Orbán's address after swearing the prime-ministerial oath of office," *The Government of Hungary,* May 12, 2018, https://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-address-after-swearing-the-prime-ministerial-oath-of-office.

[32] Jan-Werner Müller, "The People Must Be Extracted from Within the People': Reflections on Populism," *Constellations* 21, no. 4 (2014): 483–93.

[33] Majtényi et al., "Constitutional othering", 176.

[34] Majtényi et al., "Constitutional othering", 177. An example we could cite is that Article U(1) read in conjunction with the Preamble may serve to identify political opponents betraying the nation. The Article states that the Hungarian Socialist Workers' Party (the former state party) "and its legal predecessors … were criminal organizations … betraying the nation".

for illiberal politics, where the protection of the national interest justifies government attacks on independent state (~~e.g.~~e.g., courts, Constitutional Court) and civil institutions.

While the anti-refugee legislative trend in Hungary has been well documented,[35] it is less known that these changes have also opened the way for arbitrary decisions against citizens ~~as well~~ – in the spirit of the Fundamental Law. For example, at the time of the refugee crisis the Hungarian legislation authorized the police to enter private homes without a warrant "to ensure the implementation of measures against epidemics".[36]

Ironically, in parallel with the amendments on asylum-seekers, the government adopted a scheme that allowed non-citizens from outside the EU, mostly from China, Russia and Arabic countries, to obtain a visa if they bought government bonds. The move to offer visas for investment is not unique,[37] even if the scheme itself has been subject to criticism, questioning whether it makes economic sense for the state budget (not for the contracted agencies)[38]; the program was eventually closed down. What is unique is that the bond-based visa was introduced by a regime loudly committed to 'zero immigration' that undermines any meaningful public debate on the nature of desired immigration. The way this scheme was made to fit the meta-narrative we have identified was by reference to 'worthy' migrants who help fight for the country's financial sovereignty (a sort of 'war of independence' against the 'dictates' of the IMF and the EU). The program shows the extent the government's will may designate the worthy and unworthy classes of people, even when this means that oligarchs with shady backgrounds become the new 'friends'.[39] In other words, insecurity can be assigned to foreigners according to the regime's convenience, overlooking the contradiction that the government sponsored program of selling permanent residency actually offered the right to become a Hungarian resident.[40] This created a special immigration route for a selected group, just like in our opening story of former Macedonian Prime Minister Nikola Gruevski, against a background of the non-compromising zero-

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[35] For instance, only at the time of the refugee crisis did Hungary radically transform the asylum law: between July and September 2015, it amended 19 acts and 19 government regulations at 473 points. (See Judit Tóth, "From the Minimum of Human Rights to the Maximum of National Defence. Transformation of the Asylum Law in Hungary," in *Human Rights of Asylum Seekers in Italy and Hungary, Influence of International and EU Law on domestic Actions,* eds. Balázs Majtényi and Gianfranco Tamburelli (G. Giappichelli – Eleven, 2019), 129–145.) Serbia was designated as a safe third country in a new national list of safe countries. New crimes were introduced in the Criminal Code (~~e.g.~~e.g., illegal crossing of the border fence, damaging the border fence, and obstructing the construction or maintenance of the border fence). See, e.g., Boldizsár Nagy, "Hungarian asylum Law and policy in 2015–2016: securitization instead of loyal cooperation," *German Law Journal* 17, no. 6 (2016): 1033–1082.

[36] Nagy, "Hungarian asylum Law," 1049.

[37] Only the EU, Bulgaria, Cyprus, Greece, Hungary, Ireland, Latvia, Portugal, Spain and the UK have ever had 'investor residency programs'. For a comparison, see Sergio Carrera, "How much does EU citizenship cost? The Maltese citizenship-for-sale affair: A breakthrough for sincere cooperation in citizenship of the union?," *CEPS Paper* no. 64 (April 2014), https://www.ceps.eu/wp-content/uploads/2014/08/LSE%20No%2064%20Price%20of%20EU%20Citizenship%20final2.pdf.

[38] '[I]n the entire program period [the bonds] generated relative net losses of 66.5 million euros'. Balázs Romhányi, *Corruption by design – the economic and financial impact of the Government's Golden Visa bonds in Hungary. The role of residency state bonds in financing the Hungarian government 2013–2017* (Budapest: Fiscal Responsibility Institute, Budapest – Transparency International Hungary Foundation, 2018), https://transparency.hu/wp-content/uploads/2018/12/TI-Hungary_study_Hungarian_golden_visa_bond_program.pdf.

[39] Note, however, that the program seems to have done well for the private entities that mediated between the state and those seeking investment bond visas. Balzacq.

[40] Hungarian Residency Bond Program https://helpers.hu/hungarian-residency-bond-program/

immigration government line and the resulting non-compliance with basic human rights and asylum standards.

Instrumental law-making, or rule by law

Constitutionalism implies that law is not merely an instrument of power, but also sets limits to power. The Hungarian government uses law as a mere instrument of the momentary political interests of the ruling government's.[41] This leads to a regime that is better defined by rule by law, rather than rule of law.[42]

While there have been numerous cases of instrumental law-making,[43] probably the most pertinent example is the continual modification of the text of the Fundamental Law. While it was promised to be a work of art carved in stone (in the words of Orbán, "a granite-solid foundation for the future"[44]) in fact it has been amended eight(!) times since its adoption in 2011, sometimes extensively (three times already in 2012, twice in 2013, and once in 2016 and 2018 and 2019). This mirrors the domination of momentary political will, creating an ever-longer list of exceptions where constitutional protection should not apply. Human dignity is formally protected, but homelessness is criminalized. Freedom of religion is guaranteed, but rules are discriminatory against non-historic churches. Academic freedom is declared, but a loyal group of artists is given preferential treatment, and universities are subject to heavy – constitutionally circumscribed – government control. Political equality is not rejected on principle, but votes are skewed in an electoral system that favours the governing majority in a one-sided fashion. Hundreds of thousands of non-resident citizens were added by post-2010 amendments to the nationality and electoral laws, with Fidesz carrying almost all of these votes (95.5 per cent in the 2014 election). While these votes could be cast by mail, those non-resident citizens who have gone abroad to work (and are more likely to be critical of the government) are not allowed to use postal voting.

None of these practices have been successfully challenged in the Constitutional Court – an institution of judges mostly handpicked on the basis of their loyalty to the government.[45] The Court refuses to

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[41] Pál Sonnevend, András Jakab, and Lóránt Csink, "The constitution as an instrument of everyday party politics: the basic law of Hungary," in *Constitutional Crisis in the European Constitutional Area,* eds. Armin von Bogdandy and Pál Sonnevend (Oxford: Hart, 2015), 46.

[42] Tom Ginsburg, and Tamir Moustafa, eds., *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge University Press, 2008).

[43] E.g., a government-allied sportsman was not only given the leadership of a university, but upon reaching retirement age, the law was changed to allow him to continue serving, under the amendment dubbed in the media as "Lex Mocsai" after the name of the rector. Another rector was favoured with an amended cardinal law, "Lex Patyi" that allowed him to become judge and, under a plan that was later revoked, head of the administrative court system. "Jön a lex Mocsai 2.0? Plusz három évet ad a kormány az idősödő rektoroknak" ["Lex Mocsai 2.0 is coming? The government grants three additional years to aging rectors"], *Hvg.hu,* October 8, 2018, https://hvg.hu/itthon/20181009_Jon_a_lex_Mocsai_rektor_65_ev_eletkor_kormany; Lándori Tamás, "Itt a lex Patyi: Sarkalatos törvényt írnak Orbán bírságbajnokára" ["Here is Lex Patyi: Cardinal law written to fit the fines champion of Orbán"], *Azonnali,* July 5, 2018, http://azonnali.hu/cikk/20180705_torvenyt-irnak-a-birsagbajnokra.

[44] Viktor Orbán, "Kiállítás köszönti a hatálybalépést" ["Exhibition celebrates the entering into force of the Fundamental Law"], *Office of the Prime Minister,* January 9, 2012, http://2010-2014.kormany.hu/hu/miniszterelnokseg/miniszterelnok/beszedek-publikaciok-interjuk/kiallitas-koszonti-a-hatalybalepest.

[45] Members include former prominent Fidesz politicians, including one that moved directly from parliament to the court and sat to judge a law that he himself had been involved in drafting. The only exception to the solely Fidesz nominated judges is the round of nominations in 2016 when the governing majority lost its supermajority in interim elections.

provide effective constitutional control in many sensitive cases, ~~i.e.~~i.e., where their say matters for constitutional checks and balances. The most striking example is that it read into the Fundamental Law the constitutional protection of constitutional identity as a pre-existing fundamental value above international and European law.[46]

At times, even the will of the legislator remains unclear, partly because of constrained public debates. The government routinely avoids heightened scrutiny by having individual MPs submit bills, as these bills are not subject to mandatory public consultation (with civil society groups and opposition parties invited to comment as part of the preparation of the bill). However, the practice of having bills submitted by individual MPs effectively circumvents such public consultations. This has happened even in the case of cardinal acts and constitutional amendments.[47]

The speed of legislative changes is often detrimental to the quality of law making. Some laws are so vaguely formulated that they are unimplementable or undefined: it depends on individual interpretation how they are applied, as they hardly provide any secure reference points. This insecurity is further deepened because even governmental will and interest may undergo change, further promoting centralization. While the regime has generally been characterized by extreme and increasingly centralized decision-making, the fact that everything is permeated by insecurity strengthens the feeling that the only place to turn to for security is the sovereign.

Furthermore, as political will is changeable, no one and nothing is secure: government regulation may appear one day in order to destroy well-functioning businesses and disappear the next when those businesses are passed into loyal hands.[48] Property and personal security become relative, and a reference to past legal regulation and political history is an easily refutable rhetorical tool. The use of law becomes arbitrary, its application becomes synonymous with political will: rule by law. Opposing voices are plunged into legal limbo where the law itself can be used against them, whereas loyalists like oligarchs have nothing to fear as the government's rule by law offers them the possibility of circumventing or even retailing the law. In this sense, rule by law may be a substitute for open violence and oppression.

We will now discuss the key elements of the anti-immigration legislation in order to briefly illustrate how exclusion, the logic of the system, and rule by law work together and reinforce each other.

As part of the 'insecurity toolbox', the government does not shy away from ambiguous wording. In 2018, parliament moved as part of its 'Stop Soros' legislative package, to criminalize what it termed "helping or supporting illegal migration".[49] It criminalizes helping those who "do not face persecution or who do not have a well-founded fear of being persecuted for reasons of race, nationality, membership of a particular social group, religion or political opinion". The law further explains that "creating, and distributing informational material, or commissioning such activity" or "building or operating a network" with the said aim counts as organizational activity. Human rights organizations that work with lawyers, create and distribute leaflets and inform asylum seekers of their rights, including the possibility to challenge Hungarian decisions and laws before European and international forums, may face prosecution and conviction. All individual members of organizations that partly do

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[46] Decision 22/2016. (XII. 5.) of the Constitutional Court of Hungary,
https://hunconcourt.hu/uploads/sites/3/2017/11/en_22_2016.pdf.
[47] Majtényi, "The Nation's Will."
[48] Dániel Hegedűs, "Hungary," in *Nations in Transit 2018: Confronting Illiberalism* (Freedom House, 2019),
https://freedomhouse.org/sites/default/files/NiT2018_Hungary.pdf.
[49] Art. 353/A of the Criminal Code of Hungary, inserted by Art. 11 of Act VI of 2018 to amend certain laws on measures to combat illegal immigration.

what the state should be doing (informing asylum seekers of their rights) may be convicted to serve up to one year in prison. The legal definition of the criminalized activity means that criminalization is conditional upon the ulterior decision of the Hungarian authorities, which is based on regulations that do not respect international and European standards. This is like criminalizing a defense lawyer in a criminal trial because the defendant is convicted, which clearly shows that they were defending a criminal.

Playing on uncertainty had an important role in the early phases of civilian reactions to asylum seekers appearing in the country in large numbers. This included civilian solidarity, volunteers organizing basic services to help people in the face of government non-action, including providing for food, shelter, means of communication and transportation. While later the government also moved to transport asylum seekers across the country,[50] the uncertainty around whether any or all of these acts qualifies as human smuggling, a crime punishable with up to seven years in prison, could drive away many from taking action. This initial, if limited, public reaction quickly gave way to the domination of the government narrative that pushed xenophobia to new heights.

Another element of the 'anti-migration' legislative package is even vaguer, ~~i.e.~~i.e., the "extra tax on activities supporting migration" introduced in 2018. [51] All programs, actions, activities, "media campaigns", seminars, educational activities and organizations, as well as "building and operating networks", and "propaganda activity showing migration in a positive light" that directly or indirectly aims at promoting migration are subject to an extra tax. The amount is 25 per cent of the costs incurred or the amount of funding provided for such purposes.[52] University courses that introduce students to the sociology or the international legal framework of migration and asylum – topics that the authors teach – could well be considered as falling into these vague categories. But maybe they don't? Or maybe they do? The law successfully creates confusion and leads to a chilling effect: some of those who would otherwise be willing to speak freely and against the government line (even if it only providing the basics of university courses) are effectively discouraged, and uncertainty and exclusion become political instruments. Illiberal practices that constrain rights are achieved through soft means and confusion, rather than hard measures that would run the risk that critics might detect formal violations and non-compliance.

Faking compliance

We have been arguing that a combination of playing on insecurities, exclusion, and uncertainty creates an atmosphere that undermines pluralism as a precondition to the functioning of democracy. We now address the question of how this can pass muster in an EU country, for we think it is not possible to understand the regime's actions without considering the broad context. The answer is found partly in EU actors' unwillingness and inability, but it is also a result of the fact that the Hungarian regime is aware of external constraints, but it frames issues consciously and presents them externally in a way that they are hard to criticize and it is not easy to gather support for sanctioning them. That is, the phenomenon we call *faking compliance* plays a considerable role: they often demonstrate no more than minimal formal compliance which they combine with skewed arguments or confusing references. Political, diplomatic and legal instruments are used in a way that they stop short of a complete

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[50] To cite one reaction from the head of the Catholic Church: "The Church would become a smuggler if it accepted refugees." "Says Cardinal Péter Erdő," *Refugee Crisis ~~In~~in Hungary Blog,* September 3, 2015, https://refugeecrisisinhungary.wordpress.com/2015/09/03/the-church-would-become-a-smuggler-if-it-accepted-refugees-says-cardinal-peter-erdo/.
[51] The Act XLI of 2018 on Amending Certain Tax Laws and Other Related Laws as well as on Immigration Surtax.
[52] Art. 253 of Act XLI of 2018.

rejection of the norm, and the state also falls short of meaningful implementation.[53] Prime Minister Viktor Orbán openly praised this approach as a "peacock dance" that confuses the European Union, and allows Hungary to avoid implementing European measures.[54] Measures are frequently designed in a way that they invite criticism, with some room for retreat occasionally factored in. Faking compliance leads to 'double speech': a different message intended for the external 'audience' and for the citizenry. This rhetorical device is applied also domestically: adopting complying measures with a wink, communicating to supporters that they do not really mean them, or adopting policies that result in compliance in form but not in substance.

This strategy of fake compliance can be well observed in the field of asylum policy: The Hungarian asylum system has for the past few years been transformed to provide access to as few applicants as possible, with a physical barrier (a fence built in 2015) and the hypocritical regulation of allowing no more than one applicant a day into each transit zone. For the two zones created at the southern border, this makes two a day, but if a family is let in, that could use the capacity for several days (in addition, the transit zones do not accept asylum seekers over the weekend and on public holidays).

The government was externally criticized for rejecting refugees, not taking its fair share of dealing with asylum responsibilities, for not showing solidarity, and for failing to meet specific international obligations. Yet, faking compliance means that the government can point out how there is compliance on certain points, in form at least. They can demonstrate that there are asylum seekers who are allowed to enter, and there are recognized refugees, citing numbers that equal the European quota. In this context, the un/worthy distinction features in various forms. The government declared its willingness to take in Christian refugees fleeing persecution[55] and also "real refugees" who are "fleeing disastrous multiculturalist policies" in Western countries.[56] Designating the worthy and the unworthy, in other words friends and enemies, creates new lines of exclusion. It has been reported how the "increasingly illiberal European country offers shelter to a growing number of international

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[53] A similar phenomenon has been documented in the enlargement literature: Gergana Noutcheva, "Fake, partial and imposed compliance: the limits of the EU's normative power in the Western Balkans," *Journal of European Public Policy* 16, no. 7 (2009): 1065–84. More extensively, see her book: Gergana Noutcheva, *European Foreign Policy and the Challenges of Balkan Accession: Conditionality, Legitimacy and Compliance* (Routledge, 2012). See also Beáta Huszka, "Human rights on the losing end of EU enlargement: The case of Serbia," *Journal of Common Market Studies* 56, no. 2 (2018): 352–67; and Beáta Huszka, and Zsolt Körtvélyesi, "Conditional Changes: Europeanization in the Western Balkans and the Example of Media Freedom," *Intersections* 3, no. 2 (2017): 8–32. Batory talks about 'symbolic and creative compliance', but in fact describes a lack of compliance, arguing that the Commission shares the interest "in creating the appearance of compliance in order to avert a broad compliance crisis", which considerably exacerbates the problem. Ágnes Batory, "Defying the Commission: Creative Compliance and Respect for the Rule of Law in the EU," *Public Administration* 94, no. 3 (2016): 696.

[54] Viktor Orbán is describing a complex set of diplomatic tactics from 'the art of politics' that allow Hungary not to accept the European position in substance but acting as if it did. While the speech is not available on the official page of speeches of the Prime Minister, the relevant excerpt is available on YouTube (in Hungarian): Viktor Orbán, Speech on 31 May 2012, https://www.youtube.com/watch?v=0s5gzvb87ZY.

[55] There is a state secretary responsible for helping Christian refugees: http://www.kormany.hu/hu/miniszterelnokseg/az-uldozott-keresztenyek-megsegiteseert-es-a-hungary-helps-program-megvalositasaert-felelos-allamtitkar. Communiqué in English: https://www.kormany.hu/en/prime-minister-s-office/news/hungary-helps-agency-established.

[56] "Of course, we shall let in true refugees: Germans, Dutch, French and Italians, terrified politicians and journalists who here in Hungary want to find the Europe they have lost in their homelands". Viktor Orbán, "This year we must defend ourselves against five major attacks," *Government of Hungary,* February 11, 2017, http://www.kormany.hu/en/the-prime-minister/news/this-year-we-must-defend-ourselves-against-five-major-attacks.

nationalists."'[57] Measures that cause unnecessary suffering (not only to asylum seekers; see the criminalization of homelessness) are combined with a renewed rhetoric on being a European Christian democratic force – with an eye on their European political supporters (from the European People's Party) more than on domestic audiences.

A key element of the current regime is that, going against the assessment of Hungarian domestic courts, the government made Serbia a safe third country by law.[58] As virtually all asylum seekers enter through Serbia, this practically 'outlaws' all asylum seekers. Based on the most recent data available on refugee recognition, on average, less than one person was recognized a week – even if we were to include former Macedonian Prime Minister Gruevski.[59] The rule on the false assumption of a safe third country was recently sanctioned in the Fundamental Law of Hungary, with its Seventh Amendment saying that no protection shall be granted if the applicant came to Hungary "'through any country where he or she was not persecuted or directly threatened with persecution".[60] This is blatant disregard for the phenomenon of chain-expulsion. It means that legitimate asylum seekers end up in states that do not meet the minimum standards of refugee protection – as also pointed out by the European Commission, bringing Hungary to the Court of Justice of the European Union.[61] However, in many cases, the regime has escaped punishment for combining formal compliance with substantive sidestepping. For example, the government was willing to abolish the discriminatory retirement rule for judges once the new judges, who cannot be removed, had taken the places of their removed colleagues, thus formally complying with EU decisions.[62] Most recently, following the decision of the European Court of Justice, the government ~~moved to~~ closed transit zones altogether: in ~~, by~~ a cynical move, ~~eliminating~~ the possibility of asking for asylum at the border was eliminated, an option that had formally still existed ~~earlier~~.

The reasons for seeking to demonstrate compliance are not about the wish to play by the rules but to avoid shaming. External support is not to be overlooked considering the amounts flowing to the country from EU funds, comparable only to the post-World War II Marshall Plan. This can give a boost to governments that can use the funds to further entrench their power, e.g., by supporting a network of loyal oligarchs. Additional support to the Orbán governments came from the recognition as a prominent member of the European People's Party (EPP), the largest political group in the EU. 'How could anyone claim that democracy is in danger in a country that is led by a member of this club?' To be fair, the idea of ousting Fidesz has been considered, and might be reconsidered, but to date, EPP membership has given undeserved credit to an increasingly autocratic government. The bad

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[57] Carol Schaeffer, "How Hungary Became a Haven for the Alt-Right," *The Atlantic,* May 28, 2017, https://www.theatlantic.com/international/archive/2017/05/how-hungary-became-a-haven-for-the-alt-right/527178/.

[58] See Govt. order No. 191/2015. (VII. 21.). The earlier judicial practice was based on a sophisticated approach summarized in the Curia opinion on some questions of assessing safe third country status, 2/2012 (XII. 10.) KMK, https://kuria-birosag.hu/hu/kollvel/22012-xii10-kmk-velemeny-biztonsagos-harmadik-orszag-megitelesenek-egyes-kerdeseirol. This included an imperative to consult country information from the UNHCR.

[59] In the months July to September 2018, eleven refugees were recognized. Hungarian Central Statistical Office, Number of asylum seekers arriving in and receiving international protection in Hungary, http://www.ksh.hu/docs/hun/xstadat/xstadat_evkozi/e_wnvn001.html.

[60] The Fundamental Law of Hungary, Article XIV(4) as amended by the Seventh Amendment, official translation, www.kormany.hu/download/f/3e/61000/TheFundamentalLawofHungary_20180629_FIN.pdf.

[61] European Commission, "Migration and Asylum: Commission takes further steps in infringement procedures against Hungary," July 19, 2018, http://europa.eu/rapid/press-release_IP-18-4522_en.htm.

[62] Case C-286/12, European Commission v. Hungary (2012), ECR I-0000.

conscience of other EPP members and prominent EU politicians could always be eased with the Orbán government's practice of faking compliance that has led to confusion over actual violations.[63]

Faking compliance is an acknowledgment that the government and the country operate in a wider European framework, and this manoeuvring alters the regime's behaviour.[64]

Conclusion

We have argued that studying Hungary's illiberal regime ~~can~~ offers important insights for security studies. In addition to ~~studying~~ examining how securitization travels to non-democratic settings, it is necessary to recognize that illiberal regimes take an authoritarian turn but maintain the façade of liberal democratic institutions and compliance with human rights norms, thereby creating confusion internally and externally. In order to capture ~~the way~~how the regime governs, we have analysed the insecurity toolbox ~~the regime~~it relies on. This includes elements of securitization that permeate all aspects of life, constantly requiring the identification of new fights the nation is facing, and the creation of insecurities by the instrumental and arbitrary use of law and the exclusion and stigmatization of those identified as enemies. This is how the regime keeps its supporters mobilized, while it also tries to discourage its opponents from voicing their dissent.

We have highlighted that this results in the hollowing out of meanings: nothing is what it seems, and nothing stands for what its name suggests, e.g., the Constitutional Court is not limiting but supporting government power. The confusion over distinct categories of migrants (asylum seekers, refugees, forced and economic migrants, illegal and irregular migrants, Muslims and terrorists) seems deliberate and serves to undermine citizens' meaningful public debate. If it is unclear whether the discussion is about migrants or refugees and meanings are lost as a result, challenging governmental propaganda becomes extremely difficult on rational grounds. All messages are loaded with emotions, and there are visceral fears of the unknown and the foreign, undermining any attempt at a meaningful discourse and exchange of opinions. If discourse is defined as inter-subjective, there is no actual discourse present. The Schmittean distinction of friend vs. enemy that characterizes othering is similarly reflected in the way claims are made. The government is 'our' voice and the rest is but the voice of the enemy (migrants and their supporters, Soros, NGOs, and liberals), the voice of treason. Discussion and compromise inherent in democratic decision-making are translated as surrendering to hostile forces. This spirit of self-righteousness and distrust in pluralism result in~~s~~ confusion, contributing to an aura of insecurity for all potential critics of the regime, ultimately contributing to a systemic attempt at undermining democracy.

While the research for the manuscript was conducted well before the COVID-19 virus hit, the pandemic triggered government reaction that ~~only~~ underlines what our framework predicts. The government's first reaction was to blame migrants for the crisis, resorting to the comfortable meta-frame and adopting new restrictive measures that include the sealing of transit zones. In a widely publicized move, the government also sought extraordinary authorization from parliament to grant pre-authorization to any of its acts of emergency without any time limit, triggering international reactions. The operation of illiberalism included measures like relying on the chilling effect of cracking down on citizens for Facebook posts that are critical of the government, ~~as well as~~and on demonstrators honking

~~from~~ in cars~~,~~ ~~or~~ as well as ~~to~~ seizing the opportunity to drive away income from opposition-led municipalities, further shrinking the space of political opposition. COVID-19 reactions provide an apt illustration of the workings of an illiberal regime that relies on EU funds and recognition, and seeks to maintain the image of compliance but uses the security toolbox in a way that challenges the basic tenets of a democratic rule of law regime.

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