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Constitutional identity? The Hungarian model of illiberal democracy

Abstract

By connecting to ongoing scholarly discussions on conceptualizing “illiberal democracy” and analyzing the phenomenon of anti-democratic backlash in post-2010 Hungary, this chapter seeks to provide a description and an analysis of the “Hungarian model of illiberal democracy”. Throughout this text, “illiberal” is understood as a privative prefix, referring to a constitutional and political condition that creates a unique middle ground between a constitutional democracy and an autocracy. It is argued that that the “Hungarian illiberal democracy” is neither a construct of constitutional philosophy, nor is it a principle for constitutional design, nor is it characteristically illiberal within the interpretative framework of political theory. Rather, it is a tool to channel, define and dominate general political discourse and to provide a discursive framework for political identification and ideologically biased, yet divergent and ad hoc legislation. It is argued that “illiberalism” is actually a form of constitutional identity, the discursive framework of this new political community that the Orbán-regime claims to have established. The morphosis of this Hungarian model for illiberal democracy manifests itself normatively through value preferences expressed in the new constitution, as well as in a quasi-normative political declaration that serves as a manifesto for the new political community it envisages.

Terminology and conceptualization

In his seminal essay in which he argues that liberalism, either as a conception of political liberty or as a doctrine about economic policy, does not necessarily coincide with democracy, Fareed Zakaria (1997) defines liberal democracy as a political system marked not only by free and fair elections, but also by rule of law, separation of powers, and the protections of basic liberties of speech, assembly, religion, and property. Scholarly discussion on definitions has burgeoned in the past years. As Rupnik and Zielonka (2013) and Collier and Levitsky (1997) argue, authors often qualify the term democracy by adding adjectives such as liberal (or illiberal), deliberative, representative, participatory, delegative, façade, direct (or indirect), electoral, hybrid, Western, Islamic, managed (Anderson 2007), et cetera. Others refer to electoral or competitive autocracies (Shevtsova, 2000; Levitsky and Way, 2010). Following Mill (1993) and Huntington (1991) in their recent analysis, which serves as a starting point for this assessment, Csillag and Szelényi (2015) define liberalism and democracy as two distinct dimensions of good governance, identifying “liberalism” with separation of powers and the security of private property rights, and “democracy” as majoritarian rule. They do not explicitly define illiberal democracy, but describe the features of the “emergent illiberal post-communist systems” in political terms, and claim that as long as democratic institutions operate and leaders are elected to office, the ruling elites of these “illiberal democracies need a legitimating ideology which can appeal to a broader electorate”. In their genealogy of what they call “post-communist managed illiberal democracy”, where property relations shift from private property and market capitalism to neo-patrimonial and eventually neo-prebendal property relations, they argue that the core distinguishing feature is this ideology, which they call post-communist traditionalist or neo-conservative (pp. 21-22).

To Avoid further entanglement in a conceptual and terminological labyrinth, throughout this text “illiberal” should be understood as a privative prefix, referring to a constitutional and political condition that creates a unique middle ground between a constitutional democracy and an autocracy. This reading is not unique in the literature. Csillag and Szelényi claim that the road from democracy to autocracy is paved with the “stones” of illiberalism, and while “illiberalism does not necessarily eliminate democracy, it creates conditions (given the weakness of Constitutional Courts and the legislative branch) for particularly powerful political leaders to flirt with abandoning democratic procedures if they may sense their electoral support eroded and they may not win the next elections” (p. 27). Bozóki (2011)

argues that the “system of national cooperation”, introduced by Prime Minister Viktor Orbán, which I will analyze in detail below in order to make the claim that it is one of the manifestations of the “Hungarian illiberal democracy”, has emerged as an alternative to liberal democracy (p. 650). In developing this interpretation, it will be argued that illiberalism in Hungary is a form of constitutional identity, a political discourse that creates the rhetorical and political framework for the newly constructed political community.

Illiberal developments, anti-democratic backlash

In his earlier writings (Pap, 2015a; 2015b; 2015c; 2014), this author has demonstrated how the new constitution, titled the Fundamental Law of Hungary (passed in April 2011), has, along with adjacent legislation, set forth several normatively formulated value preferences which can be defined as illiberal in the sense that they either suggest the denial or at least the disregard of individual autonomy and liberty or project a paternalistic conception of society. It has been argued at length that the constitution is not based on individual autonomy or individual liberty, and that the idea of a person is unequivocally and openly based on a paternalistic conception of society and particular values. The new constitution’s indications of personhood and of the ideal typical, thus preferred members of the political community were formed to reflect an image of ethnically Hungarian individuals who belong to the middle-class, who are employed and active in the labor market, are practicing Christians—or at least belong to a denomination that is recognized by the state—, are married heterosexuals living with their spouses, and who are sexually monogamous and naturally fertile. At most, the recognition of individual dignity is conditional on belonging to a community based on the features described above, while the dignity of communities—including that of the ethnic majority community—is protected (in ways unknown in liberal democracies) by civil and criminal law, and even against various minorities (be it ethnic, ideological or lifestyle minorities) if need be.

Analysts (Blokker, 2013; Tóth, 2012; Chronowski, 2012; Majtényi, 2012), domestic and international human rights monitors, democracy-watchdogs, and other stakeholder organizations have widely documented the FIDESZ-government’s process of restructuring the constitutional landscape in Hungary. Based on the so called Tavares-report prepared by the European Parliament in 2013 which pointed to a clear weakening of the systems of checks and balances required by the rule of law and the democratic principle of the separation

of powers, several shortcomings can be identified. The new constitution was adopted on the basis of a Bill submitted from an only 35 daylong debate and exclusively by the votes of members of the governing coalition. The Budget Council, a non-parliamentary body with limited democratic legitimacy, has been granted the power to veto the adoption of the state budget, which allows for the President to dissolve the parliament. The new constitution identifies 26 subject matters that need to have cardinal laws, which require a two-thirds majority. Many of these issues, such as specific aspects of family law and the tax and pension systems, habitually fall under the ordinary decision-making powers of a legislature. In the 18 months following the adoption of the new constitution, parliament enacted 49 cardinal laws without adequate consultation with opposition parties and civil society. A 2012 Act on the National Assembly vested the Speaker of the Parliament with extensive discretionary powers to limit MPs' free expression, including severe fines applied even for displaying the EU-flag. Severe measures to weaken the competences of the Constitutional Court (a highly esteemed powerful guardian of the post-transition constitutionalism) have been introduced, such as the elimination of *actio popularis* procedures for ex post review, powers to review all budget-related legislation, and a repealing all of Court decisions made before 1 January 2012 (when the new Constitution entered into force) so that precedents of the Court are not allowed to be invoked in new cases based on the new Constitution. Additionally, the number of justices has been raised from 11 to 15, and the requirement to try to reach a consensus within parliament regarding their election was eliminated. By now, most of the judges are government loyalists, several having been appointed directly from their positions as members of parliament. In an attempt to weaken the independence of the judiciary, the six-year-long mandate of the former President of the Supreme Court was prematurely ended after two years and the mandatory retirement age for judges was reduced from 70 to 62 years of age, a move that practically removed all of the courts' presidents. A new powerful administrative organ for the judiciary titled the National Judicial Office was created with powers to transfer cases from one court to another. The body is presided by one of the new constitution's drafters—who is also the wife of a Fidesz member of the European Parliament and a longtime friend of the Prime Minister. A new Act on Churches was passed, making recognition conditional on the prior approval by a two-thirds majority in parliament. Subsequently, 300 registered churches lost their legal status. A restrictive media law was passed, creating a new Media and Telecommunication Authority with overbroad regulatory and sanctioning powers and enabling political influence on public service media. Electoral reforms introduced a remarkable form of gerrymandering

which disproportionately favor the governing parties, and the government took political control over the Election Commission.

Most legislation was introduced to parliament as individual members' bills. These introductions avoided any detailed debate, consultation, impact assessment, and traditional venues for negotiation with the civil sector. Laws have often been amended substantially after the parliamentary debate through the use of a special measure aimed at eliminating technical and incoherent provisions. And several pieces of legislation were specifically tailored to accommodate particular acts of favoritism, such as lowering age requirements for ambassadors to enable the appointment of a government loyalist, or changing incompatibility regulations to enable former military service members to run for elected office. Nominally independent institutions have been staffed by government loyalists elected by a two-thirds majority. In many cases these positions involve nine-year terms with options for tenure and automatically prolonged mandates if successors are not elected. According to Freedom House (2015), by 2014 all major independent institutions were headed by partisan or personal loyalists. A single Office of the Commissioner for Fundamental Rights was created which replaced four formerly independent ombuds-institutions. The portfolio of the former Ombudsperson for Data Protection and Freedom of Information was transformed into a quasi-governmental office. Universities were brought under governmental control (Bugarič, 2014), and the previously ideologically neutral local government schools were taken over by churches in high numbers, with many settlements only offering faith-based schools. Homelessness and extreme poverty were criminalized. Government rhetoric became hostile towards non-governmental organizations and targeted tax raids have been staged (Amnesty International, 2015/2016). The Fundamental Law also sets out that the right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Civic and criminal sanctions may ensue speech that is offending, shocking, or disturbing to others, especially to public officials or public figures (Amnesty International, 2015/2016). In 2013, the Law on Freedom of Information was amended to allow restricting full access to data concerning governmental institutions.

The right to property has also suffered serious setbacks due to private pension funds being terminated in 2010, and almost all assets (worth 10 billion EUR) were transferred to the state-run pension system. Also, a special 98 percent tax on certain revenues was introduced

retroactively as of 1 January 2010, thus creating a tax obligation for the period preceding the law's promulgation, which also was in breach of the ban on retroactive legislation.¹ Reforms have been extremely swift: in its first 20 months in office, in fact, the government pushed through 365 laws, including twelve amendments to the old constitution that together changed more than 50 individual constitutional provisions (Halmai and Scheppele, 2012, p. 7). The Fundamental Law, entering into force on 1 January 2012, has already been amended 5 times in three years, changing one-fourth of its text (Helsinki Committee, 2014).

Illiberalism and the emergence of a new political community: The National System of Cooperation

Unsurprisingly, no normative legal document, formal political manifesto or official government communication ever provided a coherent description of the nature, design or constitutional philosophy of the Hungarian illiberal democracy model. It is therefore the task and challenge of academic analyses to decipher its normative and analytic content. This chapter thus sets forth a thought-experiment to fill these gaps and provide a conceptual framework for the Hungarian illiberal democracy. A widely cited and debated speech by the new regime's founding father Prime Minister Viktor Orbán, delivered at the Summer Open University of Bálványos in July 2014, will serve as a starting point for this endeavor. Here Orbán identified his regime as illiberal in the following manner:

...while breaking with the dogmas and ideologies that have been adopted by the West and keeping ourselves independent from them, we are trying to find the form of community organisation, the new Hungarian state, which is capable of making our community competitive in the great global race for decades to come. ... a democracy does not necessarily have to be liberal. Just because a state is not liberal, it can still be a democracy. ... until now we have known three forms of state organisation: the nation state, the

¹ It needs to be noted that due to criticism by international organizations such as the EU, the Council of Europe, or judicial organs like the European Court of Human Rights (ECHR) or the European Court of Justice, some of these legislation has been amended. For example in April 2014, the European Court of Justice ruled that the abrupt termination of the data protection commissioner's term in 2011 infringed on the authority's independence, and that the church law violated the European Convention of Human Rights. The ECHR also declared that the early removal of the former Supreme Court president in 2012 violated his rights, and also condemned Hungary for violating the freedom of expression because opposition party MP's were sanctioned. Likewise, the 98 % retroactive tax was found to be contrary to the Convention.

liberal state and the welfare state. And the question is, what's next? The Hungarian answer to this question is that the era of the work-based state is approaching. We want to organise a work-based society that, as I have just mentioned, undertakes the odium of stating that it is not liberal in character. ... we must break with liberal principles and methods of social organisation, and in general with the liberal understanding of society. ... and forge a new method of Hungarian state organisation ..., following (in the sense of bypassing..., ALP) the liberal state and the era of liberal democracy ... we suggest, and are attempting to construct Hungarian state life around this idea, that (liberalism) should not be the principle on which society is built. ... the Hungarian nation is not simply a group of individuals but a community that must be organised, reinforced and in fact constructed. And ... the new state that we are constructing in Hungary is an illiberal state, a non-liberal state. ...we want to organise our national state to replace the liberal state, construct a new state built on illiberal and national foundations within the European Union. ... the Government has come to a decision according to which within this new state concept, this illiberal state concept, the reorganisation of the Hungarian state is underway, in contrast to the liberal state organisation logic of the previous twenty years.

It has been argued above that the new constitution, the Fundamental Law sets forth several value preferences, but it does not actually take up the task of declaring a new political community. But Orbán claims no less than having created such a political community. This is reflected for example in his change of the official name of the state from “Magyar Köztársaság” to “Magyarország”. The former, commonly referred to in English as the “Republic of Hungary”, in Hungarian was actually “Hungarian Republic”, a grammatical syntax with the noun "republic" ('republic') specified with the adjective "Hungarian" ('magyar'). Magyarország, ('Magyarstan') means “Hungarian Country”, grammatically a morpheme, a complex word derivated by the agglutianion of the words "Hungarian" ('magyar' - can be either a noun or an adjective) and "Country" ('ország') (Takács, 2015).

The new political community is declared in a formally non-binding, unique pre-constitutional document, Political Declaration 1 of 2010 (16 June) of the Hungarian Parliament on national

cooperation. This document foresees and legitimizes a total break with the preexisting political community and declares the emergence of a new political community, the named National System of Cooperation (NSC), which originates retroactively from a “voting booth revolution”, a term used by Orbán to describe the election which created the parliamentary supermajority of the governing coalition (FIDESZ and the Hungarian Christian Democratic Party, the two parties that ran jointly).² The political credo of the new regime and the new political community reads as follows:

At the end of the first decade of the 21st century, after forty-six years of occupation and dictatorship and two turbulent decades of transition Hungary has regained the right and ability of self-determination... In the spring of 2010 the Hungarian nation once again summoned its vitality and brought about another revolution in the voting booths. ... The National Assembly declares that a new social contract was laid down in the April general elections through which the Hungarians decided to create a new system: the National Cooperation System. ... We, members of the National Assembly declare that we shall elevate the new political and economic system emerging on the basis of the popular democratic will ... that connect the members of our diverse Hungarian society. Work, home, family, health and order - these will be the pillars of our common future.... The National Cooperation System is... an opportunity for, as well as a requirement of, everybody who lives, works or has an undertaking in Hungary. We firmly believe that we will be able to change Hungary's future through the solidarity represented by the National Cooperation System and build a strong and successful country. This solidarity that releases tremendous energies and gives great hope to every Hungarian ... and ... after decades gives a chance to the Hungarians to fulfil their own goals at last.³

² Retroactivity refers to the fact that the idea of creating a new political community (or even the adoption of a new constitution) was not part of the political campaign in the elections, and needless to say, the principles of this new regimes were not up to political deliberation either.

³The Declaration, adopted shortly after the new government took office, was ordered to be displayed in all government facilities in Hungary. The President, the Speaker of the Parliament, the Presidents of the Constitutional Court and the Supreme Court, the Central Bank, mayors, the ombudspersons, chief prosecutors and judges were requested in the form of a Government Resolution to follow suit. Most state institutions, such as hospitals or universities also complied.

Arguably, Hungarian illiberal democracy manifests itself in the NSC—a vaguely defined, yet even normatively presented political construct in which majority rule may operate unbounded by the rule of law, separation of powers, and other constraints of liberal democracies. The NSC, which was never actually defined or explained in a normative document or even a political manifesto, is arguably both the conceptualization and a metaphor of the political community. And although it is not a formalized set of political institutions, it is the conceptualization of the illiberal democratic decision-making process, which makes traditional constitutionalism obsolete.

Illiberal democracy as constitutional identity

It is beyond the scope of this chapter to discuss anti-democratic political and legal developments in more detail than the previous subchapter. Suffice it to conclude that most of the criticism pertained not so much to restrictions on individual freedoms and liberties, but rather to the systematic weakening of institutional rule of law guarantees advanced by the meta-institutional practice of cementing government loyalists in most independent constitutional offices. However, as far as strictly normative, grand scale institutional engineering goes, there is no official, authentic (constitutionally declared), *sui generis* Hungarian illiberal design at play here. In fact, the Orbán regime's constitutional framework does not go directly against the principles of liberal democracies. This constitutional order is built up from elements that are mostly not in clear breach of international human rights standards, nor are individual elements unprecedented in well-functioning constitutional democracies. However, the grand picture emerging from the sum of these individual pieces of the mosaic is one of a constitutional design in which institutional checks and balances are dismantled, the protection of human rights is severely weakened, and political freedom is curtailed (Scheppele, 2013).

Also, although the populist rhetoric (of the NSC) aims at targeting and attracting both moderate and far-right voters, the NSC is not inherently and intrinsically racist, misogynist, anti-Semitic, or homophobic. It does, however, neglect and deny the discursive recognition, and questions the importance, relevance, and legitimacy of liberal values and fails to adopt an individual freedom and human rights oriented approach that would, for example endorse Roma inclusion, feminism and multiculturalism, post-nationalism, individualism, or a particular vision of modernism—ideals and commitments Hungarian liberal public

intellectuals would advocate.⁴ In other words, the discourse is not inherently anti-liberal, only a-liberal.

Again, let us turn to the seminal Orbán-speech cited above:

the Hungarian nation is not simply a group of individuals but a community that must be organised, reinforced and in fact constructed. And ... the new state that we are constructing in Hungary is an illiberal state, a non-liberal state. It does not reject the fundamental principles of liberalism such as freedom, and I could list a few more, but it does not make this ideology the central element of state organisation, but instead includes a different, special, national approach.

As Orbán pointed out in his above 2014 Bálványos-speech regarding illiberalism and the NSC, “*This cannot be entered into law, we are talking about an intellectual starting point now.*” It is thus argued in this chapter that illiberalism in Hungary goes beyond political and legal action. It is a form of ideology and a discursive construct. Even though “unorthodox” legal and political institutions are instrumental for the establishment, solidification and cementing of the Orbán-regime, they are only byproducts. The real product is the (conceptual framework of the) newly established political community. Illiberal democracy and the NSC serve as tools for constitutional identity and an ideological framework for institutionalizing the well-documented process of anti-democratic backlash in Hungary.

This chapter argues that it would be a mistake to identify the Hungarian illiberal democracy model with these constitutional and legal developments. Instead, an alternative, institution-focused analysis is offered. “Hungarian illiberal democracy” is neither a construct of constitutional philosophy nor is it a principle for constitutional design. It cannot be properly described by the evisceration of classic democratic institutions, and it is also not characteristically illiberal within the interpretative framework of political theory. It would equally not qualify as a sui generis un-republican (Niederberger and Schink, 2013; Pettit, 2013), un-participatory (Garcia, 2015), un-agonistic (Wenman, 2013), or un-deliberative model (Mansbridge, 2012). Despite the political mantra used by Orbán’s party of the legitimating force of a parliamentary supermajority being based on a single event of popular

⁴This is not to argue that liberalism is necessarily multicultural, or that any form of collectivistic constitutionalism would be inherently liberal, only that these would be the most characteristic and typical commitments by Hungarian liberal public intellectuals (who, in the absence of a visible liberal party, can be identified as relevant “liberal” voices.)

vote, the Hungarian model of illiberal democracy cannot be equated with the unfettered freedom of a parliamentary majority to do as it pleases. Rather, it is a tool to channel, define and dominate general political discourse and to provide a discursive framework for political identification and ideologically biased yet divergent and ad hoc legislation.

This chapter argues that “illiberal democracy” and “illiberalism” in Hungary are actually forms of constitutional identity guiding the discursive framework of this new political community. Illiberalism is thus the culmination of government discourse along with the discursive framework of the new political community, which in turn reframes politics in terms of nationhood. It is the form and means to construe and express the new and novel (constitutional) identity, which emphasizes cultural particularism and values such as fidelity, faith, and charity as opposed to universal values of equality, human rights, and social inclusion. This creates official historical narratives, but disregards individual autonomy and projects a paternalistic conception of society in which value preferences are not centered on liberty and autonomy. Orbán’s illiberal democracy instrumentalizes a special form of nationalism that is built on the uniqueness of the Hungarian “people”, where illiberalism is a form of ethno symbolism.⁵ Here, the myth of election of the new political community via the NSC is constituted through independence from modernist universalist values, which only brought failure and frustration. This framework for constitutional identity politics centers around the rejection of the liberal political ideology that places individual freedom front and center.

As shown, the morphosis of this Hungarian model for illiberal democracy manifests itself normatively through value preferences expressed in the new constitution, the Fundamental Law, as well as in a quasi-normative political declaration that serves as a manifesto for not only Orbán’s new political regime, but also the new political community he and his regime envisages. It is important to highlight that, contrary to what it claims to be, the NSC is not an actual institutionalized modus operandi for the Hungarian illiberal democracy, nor is it a form of political institutional design. It is rather the manifesto of illiberal democracy: the political and quasi-normative declaration of the Orbán-regime’s discursive framework.

⁵According to the concept of ethno-symbolism, nations are based on ethnic groups, where cultural cohesion is built on myths and symbols. Anthony D. Smith (1996; 1999; 2009) explains how myths are highly significant factors in nation building. Also consider John Armstrong (1982) arguing that „A most significant effect of the myth recital is to arouse an intense awareness among the group members of their ‘common fate’” (p. 9).

In sum, the quintessential feature of the Hungarian illiberal democracy is that it is the discursive framework through which the Orbán-government constructed a new national and constitutional identity. It is a form of a constitutional commoditization aimed at selling a political regime, where a significant emphasis is put on authenticity and difference. Thus, illiberalism is not so much a constitutional term describing and legitimizing an overall backlash in democratic control mechanisms and the protection of human rights as it is a discursive framework constructed to describe and market⁶ the new imagined community of the NSC-Hungarian nation and to narrate its shared common belonging.⁷ To paraphrase Thierry Balzacq's securitization theory, one may argue that the Hungarian illiberalisation process is a perlocutionary constitutional speech act,⁸ in which the consequential effects or sequels are aimed to evoke the feelings, beliefs, thought or actions of the target audience.⁹ "Illiberalism" is a mobilizing tactic utilized to question the validity and sustainability of post the WWII (liberal) consensus on human rights centered political language, disenchantment, certain sacred democratic institutions, and neoliberal policies. The term (which is not a coherent concept) can be operationalized by neoconservative movements as an anti-modernist and fundamentalist¹⁰ answer to the neoliberal consensus, similarly, for example, to the ways in which "(anti) gender ideology" is used. As Kováts et. al argue, 'gender' has been identified as the common ground, a label amidst diverse political cultures, different party structures and a variety of mobilizing tactics, compressing different fears and values and used against diverse causes (Kováts, Pöim, and Tánzos, 2015; Kováts and Pöim 2015). Orbán's illiberalism is also very similar to how Hobsbawm (1992) sees nationalism in the 21st century—as a substitute, a placebo for disorientation, and a surrogate for integration in a disintegrating society; when society fails, the nation appears as an ultimate guarantee (and in post-communist societies, also as a device to distinguish between the innocent and the guilty). In the Hungarian case, the strategy worked. As Pető and Vasali point out, the government successfully built a state-funded (pseudo) NGO sector and this, alongside racist and nationalist movements (Feischmidt and Hervik, 2015; Wodak, Khosravini, and Mral, 2013; Vidra and Fox, 2014), convincingly offered anti-modernism (Kovács, Horváth, and

⁶ For the concept, see J.L. Comaroff and J. Comaroff (2009).

⁷ For scholarly assessments on the role of discursive action in the process of identity formation see Fox, Jon E., and Cynthia Miller-Idriss (2008) and Wodak (2009).

⁸ For the original theory, see Austin (1962).

⁹ Balzacq (2010) argues that three different aspects should be considered when analyzing perlocutionary speech acts: (i) the centrality of the audience; (ii) the co-dependency of agency and context; (iii) the dispositive and structuring force of practices.

¹⁰ For more on this see Vidra, Horváth, and Fox (2012).

Vidra, 2011), and anti-cosmopolitanism/Europeanism (Melegh, 2006) as a viable alternative to neo-liberal democracy and the market economy (Pető and Vasali, 2014).

Causes and explanations

Having provided a possible exegesis of the theoretical construction of the Hungarian model of illiberal democracy, one cannot escape the question: how has one of the leading post-communist democracies transformed into a semi-consolidated Frankenstate? Some of the most appealing explanations will be discussed in the following part of the chapter. In order to understand the evolution and success of Orbán's constitutional capture, two features of post-transition Hungarian political life needs to be highlighted: the domination of political parties in public affairs, and the prevalence of Orbán's long held political strategy to demonize and delegitimize political opponents an polarize politics to its extremes.

1. Values and political culture

Value surveys portray Hungarians as passive, uninterested in politics, isolated, and distrustful, with an especially low trust in democracy, market economy, and transparent, merit-based structures. In 2012, only 40% of Hungarian youth (mostly college and university students) accepted democracy as a legitimate system of government, and roughly one third did not see a difference between dictatorship and democracy (Szabó, 2013). According to another survey, only about 20% of respondents were interested in politics (Szabó, 2013, p. 22). While in 1991 74% of Hungarians approved of the change from a one-party system to a multiparty system, by 2009 only 56% favored the change, and 77% were dissatisfied with the way democracy was working in Hungary, which was the highest percentage of dissatisfied respondents in the region. While 89% held that politicians have benefited a great deal from the changes since 1989, only 17% believed ordinary people have done so. 76% said that corrupt political leaders are a very big problem (Wike, 2010). Only 38% believed that voting is a mechanism for affecting politics, and 91% thought the country is on the wrong track (Pew Global, 2009).

Hungary is a closed society that is frustrated with the European Union and the development of capitalism, but that also has a high tolerance for corruption and an attraction to charismatic

leaders. Regarding values, Hungary is in the vicinity of Orthodox cultures and far from its neighbouring countries with similar level of economic development; Hungary is closer to Bulgaria and Moldova than to Slovenia (Keller, 2010; Szabó, 2013, p. 10; Wike, 2009). In a comparative analysis, Hungary was found to be the very last of all European countries, including the former socialist states, in its levels of trust in institutions. Hungarians were found to have especially low levels of trust towards politicians, bankers, and journalists (Hungarianspectrum.org, 2009). Hungarians also live in social isolation: 81% reported difficulty in finding friends, and according to 85%, relationships often become increasingly unstable. 58% found little interest in politics, and 41% reported no interest in solving social problems (Till, 2015, p. 371).

It is apparent then that the NSC resonates with the expectations of a disillusioned, frustrated, inward-looking, closed Hungarian society that has lost its comparative advantage enjoyed during the time of relative freedom and economic prosperity created by the “Goulash communism” of the pre-transition 1980’s. The term “Goulash communism” evokes images of a community-style dish cooked in the open air to symbolize a communist regime with a relatively pleasant overall atmosphere. This term characterizes the mixing of certain elements of the free market with a planned economy that allowed Hungary to have had slightly higher living standards than its Iron Curtain neighbours (Wike, 2009) and to be among the rare countries in the Eastern block that did not have a shortage of food (Wike, 2010). Paradoxically, Hungarian society retains a sense of superiority, especially towards its neighbours with a significant ethnic Hungarian diaspora traditionally looked down upon by the dominant “Magyars.” Still, Hungarians have severely lacked feelings of success in the two decades since the political transition.

It also needs to be added that the conservative political ideology still centres around 1920, when in the post-WWI treaty Hungary lost two-thirds of its territory and the corresponding population. Ever since, the aspiration to reunite the old glory and territorial integrity, or at least a responsibility for ethnic kins in the neighbouring countries has been a cornerstone of conservative domestic politics, and after the political transition in 1989, a constitutional responsibility and a foreign policy priority as well. The 1920 Treaty of Trianon also serves a symbol of Hungary’s and Hungarians’ victimization and mistreatment by the international community. The narratives of victimhood allow for the culture of frustration and refusing

responsibility for one's own fate and allowing others to be blamed for failures and the lack of success.

Another important feature of Hungarian political culture is what András Bozóki (2015) describes as “partocracy”, or a case in which political parties assume civic duties and dominate public life. Such practices may be for example establishing public benefit foundations, professional groups, club-like community forums called “civic circles” (polgári kör), delegating curators to committees, employing their own journalists and political and market analysts, and self-administering most of the media outlets and think tanks. Similarly to other post-communist states, Hungarian civil society is usually characterized as weak and resource dependent. Additionally, the pervasiveness of party loyalist government organized non-governmental organizations (GONGOs) being masqueraded as independent NGOs is remarkable (Kövér, 2015). According to Jarábik (2015), although loyalty to political sides and parties is not a Hungarian specialty, nowhere else was the emerging civil society and the media captured by the political parties to such a degree as in Hungary.

2 . Orbán and his strategy: The rhetoric and politics of the “dark side”

A contradictory feature of Hungarian politics lies in the fact that despite a significant proportion of the population being in a state of political apathy and disinterest in public affairs, society is nonetheless highly politicized. Polarizing strategies aimed at demonizing and delegitimizing political opponents, initiated and utilized mostly by the right and foremost by Orbán and his party, have set the tone in political debates for over a decade. As Krasztev (2015) shows, private political preferences were transformed to identity issues, widely represented by a variety of commonly displayed symbols of self-definition against those with different political views. As a consequence, families, friendly circles and communities at work were split because of this sophisticated power trick.¹¹

Thus, a defining feature of the NSC is that, as political analyst and former FIDESZ MP Péter Tölgyessy argues, instead of attempting to form and change society and culture, as Adenauer and Thatcher did, Orbán deliberately builds on the dark side of Hungarians' values and orientation: populism, pessimism, and conspiracy theories that blame all of the nation's

¹¹ Also see Rupnik (2012).

problems on hostile cooperation of foreign interests and a general disenchantment from democracy and the free market (Gábor 2015; Jarábik, p. 319). Hegedűs (2014) demonstrates the irreconcilable polarization of Hungarian political life and culture through the example of Orbán's strategy for maintaining influence after losing the 2002 election. After this loss, Orbán initiated a political discourse centered on the phrase "the nation cannot be in opposition," and in doing so he relativized the outcome of the democratic elections. His expropriation of the phenomenon of the "nation" established a political environment that excluded any further compromise or cooperation with the governing socialists and liberals, even in important strategic issues. This created a political cold war, and after 2008 a permanent crisis of governance (p. 4). According to Rupnik (2012), Orbán actively deepened political and cultural divides and transformed transitology to traumatology by not only breaking with the communist past, but also reconnecting with pre-communism by reopening old divides between "urbanists and populists". He positions Western liberal democracy as counter to the rural lifestyle, which he poses as the source of true national values and authentic democracy.

2.1. The rhetoric of finishing the political transition suspended in 1990

Although it was never part of the 2010 electoral campaign, the cornerstone of the rhetoric of the NSC is that the new constitution finally finishes the political transition and completes the de-communization process that was suspended in 1990 (Sarlo and Otarashvili, 2013). In Jenne and Mudde's (2012) words, Fidesz have argued that their proposed transformations represent the realization of the promises of 1989, which went unfulfilled by the communists and dissidents who signed the pacted transitions (p. 8). Hungary certainly followed a unique path in post-communist transitions: unlike in other states, the first wave of democratization of the "pacted" or "post-sovereign" constitution making, the adoption of an interim constitution, which was designed as the first of a two-step process, was never followed by the adoption of a final constitution sometime after the first democratic elections (Halmai 2013, p. 75). The constitution, to be replaced by the 2011 Fundamental Law, consisted of a vast amendment (involving over 100 provisions) of the communist constitution, originally adopted in 1949 and passed by the communist legislature in 1989 following peaceful negotiations between the representatives of the authoritarian regime and their democratic opposition, in particular by its umbrella organization, the Opposition Round Table (p. 69-70). The amendment, alongside

a correction passed instantly by the first democratically elected parliament in 1990, promulgated on the thirty-third anniversary of the 1956 revolution and just two weeks before the fall of the Berlin Wall, practically created a new constitution with essentially only one provision remaining from the original Stalinist document: the provision that declared Budapest as the state capitol. The old-new document met most of the criteria liberal constitutional democracies require: a representative government, a parliamentary system, an elaborate system of checks and balances, an independent judiciary, an ombudsmen to guard fundamental rights, and probably the world's most powerful Constitutional Court (Kovács and Tóth, 2011, p. 184). The unique feature of the Hungarian velvet revolution thus lies in the fact that as the amended constitution was suitable for liberal democracy and a capitalist market academy, there was no political and legal-technical or constitutional pressure to write a new constitution, and the constitutional moment passed. As János Kis (2011) points out, however, this symbolic defect had a price to pay. He claims that the very weakness of the substantially workable constitution lies in the fact that while it was democratic in nature, the 1989 amendment lacked democratic confirmation, and the unfulfilled (and substantially moot) reference in the preamble of the 1989 amendment which stated that a new constitution will be adopted after the first free elections created the impression that the new Hungarian post-communist society is still unfit for constituting a political community (p. 8). The old-new constitution, thus, could not serve as the symbolic glue for the 3rd Hungarian Republic, and subsequently, it was too weak to withstand the shocks of the political transition: the shocks of the dark side fundamental rights (i.e. hate speech, due process provided for even the guilty, and claims by minority communities—such as the LGBTQ community for example, which is seen as controversial by the conservative majority); shocks brought by the market economy; the shock of weak institutions, which were unable to sustain corruption; and the shock of globalization. The constitution could not stop the erosion of social solidarity, could not build trust in the political class, was incapable of combating skepticism towards market economy and democracy, could not sustain anti-establishment sentiments, and most of all, though being built to foster a constitutional partnership, could not withstand a polarizing and obstructive powerful political party. In sum, the constitution became an easy target and a useful scapegoat (p. 13).

It is noteworthy that despite the fact that Orbán's party played a crucial role in the 1989 negotiations, his rhetoric played on the lack of constitutional-making mandate of the

Roundtable talks in 2010. At the end of the day, instead of completing its mission, he created a construct that builds on its negation.

2.2. The rhetoric of stability and governance by the people instead of debates

As Csillag and Szelényi argue, “liberalism” for Orbán means the excessive emphasis of individual interest over “national” interest (p. 23). In one of his most widely cited speeches, Orbán envisions that in the next 15-20 years Hungary should be dominated by a single, massive right-wing political party that would rule the whole political field without “unnecessary” debates (Rácz, 2015). Bánkuti et al (2012, p. 145) quotes Orbán in 2009, even before the victorious elections envisioning a

...real chance that politics in Hungary will no longer be tied by a dualist power space... Instead, a large governing party will emerge in the center of the political stage (that) will be able to formulate national policy, not through constant debates but through a natural representation of interests.

As Tölgyessy (2015) argues, this also relies on the assumption that the rule of law state built in 1989 never belonged to the people. It was an elite project, manifested in the activism of the Constitutional Court, which brought only legalism instead of justice, wealth and prosperity for former communist elites, and the ordinary people were left behind and unattended. Halmai points out that his rhetoric also reinforces that there was no real transition in 1989-90, only the communist nomenclature converting its lost political power to an economic one, which Orbán exemplified by that the last Socialist prime ministers in office before his takeover in 2010 both became rich after the transition through to the privatization process (p.72).

2.3. “We will not be a colony!”

Hegedűs (p. 8) cites Orbán’s infamous speech stating that

The political and intellectual program of 1848 proclaimed: we will not be a colony! The program and the desire of Hungarians in 2012 is: we will not be a colony! Hungary could not have stood against the pressure and dictats

from abroad in the winter of 2011-2012 if it were not for those hundreds of thousands of people who stood up to show everyone that Hungarians will not live as foreigners dictate, will not give up their independence or their freedom, therefore they will not give up their constitution either, which they finally managed to draft after twenty years. Thank you all!

2.4. A note on Orbán...

Last but not least, Viktor Orbán's personal and political charisma needs to be mentioned among the potential causes for the NSC's success. This charisma appears to be incomparable to his contemporaries, and it certainly makes him the most influential politicians in post-transition Hungary.

3. A little help from the constitutional structure...

As mentioned above, the institutional structure set forth by the 1989 constitution envisioned a constitutional partnership, relying on a broad consensus that could not withhold the political cold war FIDESZ instrumentalized (Kis, p. 19). The founding fathers (who, in fact, were mostly male) institutionalized the qualified two-third majority consensus for a wide variety of issues, and this has enabled the opposition to obstruct structural reforms for decades. Following the German chancellor-type model, the Prime Minister, on the other hand could have only been removed by constructive vote of non-confidence, which in turn created a strong government with a limited responsibility to the strong opposition. This in practice meant that no incumbent government was ever removed. As Bozóki argues, the illusion of stability brought a plethora of informal practices as a modus operandi: tax evasion and party finance stalling democratic institution-building (p. 5).

It is not as much a cause as it is an illuminating signifier how deeply post-transition Hungarian politics have failed to fulfill the goals of constitutional partnership. Hungary has maintained a political culture that continues to lack commitment to substantive gender equality. Before the 1990s the ratio of female parliamentarians was at about 30%; after the transition, it has yet to exceeded 10 per cent (Kövérv, p. 114). (And 2009 opened the era of all-male governments, with now the third in such in power.) For example, in 2007 only 18 % of mayors were women: this number being the lowest among Budapest districts, with most

elected in the strategically least important settlements—poorly founded small, disadvantaged villages—where there is no money, only lots of work.¹²

4. Economic hardship

According to a 2009 poll, a half a year before the “voting booth revolution”, 72% of Hungarians actually felt to be worse off economically now than under communism. 94% described the country’s economy as bad, and 42% disapproved of the move from a state-controlled economy to a market economy (Pew Global; Wike), even though in 1991, 80% answered just the opposite to the same question (Wike). Not only have Hungarians felt as though they have been the losers in the political transition to free market democracy, but also, as Hegedűs points out, though Hungary carried out widely recognized economic reforms during the late state socialist era and was the first post-socialist state to pave the way for liberal economic reforms in East Central Europe during the 1990s, in the 2000s its competitiveness continuously decreased. The country’s external debts and economic imbalances soared during the first decade of the new millennium (Hegedűs, p. 3; Eurostat; Knoema). In 2010, Hungary’s GDP was further from Austria’s (the former sibling-state apropos the Austro-Hungarian Monarchy, dismantled in the post-WWI treaties) than it was in 1990 (Gábor, 2015, p. 9). Since 2002, the gross debt in GDP percentage has grown by approximately 3 percent annually, from a level of 55.9% in 2002 to 58.6% in 2003, 65.9% in 2006, 73% in 2008, and finally 82.2% in 2010 (Hegedűs, pp. 4-5; World Bank). In the years 2002–08, the budget deficit varied between -5 percent and -9 percent annually and all initiatives to create structural reforms and restore the balance of public spending remained unsuccessful. This was partly due to the then-opposition FIDESZ torpedoing education and healthcare reforms with a “social referendum” in 2009, which pressed the government to suspend the system of individual financial contributions to healthcare and higher education. Thus, by the time the economic crisis hit, Hungary was greatly in debt both in the public and private sectors and was without feasible crisis management strategies (Hegedűs, pp. 4-5). Additionally, the lack of appropriate structural reforms led to losing Hungary’s earlier competitive advantages over other countries in the region (p. 6). Being in public and private debt, as well as a structural economic and competitiveness crisis, Hungary was hit hard by the global economic crisis and was endangered both by the collapse of the national currency the forint (HUF), and

¹² According to the 2014 World Economic Forum Global Gender Gap Report Hungary is placed 128 out of 143 in the field of political empowerment, with a 93rd overall gender-gap rank, and not only the last in Europe.

in 2009 by state insolvency (World Bank Group, 2016; INSOL). Before Orbán's takeover, his predecessors focused mainly on spending cuts and the securing of the IMF-EU-IBRD loan package amounting to approximately 20 billion euros for 2008 (IMF, 2008).

Shift and legacy: concluding remarks

To sum up, this chapter made the following arguments: (i) the Orbán-government's self-proclaimed revolutionary regime claims to have reconstituted and re-conceptualized the relationship between the state and its citizens, both in institutional and normative terms. For example, the Republic of Hungary was renamed Hungary. (ii) The new regime in several fields of life made a significant departure from the constitutional standards generally held in liberal democracies. However, neither its creators argued convincingly, nor could an academic analysis support the claim that this would indeed constitute a new, coherent, sui generis illiberal democracy model from the constitutional legal or the political theoretical point of view. (iii) This self-identified illiberal regime, however sets forth a political discourse and a discursive framework that also materializes in the form of legal, constitutional documents, which reject ideological and policy commitments towards human rights and an autonomy centered (and in this sense liberal) concept of personhood.

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