The Erosion of Democracy in Poland and in Hungary

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The failure of party competition

The erosion of democracy in Poland and in Hungary is a consequence of the failure of mainstream political parties to articulate distinct policies and to respond to constituent concerns. Populist right-wing parties took advantage of this indifference in the last ten years, and convincingly argued they better represented the interests of "real" Poles and Hungarians against the corrupt and collusive elite establishment. To achieve their goal of a state loyal to the will of the people, these parties then set out to systematically dismantle the formal institutions of liberal democracy: constitutional courts, media freedoms, civil society associations, and the constitutions. They also undermined the informal values that buttress liberal democracy, such as protecting the opposition, transparency in financial dealings, or equal treatment of all citizens. Neither civil society alone nor international criticism have been able to thwart these processes of democratic corrosion. Only other political parties could do so, but they remain too weak, divided, and hampered by new laws passed by the populist governments.

Initially after the collapse of communism in 1989, Poland and Hungary were the poster children for successful transformation. They were the first to democratize, with Round Table agreements in 1989 that led to free elections and political competition. Both successfully managed the transition to a market economy, and both were among the earliest entrants to NATO and the EU among the post-communist states. As other post-communist countries wobbled in their commitments to democratic norms and market reforms, the two were seen as the stablest democracies in the region, with independent and active judiciaries, vibrant civic societies, and robust political competition.

Underlying these transformations was a broad elite consensus on the desirability of market reforms, the need for a rule of law that would constrain the governments and

protect the opposition alike, and the unalloyed benefits of joining both NATO and the EU. In the run up to the EU accession in 2004, especially, there was virtually no criticism of the EU project. In both Poland and in Hungary, this consensus was led by politicians from two seemingly "natural governing parties": Civic Platform (Platforma Obywatelska, PO) which governed Poland from 2007 to 2015, and the Hungarian Socialist Party (Magyar Szocialista Párt, MSzP), which governed in Hungary from 1994-8, and again from 2002 to 2010.

This elite consensus was both critical to the post-1989 accomplishments, and it was the original sin of post-communist democracy. Elite agreement among the centrist, mainstream political parties meant that few critics other than populist and protest parties questioned the reforms or EU accession. Moreover, the PO's and MSzP's lengthy incumbency meant they grew lazy in office. PO became infamous for the "politics of warm water": the conviction that so long as basic goods were provided and stability reigned, no new policy initiatives were necessary. The MSzP failed to address growing deficits and slow growth. It eventually admitted to knowingly lying about the economic situation shortly after its re-election in 2006[1], precipitating a crisis of confidence in the party and its governance. Nor was it often easy to differentiate the policy programs of these parties from either their predecessors or their competitors, given their broad catch-all centrist nature and the widely held conviction that the exigencies of market reforms and international pressures reduced room for policy change.

The beneficiaries of this complacency were two populist right-wing parties, Fidesz in Hungary in 2010 and Prawo i Sprawiedliwośc in Poland in 2015. They were huge electoral winners, gaining two-thirds supermajority and an absolute majority of the seats, respectively. They could govern alone, and rapidly proceeded to take advantage of what they saw was a clear and unquestioned mandate. Both followed the same template: target the highest courts and the judiciary, then restrict the independence of the media and civil society, and finally transform the constitutional framework and electoral laws in ways that enshrine their hold on power.

The Role of Leaders

The leaders of the two parties, Viktor Orbán and Jarosłław Kaczyński, had already been known as conservative, nationalist, and populist politicians well before their respective

[1] In a leaked tape from a confidential speech, Prime Minister Ferenc Gyurcsány said that "We have screwed it up. Not a little but a lot. No European country has screwed up as much as we have. It can be explained. We have obviously lied throughout the past 18 to 24 months. It was perfectly clear that what we were saying was not true...And in the meantime, by the way, we did not do anything for four years. Nothing... Instead, we lied, morning, noon, and night." English translation available at `http://news.bbc.co.uk/2/hi/europe/5359546.stm`. Accessed 7 September 2016.

electoral victories. The surprise was not their ideology, but the means with which they implemented it. By 2014, Orban declared that his goal deliberately "building an illiberal new state on national foundations." Both leaders have also sought to portray their critics as enemies, with Kaczyński notoriously declaring that those who oppose PiS are "a worse sort of Poles." Kaczyński himself proved so controversial that PiS did not run him as the candidate for either Prime Minister or for President in 2015, substituting the relatively malleable and inexperienced politicians, Beata Szydłło and Andrzej Duda, respectively.

Kaczyński and Orbán both had a set of powerful commitments that were damaging to liberal and inclusive democracy: a disregard for opposition, a narrow definition of "the people" that excluded marginalized members of society such as the Roma, immigrants, or gay people, and a view of the law as an instrument for cementing political mandates rather than upholding abstract principles. in Poland, Kaczyński openly called for a "fourth republic" that would eliminate traces of the elite cartel ("ukłład") between former Solidarity and former communist parties. These, PiS claimed, comprised a self-serving, anti-Polish, liberal-communist-criminal mafia (happened to be coterminous with PiS's political opponents.) To that end, PiS passed a lustration law in 2006 that made all public officials subject to scrutiny. In Hungary, the 2011-2 Constitution proclaimed the 1949 Communist Constitution invalid, which not only gave grounds for ignoring constitutional precedent, but made a political statement regarding all those who participated in the communist system. The Orbán government also opened the House of Terror in 2002, a memorial to the victims of "both the Nazi and the Communist terror," equating the Fascists with the communists as illegitimate and foreign regimes of terror. This move implicated the MSzP, the successor to the Hungarian Communist Party that had reinvented itself as a moderate social democratic party, and the chief competitor for Fidesz. Finally, Orbán and Kaczyński not only share the same goals, but have coordinated tactics and repeatedly vowed to protect each other from potential sanctions by the European Union.

Yet even if the leaders had clear ideologies and policy goals, they could achieve little in the face of the continued existence and resistance of critical monitoring and oversight institutions. To that end, they both embarked on a systematic (and coordinated) program of institutional corrosion.

Eroding formal institutions and informal norms

In both countries, these actions amount to, as Orbán declared in 2014, deliberately "building an illiberal new state on national foundations." In Hungary, as exquisitely documented by Kim Lane Scheppele[2], Fidesz gutted liberal democracy with a precise and

[2]See the posts by Kim Lane Scheppele, New York Times, December 19, 2011, at https://krugman.blogs.nytimes.com/2011/12/19/hungarys-constitutional-revolution/; March 9, 2012,

fundamental transformation of political institutions. To review a familiar and depressing litany: a new, self-serving Constitution was passed in 2011 by the Fideszdominated parliament, which included extensive supermajority requirements, and created a power structure for establishing autonomous bodies that could "curtail the parliament's powers," in the words of the Venice Commission.[3] The Constitutional Court was gutted (with the 4th amendment to the new Constitution invalidating the past 20 years of judicial precedent), new early retirement ages for judges introduced (which would force the retirement of 300 of the most experienced jurists within the year, according to the Venice Commission Report), and judicial appointments centralized (with the final decision left to one official–the wife of a party leader of Fidesz). Universities and religious groups were brought under control with registration and other requirements, a new media law gave the media board the power to bankrupt any media outlet, new electoral laws skewed the playing field to the governing party (with cumbersome electoral thresholds, constraints on diaspora votes, and changes in the districting and registration laws), and so on. In a blatantly self-serving move, the ruling party ensured its potential to blackmail future governments: decisions concerning budgets and other parliamentary laws could not pass without a 2/3 majority, ensuring that Fidesz could hold hostage future governments even if in the opposition.

Poland after 2015 followed the Hungarian template in both sequence and targets. PiS began first with a controversy over the Constitutional Court: the new government refused to seat judges nominated by the previous, and instead insisted both on naming the replacements and curtailing the power of the Court. PiS then attacked the media, with directors of the public TV and radio stations and critical journalists being fired and replaced. Its leaders then announced a civil service purge that would verify at least 2,000 civil servants for their loyalty and ideological identification. True to its electoral promises, the party passed a law that gave around $125 per child to each family, and pursued a tightening of an already very strict abortion law. In February 2017, the PiS government announced it would transform the electoral districts of metropolitan Warsaw, long a stronghold of the liberal PO opposition, and enlarge it by adding the much more pro-government suburbs, thus diluting the power of the opposition. In both Poland and in Hungary, these maneuvers have been used to undermine the opposition's legal standing as well as to limit criticism, transparency, and accountability.

Just as importantly, however, these governments have also undermined *informal*

at https://krugman.blogs.nytimes.com/2012/03/10/first-lets-pick-all-the-judges/; March 11, 2013, at https://krugman.blogs.nytimes.com/2013/03/12/guest-post-the-fog-of-amendment/; and February 29, 2014, at https://krugman.blogs.nytimes.com/2014/02/28/hungary-an-election-in-question-part-2/ (all accessed September 6, 2017)

[3]European Commission For Democracy Through Law (Venice Commission of the Council of Europe), Opinion on the New Constitution of Hungary, 87th Plenary Session (Venice, 17-18 June 2011), 1-29, here 19, at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)016-e (accessed September 6, 2017).

democratic norms, including conflict of interest laws, financial transparency, respect for the opposition, access and accountability to the media, and merit rather than party loyalty as the basis for the awarding of tenders, contracts, and government responsibilities. Here the damage may go deeper and be far less reversible: such norms and informal rules are the product of decades of elite and popular interactions and the shaping of expectations that govern political behavior. Once such trust and consensus disappear, they do not return easily.

Thwarting the Erosion?

Which forces can check this erosion? International criticism has done little. While the European Union has criticized the two governments, this criticism has had little effect. For one thing, such criticism actually burnishes the parties' nationalist credentials. For another, it has been limited, held in check both by the two countries' commitment to veto any real sanctions, and by the European People's Party, to which Fidesz belongs (and which is loathe to lose its numerical strength in the European Parliament by provoking a Fidesz departure.)

Civil society and mass mobilization have stopped some government initiatives but not others. In Hungary, the proposal to effectively shut down the Central European University, the most prominent (and one of the very few) independent educational institution in Budapest, met with enormous international outcry and local protest. Fidesz eventually backed down. In Poland, mass protests shook the country when PiS attacked the Constitutional Court with new supermajority and quorum requirements. This controversial action, taken in the fall of 2015 shortly after the party was elected to office, targeted what Kaczyński had called "the bastion of everything in Poland that is bad" since, supposedly thanks to the courts, "all our actions could be questioned for whatever reason."[4] Mass protests shook the country, but failed to alter the decision. That said, a few months later new abortion restrictions were proposed, triggering similarly enormous protests, and these were subsequently withdrawn.

Yet even when civil society can stop policy proposals through protest and mobilization, it cannot introduce, much less implement, new policy alternatives. This makes political party competition so critical: it is both the source of and solution for erosion. Thus, the real alternative to thwarting this corrosion of democracy lies with other parliamentary parties, who could check the parties' further dismantling of institutions. They can do so by winning the elections outright, or by necessitating that Fidesz and PiS have to form a governing coalition and therefore yield on some of their commitments. Yet the opposition parties are weak and divided over how to address the dominance of the

[4] http://www.politico.eu/article/poland-constitution-crisis-kaczynski-duda/

authoritarian-leaning government parties. The opposition remains weak, in two senses of the word: first, ideologically, opposition parties have been unable to offer a credible and effective set of alternative policies. Second, they are weak numerically: they do not have enough votes or seats to force PiS or Fidesz into governing coalitions that would moderate these corrosive attacks on liberal democracy. Excluded from its traditional role as monitor and check on government actions, the opposition cannot deter these governments from further action.

Meanwhile, voters seem loyal to their governments: Fidesz received 53% of the vote in 2010 and 47% in 2014. It maintained its parliamentary majority and did not have to form a coalition with other parties. And if in 2010 Hungarian voters may have been surprised by the Fidesz's tactics, they were fully aware of the party's combination of welfare chauvinism, rent-seeking and authoritarian dismantling of liberal institutions by the 2014 elections. In Poland, despite the mass protests and the international criticism, PiS retains a steady 38% of the electoral support, which shows no signs of waning.

Two other checks on the erosion of democracy exist. First, there are other political actors who can serve as veto points. Thus, in Poland in July 2017, PiS once again attempted to follow Fidesz in bringing the rest of the judiciary under explicitly partisan control. Three new laws were put forth, which would have accomplished similar goals to those successfully accomplished by Fidesz: They would reorganize the Supreme Court and retire its judges, bring the courts under the Justice Ministry (which would now appoint both judges and prosecutors in legal cases), and reorganize the common courts. The effort failed. Mass protest dominated politics for several days, and against all expectations, President Andrzej Duda (ostensibly a PiS politician) signed one law but vetoed the other two, to the outrage of PiS parliamentarians.

Second, there is the skill of the would-be autocrats themselves. PiS appears to have all the commitments of Fidesz, but half the competence. The Fidesz leadership, from Orbn on down, is composed of trained lawyers, who had the legal expertise to scrupulously follow the letter (if not the spirit) of the law. The party passed enabling laws that expanded its power, moved quickly to sequence its transformation of the constitutional and legal order, and did not back down. PiS, on the other hand, may be led by Kaczyński, a doctor of laws, but its legislative proposals have been found to be riddled with simple errors and inconsistencies, including in the Supreme Court proposals. Its legal experts have been denounced as party hacks and "amateurish."[5] Even when undermining the democratic rule of law, it helps to have legal expertise.

[5]https://wpolityce.pl/polityka/351270-adam-hofman-o-prezydenckich-wetach-andrzej-duda-nie-mial-innego-wyjscia-jakie-sa-cele-ziobry-tego-nie-wiem

Conclusion

In short, in Poland and in Hungary, democratically-elected political parties both initially built democracy and then undermined it. Led by powerful, if not necessarily charismatic, leaders, these parties espouse an ideology of securing the interests of a narrowly defined nation, the "better sort" of Poles and Hungarians, who are suspicious of international alliances and norms, who see themselves as traditional, Christian, and native, and who worry about cosmopolitan elites selling out the country to enemies real and imagined. Their voters perceive the mainstream elite as collusive and undifferentiated–and accordingly agree with these parties' aims to reform the political system by bringing it into line with the ruling parties' (and thus their own) interests.

As a final observation, we should note the prominent dog that did not bark: economic or exogenous crises did not simply predetermine the erosion of democracy in Poland and in Hungary. If Hungary suffered in the 2008 financial crisis, Poland did not. Its growth, in fact, was consistently positive throughout the post-1989 era. Economic crises were neither a necessary nor sufficient condition, and voters have had plenty grievances before without voting for such anti-liberal democratic parties. The wounds on the body politic were self-inflicted by political parties themselves: both in their failure to adequately differentiate themselves and respond to popular concerns, and in their unscrupulous willingness to use their power to undermine formal and informal institutions of liberal democracy.