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# APSA

## European Politics & Society

Newsletter of the European Politics and Society Section of the American Political Science Association

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## European Forum

### Threats to Democracy in Eastern Europe

#### **Not Your Father's Authoritarianism: The Creation of the "Frankenstate"**

*Kim Lane Scheppelle*

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**W**E think we know what authoritarianisms are. Ideological leaders, backed by the military and security services, whip the masses into obedience with threats and propaganda. Dissidents are rounded up, imprisoned and tortured. Populations are trapped within national borders and repressed to the point of docility. Freedom dies.

Sophisticated 21st century authoritarians, like their 20th century counterparts, are leaders who want to stay in power for the foreseeable future and who will do whatever it takes to realize that goal. But, having learned the lessons of earlier authoritarianisms, they now achieve their ambitions without brute force. If they can simply maintain the formal trappings of democratic government while undermining democracy in "technical" ways, they can reign forever. And one of the most effective ways to do that is to create a Frankensteinian state, or a "Frankenstate."

A Frankenstate is an abusive form of rule, created by combining the bits and pieces of perfectly reasonable democratic institutions in monstrous ways, much as Frankenstein's monster was created from bits and pieces of other living things. No one part is objectionable; the horror emerges from the combinations. As a result, if one approaches the monster with a checklist, the monster will pass the test (elections, CHECK; parliamentary government, CHECK). But the combinations—free elections with a paucity of parties; a unicameral parliament without independent "transparency institutions" like ombudsmen and audit offices—are where the problems lie. Not all democracies have more than two parties; not all democracies have independent ombudsman. Does every democracy therefore require these things? No. But combining elements one finds in reasonable democratic states in an ugly new way creates a Frankenstate that is hard to criticize with our available conceptual frameworks.

Armed with this knowledge about how to hide a non-democracy in plain sight, the new authoritarians create Frankenstates that are neither fully repressive nor fully free. These are not your father's authoritarians, bolstered by an overweening ideology and efficient direct repression. These are governments that appear democratic but that provide hopeless odds for anyone to challenge the existing distribution of power effectively. These are governments against which checklists of democracy are helpless.

The government of Viktor Orbán and his Fidesz political party in Hungary is a Frankenstate in point. Brought to power in spring 2010 in a free and fair election, Orbán turned 40% popular approval into a 53% party-list vote, which, under Hungary's disproportionate election law, gave his Fidesz party 68% of the seats in a unicameral parliament. Under the rules of the game, Hungary's constitution could be changed with a two-thirds vote. The election therefore gave Orbán the ability to change everything. And so he did. Almost three years later, Hungary has a new constitution and more than 400 new laws. The upshot of all of this legal change is that power is concentrated in Orbán's hands. He and his party used legal, democratic means to capture a democratic state for themselves, all without appearing to change the key features that make Hungary look like a democracy.

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To both the European Union and to his detractors at home and abroad, Orbán has claimed the mantle of legitimacy, since he won an election fair and square. But when one looks under the surface, both at the election he won and at what he has done since, a much darker picture emerges.

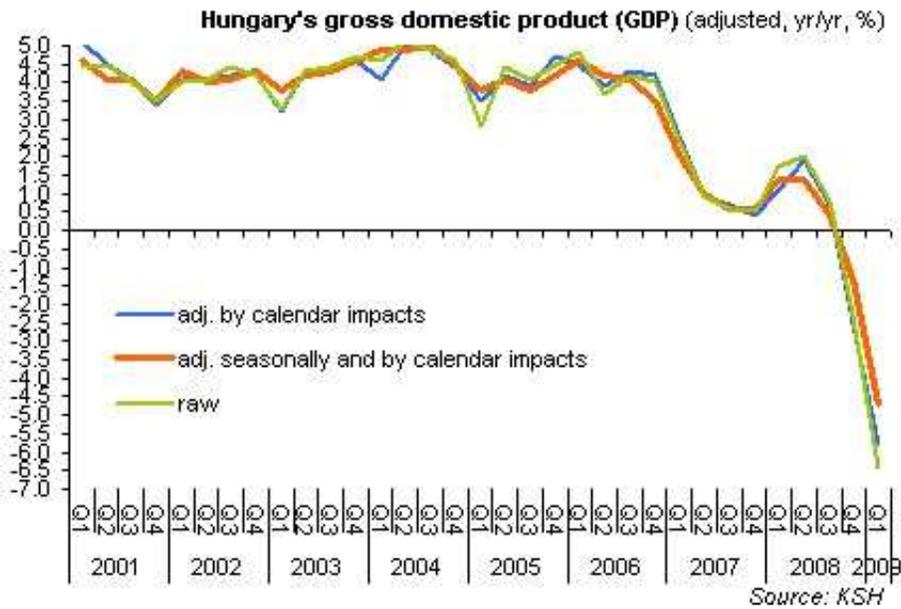
Hungary had been a major success story among the post-1989 transition states. A reasonably stable six-party, tri-polar political system emerged in the 1990s, with nationalist/conservative, liberal and post-communist parties coexisting in a broad political spectrum, peacefully alternating power across five elections. Only once in the first five post-communist elections did a governing party win a second term in office. Hungarians got very accustomed to throwing the bums out at the end of each term and having viable alternative parties at each election.

But not all was well under the surface of Hungary's party system. Hungary's varied political parties collapsed one after another in the late 1990s and beyond, under the weight of exhaustion. None of the parties managed to successfully groom the next generation of leaders to take the place of their founding generations. As a result, when the first post-communist generations in each of the parties stepped back from public life, their parties collapsed with them. By the 2010 election, Hungary was functionally a two-and-a-half party state. The Socialists had been governing for eight years, but—having burned through three prime ministers trying to stay in office—they now had a completely new and inexperienced leadership, with a party head only in his 30s. The neo-fascist party, Jobbik, spewed toxic political ideas from its new-to-politics leadership team. Fidesz, which had been the youth party in 1989, was still operating under its one and only leader Viktor Orbán, who was then only 48. At the time of the 2010 election, then, only one party—Fidesz—had any real political savvy or experience. And only one party—Fidesz—had a party leader with public name-recognition.

The outgoing Socialists, who had governed from 2002-2008, were mired in corruption and had been the party on whose watch the economy caved in (see figure 1 below). An economic collapse in which GDP growth dropped from +4% to -5% in the space of two years was not going to be kind to the party in power, even if it had good leadership.

As a result, Fidesz won the election almost by default, as the only real party left standing when the Socialists hit an economic wall and Jobbik proved too toxic for even a nationalist public. So yes, Orbán won fair and square in the way that only candidates with no viable competition can. What happened after that resulted from a weakness of constitutional design combined with the evil genius of smart lawyers.

The Hungarian political system since 1989 was a unicameral parliamentary system in which the primary meaningful check on political power had been a very powerful Constitutional Court. As was befitting a democracy with a powerful court, the constitution had an easy amendment rule. A single two-thirds vote of the Parliament could change anything. That rule made sense as a safety valve for overriding decisions of the Constitutional Court that supermajorities opposed (though the Constitutional Court had such public legitimacy that this only happened once in 20+ years). The system worked well while it worked well. But it was also vulnerable. If the Court could be captured, the main check on power would be gone. And if the Parliament could be packed with a single party that reached the constitutional amendment threshold, then all bets were off.



The structure of power in the Hungarian constitutional order was something Orbán knew intimately, since he had been in on the initial design in 1989 and then spent years working out in detail how to undermine it. During his eight years in the political wilderness from 2002-2010, his party hired phalanxes of private law firms to draft a plan that would permit the capture of the government. Because the plan was divided up into many small pieces, each of which was contracted out to a different law firm, it is not clear if the lawyers outside the party really understood what they were doing. The end result, once the plan was unveiled in hundreds of complex laws, was a system Orbán completely controlled.

Once Orbán won his magical two-thirds, he put his plan into action. But the Constitutional Court emerged as the key barrier. So Orbán wasted no time in bringing the Court to heel. The Parliament changed the system for election of judges to the Court so that the votes of their party were alone enough to place party loyalists on the bench. The number of judges on the Court was then expanded from 11 to 15, giving Fidesz a windfall of four new judges to name. Cutting the jurisdiction of the Court in some key areas—all made easy with the reliable two-thirds vote of the Parliament—came next. And then, when the new constitution came into effect on 1 January 2012, the wide jurisdiction of the Court to review virtually all laws in the abstract was axed.

At first, the Court fought back, issuing some brave decisions that temporarily blocked Orbán's plans. But each time, the Parliament either amended the constitution to nullify the Court decision or stripped more jurisdiction from the Court. This spring (2013), Orbán's forces will have finally named a supermajority of judges to the Court, making it highly unlikely that the Court will be able to get in Orbán's way any longer.

Other institutions that are part-and-parcel of a typical democratic order were reorganized to entrench Fidesz as well. The ombudsman, state audit office, public prosecutor, media board, election commission, monetary council, budget council, and judicial administration office were all "strengthened" as is befitting a good democracy. In fact, the prior occupants of these offices were

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ousted if they were not Fidesz loyalists, and the new occupants were greeted with extended terms of office and a manner of appointment that guaranteed Fidesz was able to fill every single one of these jobs from among their own party faithful. Had Orbán chosen to eliminate any of these offices or weaken their powers, he might have been caught out as an autocrat. But simply "strengthening" these offices with supermajority appointments and long terms of office appeared to be ensuring their independence.

The judiciary was also reorganized to be more "modern" and "efficient." The retirement age was suddenly lowered to get rid of judges whose legal training was, according to Fidesz, out of date. This move also had the effect of removing much of the judiciary's established leadership which, combined with the creation of a new judicial administration office led by one of their own, then allowed Fidesz to replace many court leaders with people who now owe their careers to the party. Fidesz then made the courts more "efficient" by giving the head of the newly created National Judicial Office as well as their favorite public prosecutor the power to assign any case to any court, a move which, party leaders explained, was designed to reduce judicial backlogs. In these two steps—replacing the judicial leadership and giving their own appointees the power to move any case to any court—Fidesz invented a judicial machine to ensure that all politically sensitive cases were under their control, while simultaneously preaching the doctrine of efficiency.

When the Constitutional Court and the European Court of Justice found the sudden lowering of the judicial retirement age to be a violation of the Hungarian constitution and EU law respectively, Orbán complained but ultimately complied by returning the fired judges to the bench—just not in their old leadership positions. One can imagine that these new judges will be sentenced to a load of routine cases of no interest to Fidesz. And the EU can applaud the fact that Hungary is now in compliance with EU law.

I could go on, but you can see how Hungary has become a Frankenstate. Orbán and his party loyalists respond to criticism by pointing to some other democratic state that does just what they did—reorganize judicial administration, lengthen the terms of the "transparency institutions," require a two-thirds vote for all important matters. But as is befitting the image of the Frankenstate, it is the horrible combination of these things that makes Orbán's government only superficially a democracy. Under that surface, Orbán and his party have entrenched themselves for the long term, occupying all of the choke-points of power and writing all of the rules to avoid challenge.

There will be elections in 2014, since the appearance of democracy requires it. And there is a "democratic opposition" (opposition groups excluding Jobbik) that is trying to pull itself together to challenge Orbán's dominance. The opposition operates under surveillance and under ever-shifting electoral rules designed to throw them off-balance. But even if, against all odds, the democratic opposition wins the next election, Orbán's people will be dug into every office that must approve what a new government does next.

One example: An Orbán-created budget council, filled entirely with party loyalists, has the power to veto any budget passed by the Parliament if that budget adds to the debt. But the law creating the budget council does not provide deadlines for these vetoes. At the same time, the new constitution says that a budget must be passed by Parliament by 31 March of every year, and if the Parliament cannot reach agreement on a budget, the national President (another Fidesz loyalist who will remain in power until 2016) can dissolve the Parliament and call new elections. With this one measure alone, a non-Fidesz government can be deposed in its first year when the Orbánites snap the trap. And there are many more legal tricks like that built into this complex, redundant

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and Fidesz-entrenching system.

So—is Hungary a democracy? It will go on having elections that will be contested. It will go on having courts that will follow the (new) law. It will probably continue to employ public relations firms on multiple continents that put forward the image of Hungary as the state that finally got rid of corruption and communism in one fell swoop, modernizing and making more efficient a previously ineffective government. But for those who are leaving the country in droves because they oppose the government, the only difference between the authoritarianisms of the past and the authoritarianism of the present is that the current government says all the right things when its officials speak English and it holds open the door to Europe and to the world, through which its opponents are now free to leave.

Victor Frankenstein's monster brought fear and horror to all those who saw it. But Viktor Orbán's monster state does Frankenstein one better. Orbán has mastered the art of legal suture so well that his Frankenstate can live and work in the European Union. People can tell that there is something not normal about this state, but it is hard to say what it is. It looks like a democracy; it talks like a democracy. It doesn't look or act like your father's authoritarianism. It is the new, improved, democratic-edition Frankenstate.

## **Learning from Mistakes: Romanian Democracy and the Hungarian Precedent**

*Grigore Pop-Eleches*

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A joke that circulated in Eastern Europe in the 1980s quipped that the capitalist countries were on the edge of the abyss, while the communist countries were, as usual, a couple of steps ahead. These days, it is tempting to apply the joke to the state of democracy in Eastern Europe: Romanian democracy is on the edge of the abyss and, as usual, neighboring Hungary is a couple of steps ahead. Of course, transplanting jokes into new contexts has its limitations: at least judging by the latest Freedom House democracy scores, both Hungary and Romania are still categorized as Free, and Hungary's score is still slightly higher than Romania's. And we need to be careful about using terms like 'democratic collapse' or 'dictatorship'—both because such terms have frequently been used for partisan reasons in East European politics<sup>1</sup> and to reserve them for the appropriate moments so we don't end up like the boy who called wolf.

But if it is premature to talk about dictatorships, there is little doubt that at least the liberal component of democracy is under siege in both countries. Thus, even limited proxies like democracy and governance scores offer a much more somber picture of the Hungarian situation: since Fidesz's rise to power after the 2010 elections, the country's ratings for press freedom and judicial independence have declined sharply,<sup>2</sup> reflecting the systematic efforts by Fidesz's parliamentary super-majority to control the judicial system and intimidate critical mass media outlets. The domestic ingredients for the Hungarian crisis, which have been discussed by a growing number of commentators, were an unfortunate combination of a corruption and economic crisis-fueled implosion of the Hungarian Socialist Party. The effects of that implosion were exacerbated by a semi-majoritarian electoral system that gave the right-wing Fidesz over 68% of seats (based on a

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<sup>1</sup>See, for example, the oft-repeated and broadly unfounded charges against Romania's President, Traian Băsescu, as a dictator.

<sup>2</sup>Thus, for the first time since 1996, Hungary was characterized as only "partially free" in Freedom House's Press Freedom Survey in 2011 (and its 13 point decline on the 100-point scale was the largest two-year decline among all the countries surveyed in 2011).