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De-democratization in Hungary: diffusely defective democracy

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ABSTRACT


Scholarly attention has started to shift from democratization and democratic consolidation to trends of democratic deconsolidation, backsliding, regression, and erosion. This article examines Hungary as a deviant and exemplary case for understanding de-democratization. The starting point is the literature on defective democracy, which provides a unified framework of analysis for the causes and the outcomes of democratization. However, as the case of Hungary shows, de-democratization is not simply the mirror of democratization. In Hungary, both the outcome and the process of de-democratization defy expectations. The democratic defects do not conform to any of the standard types, instead resembling a “diffusely defective democracy”. Moreover, existing explanations fail to account for their emergence. The case of Hungary indicates that our knowledge of democratization may be a poor guide to understanding de-democratization.

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Introduction

Not long ago, scholars struggled to explain the unexpected consolidation of democracy in post-communist Central and Eastern Europe.¹ Why had political science theories been too pessimistic?² Today, scholars seek instead to explain “the mismatch between positive assessments of the solidity of Hungarian democracy up to 2010, and the empirical reality of contemporary Hungarian politics since then”.³ In the Hungarian parliamentary elections of 2010, the alliance of Fidesz and the KDNP won a majority of votes and a two-thirds majority of seats.⁴ The new prime minister and leader of Fidesz, Viktor Orbán, wasted no time in pursuing a series of drastic changes to the Hungarian political system: “Never in the history of the European Union has an election in a member state resulted in political, legal, economic and administrative changes of this magnitude in such a short period.”⁵ For Orbán, this was a “revolution through the ballot box” while for others it amounted to a “constitutional coup d’état”.⁶ Freedom House continues to classify Hungary as a free country, but only barely. Between 2010 and 2016, Hungary deteriorated from the perfect score on political rights and civil liberties to the threshold of a partially free

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country. Hungary is in the top ten of countries where freedom has declined most in the past ten years, ranking between Venezuela and Nicaragua.⁷ Hungary already has the lowest Freedom House score of any of the 28 member states of the European Union (EU).⁸

There is no scholarly consensus on how to characterize Hungary's contemporary regime. The most pessimistic commentators observe the "onset of autocratic, crypto-dictatorial trends",⁹ a slide towards "semi-dictatorship",¹⁰ or "semi-authoritarianism",¹¹ an "elected autocracy",¹² and even an "operetta dictatorship".¹³ Others consider Hungary "a hybrid regime, a mix of democratic and autocratic practices",¹⁴ "a regime somewhere in the grey zone between liberal democracy and full blown authoritarianism".¹⁵ A third group writes about the "deconsolidation of democracy",¹⁶ "democratic backsliding",¹⁷ "simulated democracy",¹⁸ "populist democracy",¹⁹ "selective democracy",²⁰ and a "'diminished' form of democracy".²¹ Of all the adjectives attached to democracy, "illiberal" is the most common.²²

Scheppele has described contemporary Hungary as a "Frankenstate", a state "composed from various perfectly reasonable pieces, and its monstrous quality comes from the horrible way that those pieces interact when stitched together".²³ She claims that only "forensic legal analysis can tell how such a system works", but political science supplies just such tools.²⁴ Merkel et al.'s work on embedded democracies provides a useful starting point.²⁵ First, it covers the entire range from liberal democracy to autocracy.²⁶ Second, it provides a typology of defective democracies, distinguishing between exclusive, illiberal, delegative, and tutelary democracies. Third, Merkel et al. combine the identification and classification of democratic defects with a theory about their origin and development. This integrated framework of analysis allows for an assessment of the causes and outcomes of de-democratization in Hungary.

The term de-democratization is preferred here to "democratic erosion",²⁷ "backsliding",²⁸ and "regression",²⁹ to facilitate a direct comparison with democratization. De-democratization indicates a starting point, democracy, and a direction, less democracy. It makes no assumptions about causes, conditions, and culprits, nor about speed, extent, and end-point. All these factors are treated as empirical questions. The findings are surprising. First, whereas the defective democracies described in the literature so far have a clear profile, Hungary combines features of an exclusive, delegative, illiberal, and tutelary democracy, making it a "diffusely defective" democracy. The diffuse picture helps to explain the lack of consensus on how to categorize Hungary's regime as well as the difficulty international and regional organizations have in dealing with de-democratization in Hungary. Second, none of the established causes of democratic defects help to explain the outcomes of de-democratization in Hungary.³⁰

Hungary is a deviant *and* an exemplary case. It is a deviant case because its democratic defects are not caused by the factors normally highlighted in the literature and because the particular combination of its deficits has not been witnessed before. Deviant case studies are particularly suitable for modifying existing theories.³¹ In this case, the findings suggest the need for new theories. If the process and outcomes of de-democratization are different from the process and outcomes of democratization, then we need a theory of de-democratization. Hungary is an exemplary case in the sense that it "is not only of importance in itself but is also instructive for comparativists with no special commitment to this particular instance".³²

This article is organized as follows. After a brief introduction of the concept of defective democracy, the article systematically applies the typology of defective democracy to the case of Hungary, using first quantitative indicators and, second, qualitative

indicators. The quantitative indicators come from Freedom House and the Bertelsmann Transformation Index (BTI). The qualitative indicators come from a review of the extensive international literature on Hungary. The four types of defective democracy are discussed in turn. Next, the article examines whether standard explanations for the emergence of democratic defects help to understand the Hungarian trajectory. The conclusion summarizes the main findings and challenges in coming to terms with the process and outcomes of de-democratization.

Defective democracy

Merkel et al.'s concept of democracy has three dimensions: vertical legitimacy; horizontal accountability plus rule of law; and effective government.³³ Vertical legitimacy pertains to the relationship between citizens and rulers through elections and political rights. The horizontal dimension encompasses liberal constitutionalism and horizontal accountability. Effective government means that only duly elected representatives can make authoritative decisions. The three dimensions find expression in five partial regimes that together constitute an embedded democracy: elections, political participation rights, civil rights, horizontal accountability, and effective government. These five partial regimes are measured with ten criteria, which are operationalized with a total of 34 indicators.³⁴ When any of these criteria of democracy are violated, we are dealing with a defective democracy, defined as “democracies in which the partial regimes are no longer mutually embedded, the logic of constitutional democracy becoming disrupted”.³⁵ Therefore, a regime can be (come) less democratic or even undemocratic in multiple ways.

Merkel et al.'s main contribution is that they offer a theoretically grounded typology of less-than-fully democratic regimes. These types correspond to defects in particular partial regimes: elections and political participation rights (exclusive democracy); civil rights (illiberal democracy); horizontal accountability (delegative democracy); and effective government (tutelary democracy or democracy with reserved domains). Nine countries around the world have been analysed in detail as defective democracies: Peru, Argentina, and Mexico in Latin America; the Philippines, South Korea, and Thailand in Asia; and Russia, Slovakia, and Albania in post-communist Eastern Europe.³⁶ Pure types are in the minority and most countries exhibit democratic defects in two or even more domains.³⁷ However, no country reveals democratic deficits across the board and no country is described as belonging to more than two types of defective democracy at the same time.

The empirical assessment of democratic defects is qualitative: “The question whether the particular value of an indicator identifies a democratic defect requires a qualitative and quantitative assessment. It cannot be answered independent from the context”.³⁸ Subsequently, Merkel and his collaborators have tended to rely more on quantitative indicators. Merkel and Talshir's analysis of Israel uses Freedom House subcategory scores to detect democratic defects.³⁹ Croissant uses the BTI to identify democratic defects in non-OECD countries.⁴⁰ This article combines all three sources, supplementing disaggregated data from Freedom House and the BTI with information and insights from the rich international literature on Hungarian politics.

Defective democracy in Hungary: quantitative indicators

In its annual survey of freedom in the world, Freedom House uses a checklist with 25 indicators grouped under seven headings. Subcategory scores are available from 2006.⁴¹

Table 1 presents the Freedom House scores for their seven dimensions, which are linked to the dimensions of embedded democracy following Merkel and Talshir.⁴² Four of the seven dimensions pertain to the electoral regime and to political liberties, partial regimes where defects lead to a classification as exclusive democracy. The other three types of democratic defects are captured with one dimension each. The picture is one of relative stability up to 2016, which is really 2015, as Freedom House reports cover the previous year. Freedom House therefore seems to perceive a strong decline of the quality of democracy after the 2014 elections, which returned Prime Minister Orbán and Fidesz to power. The decline affects six out of the seven dimensions, signalling widespread problems, with the electoral process regarded as especially worrisome. Whether the extent of these problems merits classification as a defective democracy or worse is not clear, as Merkel and Talshir do not provide thresholds for Freedom House subcategory scores.

According to Merkel, the BTI was developed to operationalize his concept of embedded democracy.⁴³ The BTI has been published every two years since 2006. The latest BTI from 2016 has information on 129 countries. In each edition, defective democracies outnumber both democracies and autocracies. Croissant links eight BTI indicators to the five partial regimes that make up an embedded democracy, thereby

Table 1. Defective democracy in Hungary: quantitative indicators.

BTI indicator	Democratic defect	2006	2008	2010	2012	2014	2016
Free elections	Exclusive democracy	10	10	10	9	9	7
Association rights	Exclusive democracy	10	10	10	9	9	7
Freedom of expression	Exclusive democracy	10	10	10	8	7	6
Independent judiciary	Illiberal democracy	9	9	9	8	7	6
Civil rights	Illiberal democracy	9	10	9	8	8	8
Separation of powers	Delegative democracy	10	10	10	7	6	5
Abuse of office persecuted	Delegative democracy	8	8	8	8	8	7
Effective power to govern	Tutelary democracy	10	10	10	10	10	10
Democracy status		9.4	9.35	9.25	8.35	7.95	7.6
Democracy classification		Dem.	Dem.	Dem.	Dem.	Defect.	Defect.
Freedom House subcategory scores	Democratic defect	2006	2008	2010	2012	2014	2016
Electoral process (12)	Exclusive democracy	12	12	12	12	12	9
Political pluralism and participation (16)	Exclusive democracy	15	15	15	15	15	15
Associational and organization rights (12)	Exclusive democracy	12	12	12	12	12	11
Freedom of expression (16)	Exclusive democracy	16	16	16	15	15	13
Personal autonomy and individual rights (16)	Illiberal democracy	14	14	14	14	14	13
Rule of law (16)	Delegative democracy	13	13	12	11	11	10
Functioning of government (12)	Tutelary democracy	10	10	10	9	9	8

Note: Own compilation based on BTI, Freedom House, Croissant, "Analyse Defekter Demokratien", and Merkel and Talshir, "Is Israel an Embedded Democracy?"

Legend: Dem. = democracy in consolidation, Defect. = defective democracy; The maximum number of points for each Freedom House subcategory is in parentheses.

allowing us to use the BTI to distinguish different types of defective democracy.⁴⁴ As can be seen in [Table 1](#), the BTI has multiple indicators for all types of defective democracy except for tutelary democracy. In Hungary, all indicators except the one for tutelary democracy register a decline over time. In the BTI this decline starts earlier than in the Freedom House survey of freedom in the world, but they agree on the trends and they agree on the acceleration of democratic decline following the 2014 elections. In 2014, Hungary became a defective democracy according to the BTI. If one keeps in mind that the BTI requires a score of 8 to 10 for what it terms a “democracy in consolidation”, then Hungary falls short on seven out of eight indicators. On three indicators, Hungary even rates as highly defective with scores between 5 and 6. In other words, on most counts, Hungary today is a defective or even highly defective democracy according to the BTI. The opening sentence of the BTI’s country report says it all: “The defects of democracy in Hungary have persisted and become more entrenched during the period under review.”⁴⁵

To distinguish between democracies and autocracies, the BTI does not rely on the overall score but on threshold values for seven indicators: all the indicators in [Table 1](#) minus independent judiciary and abuse of office persecuted plus a state monopoly on the use of force. For the indicators in [Table 1](#), the threshold is set at four, except with free elections, the core criterion of democracy, where the threshold is put at six. If a country scores below these threshold values on even a single indicator, it is deemed authoritarian. This clearly follows the logic of the concept of embedded democracy. Hungary is close to the edge on two indicators: free elections and separation of powers.

Hungary as an exclusive democracy

To supplement the picture derived from the two sets of quantitative indicators of defective democracy, the next four sections present a qualitative evaluation of the state of Hungarian democracy, examining the four types of defective democracy (exclusive, illiberal, delegative, and tutelary) in turn. As can be seen in [Table 2](#), a democracy can become exclusive in two ways: through defects in the partial regime of elections and/or the partial regime of political participation rights. At first blush, it seems counterintuitive to classify Hungary as an exclusive democracy because it is overly inclusive, extending the right to vote to ethnic Hungarians abroad. It is estimated that by the time of the 2014 elections, half a million non-resident citizens might have been eligible to vote. Although the impact on the election results is said to be minimal, there is no denying that the overwhelming majority of these ethnic Hungarian voters support the ruling party.⁴⁶

The new electoral law of 2011 was introduced as an individual member’s initiative, without meaningful discussion in parliament, without consultation, and without the support of the opposition. The new electoral rules helped the government to win 67% of the seats with 45% of the vote. According to Tóka, “many aspects of Hungary’s new electoral system seem, in their local and political context, to give a competitive advantage to Fidesz”.⁴⁷ Redistricting disadvantaged opposition districts and “the majoritarian turn in the electoral system has served as a tool for ensuring the long-term electoral success of the dominant party”.⁴⁸ An attempt to quantify this bias through a simulation shows that under the new rules Fidesz would have won 8% more seats than it already did in 2010.⁴⁹ In sum, looking at the partial

Table 2. Hungary: a diffusely defective democracy.

Three dimensions	Five partial regimes	Ten criteria	Hungarian evidence	Democratic defect
Vertical legitimacy	Elections	Active suffrage	Voting rights for ethnic Hungarians abroad	Exclusive democracy
		Passive suffrage	-	
		Free and fair elections	New electoral law systematically favours ruling party	
		Elected officials	National Electoral Commission dominated by ruling party Reduced opportunities for direct democracy Campaign against NGOs	
Horizontal accountability & rule of law	Political participation rights	Freedom of association	Government control of media	Illiberal democracy
	Civil rights	Freedom of opinion, press & information	Nepotism, corruption	
		Individual protection of rights against state & private actors	Discrimination against Roma	
		Equal treatment by & equal access to courts	Ethnically defined nation	
Horizontal accountability	Horizontal accountability	Limited parliamentary control over government Severely reduced judicial control over government Severely reduced independence of constitutional court	Delegative democracy	
Effective government/ agenda control	Effective government	Elected officials with real power	Institutionalized veto points to protect ruling party's influence in the future	Democracy with reserved domains

Note: Own compilation based on Merkel et al. (*Defekte Demokratie: Band 1; Defekte Demokratie: Band 2*).

regime of elections, there are problems with voting rights for non-resident ethnic Hungarians, an electoral system that systematically favours the ruling party, and a politically packed electoral commission.⁵⁰ The 2018 elections again lacked a level playing field.⁵¹

Moreover, the new constitution has limited the opportunities for direct democracy, making it more difficult for citizens to circumvent the Fidesz-controlled parliament.⁵² It also took away “*actio popularis*” or the right of any citizen to challenge the constitutionality of a parliamentary law in front of the Constitutional Court, which its former president, admitting to “some exaggeration”, saw as a “channel for direct democracy”.⁵³

The partial regime of political participation rights is measured through two criteria: freedom of association and freedom of opinion, press, and information. Both have suffered. Changes in the regulation of political parties benefit the ruling party.⁵⁴ The BTI report mentions a “government campaign against leading human rights groups and watchdog NGOs in 2013” and a police investigation of several civil society organizations in 2014.⁵⁵ Press freedom in Hungary has deteriorated steadily since 2010 and is now the worst in the EU.⁵⁶ Since 2017, the Hungarian government has intensified its attack on foreign-funded non-governmental organizations (NGOs), causing the Open Society Foundations to leave Budapest.

Bajomi-Lázár uses the case of Hungary to illustrate party colonization of the media, defined as “a strategy aimed at extracting from the media resources such as airtime, frequencies, positions and money, and channelling them to party loyalists in order to reward them for various services”.⁵⁷ The four members of the new Media Council were appointed by a parliamentary commission exclusively composed of Fidesz nominees.⁵⁸ Its head, who also directs the National Media and Telecommunications Authority (NMTA), was directly appointed by the prime minister. All were appointed for a nine-year term. One of the first decisions of the NMTA was to take the last opposition channel, Club Radio, off the air. In 2016, the most influential newspaper in the country closed down. According to Reporters without Borders, this decision “was politically motivated”.⁵⁹

Hungary as an illiberal democracy

In a widely reported speech of July 2014, Prime Minister Orbán talked about “the new state that we are building (...) an illiberal state, a non-liberal state”, claiming that “a democracy is not necessarily liberal. Just because something is not liberal, it still can be a democracy”.⁶⁰ It is tempting, but problematic, to draw strong conclusions from this statement. First, it should be understood in the context of the political history of liberalism in Hungary.⁶¹ Second, observers have struggled to detect a regime ideology. One of the first acts of the new parliament following the landslide win in 2010 was to issue the so-called “Declaration of National Cooperation”, which has to be displayed on the walls of public buildings. However, the “National System of Cooperation” was “never actually defined or explained in a normative document or even a political manifesto”.⁶² Buzogány notes that the Hungarian government’s “neoconservative ideas are rather fluid and heterogeneous in a way that does not add up to a clear ideology at all”.⁶³

Merkel et al. have a narrow understanding of illiberal democracy, limiting it to violations of civil rights and liberties as well as corruption.⁶⁴ Even in this limited understanding of illiberalism, Hungary exhibits a broad range of problems, such as the government’s heavily criticized handling of the refugee crisis,⁶⁵ the combination of nationalism and Christianity,⁶⁶ the campaign against seven university professors in philosophy,⁶⁷ the government’s cultural policies,⁶⁸ and its mission to educate and discipline its citizens.⁶⁹ Since 2017, the Hungarian government has intensified its attack on academic freedom.⁷⁰

The most detailed and systematic analysis of Hungary’s political economy can be found in Magyar’s book on the post-communist mafia state.⁷¹ His accusations find support in other sources. Innes writes about “crony capitalism” and Fazekas and Tóth show, in a network analysis of official public procurement data, how corruption in Hungary became more centralized after 2010.⁷² According to Transparency International, Hungary’s anti-corruption performance has “strikingly deteriorated” in the last years.⁷³

Hungary as a delegative democracy

Delegative democracies lack horizontal accountability. In Hungary, amending and even adopting a constitution is relatively easy, requiring only a two-thirds majority of members of parliament. Having won such a constitutional majority thanks to a highly disproportional electoral system, the Fidesz government immediately started

to change the existing constitution before replacing it with its own. The new Basic or Fundamental Law was prepared and pushed through without any participation or even consultation, giving rise to the term “one-party constitution”.⁷⁴ To minimize the need for parliamentary debate, the constitution was introduced as a private member’s bill. The only votes in favour came from the government parties. After entering into force on the 1 January 2012, it has already been amended, significantly, several times. In the words of the former president of Hungary and former president of the Hungarian Constitutional Court, László Sólyom, “the Constitution is used nowadays again merely as a tool of everyday politics”.⁷⁵ In the view of Kis, the aim of the new constitution “is to entrench a sweeping but momentary victory of the right over the left into symbolic hegemony and institutional domination”.⁷⁶ For Pogány, “Hungary’s Fundamental Law and related legislation represent a significant shift towards a more authoritarian political culture”.⁷⁷ Using a comparative perspective, Landau discusses Hungary together with such cases as Egypt and Venezuela as examples of “abusive constitutionalism”, accusing the government of trying to create a “competitive authoritarian regime”.⁷⁸

The Constitutional Court, once one of the most independent and active in the region, has been packed by the government and stripped of many of its powers.⁷⁹ To undo previous rulings against the Fidesz government, these were included in the new constitution itself. Jurisprudence based on the old constitution is no longer valid. By consequence, the Constitutional Court has stopped being an effective check on government. Reviewing recent rulings of the Constitutional Court on the government’s self-proclaimed “unorthodox” economic policy, which includes nationalization of private pensions and retroactive taxes that predominantly hurt foreign economic interests, Varju and Chronowski accuse the Constitutional Court of “giving a blank cheque to government policy making”.⁸⁰

The adoption of the new constitution, its provisions, controversial subsequent amendments, and the emasculation of the Constitutional Court have attracted intense international scrutiny and criticism. Some specific measures were later withdrawn under pressure, but the damage had already been done. Moreover, the drive towards delegative democracy in Hungary does not stop here. According to the BTI report, the Fidesz government “has relentlessly sought to monopolize power”.⁸¹ Hungary’s unitary state has been “completely restructured and centralized”.⁸² Local self-government has been abolished or weakened. Even schools have lost their autonomy and are now under central control.⁸³ The concentration of power can also be found within the ruling party. In the region, Fidesz is, “among traditional parties, the organization that has seen the greatest formalization of the presidentialization process”.⁸⁴

Hungary as a democracy with reserved domains

In a tutelary democracy, decision-making in certain domains is reserved for non-elected powers, usually the military. Many policies that in other countries are left to be decided by the government of the day in Hungary have been enshrined in the constitution or couched in so-called “cardinal laws”, which require a two-thirds majority in parliament to change. Cardinal laws existed before, but the new government greatly expanded their scope. Normally, the need for supermajorities enhances the power of minorities. However, in Hungary, minority protection is not the aim.⁸⁵ The Venice Commission bluntly states that “this wide use of cardinal laws to cement the economic, social,

fiscal, family, educational etc. policies of the current two-thirds majority, is a serious threat to democracy”.⁸⁶ The European Parliament concludes that “future elections will have less significance”.⁸⁷

The organ casting the longest shadow is the new Budget Council. Two of its three members were elected by a qualified majority in parliament, the other was appointed by the (Fidesz) president. They have terms from six to twelve years. The Budget Council can veto the national annual budget adopted by parliament if it adds to the national debt. If parliament fails to agree on a budget by the end of March of each year, the president can dissolve parliament and call new elections. This provision thus hangs as “the Sword of Damocles” over any future non-Fidesz government.⁸⁸ The European Parliament has accused the Budget Council of “severely restricting the scope for action of the democratically elected parliament”.⁸⁹ In the view of Enyedi, “these non-majoritarian institutions can be partly explained by the fact that they protect the interests of the current government against future governments”.⁹⁰

Moreover, many key positions have been filled by Fidesz loyalists for unusually long terms of nine to twelve years. As Bánkuti et al. note:

The long terms of the current head of the state audit office and the current public prosecutor mean that both will survive through multiple parliamentary election cycles, providing crucial veto points should any other party come to power in the meantime.⁹¹

According to Przeworski’s famous definition, “democracy is a system in which parties lose elections”.⁹² The problem with democracy in Hungary is that Fidesz might lose elections, but can hold on to power through the counter-majoritarian institutions it created, the long-term appointments it made to key positions, and the policies it enshrined in the constitution and cardinal laws. This situation poses a problem for any future non-Fidesz government, which will have to decide whether it plays by Fidesz’s rules of the game or seeks to change, perhaps abandon, what has been called “the Fidesz constitution”.⁹³

The BTI does not register democratic defects in the partial regime of effective government.⁹⁴ There are three explanations for this oversight. First, the overextension of cardinal laws is discussed in the context of the separation of powers. Second, there is no doubt that in Hungary elected rulers have the effective power to govern. In fact, this is the only criterion on which Hungary has consistently received a perfect score between 2006 and 2016 from the BTI. Third, in the third wave of democratization, tutelary democracy has been a problem of authoritarian legacies: former rulers who gave themselves vestigial powers in the new regime. Hungary’s story is different: here, two decades after democratization, a democratically elected government imposes limits on future democratically elected governments. For Merkel and Talshir the key question is revocation: Can a democratic majority take back control? The answer is: only if the new government can count on a two-thirds majority in parliament and the Budget Council does not “try to abuse” its power “for party-political reasons”.⁹⁵

The drivers of de-democratization in Hungary

Merkel et al. identify five clusters of factors that help explain the emergence of democratic defects: (1) socio-economic development and modernization; (2) socio-cultural factors; (3) former regime type and mode of transition; (4) stateness and nation-building; (5) the

international context.⁹⁶ Each cluster contains at least two factors and many of these factors are broken down further, resulting in a total of 23 variables that are thought to be conducive to the emergence of democratic defects or, in contrast, to the building of a functioning democracy. For example, “exclusive and confrontational” regime change is linked to democratic defects whereas an “inclusive-cooperative” transition helps to establish an embedded democracy. Many of the factors are structural and historical. They help to explain long-term developments, not sudden changes of the kind witnessed in Hungary. In addition, the authors caution that no single negative factor or even a combination thereof will by itself lead to the emergence of democratic defects.⁹⁷

In a next step, Merkel et al. formulate five propositions about the emergence of specific types of defective democracies.⁹⁸ Exclusive democracies are caused by large-scale social and economic inequality and by the adoption of majoritarian institutions in an ethnically divided society. Tutelary democracies are caused by features related to the military, such as its organization, its role, and its past involvement in politics. Illiberal democracies are caused by an asymmetry in societal resources and by problems with stateness. Delegative democracy is caused by presidential systems of government with a strong president who can easily expand his/her powers. The nine case studies of new democracies in three world regions largely confirm this picture and lead to two further conclusions.⁹⁹ First, illiberal, tutelary, and exclusive democracies have their roots in the undemocratic past. The causes are deep and historical, not contingent and strategic. Second, delegative democracies have their origin in the transition process and the institutional choices made in the context of regime change.

Although Merkel et al.’s propositions were successful in explaining the outcomes of democratization, they do not aid in explaining *de*-democratization in Hungary. Exclusive democracy in Hungary is neither due to inequality nor to ethnic diversity. The military played no role in the emergence of reserved domains. Illiberal tendencies cannot be traced to problems of stateness and asymmetrical societal resources. The concentration of power leading to a delegative democracy took place under a parliamentary form of government. Finally, the emergence of a defective democracy in Hungary occurred suddenly and rapidly, two decades after the transition to a functioning democracy. This makes it difficult to see democratic defects as historical legacies or the product of decisions surrounding the transition.

Scholars have written about the 2010 elections in Hungary as the “perfect storm”.¹⁰⁰ This term suggests a unique constellation of forces, which include polarization, populism, an anti-incumbency effect, the economic crisis, corruption, and dissatisfaction with the outcomes of the post-communist transition process, amplified by a disproportional electoral system that gave the winners a supermajority in parliament, allowing them to unilaterally change the constitution. Institutional factors act as “major promoters or inhibitors of radical policy change”.¹⁰¹ According to Schmidt, the impact of parties is bigger in majoritarian than in consensus democracies. Of all new democracies in Eastern Europe, Hungary was the most majoritarian, if one combines the scores on the executives-parties and the federal-unitary dimensions.¹⁰² Ironically, Hungary started out as a consensual democracy after round-table negotiations led to a pacted transition to democracy. The change towards a more majoritarian model began during Orbán’s first government (1998–2002).¹⁰³

Another factor is the size of the mandate received by the new government, which, together with the severity of the crisis, determines the size of the window for reform in Keeler’s model of “extra-ordinary policy-making”.¹⁰⁴ Using Keeler’s formula,

based on election outcomes, the size of the government's mandate after the 2010 elections was higher than any Keeler recorded for Great Britain, Europe's prototypical majoritarian democracy, or indeed any other country in his study. Successive victories in 2014 and 2018 increased the window for reform. In historical and comparative perspective, the scope for reform in Hungary has been enormous, all the more so as Orbán's victories came on the heels of a global financial and economic crisis.¹⁰⁵ It is not possible to calculate the scope of legislative achievement in Hungary using the measures found in Keeler's study, but there is no doubt that Hungary had a reform government, defined as "a government that manages to achieve, through sponsored legislation and/or other executive action, an unusually large number of reforms".¹⁰⁶ In the first four years, 859 laws were passed – 365 laws in the first 20 months alone, including 49 cardinal laws.¹⁰⁷

Orbán's intentions could have been known. Lendvai quotes Debreczeni's biography of Orbán, published in 2009, in which he warns: "We can take it for granted that Viktor Orbán will regain the mandate to form a government which he lost eight years ago. Once he is in possession of a constituent majority, he will turn this into an impregnable fortress ... Nobody should have any doubts that Orbán will recklessly and ruthlessly make use of this power".¹⁰⁸ Still, none of this could have been predicted from Fidesz's campaign, which "made no mention, for instance, of any plans for a new constitution, electoral system, or any of the large-scale institutional changes Fidesz put in place after the elections".¹⁰⁹ There were other indications, though. His first government already sought to dominate parliament.¹¹⁰ Orbán proved to be a bad loser after narrowly failing to win a new term in 2002. He "hardly visited the Parliament",¹¹¹ and even refused to take up the role of leader of the opposition in parliament, arguing that "the nation cannot be in opposition". Instead, Orbán invested heavily in extra-parliamentary activity, setting up so-called "civic circles" throughout the country and organizing referendums against unpopular government policies. After losing again in 2006, "Viktor Orbán found it difficult to concede the defeat of Fidesz in the elections. For the first time in the history of Hungary's new democracy, violent protests were staged to challenge the election results".¹¹² Enyedi captures these dynamics with the new category of "populist polarization".¹¹³ In other words, to understand the scope for reform in 2010 and afterwards, the literature on party government is helpful. To understand the direction and nature of the reforms, one needs to look at Hungarian politics before 2010.

Conclusion

Using quantitative and qualitative indicators, this article has analysed Hungary as a "diffusely defective" democracy, combining features of an exclusive, delegative, illiberal, and tutelary democracy. In each domain, democratic defects still fall short of the threshold with electoral authoritarianism, but taken together, they reveal the systematic and structural weakening of democracy by the current government.

Merkel et al. already allowed for the possibility that "an accumulation of defects can occur both within partial regimes and the regime overall. These defects in themselves can be weak but taken together can form a serious overall defect".¹¹⁴ This aptly captures Hungary and renders it different from all other defective democracies described in the literature. Since many of the democratic defects have been constitutionally entrenched, it is difficult to see how an alternation in power – already unlikely in itself – can restore Hungary to a functioning democracy.

Hungary is a deviant case for Merkel et al.'s theory of democratization, which can explain neither the drivers nor the outcome of de-democratization in this country. In addition, Hungary reveals a new form of democracy with reserved domains, in which the government of the day puts its policies out of reach of future governments. Hungary is also an exemplary case, because it alerts scholars of de-democratization to the possibility that theories of democratization may be of little help in understanding the process and outcomes of *de*-democratization. This matters all the more as the defence of democracy, not democracy promotion, becomes the priority of democrats around the world. A better understanding of the drivers and manifestations of de-democratization is crucial in that effort. The limited success of the EU in preventing let alone reversing de-democratization in Hungary can serve as a cautionary tale. A diffusely defective democracy requires a comprehensive plan for the defence of democracy. Instead, until recently, the EU preferred "to target specific government actions in isolation without addressing the overarching problem".¹¹⁵ This allowed the Hungarian government to get away with a mixture of symbolic and creative compliance.¹¹⁶

In fact, the relationship between Hungary and the EU may be a key to understanding why defective democracy in Hungary has taken the form of diffusely defective democracy. Bozóki and Hegedűs argue that the EU fulfils three functions vis-à-vis Hungary's regime: as a systemic constraint, a supporter, and a legitimizer.¹¹⁷ They see Hungary as a new and unique type of hybrid regime, what they label an "externally constrained hybrid regime".¹¹⁸ As also other scholars have noted, compared to Turkey, "there are limits to the extent to which Hungary, as insider, can deviate from EU norms".¹¹⁹ At this point in time, it is not clear whether these observations are wishful thinking or accurate estimates of the limits of de-democratization in Hungary. Table 1 shows that democratic defects are deepening and accumulating. The case of Hungary suggests that the new concepts of diffusely defective democracy and an externally constrained hybrid regime are two sides of the same coin: EU institutions and laws have prevented the blatant human rights violations, exclusion, one-man rule, and political influence of non-elected actors that characterize classic defective democracies. Instead, Prime Minister Orbán has built a diffusely defective democracy, weakening democracy across the board but being careful, so far, not to cross the line with autocracy in any of democracy's partial regimes. Only comparative research can tell whether diffusely defective democracy is a uniquely Hungarian phenomenon and whether external constraints are the only explanation for this novel form of defective democracy.

Notes

1. Previous versions of this paper were presented in the departmental seminar of the Department of Political Science at the Central European University in Budapest, March 2016, at the Annual Meeting of the Hungarian Political Science Association in Esztergom, June 2016, and at the 4th SCOPE Conference at the University of Bucharest, May 2017. I thank all the participants, and especially András Bozóki and Zsolt Enyedi, for their helpful comments. The usual disclaimer applies.
2. Merkel, "Plausible Theory, Unexpected Results."
3. Herman, "Reevaluating the Post-Communist Success Story," 252.
4. KDNP stands for Christian Democratic People's Party.
5. Sitter, "Absolute Power?," 249. Körösesnyei and Patkós, "Variations of Inspirational Leadership," 623, write that "it is not an overstatement to characterize Orbán as the founder of a new regime in Hungary."
6. Ágh, "The Triple Crisis in Hungary," 27; Bozóki, "Broken Democracy," 27.

7. Freedom House, *Freedom in the World 2018*, 10. Hungary is the only country in the region to experience an “illiberal turn” rather than “illiberal swerves.” Bustikova and Guasti, “The Illiberal Turn”; See also, Pająk-Patkowska and Rachwał, “Hungary and Poland.”
8. Available at: <http://freedomhouse.org/report/freedom-world/freedom-world-2018>. See also the so-called Tavares report by the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0229+0+DOC+XML+V0//EN>. The Council of Europe’s Venice Commission has published 12 opinions on Hungary since 2011, available at: <http://www.venice.coe.int/webforms/documents/?country=17&year=all>.
9. Tismaneanu, “The Moving Ruins,” 61.
10. Rupnik and Zielonka, “The State of Democracy Twenty Years On,” 9.
11. Dawson and Hanley, “The Fading Mirage,” 20.
12. Ágh, “The Decline of Democracy in East-Central Europe,” 280. Kelemen, “Europe’s Other Democratic Deficit,” 220, writes about an “electoral authoritarian regime.”
13. Van Til, “Democratic Resurgence in Hungary,” 372.
14. Ádám and Bozóki, “State and Faith,” 105.
15. Batory, “Populists in Government?,” 300.
16. Brusis, “Democracies Adrift,” 272.
17. Greskovits, “The Hollowing and Backsliding of Democracy,” 28.
18. Lengyel and Ilonszki, “Simulated Democracy.”
19. Pappas, “Populist Democracies.” According to one measure, Orbán is the most populist sitting prime minister in Central and Eastern Europe. Kocijan, “Who is Populist in Central and Eastern Europe?,” 78.
20. Varga and Freyberg-Inan, “The Threat of Selective Democracy,” 353, coin the term “selective democracy” for a regime that “although preserving free elections, allows ruling elites to narrow political competition by excluding rivals by defamation and institutional restrictions that threaten democracy itself.”
21. Bugarič, “A Crisis of Constitutional Democracy,” 222.
22. Rupnik, “How Things Went Wrong”; Bozóki, “Broken Democracy,” 4; Innes, “Hungary’s Illiberal Democracy”; Puddington and Roylance, “The Dual Threats of Populists and Autocrats,” 112; Enyedi, “Populist Polarization,” 218; Pap, *Democratic Decline*, Buzogány, “Illiberal Democracy in Hungary.” Csillag and Szelényi, “Drifting From Liberal Democracy,” 25, group Putin’s Russia and Orbán’s Hungary together in the category of “illiberal managed democracies.”
23. Scheppele, “The Rule of Law,” 560.
24. *Ibid.*, 562.
25. Merkel et al., *Defekte Demokratie: Band 1*; Merkel et al., *Defekte Demokratie: Band 2*.
26. Bogaards, “How to Classify Hybrid Regimes?”
27. Huntington, “Democracy for the Long Haul.”
28. Bermeo, “On Democratic Backsliding”; Lust and Waldner, *Unwelcome Change*.
29. Erdmann and Kneuer, “Regression of Democracy?”
30. This is not a critique of Merkel et al.’s work, which after all is concerned with the study of democratic defects in the process of democratization. Their conclusions stand. The problem is with the transferability of their theories and findings to processes and outcomes of *de*-democratization.
31. Lijphart, “Comparative Politics,” 692.
32. Whitehead, *Democratization*, 213.
33. Merkel et al., *Defekte Demokratie: Band 1*.
34. See Table 2.
35. Merkel, “Embedded and Defective Democracies,” 48. All translations from German are by the author.
36. Merkel et al., *Defekte Demokratie: Band 2*.
37. *Ibid.*, 468.
38. Merkel et al., *Defekte Demokratie: Band 1*, 75.
39. Merkel and Talshir, “Is Israel an Embedded Democracy?” Møller and Skaaning, “The Three Worlds of Post-Communism,” classify post-communist countries as democracies, defective democracies, or autocracies with the help of *aggregate* Freedom House scores.
40. Croissant, “Analyse Defekter Demokratien.”

41. Available at: <https://freedomhouse.org/report/freedom-world-aggregate-and-subcategory-scores>.
42. Merkel and Talshir, "Is Israel an Embedded Democracy?," 90.
43. Merkel, "Eingebettete und Defekte Demokratien," 476.
44. Croissant, "Analyse Defekter Demokratien," 103. Møller and Skaaning, "Beyond the Radial Delusion," note a lack of consensus about how to operationalize embedded democracy with the help of the BTI, but Croissant is the only published and publicly available source for measuring defective democracy with the BTI.
45. BTI, *Hungary Country Report*, 2.
46. Ilonszki and Várnagy, "Parliamentary Elections in Hungary," 169.
47. Tóka, "Constitutional Principles and Electoral Democracy," 324.
48. Ilonszki and Várnagy, "Parliamentary Elections in Hungary," 172.
49. Tóka, "Constitutional Principles and Electoral Democracy," 318.
50. Many of these problems were already noted in the report by the election observer mission of the Organization for Security and Co-operation in Europe (OSCE), available at: <http://www.osce.org/odihr/elections/hungary/116077>.
51. See the statement of preliminary findings and conclusions of the OSCE election observer mission, available at: <https://www.osce.org/odihr/elections/hungary/377410?download=true>.
52. Pállinger, "Direkte Demokratie und das Grundgesetz."
53. Sólyom, "The Rise and Decline," 17.
54. Ilonszki and Várnagy, "From Party Cartel to One-Party Dominance."
55. BTI, *Hungary Country Report*, 7–8.
56. Available at: <https://freedomhouse.org/report/freedom-press/2017/hungary>.
57. Bajomi-Lázár, "The Party Colonisation of the Media," 76, italics removed from original.
58. BTI, *Hungary Country Report*, 8.
59. See: <https://rsf.org/en/hungary>.
60. See: <http://budapestbeacon.com/public-policy/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/10592>.
61. See Pap, *Democratic Decline*.
62. Ibid., 60. The text is available at: <http://www.nefmi.gov.hu/english/political-declaration-of>.
63. Buzogány, "Illiberal Democracy in Hungary," 8 (in manuscript).
64. Merkel et al., *Defekte Demokratie, Band 1*, 85–87.
65. Körösenyi, Illés, and Metz, "Contingency and Political Action," analyse how Orbán has made clever use of crises, redefining and creating crises for his own partisan purposes.
66. Fekete, "Hungary"; Ádám and Bozóki, "State and Faith."
67. Lendvai, *Hungary*, 224.
68. Bozóki, "Nationalism and Hegemony."
69. Enyedi, "Paternalist Populism," 14.
70. Bustikova and Guasti, "The Illiberal Turn."
71. Magyar, *Post-Communist Mafia State*.
72. Innes, "Hungary's Illiberal Democracy," 98; Fazekas and Tóth, "From Corruption to State Capture."
73. Available at: <https://transparency.hu/en/news/cpi-2016-magyarorszag-tovabbra-is-lejtmenetben>.
74. Scheppele, "Understanding Hungary's Constitutional Revolution," 112.
75. Sólyom, "The Rise and Decline," 19. With the word "again," Sólyom refers to the communist period, when "those in power used law as a tool at will."
76. Kis, "From the 1989 Constitution to the 2011 Fundamental Law," 1.
77. Pogány, "The Crisis of Democracy in East Central Europe," 366.
78. Landau, "Abusive Constitutionalism," 212.
79. See Kovács and Tóth, "Hungary's Constitutional Transformation"; Bánkuti, Halmai, and Scheppele, "Disabling the Constitution"; Scheppele, "Understanding Hungary's Constitutional Revolution"; Sólyom, "The Rise and Decline"; Kornai, "Hungary's U-Turn."
80. Varju and Chronowski, "Constitutional Backsliding in Hungary," 308.
81. BTI, *Hungary Country Report*, 35.
82. Ibid., 6.
83. Hajnal and Rosta, "A New Doctrine in the Making?"

84. Hloušek, “Two Types of Presidentialization,” 287.
85. Mazza, “The Hungarian Fundamental Law,” 155.
86. See: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2013\)012-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2013)012-e), 29.
87. See: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0315+0+DOC+XML+V0//EN>, under point M.
88. Bánkúti, Halmai, and Scheppele, “Disabling the Constitution,” 144.
89. See: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0315+0+DOC+XML+V0//EN>, under point O.
90. Enyedi, “Plebeians, Citoyens and Aristocrats,” 247.
91. Bánkúti, Halmai, and Scheppele, “Disabling the Constitution,” 144.
92. Przeworski, *Democracy and the Market*, 10.
93. Scheppele, “Understanding Hungary’s Constitutional Revolution,” 111.
94. Merkel, “Eingebettete und Defekte Demokratien,” admits that the BTI fails to capture democracy with reserved domains, 476.
95. Merkel and Talshir, “Is Israel an Embedded Democracy?,” 81; Sonnevend, Jakab, and Csink, “The Constitution as an Instrument,” 78.
96. Merkel et al., *Defekte Demokratie: Band 1*, 187–238.
97. *Ibid.*, 237–238.
98. *Ibid.*, 239–288.
99. Merkel et al., *Defekte Demokratie: Band 2*, 476–477.
100. Sitter, “Absolute Power?,” 263; Bozóki, “Broken Democracy,” 4; Batory, “Populists in Government?,” 299.
101. Schmidt, “When Parties Matter,” 175.
102. Bernauer and Vatter, “Can’t Get No Satisfaction,” 461.
103. Ágh, “Early Consolidation and Performance Crisis.”
104. Keeler, “Opening the Window for Reform.”
105. Johnson and Barnes, “Financial Nationalism.”
106. Keeler, “Opening the Window for Reform,” 434.
107. Pap, *Democratic Decline*, 14.
108. Lendvai, *Hungary*, 215.
109. Batory, “Populists in Government?,” 291.
110. Ilonszki and Jáger, “Hungary,” 101.
111. Palonen, “Political Polarisation and Populism,” 329.
112. Uitz, “Hungary,” 55.
113. Enyedi, “Populist Polarization.”
114. Merkel et al., *Defekte Demokratie: Band 1*, 76.
115. Jenne and Mudde, “Can Outsiders Help?” 150. See also Müller, “Defending Democracy Within the EU”; Müller, *Wo Europa Endet*.
116. Batory, “Denying the Commission,” 695.
117. Bozóki and Hegedűs, “An Externally Constrained Hybrid Regime.” For a similar analysis focusing on ASEAN and defective democracies in South-East Asia, see Davies, “Regional Organisations.”
118. *Ibid.*, 11.
119. Öniş and Kutlay, “Global Shifts,” 21.

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