Hungary's Democratic Backsliding as a Threat to EU Normative Power

With the end of the Cold War and the fall of Communism in Europe, many Central and Eastern European countries underwent a radical political and economic reconfiguration. Many countries pushed to transform in the hope of acquiring membership to the European Union (EU) to solidify and consolidate these changes. Amongst the list of candidates, Hungary appeared as a strong contender and was accepted into the Union in 2004 (Toomey, 2015). The criteria for accession were that the countries were stable, liberal democracies that recognized and espoused the values and norms associated with membership into the Union. In recent years, however, the EU has experienced a rise in extreme political parties, which have allowed for anti-democratic forces to grow in individual Member States. This democratic backsliding is felt most intently in Hungary under the leadership of Viktor Orbán and the Fidesz party. They have steered the country into a direction many scholars have dubbed "Competitive Authoritarianism." This exemplifies a hybrid form of governance in which the authority remains outwardly loyal to democratic practices but through illiberal mechanisms, like arresting opponents and shutting down independent media (Levitski, 2020). This poses a significant threat to the normative power of the EU and its political leverage as a democratic polity. Normative power and appeal require consistent 'exportable' values (Manners, 2009). Without a clear political narrative that binds the EU Member States together, its efforts and credibility both internally and externally may be undermined. Particularly in the case of Hungary, its overt departure from the democratic principles required of Member States puts into question the authority of the EU's normative power and legitimacy.

EU Democratic Principles

From its inception, the EU has always remained committed to democracy. Although initially founded as primarily an economic union, it eventually made its political stance official when setting the criteria for membership. In the 1993 Copenhagen Criteria, it explicitly stated that qualifying candidates must have "stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities" (European Commission). The EU is committed to diversity and does not impose a universal democratic model, but it does hold Member States accountable to EU treaties. These require countries to uphold certain collective values, including "democracy, pluralism and the rule of law" (Kelemen, 2017). They also created a mechanism to sanction Member States that break away and fail to preserve the EU's democratic values in their country (TEU, Article 7). Recently, there has been compelling evidence of 'democratic backsliding' in countries like Hungary, Poland, Bulgaria, Slovenia, amongst others that appear to be reneging on the democratic duties articulated in EU treaties. In 2018 the EU attempted to sanction Hungary for its blatant breaches of EU established values. Although its efforts were unsuccessful, it serves to highlight the role that the EU has in defending democracy and the rule of law amongst its Member States (Kelemen, 2017).

Hungary's Democratic Backsliding

Despite the EU's official commitment to democracy, it has allowed for the emergence of many 'Competitive Authoritarian' or 'Illiberal Democracies' to retain power and exist in the Union. Viktor Orbán and the governing Fidesz party have, for the past nine years, tried to line up the Hungarian executive, legislative and judicial power to consolidate their control over the state. In doing so, they have managed to undermine many liberal institutions, like

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checks and balances, by concentrating power in the executive branch and unilaterally changing the Constitution. They also took over ownership of major news agencies to control the information broadcasted to the Hungarian public (Kreko et al., 2018). Hungary's Fidesz party has made essential changes to the system to keep itself in power. The government under Orbán has passed laws allowing for the appointment of judges on the constitutional Court without approval from the opposition. Subsequently, it packed the Court with Fidesz loyalists by expanding the number of judges on the Constitutional Court. In response to continued resistance by the Court to many of his ordinances, Orbán amended the Constitution to curtail the Court's power (Kelemen & Orenstein, 2019).

The new Constitution granted constitutional status to several of the laws the Court had overturned and gave more significant control over the judiciary to the head of the National Judicial Office, a government appointee. These moves were followed by a raft of other changes such as an overhaul of the electoral system to favor Fidesz and a reorganization of numerous public bodies, which might serve as checks on the government (Andrzej, 2016). Orbán also aims to polarize and divide the country by spreading erroneous information, like false immigration statistics, to rally voters, while remodeling institutions to fit his party's needs (Zerofsky, 2020). In light of all these apparent breaches of power, the question of Hungary's democratic legitimacy and the credibility of their procedural discourse has become increasingly contested in recent years.

Hungary reflects a worldwide rollback of liberalism across Central and Eastern Europe. Scholars have cautioned against the threat of populism and the consequences of allowing autocratic regimes like Hungary to take root. With extreme parties now competing on moral grounds centered around identity rather than economics, the EU faces an 'existential' challenge as a supranational institution meant to unify diverse Member States (Mudde, 2017). Because the EU already has existing and seemingly growing 'Eurosceptic' challenges internally, such obvious mismatches concerning core EU values only risks further highlighting the current divisions. For instance, scholars like Daniel Kelemen (2017) referred to these autocratic insurgencies as "Europe's Other Democratic Deficit" and Meunier and Vachudova (2018) caution that "ideological convergence around liberal values" can no longer be taken for granted as a natural byproduct of membership to liberal institutions, which can have significant consequences for the EU's position as a global power.

The erosion of democracy in Hungary has reached comparatively extreme heights and has been repeatedly rebuked by international organizations, scholars, and media outlets alike. The European Parliament in 2018 invoked the TEU's Article 7 on Hungary and called on the Council of the EU to act against the country because they perceive it to pose a "systemic threat to the Union's founding values… which are enshrined in EU Treaty Article 2 and reflected in the EU Charter of Fundamental Rights [which] include respect for democracy, equality, the rule of law and human rights" (European Parliament 2018). Hungary also became the first EU Member State to ever be demoted in status to only 'partly free' by Freedom House. (Freedom House, 2019) The question then becomes, what will the existence of illiberal democracies, in a Union committed to democratic core values, mean for its normative power?

Normative Power

The concept of normative power can take shape in two distinct ways; one is ideational and the other material. The European Union has developed both types to varying degrees. For instance, EU Member States developed their material power by developing a significant capacity to coordinate collectively in the realm of foreign and security policy through the EU's Common Foreign and Security Policy (CFSP) and Common Security and Defense Policy (CSDP) (Bickerton, 2010). However, the EU's primary source of power is ideational. Richard Rosecrance points out that "Europe's attainment is normative rather than empirical…It is perhaps a paradox to note that the continent which once ruled the world through the physical impositions of imperialism is now coming to set world standards in normative terms." Following Rosecrance's argument, Ian Manners seeks to refocus the debate of power in the EU not in civilian and military terms but rather through its ideational impact. The notion of a 'Normative Power Europe' has its roots in the power of ideas, or *idée force* as a way of conceptualizing the EU's international identity (Manners, 2002). According to Manners, it is the shared principles and beliefs that members must abide by in the EU that allows it to lead by example.

These values are enshrined in the *acquis communautaire* (the EU's body of law) and stipulated in the 1993

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Copenhagen Criteria and the founding treaties which assert that "in international relations, the Union should be guided by and would seek to spread the values upon which it is founded – democracy, human rights and the rule of law" (Treaty of Lisbon, article 21). They also have four minor norms: social solidarity, anti-discrimination, sustainable development, and good governance. The European Council also decided at the Cologne summit in 1999 that they should draft a human rights charter because "protection of fundamental rights is a founding principle of the Union and an indispensable prerequisite for her legitimacy" (European Parliament). The ethical standards required of each of its Member States in the general principles of community law signify the founding and legislative basis of the EU to serve as a desired facet of its international identity. Additionally, when trading with third countries, the EU specifies conditionality clauses that bind the country to practice ethical human rights, as stipulated in the European Convention on Human Rights (Meissner & McKenzie, 2019). Therefore, it is clear that the EU relies heavily on its ideational power as well as material power.

Clearly, the EU has made great strides to officially establish itself as a polity governed by shared principles and values. To evaluate the sustainability of the EU's normative power, Manners conceptualized a criterion of analysis that links its professed *values* with the corresponding *actions*, followed by its desired *impact* and assess its performance. The normative power of its *values* is seen as legitimate primarily through the principles it is pushing and endorsing. The ethics of the principles being promoted generally come from its consistency with previously established conventions, treaties, and agreements, particularly if they align with fundamental tenets of the United Nations (UN). The second part of its legitimacy comes from the 'extent to which differing principles can be seen as sound and non-contradictory… and practices to promote them are uniform both within and without the promoting entity, and are applied uniformly" (Manners, 2009). The *actions* should be perceived as persuasive in the efforts to promote the principles. For normative justification to be convincing, it must "involve persuasion, argumentation, and the conferral of prestige or shame" (Manners, 2009). In the case of the EU, its normative power is in part derived from its structural capacity, such as its accession criteria and Article 7 of the Treaty on European Union which allows for suspending a Member States voting rights. Lastly, its *impact* must be socializing, i.e., ideational power requires 'normative justification,' which is understandable to others and is 'sustainable' into future generations.

In Hungary's case, we will look at it from two perspectives. First by examining how it undermines the normative power of the EU from inside the European Union by acting outside the purview of its democratic principles, particularly by looking at its stance on immigration and its performance during the refugee crisis. Secondly, tracing Hungary's development from when it was admitted to the EU in 2004 as part of the Eastern Enlargement Project. Since the Eastern enlargement was devised as a mechanism to push the EU's normative power and consolidate democracy, recent events in Hungary underscore the critical limitations of the EU's supranational community in regulating political troubles within the Union.

Hungary and the Refugee Crisis

The Refugee crisis that hit Europe posed a considerable threat to the EU. The wave of refugees that entered Europe in 2015 catalyzed right-wing radical populist parties. In Hungary, the erosion of democracy and nativist rhetoric predated the crisis in 2015 but was exploited as a means to stimulate support for the Fidesz regime. Viktor Orbán manipulated the public's fear of refugees and migrants to bolster his support (Anna Grzymala-Busse, 2019). The refugee crisis reveals some of the most apparent mismatches between the EU and Hungary.

The EU made numerous requests for member nations to relieve Italy and Greece of their large numbers of refugees coming from Syria, North Africa, or other parts of the Middle East. In September 2015, EU nations voted to bring in 160,000 refugees from Greece and Italy, with Germany and France taking in the greatest number of people. Together, nine Central and Eastern European countries were asked to shelter a total of 15,000 refugees. Although four nations, the Czech Republic, Slovakia, Hungary, and Romania, voted against the agreement, they were still obliged to comply with the majority decree.

Orbán immediately began a series of campaigns to prevent the refugees from entering the country. First, he built a fence along Hungary's southern border. This was accompanied by several "Information Campaigns" to undermine the EU. In 2017, the Hungarian government spent about US$250 million to build billboards, leaflets, television ads,

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and mass mailings to undermine and criticize the EU for forcing them to admit refugees (Krekó & Enyedi, 2018). Perhaps the most dramatic move they took was changing the constitution, making it illegal to accept refugees in Hungary and making it a crime to assist a refugee.

In retaliation, the European Union launched a formal "infringement procedure" against Hungary, and two other member nations—the Czech Republic, and Poland—for failing to comply with the 2015 agreement to harbor asylum-seekers. The European Executive took the matter to the European Court of Justice for adjudication. The Court recently released its decision claiming Hungary to be in breach of European Union law by not taking in refugees and would be subject to financial penalties (Sandford, 2020).

The mismatch between the EU's expectations of its Member States and the policies enacted by some of those States poses a fundamental challenge to the values of the EU. It reveals shortcomings in the policies of the EU to enforce its normative power. Börzel and Risse (2018) argue that right-wing political parties in the various Member States successfully mobilized nativist sentiment and anti-immigrant stances by politicizing the asylum and migration topic. It is this politicization that prevented the successful formulation of a European response to the refugee flows (Börzel and Risse, 2018:). Instead, what emerged was a normative narrative often at odds with policies in place.

Part of the normative power of the EU is established through its procedural diffusion to third parties. This can be achieved in the case of the EU through, for instance, legally binding cooperation agreements, trading conditionality clauses, and the enlargement of the EU itself (Manners, 2002). The EU offered admittance into the Union to Central and Eastern European Countries (CEE) on the condition that they suppress nationalist policies and promote democracy (Vachudova, 2006) However, The EU also importantly sought to help with the consolidation of these new liberal democratic systems in these countries to "prevent any future backsliding on democratic reforms, and a reversion to some form of authoritarian rule" (Toomey, 2015). Now that these countries have been admitted into the Union, the EU faces significant challenges with the rise of the far-right autocratic leaders, particularly in Hungary and Poland, because it has inadequate mechanisms to sanction States for infringing EU Treaties or Laws.

Viktor Orbán's undemocratic changes in Hungary are a blatant attempt to secure his grip on power following initial electoral defeats, which made him realize the fragility of his appeal to the electorate. He was elected to a seat in Parliament in 1990, which he retained until 1993. In 1998 he won the national election with 42% of the vote and became Prime Minister by forming a coalition with two other parties (Martens, 2009). Once in office, he immediately began making reforms that drew much opposition. Despite these changes, Fidesz lost its majority in the 2002 election. This experience anchored the Fidesz's shift from liberalism to nationalism. Throughout the 2000s, the party garnered much of its popularity by espousing xenophobic and exclusionary policies and rhetoric. When the party won again in 2012, its popularity largely stemmed from its Christian values and identity politics (Economist, 2019). Throughout Orbán's time in office, he has been an open supporter of 'illiberal democracies.' He has been aggressively dismantling the country's democratic institutions, suppressing the freedom of the press, undermining the education system, and restricting the power of the judiciary. These anti-democratic developments have hardly gone unnoticed by the international community and the international media. There have been several calls for greater action on the part of the EU to contain and act on these developments, but the EU has not successfully managed to curb these autocratic insurgencies. Judith Sargentini, the Dutch Greens lawmaker, steered a proposal, which garnered an overwhelming majority in the EU Parliament, to trigger Article 7 against Hungary condemned "Viktor Orbán's government [for} leading the charge against European values by silencing independent media, replacing critical judges, and putting academia on a leash" (Sargentini reported in BBC 2018). Despite the support for triggering Article 7, the motion itself failed when it came up for a vote. The reality is that the EU's inaction can in part be accounted for by the lack of tools at its disposal to control the situation.

EU's Response to Hungary's Democratic backsliding

The bloc cannot expel a member from the Union once they have been accepted. The most it can do is suspend its voting rights under Article 7 of the Treaty of Lisbon if the country is in "serious and persistent breach" of the EU's fundamental values (TEU, Article 7). However, Article 7 can only be enacted if the EU Council members unanimously agree. The EU runs into problems with unanimous voting because, as mentioned earlier, the autocratic regimes are

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far from contained exclusively in Hungary. Poland, under the Law and Justice Party, reflects many of the same anti-democratic developments that have occurred in Hungary under the Fidesz regime. Poland began implementing undemocratic reforms, undermining the judiciary and the public media, as soon as it was elected. The party's leader, Jaroslaw Kaczynski, has dismissed the massive protests within the country and the criticism by the EU of their actions (Kelemen & Orenstein, 2019). Article 7 of the TEU will likely never be successful in the immediate future because Poland and Hungary continue to mutually shield each other from any possible EU punitive measure. We saw this relationship play out on two different occasions. An Article 7 procedure was initiated by the European Commission against Poland on the 20th of December 2017 and less than a year later on the 12th of September 2018 against Hungary. On both occasions, the motions were defeated because both countries shielded the other by voting against the proposal.

The other options at the EU's disposal may also prove ineffective. The bloc could limit the amount of funding allocated to Hungary in the next long-term budget, the Multiannual Financial Framework (MFF), which is currently under negotiation. In theory, this would be a powerful option because Hungary's gross domestic product (GDP) is heavily dependent on money from the European Union. Between 2009 and 2016, such funding constituted nearly 4 percent of Hungarian G.D.P. per year (Economist, 2019). However, the European Commission does not have the necessary powers to withhold funding unilaterally. It requires the support of the EU heads of state and the European Parliament. The MFF is a long-term spending plan, allowing the EU to plan and invest in long-term projects. It is proposed by the European Commission and adopted by the Council (requiring the unanimous approval of every Member State) with the assent of the European Parliament (European Council). Because a unanimous vote is necessary for the MFF to go through, the entire seven-year plan can be derailed by the objection of a single Member State (Lilkov through LSE, 2018). This requirement makes it very unlikely that any budget passed would include limits on the funding given to Hungary.

In 2018 the European Commission presented a proposal for the creation of a Regulation to protect the Union's budget "in cases of generalized deficiencies as regards the rule of law in the Member States" (European Commission, 2018). The Regulation would create a mechanism that would block access to EU funds. In 2019 three hundred and ninety-seven members of Parliament voted in favor of a report on the proposal (Bayer, 2019). However, it still faces stiff opposition and has not yet been passed. At the moment, the Commission can only make financial corrections for administrative management of EU funding. Still, as it stands, there is no mechanism that could suspend or reduce payments to countries found in breach of fundamental EU regulations and values (Financial Times, 2019). The Regulation has come under considerable scrutiny because many contend this will further highlight the East-West divide. Because of a lack of mechanisms to sanction Member States for ignoring or defying the rule of law, such as illiberal democracies, one rogue country can derail the EU's objective substantially.

A last option for the EU is to begin infringement proceedings against Hungary at the European Court of Justice for its democratic violations. The ECJ, if it finds Hungary to be guilty, can impose financial penalties. In the past, fines have amounted to roughly 100,000 euros (Sehran through the Atlantic, 2020). The major problem is that the system is inefficient and takes a long time. Although it can have some substantive effect, by the time the decrees are released, it may too late.

It becomes evident that the EU does not have the necessary mechanisms to ensure that the liberal principles required to become a member state are sustainable into future generations, a criterion that Manner's says is necessary for normative power. The current democratic crises in Hungary underscores the lack of accountability for democratic norms in the EU. This can be explained by the EU's lack of procedural protocols to enforce its normative power within the Union, which inevitably impedes its ability to keep Member States in line with the accession norms and values.

The refugee crisis exemplifies the lack of normative power the EU has in steering the Hungarian government to act in conjunction with the EU. Looking back at Manners' criterion for normative power, The EU suffers in terms of its legitimacy because it cannot offer "coherent principles … that can be [promoted] in a sound and non-contradictory way" (Manners, 2008). As seen by the accession period of 1998 to 2004, the carrot of membership into the EU was a sufficient incentive to shape and change the political climates of Hungary in the short term, which gave it the

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opportunity to gain membership into the EU in 2004. Without a mechanism to expel members from the Union, and the need for unanimous voting in the Council to invoke Article 7, the EU finds itself at political crossroads. It has established itself as a Union bounded by certain key principles enumerated in treaties and the *acquis communautaire*; however, it has countries in its Union that are disturbingly at odds with its professed principles. With few tools to mobilize change and punish deviation from EU norms, coupled with an ever-growing problem of democratic backsliding particularly in CEE countries, the EU risks exposing its lack of political leverage without the carrot of membership to promote its political objectives (Jenne & Mudde, 2012).

Conclusion

Clearly, there is a significant mismatch between Hungary's government and the core democratic values of the EU. This poses a considerable threat to the EU's normative power because it does not appear consistent in terms of its international policies, as seen through the refugee crisis. Additionally, the EU lacks the structural mechanisms necessary to sanction the Hungarian government and is therefore stuck in a gridlock with countries at odds with its qualifying democratic principles but very few options to change it.

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