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Comment on "Hungary's U-Turn" (by János Kornai)

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"Democracy is the worst form of government, except for all those other forms that have been tried from time to time." (House of Commons speech on Nov. 11, 1947). It is useful to keep this well-known quote from Winston Churchill in mind as we think about János Kornai's latest very interesting and significant paper on Hungary.

Right at the start of his paper, Kornai remarks that Hungary is a small and unimportant country, not engaged in any wars, not facing imminent financial crisis. Yet, he claims, what has been going on there since 2010 – both politically and economically – is, to put it mildly, cause for concern and merits our full attention. In what follows, we sketch Kornai's line of argument, and then comment on some of the issues he highlights.

Back in the old days of central planning, Kornai led the way in helping us understand that system and its inherent logic (see Kornai, 1959 and 1980), while Hungary itself led the way in terms of introducing reforms of the central planning system from as early as 1968 (these reforms were known as the New Economic Mechanism). The reforms allowed for some decentralisation, with enterprises allowed more independence than elsewhere in the region, and permitted the development of some markets and small businesses. As a result, when Hungary's last communist government opted to hold free elections in late 1989, the country was already primed to transition easily to a market-type, western-oriented economy.

Since the start of that transition[1] in 1989/90, Hungary's economic reforms proceeded rapidly and surprisingly smoothly, with the result that for most of the 1990s the EBRD transition indicators (see EBRD, various years) placed Hungary among the leading reformers. Like everywhere else in the region, there were mistakes and even some backtracking, but the general trend was not in doubt, allied with a strong political commitment to join the western system of alliances, notably NATO (1999), the EU (2004), and the OECD (1996). Supposedly, too, all this would cement in place Hungary's nascent democracy, the rule of law, respect for private property and a market-type economy, and support for a thriving civil society. On the other hand, already in his Snowdon interview in 2003 (Snowdon, 2003), Kornai drew attention to some disappointments about transition, including within Hungary itself, due at least in part – as he argued – to unrealistic expectations among the general population about how rapidly living standards could rise.

Against this broadly positive and hopeful background, Kornai's paper begins with the election in 2010 of a Fidesz government, led by Viktor Orbán and enjoying a decisive mandate – a comfortable two-thirds majority in the Hungarian Parliament. Since that election, many of the gains – or what those of us living in long-established democracies think of as gains – achieved by Hungary since 1989 have been lost, or at best undermined and weakened. For brevity, we merely list the key points:

- *Democracy*. The executive and legislative branches are no longer strictly separated, both being dominated by Orbán and his leading supporters. Parliament became a

1 This is not the place for a detailed account of transition and all the debates about how it should or should not have been conducted. For a non-technical account of many aspects of the process, see Hare, 2009. For a more comprehensive survey, see Hare and Turley, 2013. Kornai himself has also written a great deal about the uneven and erratic process of transition (for instance Kornai, 2006).

'law factory', passing many new laws with little or no preparation, consultation or debate. And bodies that normally provide checks and balances in a healthy democracy, such as the constitutional court, the audit office, the competition authority, and others are now headed by people 'close' to Orbán.

- *Rule of law*. A new constitution (the Fundamental Law) came into effect in January 2012, introduced with little consultation (opposition parties boycotted some discussions), buttressed by 32 cardinal laws,[2] themselves requiring a two-thirds majority before they can be amended.[3] This new constitutional framework has been widely criticised.[4] The judicial branch has lost much of its independence from the executive, notably the Prosecution Service; and the judiciary itself has been restructured through the simple device of lowering the compulsory retirement age for judges from 70 to 62 (this measure was challenged internationally, but dismissed judges were not restored to their former positions).
- *Private ownership*. While private ownership is still dominant, Hungary has seen some creeping nationalization since 2010, sometimes via dubious legal devices. Even where property rights have been purchased rather than confiscated, pressure has been put on the former owners so that sales have taken place at prices well below what would be considered the 'normal' market value.
- *Centralization*. After a couple of decades of decentralization, since 2010 Hungary has witnessed a return to centralization as schools and hospitals come under the direct control of central government departments. Kornai remarks (p. 6), 'A pyramid-like vertical hierarchy has emerged and solidified….'

In addition to the nationalization referred to above, a form of clientelism, or 'crony capitalism,' has been growing in Hungary since 2010. In all market-type economies there is a degree of symbiosis between state and market. To work well, after all, markets need a supportive institutional framework, various forms of regulation to limit abuses, rules governing taxation and redistribution, and legal protection both for ownership/property rights, and for market transactions. Getting the balance between state and market 'right' is never easy. It can be influenced by periodic fashions in popular thinking, by serious economic policy analysis, and always by politics. In Hungary, it seems, the market mechanism is increasingly distorted by the dominant party, Fidesz, effectively choosing who will be permitted to become an oligarch, while also protecting friends of the ruling party from corruption allegations and the like.

[2] This is the number of such laws listed on the Hungarian Parliament website, though different authors have come up with different numbers.

[3] Moreover, according to the website of the Hungarian Parliament, some cardinal laws can only be amended with an *absolute* two-thirds majority, i.e. two-thirds of all MPs must vote for the change; others need only a *relative* two-thirds majority, i.e. two-thirds of the MPs present and voting at the time of a proposed amendment. This distinction can be quite confusing, and its logic is far from clear.

[4] For the constitution itself (October 2013 version, after five amendments), see Constitution, 2013. For critical reviews, see Scheppele (2012), Halmai and Scheppele (2012), and HRW (2013), among many others.

According to Kornai, observers of the recent developments in Hungary have often misunderstood the situation, or been taken in by various intellectual fallacies. For a start, critics overestimate the value of the 'letter of the law', which still leaves ample scope for party leaders to influence outcomes; then there is the overwhelming Fidesz dominance of most media outlets; and it is all too easy to point to the two-thirds majority won by Fidesz in two successive elections, and hence claim: (a) this is what Hungarians want; and (b) the elections were in any case democratically conducted. Despite the democratic veneer, Kornai nevertheless considers that Hungary has become an *autocracy*, neither a democracy nor a dictatorship. Moreover, anyone hoping for EU intervention to push Hungary back on the 'right track' is most likely indulging in wishful thinking. In modest ways the EU and the Council of Europe have intervened already – they have stated adverse opinions, put pressure for minor legal changes here and there, and even imposed some financial penalties for a time, all without altering the essence of the new system. And nowadays, there are far more urgent and pressing matters on the world stage for anyone to bother much about Hungary.

For those of us living in long-established, consolidated democracies with the rule of law, Kornai's article reminds us of some important issues to which we mostly don't give much thought. I shall focus on just two of these.

Rule of law

The rule of law is a phrase we often use quite casually, without fully understanding its deeper meaning. Many parts of the world claim to follow the rule of law and quite clearly do not. Conceptually, the rule of law means two things: (a) private agents enjoy the protection of the law in their relations with other private agents; and (b) they also enjoy the protection of the law in their relations with the state (see Bingham, 2011; and Maravall and Przeworski, 2003).

Part (a) covers both civil wrongs, such as issues relating to contracts, property rights and the like; and also criminal wrongs such as theft, acts of violence, fraud, and so on. Private agents should be treated equally before the law, none enjoying priority or privilege due to their position in society, links with the organs of political power, their wealth, sex, or other extraneous factors. Part (b) means that the state and its agents are not themselves above the law, and that their actions and decisions can be constrained by legal verdicts. Thinking about this economically, it implies, for instance, that government agencies cannot simply decide that they wish to take over a successful private business, perhaps even without compensation. Yet one sees this sort of thing happening all around the world, and the private agents losing out usually have little or no redress. Step-by-step, Hungary has moved in this direction since 2010.

These last remarks concern what we may term the formal aspects of the 'rule of law'. But all institutional arrangements in society also rely on informal practices and understandings, and the rule of law is no exception. Thus it is a convention in many areas of life that those involved in decision-making should declare their personal interests, and are expected to withdraw from the decision-making process when an issue affecting their personal

interest comes up. Further, transparency and openness are also important here, for popular support for the rule of law is undoubtedly enhanced if the law is not only followed, but widely seen to be followed. This is where free and open media are vital.

Last, the rule of law concerns both procedures and outcomes in society. Procedurally, it ensures that all parties to a case (whether civil or criminal) can present their evidence and arguments in a manner perceived as fair to all those involved. As for outcomes, courts or non-court elements in the judicial system (e.g. arbitrators) reach decisions that are normally supported by written reasons, and these can sometimes be challenged in a higher court. Most importantly, it is not for the state simply to ignore or cancel some judicial decision that it doesn't like, or even worse, to hastily re-write the law and give it retrospective effect so that the original case no longer applies. Yet such distortions have occurred in Hungary on several occasions since 2010, a dangerous tendency.

Consolidation of democracy

One might argue that these changes in Hungary do not add up to anything very substantial, that they are merely the 'teething troubles' of a new democracy as it consolidates itself following decades of communist rule, and that as outsiders we should leave well enough alone, leaving Hungarians to figure out for themselves exactly how they wish to be governed. This is a tempting, though intellectually lazy position to hold. The problem is twofold.

First, in recent years there have been many conceptual contributions on political structures, including models addressing the issue of consolidation of democracy, and how and why it might go wrong, or fail.[5] True, the available models are highly stylised and simplified, and there has been little or no empirical testing so far. But they are suggestive for Hungary, and they do tend to support Kornai's notion that while there has been much consolidation, it has shifted the country toward autocracy.

Second, it is quite normal for countries, whether claiming to be democratic or not, to make mistakes, passing laws or issuing decrees that turn out to be foolish or irrelevant to the problem at hand; or which, due to the 'law' of unintended consequences, turn out to be unexpectedly harmful in some way. But the whole point of a democracy is that such errors can be rectified: laws can be revoked or amended, either by the same party (if it still holds power), or by a new party, following an election. This sort of 'adjustment' has happened many times in the UK, for instance, where all new or amended legislation only requires a simple majority of those present and voting in the House of Commons, in order to take effect. Democratic politics is often an untidy and messy business, but as Churchill understood, it does (eventually) work.

The difficulty in Hungary now is that so much that a government might wish to do lies within the scope of the constitution itself, plus the cardinal laws that cannot be changed without a two-thirds majority. Fidesz managed to pass all this 'machinery' of the state into

[5] See, for instance, Acemoglu and Robinson, 2009; Robinson and Verdier, 2013; and Acemoglu and Robinson, 2001.

law between 2011 and 2013, but it has effectively blocked any successor government from changing much, since it is highly unlikely that any other party in the foreseeable future will achieve such a plurality. Interestingly, following two by-election defeats earlier this year, Fidesz itself no longer enjoys a two-thirds majority in Hungary's Parliament (Scheppele, 2015). Hence, to function it must rely on informal cooperation from the right-wing Jobbik party. Fidesz has entrenched its power, and now not even Fidesz itself can undo or amend much of what it has done; without some sort of revolution in Hungarian society, nor can a successor government. Those in positions of influence, currently close to the Orbán political leadership, will be able to retain their positions for a long time, regardless of future elections. This does not make for a healthy democracy.

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