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Ambiguity and interpretive politics in the crisis of European values: evidence from Hungary

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ABSTRACT

The European Union, courtesy of Orbán's Fidesz and Kaczyński's Law & Justice, is supposedly experiencing a crisis of values. This article points to two fatal errors in the design of EU values: ambiguity and practical unenforceability. Politicians can exploit these flaws by interpreting ambiguous values in self-serving ways. Based on an analysis of the Hungarian Prime Minister's speeches, it shows that descriptions of Orbán as an unrepentant challenger of EU values miss the mark. Instead, Orbán used the plasticity of EU values to style himself as a pro-European statesman, ready to steer the Union back to its moral roots.

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"When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean — neither more nor less."

"The question is," said Alice, "whether you *can* make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master — that's all."

— Lewis Carroll, *Through the Looking Glass, and What Alice Found There* (1872: 124)

At an event that was aptly titled "Europe – Back on Track", the President of the European Commission observed that it was "not so long ago that our Union was in danger of sleepwalking from one crisis to another without waking up." He argued that the European Union (EU) was plagued by a "polycrisis" (European Commission 2018). Brussels struggled to resolve the Eurozone's financial woes, the sudden influx of refugees and Brexit. What is more, a rebellion occurred within the ranks: several member states, with Hungary and Poland sticking out like sore thumbs, were said to be riding roughshod over the fundamental values that defined the European project. This surge of authoritarianism initiated a "crisis of values" (Kochenov 2014).

Together, these events have thrown the EU into an "existential crisis" (Salines, Glöckler, and Truchlewski 2012); they have cast doubt upon the meaning of European integration. Leading scholars have set out to study both the implications of the existential crisis for the EU's future and the explanatory power of conventional integration theories (e.g. Schimmelfennig 2014; Tosun, Wetzels, and Zapryanova 2014; Bulmer and Joseph 2016; Börzel and Risse 2018; Kreuder-Sonnen 2018; Rittberger and Blauberg 2018; Hooghe

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and Marks 2019). Scholars disagree over the precise causes of the EU's predicament. They also quibble over the appropriate solution. Undisputed, however, is the diagnosis: the Union is in crisis mode, whether it concerns the Eurozone, Brexit, migration or EU values.

Yet, this paper questions whether this shared understanding, according to which the Union is an ailing patient in urgent need of treatment, is correct when it comes to the issue of fundamental values. Article 2 of the Treaty on European Union (TEU) outlines these values: "respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities" (European Union 2012). Whether the changes made by the wayward leaders of Hungary and Poland are labeled as "democratic backsliding" (Sedelmeier 2014; 2016; Blauburger and Kelemen 2017), "national authoritarianism" (Kelemen 2017) or an "illiberal turn" (Bánkuti, Halmai, and Scheppele 2012; Bustikova and Guasti 2017; Hanley and Vachudova 2018), scholars agree that these countries have violated parts of this treaty article. Journalists and other commentators generally underwrite this analysis (Grabbe and Lehne 2017; Pelczynska-Nalecz 2017; Chopin and Macek 2018). Even policymakers are increasingly denouncing developments in Budapest and Warsaw as going against the normative ties that bind. Both the European Parliament and European Commission have repeatedly voiced their concerns (Meijers and Van der Veer 2019). The European People's Party (2019), after insistent pressure, finally suspended the membership of Orbán's Fidesz party in March 2019.

These evaluations rest, often implicitly, on an assumption of *clarity*: the fundamental values are clearly defined and measurable. This should make it easy to determine non-compliance. I argue, however, that the EU's values are better characterised by *ambiguity*. Drawing on contracting theory, I see them as incomplete contracts: although all parties agreed to uphold the values, it is unclear how this commitment requires member states to behave in practice. What is more, even though virtually all agreements in business and international relations resemble incomplete contracts, the EU does not have the institutional machinery in place that can both specify and enforce the contractual obligations. The Union's fundamental values, in other words, constitute a flawed attempt at incomplete contracting. As a result, these values are at once ambiguous and unenforceable.

This ambiguity has an important implication that scholars have not yet recognised: compliance becomes almost impossible to evaluate. The undefined nature of the EU's fundamental values gives politicians ample room for maneuver. As leaders stand accused of violating shared principles, they can simply retort that they understand these principles to mean different things. They may even claim to be *strengthening*, rather than undermining, democracy, the rule of law and related values. The result is a battle between competing interpretations of the same standards (cf. Hurd 2005). Orbán and consorts are not blatantly disregarding EU values. Instead, they behave like Humpty Dumpty in Lewis Carroll's *Through the Looking Glass*: they have realised that these values can mean whatever they choose them to mean. The question then is: who is the master of the EU's discourse on fundamental values?

If this argument holds water, then we should find evidence for it in the legitimation strategies of political actors. When their party is accused of noncompliance, representatives will neither repent nor take pride in their defiant position. Instead, they will contest their adversaries' interpretation of these values. The discursive record should thus show that parties like Fidesz are not made up of dyed-in-the-wool Eurosceptics; they rather consist of cunning politicians that are using the ambiguity of EU values to their advantage.

Table 1. Overview of Prime Minister Orbán's speeches.

Date	Occasion
5 July 2011	European Parliament
18 January 2012	European Parliament
19 October 2012	EPP Congress
23 November 2012	Special Meeting of the European Council
27 February 2013	Visit of the President of the European Council
15 April 2013	Conference "A Christian response to the challenges facing Europe"
2 July 2013	European Parliament
2 July 2013	European Parliament
8 May 2014	Europe Forum Conference
21 May 2014	Campaign for the European Parliament elections
22 May 2014	Campaign for the European Parliament elections
23 May 2014	Campaign for the European Parliament elections
25 May 2014	Campaign for the European Parliament elections
27 June 2014	European Council
6 November 2014	Event of the Hanns Seidel Stiftung and the Bavarian-Hungarian Forum
19 May 2015	European Parliament
19 May 2015	European Parliament
4 June 2015	EPP Meeting
22 October 2015	EPP Congress
22 February 2016	European Council
16 September 2016	European Council
21 October 2016	European Council
15 December 2016	European Council
16 December 2016	European Council
9 March 2017	European Council
10 March 2017	European Council
30 March 2017	EPP Congress
26 April 2017	European Parliament
26 April 2017	European Parliament
22 June 2017	European Council
23 June 2017	European Council
26 January 2018	Visegrád Group conference "The Future of Europe"
20 March 2018	EPP Meeting
11 September 2018	European Parliament
11 September 2018	European Parliament
11 September 2018	European Parliament

The remainder of this article proceeds as follows. The next section briefly captures the conventional understanding of Hungary and Poland as backsliders. I then draw upon incomplete contracting theory to show that the EU's fundamental values are inherently ambiguous and unenforceable, which, as the subsequent section argues, enables political actors to engage in a strategic form of interpretive politics. The empirical section uses Hungary's Fidesz as a crucial case. On the basis of the speeches listed in Table 1, I analyze how Prime Minister Viktor Orbán responded to the charges laid against him. The conclusion summarises the argument and suggests that the interpretive room for maneuver regarding EU values is increasingly narrowed.

The conventional view: democratic backsliding and the crisis of EU values

As much as EU officials like to refer to the Union as a community of values, reality increasingly appears to be at variance with this self-description. Most scholars agree that several member states have begun to call the EU's shared principles into question, whether verbally or by dismantling the institutions that embody these principles. The alleged transgressors can predominantly, if not exclusively, be found in Central and Eastern Europe. The

enlargement process intended to impart EU values into the candidate countries. Yet, post-enlargement, the Union's transformative power looks uncertain (Grabbe 2014).

Indeed, some of the supposed success stories have turned a new page. Most infamously, Viktor Orbán initiated a "constitutional counter-revolution" in Hungary (Halmai 2012). The Prime Minister's party, Fidesz, replaced the old constitution, which dated back to communist times, in 2011.¹ In the process, it overhauled many of the institutions that made Hungary a functioning democracy, including the judiciary, the election commission, the media authority, the state audit office, the office of the public prosecutor and the central bank. Scholars have analyzed in great detail how Orbán upended Hungary's system of checks and balances (Bánkuti, Halmai, and Scheppele 2012; Pogány 2013; Kornai 2015; Bogaards 2018; Bozóki and Hegedüs 2018; Krekó and Enyedi 2018). The Fidesz government has come in for criticism on numerous other grounds as well: its inhumane approach to the refugee crisis (Bocskor 2018; Scott 2018); its slanderous campaign against George Soros; its decision to ban gender studies as an academic discipline (Pető 2018); the forced departure of the Central European University (Enyedi 2018); and the increased restrictions on civil society (Serhan 2017). The list of charges, while already long, continues to grow.

Hungary became a trendsetter of sorts. Following the feckless response of Brussels to developments in Budapest, other member states implemented similar changes. The national conservatives of Law & Justice in Poland were particularly inspired by Orbán's playbook. Jarosław Kaczyński's party reconfigured many of the same checks and balances that were undercut in Hungary (Niklewicz 2017; Grzymala-Busse 2018; Przybylski 2018; Sadurski 2018). Although scholars see the disregard for fundamental values as especially pronounced in Hungary and Poland, they have found cause for concern elsewhere as well. The Czech Republic (Hanley and Vachudova 2018), Romania (Dawson and Muir 2012; Sedelmeier 2014; Iusmen 2015) and Slovenia (Bugarič 2015) are among the new member states that are accused of playing fast and loose with the EU's standards.²

A plethora of labels have been suggested to capture these events (Daly 2019). Popular descriptors include backsliding, de-democratization, an illiberal turn, and a return to authoritarianism. Regardless of their preferred term, however, scholars seek to capture the same phenomenon: the violation of EU values by insubordinate member states. Kelemen (2017) refers to this as "Europe's other democratic deficit".³ Falkner (2013, 14) cautions against "a growing perception that the EU might become a non-compliance community". Meunier and Vachudova (2018, 1639) believe that "ideological convergence around liberal values" can no longer be taken for granted, with serious implications for the Union's position as a global power. EU member states feature prominently in elegiac accounts of the liberal order (Eatwell and Goodwin 2018; Levitsky and Ziblatt 2018; Mounk 2018; Zielonka 2018). The EU's crisis of values, in these analyses, is emblematic of the worldwide rollback of liberalism. There is ample debate on how to correct the non-compliance with fundamental values (see Jakab and Kochenov 2017). Not up for discussion, however, is the indictment of non-compliance itself.

This also holds true for studies that emphasize politicians' strategic behaviour. For instance, Müller (2017), with reference to the "peacock dance" that Orbán himself once claimed to be performing at the supranational level, notes that his "dance moves" amounted to mere "cosmetic changes in reaction to criticism from Brussels". Orbán's choreography enabled him to continue to pursue his political agenda while simultaneously

appearing acquiescent. Batory's (2016) discussion of and symbolic and creative compliance reaches a similar conclusion. Underlying these accounts is the assumption that disregard for EU values can straightforwardly be determined. This, the next section argues, should be reevaluated.

EU fundamental values: ambiguous and (near) unenforceable

It is certainly true that Hungarian and Polish leaders, among others, have made far-reaching changes to their countries' political systems in recent years. Many external reports objectively characterise these changes as a decline in democracy. Freedom House (2019), for example, downgraded Hungary in 2019, making it the only EU country to be labeled "partly free". A downward trend is also evident in other indices (Brusis 2018; Economist Intelligence Unit 2018). From a liberal standpoint, the situation in Budapest and Warsaw is thus undeniably worsening.

It does not automatically follow, however, that the governments in these capital cities are undermining the EU's fundamental values. For this to be the case, clear benchmarks would need to be in place against which member states' behaviour could be evaluated. Compliance occurs "when the actual behaviour of a given subject conforms to prescribed behavior" (Young 1979, 104). It follows that a meaningful assessment of compliance can only be made when behavioral prescriptions have been clearly specified. Such clear guidelines are absent with respect to EU fundamental values.

Instead, these values should be seen as a failed attempt at incomplete contracting. The notion of incomplete contracting has its roots in the field of New Institutional Economics (Hart 1988; Milgrom and Roberts 1992; Williamson 2002). Two parties, eager to enter into a relationship with each other yet wary of being duped, draw up a set of terms to guide their dealings. The contract, however, cannot capture every possible contingency; the parties will instead "write a contract that is *incomplete*, in the sense that it contains gaps or missing provisions" (Hart 1988, 123, original emphasis). In due course, this incompleteness is likely to give rise to disputes over whether the parties are honoring or breaching their agreement. A common solution is therefore to build a form of dispute settlement into the contract. Such "intervening decision-making and enforcement mechanisms" may take various forms (Doleys 2000, 536). Prominent examples within international politics are the "trustee courts" that oversee intergovernmental treaties (Stone Sweet and Brunell 2013). Regardless of their form, these mechanisms serve a twofold function: to fill in the details of the incomplete contract (*clarification*) and to determine parties' compliance performance (*enforcement*). Entities such as the World Trade Organization's Appellate Body and the European Court of Human Rights consequently aim to ensure that contractual incompleteness does not lead to a breakdown of cooperation.

European integration, too, is an exercise in incomplete contracting (Doleys 2000; Kassim and Menon 2003; Farrell and Héritier 2007; Héritier 2014). The European Commission's primary role – that of guardian of the Treaties – suggests as much. The European Court of Justice (ECJ) acts as a backstop in legislative squabbles (Tallberg 2002). For the most part, this system of dispute settlement functions effectively: in simplified terms, the Commission helps to clarify the member states' obligations and, if necessary, calls upon the Court to enforce them. These dual tasks of clarification and enforcement make cooperation at the European level workable.

Crucially, however, fundamental values fall outside the scope of this conventional method of dispute resolution. They are certainly part of a contractual arrangement; the Treaty on European Union not only lists the core values, but also commits the member states (and EU institutions) to upholding and promoting them.⁴ Member states, in other words, are expected to comply with the principles that are outlined in Article 2 TEU. The problem is that the EU struggles to clarify and enforce its own values.

The need for clarification arises from the values' inherent ambiguity. The contracting parties have loftily committed themselves to respecting *inter alia*, freedom, democracy, equality, human rights and the rule of law. Yet, what do these foundational principles entail in practice? The Treaties provide no further guidance. What is more, the values are seldom the focus of regulations or directives. Neither primary nor secondary law thus specify the member states' obligation to comply with fundamental values.

The lack of secondary law on fundamental values has an important consequence: it sidelines the Commission and the Court, who are ordinarily in charge of enforcement matters. The conventional system of compliance, however, concerns concrete laws rather than abstract principles. When taking action against a member state, the European Commission has to cite specific policies that it believes the country in question to be violating. The Court, in turn, becomes involved if the alleged transgressor fails to heed the Commission's concerns. Fundamental values can only be addressed indirectly under this system. Thus, instead of denouncing Hungary's "Stop Soros" legislation as a human rights violation, the Commission framed it as a case of non-compliance with the Asylum Procedures Directive, the Asylum Qualifications Directive and the Reception Conditions Directive (European Commission 2019). The Commission had acted similarly when the Orbán government lowered the mandatory retirement age for judges, prosecutors and notaries. It did not claim that this move compromised the rule of law; instead, invoking the Employment Equality Directive, it presented the issue as one of age-based discrimination (European Commission 2012).⁵ These examples show that the EU has a powerful apparatus for enforcing secondary law, but also that this apparatus does not directly encompass fundamental values. As a result, the ambiguity of these values remains unresolved.

Yet, there is one instrument that is tailor-made for enforcing fundamental values: the "Article 7" procedure. When "the existence of a serious and persistent breach" of fundamental values by a member state has been established, this treaty provision stipulates that the Council can strip the wrongdoer of its membership privileges, including voting rights (European Union 2012). Because legal scholars have already analyzed the mechanism in great depth (e.g. Bugarič 2016; Hillion 2016; Jakab and Kochenov 2017; Closa 2019), I will not discuss its precise workings here. What matters for my purposes is that Article 7 is generally seen as a paper tiger. Bureaucratic hurdles and political considerations have, at least until recently, prevented its application. Even when activated, the provision is unlikely to result in actual sanctions. Commission President Barroso consequently referred to Article 7 as a "nuclear option" in his 2013 State of the Union (European Commission 2013). This assessment of the instrument's unworkability is widely shared among analysts and policymakers.⁶ The upshot is a stark contrast between the EU's theoretical enforcement potential and the actual inability to act.

Only recently, as I discuss in the conclusion, have the Parliament and Commission begun to address this flaw by setting up new monitoring tools. The autocrats' breathing

room is therefore shrinking. Yet, precisely because these new measures were created at the eleventh hour, they reveal how lack of clarity and enforceability long gave Orbán and consorts free rein.

Thus, EU values constitute a flawed attempt at incomplete contracting. The agreement among member states to abide by Article 2 TEU is plagued by ambiguities. In this regard, fundamental values are no different than most other commitments made at the European level. The critical difference is that the well-developed system of enforcement, which conventionally undergirds policymaking in the EU, does not extend to the fundamental values. These core principles, in short, remain ambiguous and unenforceable.

Ambiguity and the politics of interpretation

A defining feature of ambiguity is, as Best (2012, 88) notes, “the inescapability of interpretation”. Ideally, although fundamental values may be understood in various ways, EU institutions would provide a focal interpretation around which the behaviour of member states converge (Garrett and Weingast 1993). When institutions are either unwilling or unable to do so, there remains ample space for definitional disagreement; while the sanctity of the values themselves is not open for discussion, battles may be waged over both the meaning of shared standards and their scope of application. That is to say, ambiguity paves the way for a politics of interpretation.

Within International Relations, the concept of “norm contestation” has been used to refer to such semantic disputes over shared standards (Wiener 2007; Deitelhoff and Zimmermann 2013). Norm contestation concerns “intersubjective disagreement on the norm’s content” (Jose 2018, 3). Scholars initially viewed contestation as simultaneously unavoidable and generally benign. Most critical constructivists do not see norms as static concepts, but treat them as processes or structures of meaning-in-use; the content of a norm is not fixed, but changes as actors act on the basis of their own interpretation of the norm and, subsequently, as they question divergent understandings of appropriate behaviour (Sandholtz 2008; Wiener 2009; Krook and True 2012). Norm contestation is not considered to be “normatively undesirable” (Wolff and Zimmermann 2016, 515). An inclusive dialogue on the meaning of norms is instead not only healthy from the perspective of democracy, but also enables interlocutors to arrive at a common understanding of the norm (Wiener 2018). Contestation, in short, helps to resolve ambiguity.

This optimistic reading has come in for criticism on several counts (Niemann and Schillinger 2017). Importantly, ambiguity is not simply a collective misunderstanding that can be resolved through dialogue. It also presents an opportunity that strategic actors can exploit. Several scholars, for example, have shown how the malleability of international norms fed into the War on Terror (Liese 2009; Birdsall 2016; Sanders 2016). The Bush government did not blatantly reject the anti-torture norm. It instead tried to redefine the meaning of torture and, by citing exceptional circumstances, sought to restrict the norm’s applicability. Großklaus (2015, 1254) refers to such “intentional reinterpretation of ideas [...] aimed at definitional power” as “norm appropriation”. This is an especially lucrative strategy when there is no institutional arbiter with the authority to judge and enforce compliance.

Importantly, ambiguity does not mean that anything goes. Strategic interpretations must not stretch credulity. As Hurd (2017, 52) notes, “interpretation is not blind to the

political consequences that follow from it – that is, states and legal observers know which interpretations will legitimize their preferred outcomes and which will not”. Norms are not infinitely malleable: the expectation of compliance “implies the inability to take actions for which no resources of justification exist” (Hurd 2017, 46). This explains why the Bush administration relied on advice from the Office of Legal Counsel to justify its anti-terrorist measures. It also explains why Hungarian and Polish officials dismiss criticisms of specific legal changes by arguing that other EU member states have similar laws on their books (Scheppele 2013, 561; as cited in Batory 2016). Thus, ambiguous norms are simultaneously constraining and enabling: actors must appear to respect sacrosanct norms, but underneath this façade can try to define supposedly shared standards in self-serving ways.

This strategic account of interpretive politics is of great relevance to the EU’s crisis of values. Whereas the language of democratic backsliding simply assumes that some of the youngest member states are violating some components of Article 2 TEU, I suggest that the norm resistance of their leaders is subtler. The representatives of governing parties should remain superficially committed to the fundamental values. They take care to present controversial policy initiatives as consistent with the Union’s core principles. In so doing, they look for loopholes in an incomplete contract; they reinterpret values and quibble over their scope. What they do not do, however, is question the values’ overall validity. The next section examines whether the argument holds up in Hungarian case.

Case study: the legitimization strategies of Hungary’s *Fidesz* party

A fruitful way to capture the strategic use of norm ambiguity is to analyze actors’ legitimization strategies (Saurugger 2013, 899). Legitimation strategies concern “the use of public and recognised reasons to justify a claim to an issue” (Goddard 2006, 40). Political leaders, especially in democratic societies, are not free to act as they wish. They are expected to “publicly justify policy stances before concrete audiences” (Goddard and Krebs 2018, 67). Many audiences are located domestically. Government representatives, for instance, defend their proposals on the parliament floor, at press conferences or in the national media. Increasingly, however, the same actors have to justify their behaviour in front of a foreign audience. This is, unsurprisingly, especially the case when they are accused of violating international norms. Leaders may respond to such a charge by speaking to foreign news outlets or by addressing the matter at international forums. The need to legitimate policy choices thus generates a wealth of discursive data.

The claim that political actors make strategic use of the ambiguity of international norms has three observable implications. The first concerns the norm’s constraining effect. Actors will feel compelled to defend their policy moves as consistent with international norms. They thereby reaffirm the general validity of these norms. It is not enough, however, to simply declare oneself to be norm-abiding. In a second step, actors must explain *why* their actions correspond to the expectation of appropriate behaviour. This implies that actors must put forward their own interpretation of the norm. Third, actors may respond directly to audience members’ accusations that they are norm violators. In so doing, they will contrast their own understanding of a norm with alternative conceptualizations. The discursive record should, in other words, reveal “competitive reinterpretations” of the same standard (Hurd 2005, 501). Such interpretive disagreements

may concern the meaning of core concepts, a norm's scope of application or, in the case of clashing norms, the question of precedence. All three implications run counter to the idea of unapologetic backsliding, which currently enjoys scholarly popularity.

To put the argument of interpretive politics to the test, I turn to the Hungarian case. I specifically look at the period from 29 May 2010, when Viktor Orbán began his second term as Prime Minister, to 11 September 2018. During this period, in which Fidesz governed with its satellite party, the KDNP, Orbán's successive cabinets undertook a series of far-reaching reforms that critics decried as incompatible with European values. The endpoint of the case study is marked by the most scathing of critiques: the European Parliament's adoption of the Sargentini Report on the fundamental rights situation in Hungary.

I compiled a corpus of texts in order to examine how the Hungarian government justified its policies with reference to EU values. First, I collected 36 speeches that Orbán delivered on matters related to European integration, at both domestic and international platforms (see online appendix for an overview). The Prime Minister may have discussed fundamental values in other speeches as well, but the selected texts are most likely to provide representative evidence of the government's legitimation strategies. I retrieved the English-language version of all speeches from the official website of the Hungarian government (<https://www.kormany.hu/en>).

Specifically, I carried out a close reading of all speeches with the objective of "uncovering more general patterns" of discursive legitimation (Vaara 2014, 504). In each text, I identified references to the values of Article 2 TEU. The analysis then followed the aforementioned observable implications: (1) I noted whether Orbán embraced or rejected a specific value; (2) how he interpreted it; and (3) how he responded to (implicit or explicit) accusations of noncompliance. Not each of Orbán's references to fundamental values provided information on all three factors. When taken together, however, a clear pattern emerges: the Prime Minister consistently interpreted EU values and his government's actions "in such a way that the two coincide" (Hurd 2017, 46).

The analysis below serves as a plausibility probe of the theoretical argument. It paves the way for a more systematic coding of official speeches and press releases in future studies. Nevertheless, as a robustness check, I explored how Fidesz representatives responded to their detractors during plenary debates in the European Parliament. Between 2010 and 2018, Parliament discussed seven separate reports and motions on the status of fundamental values in Hungary. These moments constituted an opportunity for the representatives of Fidesz to justify controversial policy choices. Fidesz politicians made a total of 62 speeches during these debates.⁷ MEPs' legitimation strategies were consistent with those of the Prime Minister. Given space constraints, the empirical discussion focuses on Orbán's speeches here.

The Prime Minister's speeches: Viktor Orbán as the "True European"

In April 2017, the Hungarian government launched a national consultation – pointedly titled "Let's Stop Brussels!" – in which it posed leading questions about the EU's interference in a number of policy areas (Gotev 2017). Billboards announcing that citizens had the right to know "what Europe is planning", and featuring the faces of Commission President Jean-Claude Juncker and popular bogeyman George Soros, lined the country's streets in the run-up to the European Parliament elections two years later. Initiatives such as

these suggest that Orbán has embarked on a course of unapologetic Euroscepticism. Orbán appears to wear the anti-EU badge with pride.

Yet, the Prime Minister's discourse reveals a more subtle reality. Orbán defends his hardline positions as not merely consistent with the EU's fundamental values, but as their true embodiment. In this narrative, it is progressive politicians and unelected bureaucrats who are running afoul of the principles upon which European integration rests. The narrative unfolds in three main steps. Orbán first proclaims himself to be norm compliant. His government respects and acts in accordance with fundamental values. He subsequently explains why accusations of norm violation miss the mark: Hungary's policies reflect the principle of subsidiarity, have received the seal of approval from international authorities, and are similar to practices elsewhere in the Union. Finally, Orbán presents himself as the "true" European. His policies reflect the EU's roots and are intended to strengthen the European project. The ambiguity of fundamental values thus makes it possible for a European statesman to present an array of controversial measures – ranging from a clampdown on the country's most prestigious academic institution to the construction of an anti-migrant border fence – as genuinely European in letter and spirit.

First, Orbán consistently declared his commitment to the Union's values. Democracy, in particular, suffused his speeches. Take the adoption of a new constitution – the Fundamental Law – in 2011. Boosted by an oversized parliamentary majority, Fidesz seized the opportunity to replace the old constitution with a new document that sparked widespread criticism on both procedural and substantive grounds (see Tóth 2012; Pap 2018). Critics charged that the Fundamental Law was "pushed through without any participation or even consultation" (Bogaards 2018, 1488). They also balked, among many other concerns, at the provision allowing for the "extensive use of cardinal laws", which can only be amended with a two-thirds parliamentary majority and therefore aided the government in "cementing its political preferences" (Venice Commission 2011, 6). In short, the new constitution risked "undermining democratic checks and balances" (International Federation for Human Rights 2016).

According to Orbán, however, the Fundamental Law could proudly take its place among the constitutions of other member states. It was "a modern, European, democratic constitution in nature and in political character" (Orbán 2011). In fact, the overhaul itself was a democratic exercise: Hungary was "the last among the former occupied countries" to replace its communist constitution (Orbán 2012). What is more,

the renewal and reorganization in Hungary was done on the basis of European principles and European values. We have also relied on the best practices of EU Member States and the basic documents of the European Union (Orbán 2012).

According to Budapest, and contrary to what its detractors argued, the Fundamental Law thus emanated the Union's values.

Orbán further committed himself to the democratic rulebook. When Members of the European Parliament (MEPs) accused him of authoritarian tendencies, the Prime Minister shot back:

With respect to lecturing me about democracy, I would only like to remind you that after 1990, I and the community that I lead both won and lost elections, and so allow me to tell you on

behalf of our political community that we are not in need of any lectures about the character of democracy (Orbán 2013b).

[I] am one of the few European leaders who has not gone into business after losing an election, has not taken a highly paid post on a board of directors, and has not delivered guest speeches for exorbitant sums of money. When we lost, my party and I remained in politics and accepted the role of debating from the opposition benches. We fought on, and we regained the people's trust (Orbán 2017c).

This respect for the electoral process provided no “evidence of a lack of democracy or of an autocratic regime” (Orbán 2015a). Indeed, his government's controversial use of national consultations honored democratic values (Orbán 2017b). Such questionnaires, because they are “cast in a seemingly democratic sheen” (Nietsche 2019), aid the Hungarian government in rebuking international criticism.

Furthermore, Orbán put forward his understanding of democracy as openness to dialogue and respect for a diversity of viewpoints. He denounced “the tradition of the European left” to cry wolf over the state of democracy whenever left-wing parties “are left out of government” (Orbán 2011). Disagreements, according to Orbán, reflected rather than undermined the value of democracy: “democracy is based on reasoning, and it also gives the moral basis of the European Union” (Orbán 2017b). Hungarians are a “frank and open people”, who are not afraid to question European orthodoxies (Orbán 2015b). Indeed, the “principles, treaties and rules of the European Union are not carved in stone [...] people may therefore change them at any time. This is freedom, and this is democracy” (Orbán 2015b).

This argument even extended to the moratorium on the death penalty, arguably the cornerstone of the EU's normative power (Manners 2002). In 2015, Orbán caused a stir by suggesting to reintroduce capital punishment (Traynor 2015). He rebuffed his critics by emphasizing that free speech is essential to democracy:

I do not want to return to the Middle Ages, with taboo subjects which we must not talk about. In fact, this debate is not about the death penalty, but about the issue of freedom of thought, opinion and speech (Orbán 2015b).

At the same time, Orbán (2015b) acknowledged that “the relevant rules can only be amended in harmony with the European Union”.⁸ He responded similarly to accusations of antisemitism and state-sponsored xenophobia. Orbán was convinced that his anti-migrant politics was “fully in harmony with the core values of Europe and the intentions of the founders of the European Union” (Orbán 2015b). The “European Christian democratic approach”, furthermore, “doesn't tolerate any anti-Muslim policy” (Orbán 2015c). In short, although the Hungarian leader has acquired a reputation as a Eurosceptic maverick, he actually goes to great lengths to position himself as a pro-European and norm-abiding statesman.

In a second step, Orbán explains *why* critics are wrong to label some of his government's controversial measures as norm violations. Here he relies heavily on the twin notions of sovereignty and subsidiarity (see Van Kersbergen and Verbeek 2007). The introduction of the Fundamental Law, for example, was a sovereign affair that fell wholly outside the scope of EU competences. Accordingly, “no European Prime Minister, no European government is in a position to tell Hungarians what kind of constitution they can have and what not” (Orbán 2011). Article 4(2) TEU furthermore requires the Union to

“respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government” (European Union 2012). Kelemen (2019) notes that the Hungarian Prime Minister and his autocratic peers have consequently embraced the concept of constitutional pluralism in order to legitimize their actions. Indeed, Orbán reminded MEPs that the EU “respects the constitutional identity and the national identity of member states” (Orbán 2011).

Constitutional identity also featured prominently in debates on migration. According to Orbán, Hungary did not violate fundamental values by erecting border fences or by refusing to accept mandatory migrant quotas; instead, Central European leaders “have the authority to determine the identities of our countries” (Orbán 2017d). A similar argument pertained to LGBT rights. Under the new constitution, marriage is defined as a union between a man and a woman.⁹ Orbán defended this provision to critical MEPs by invoking both his government’s wish to preserve a “4000-year-old tradition”. Given the Union’s need to respect the member states’ national identities, Orbán could “not understand why any MEP should think that our right to this tradition in Hungary could possibly be restricted” (Orbán 2013b). Such comments were invariably accompanied by a stated commitment to fundamental values.¹⁰ At the same time, however, the scope of these values is such that Hungary retains the authority to protect its constitutional identity.

The Prime Minister also found support for his policies from other member states and international institutions. I already mentioned that the drafters of the Fundamental Law “relied on the best practices of EU Member States” (Orbán 2012). Here, other countries served as inspiration to Hungary.

A different legitimization strategy was also to compare the Hungarian lawbooks to others in the Union. As Varol (2015, 173) has noted, “many incumbent officeholders who deploy stealth authoritarian practices attempt to deflect criticism by citing democratic foreign countries that have adopted the same criticised legal mechanisms”. Academic freedom is a case in point. In 2017, the Hungarian Parliament amended the Act on National Higher Education. The initiative soon became known as the “Lex CEU”, because its sole target appeared to be the Central European University, a progressive institution funded by George Soros. In simplified terms, the new law made it impossible for the university to remain in Budapest (see Enyedi 2018). This move was widely condemned. Even Manfred Weber, the Bavarian leader of the European People’s Party, of which Fidesz is a member, spoke out critically. Unimpressed, Orbán retorted: “If he looks at Bavaria’s regulations, he will see that they are stricter than Hungary’s. You are using a double standard” (Orbán 2018b). Such comparisons served to normalise Hungarian policies.

Furthermore, Orbán allayed concerns about his government’s noncompliant behaviour by citing selectively from the reports of international authorities. He told MEPs, for example, that the Venice Commission spoke favorably of the Fundamental Law:

the Venice Commission welcomes the fact that this new Constitution establishes a constitutional order based on democracy, the rule of law and the protection of fundamental rights as underlying principles. A particular effort has been made to follow closely the technique and the contents of the European Court of Human Rights and to some extent the EU Charter (Venice Commission 2011; as cited in Orbán 2011).

The Prime Minister reiterated this point two years later, while also invoking a resolution of the Parliamentary Assembly of the Council of Europe (Orbán 2013b). He similarly invoked the opinions of the European Commission to reject accusations of norm violation: “Nobody has raised any sort of legal concerns about any of the passages of the Hungarian constitution” (Orbán 2012). Whenever disagreements arose between the Commission and the Hungarian government, they were only minor; the latter, moreover, quickly made amends to ensure that the constitutional system was “fully compatible with the laws and principles of the EU” (Orbán 2014).¹¹ Orbán’s message was clear: when leading international actors thought little was amiss, the European Parliament’s examinations of the status of fundamental rights in Hungary were politically motivated. They amounted, according to Fidesz MEPs, to “show trials” and “postcolonial bullying” (European Parliament 2013).

Nevertheless, Orbán could not deny the unconventional nature of his policy agenda. Nor did he want to. In the final step of the legitimization narrative, Orbán argued that breaking with Brussels’ orthodoxies was necessary in order to *protect* and *strengthen* the European project. Orbán thereby presented himself as the true guardian of EU values.

This line of reasoning became especially apparent during the migrant crisis. While Hungary stood accused of lacking solidarity, the country’s leader argued that he was showing a *different* kind of solidarity. Hungary’s solidarity lay, first and foremost, with the EU. The following excerpt from a post-summit press conference is worth citing at length:

Those in opposition to us favouring a pro-immigration policy have repeatedly slandered our honour by arguing that Hungary is not showing solidarity when it refuses to take in migrants. I announced that from this point onwards Hungary will regard all the money and energy that we are investing in the protection of the borders to be part of that solidarity. [...] The basic reality of this is that in doing so we are not only acting in the interest of Hungary, we are not only protecting Hungary interests, but also the interests of everyone behind us and our borders – in other words, the entire European Union. We therefore demand that this be recognised as a manifestation of solidarity, especially as there are Member States which have a duty to protect their state borders, but are not doing so. They are not showing solidarity with the other Member States of the European Union, but we are. And so we expect to hear no more insulting claims that Hungary lacks solidarity (Orbán 2016).

Being tough on migrants was justified, because it enabled the EU to protect its way of life. This “is the real solidarity” (Orbán 2017a). Pro-migrant policies, on the other hand, would imperil European values. Orbán accordingly implored his fellow members of the EPP: “Do not let the leftist mess up and reconstruct Europe! And do not let them oust the soul of Europe! Do not let liberals and socialists take away Europe from the people!” (Orbán 2015c). Orbán thus marked himself out as the real defender of EU values.

This defense went beyond the issue of migration. For example, Orbán charged that left-wing and liberal politicians – touting an “aggressive secular political vision” (Orbán 2013a) – had lost sight of the principles that originally underpinned European integration. Hungary, on the other hand, was returning to the Union’s Christian roots by implementing socially conservative policies. Its government combatted the “delusion” that “Western values and institutions can be maintained without Christian moral principles” (Orbán 2013a). Orbán even quoted one of Europe’s founding fathers, Robert Schumann, in arguing that “Europe will either be Christian or it will not exist”. The “only good response

to the twenty-first century challenges facing Europe” was for the Union to reconnect to its moral foundations (Orbán 2013a). In this, Orbán assigned himself a leadership role.

In short, it would be too simple to label Orbán’s Hungary as a Eurosceptic regime with scant regard for fundamental values. The empirical analysis instead shows that Orbán takes great care to present himself as a norm-abiding and pro-European politician. He evidently feels compelled to talk the normative talk. Critics may rightly question whether Orbán also walks the normative walk, but, given the inherent ambiguity of the Union’s fundamental values, such an assessment of norm compliance is hard to make. There are, however, encouraging signs coming from Brussels. I address these in the concluding section.

Conclusion

The EU is supposedly suffering from “illiberalism within” (Pech and Scheppele 2017). The conventional analysis sees Hungary and Poland as the most brazen of offenders. With Fidesz and Law & Justice at their respective helms, these countries have begun to flaunt the EU’s fundamental values. The fear is that others may follow. As Kelemen (2019, 249) evocatively puts it, “accepting an autocratic member government in the EU is like allowing a toilet area in a swimming pool – eventually the filth will contaminate the entire pool.” The entire edifice of European integration may therefore be at risk.

This article is not intended to downplay these concerns. Deeply worrying policy changes have indeed taken place in Budapest and Warsaw in recent years. What I have tried to show, however, is that these developments are not in clear violation of EU values. Any assessment of norm (non-)compliance requires a degree of norm clarity as well as the presence of an arbiter with the authority to determine whether prescribed and actual behaviour correspond. This is where the EU falls short. Its fundamental values are not defined beyond Article 2 TEU and the only truly powerful corrective mechanism, Article 7, was, at least until recently, seen as impracticable. The upshot has been that the fundamental values remain both ambiguous and practically unenforceable.

As the case study showed, savvy politicians can exploit this situation. They can interpret ambiguous norms in self-serving ways and, consequently, claim to be “good” Europeans. Interpretive politics proved a useful method of deflecting criticism. Viktor Orbán repeatedly used the ambiguity of fundamental values to his advantage: when labeled an autocrat, Orbán cited his electoral track record and his use of national consultations; when accused of violating LGBT rights, he noted the Union’s obligation to respect Hungary’s constitutional identity; when charged with undermining the rule of law, he reminded his critics of the subsidiarity principle; and when urged to show solidarity during the migrant crisis, the Prime Minister claimed his country’s restrictive policies were an act of solidarity toward the other member states. Orbán consistently reaffirmed the fundamental values’ general validity. He simply twisted their meaning as he saw fit. Contrary to the common descriptions of Hungary as the bugbear of Brussels, Orbán, enabled by the plasticity of EU values, styles himself as a pro-European statesman who is ready to steer the Union back to its moral roots.

This narrative has long served Orbán *et al.* well. However, EU institutions have started to address both the fundamental values’ ambiguity and unenforceability. Initiatives such as the EU Justice Scoreboard and the Commission’s Rule of Law Framework have begun to put some flesh on Article 2’s bare bones. The European Parliament (2016) is pushing for

the creation of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights. MEPs even triggered Article 7's sanctions procedure against Hungary in 2018.¹² A year earlier, the Commission had done the same with respect to Poland. The EPP, after years of having protected its most impudent member, took the unparalleled step of suspending Fidesz in March 2019 over its failure to respect European values (European People's Party 2019). It also created an evaluation committee to assess Fidesz's compliance. While commentators are rightfully skeptical about the ability of these initiatives to stem the authoritarian tide (Pech and Scheppele 2017; Closa 2019; Hall 2019), they may limit the interpretive wiggle room that politicians have. As definitions, indicators and benchmarks proliferate, fundamental values become less abstract. And as member states are monitored more frequently, whether by panels of experts or judges, it becomes easier to hold governments accountable. This might be our best hope for weathering the crisis of European values.

Notes

1. Since 2010, Fidesz has governed in an alliance with the Christian Democratic People's Party (KDNP).
2. However, as Cianetti, Dawson, and Hanley (2018) note, Hungary and Poland should not be treated as paradigmatic of Central and Eastern Europe.
3. Also see Müller (2014).
4. See Articles 3 and 7 TEU.
5. After the Court ruled in favor of the Commission, the Hungarian government brought its legislation in line with EU law, albeit without actually reinstating most judges. As Müller (2015, 148) notes, "despite its nominal success, Europe appeared impotent in getting at the real issue, which was political and had nothing to do with the discrimination of individuals".
6. But see Kochenov (2017) and Scheppele (2018).
7. This tally includes so-called "blue-card questions" that MEPs can submit to their peers.
8. Also see Orbán (2013b).
9. The Fundamental Law also lacks a provision that explicitly prohibits discrimination on the basis of homosexuality. Such discrimination, however, falls under the residual category of "any other status".
10. Concerning LGBT rights, Orbán (2013b) assured that "the Hungarian constitution is not against anybody". The Prime Minister also repeatedly pledged that Hungary would "help those who need help" during the migrant crisis, while reiterating the right to take restrictive measures (Orbán 2018a).
11. Orbán referred to this strategy as his "peacock dance": "making cosmetic changes in reaction to criticism from Brussels — but ultimately persisting with the overall project of centralizing all power in his hands" (Müller 2017).
12. The outcome of this procedure was not yet known at the time of writing.

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