Two-Thirds Majority Is Essential but Not Enough

EU Law, Constitutional Identity, and Procedural Legitimacy in Hungary's Reconstruction

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We can start now rebuilding our democracy and constitutionalism. TISZA Party, led by Péter Magyar, secured a constitutional majority on 12 April 2026. This broad democratic authorization allows for the creation of a new constitution, but it will – hopefully – take time, a lot of effort, and careful consideration. Until then, we need to function within the existing constitutional structure, with a very useful constitutional majority, allowing a robust regime-change legislation, including constitutional amendments. A constitutional majority provides an exceptional form of democratic authorization. Yet, especially in reconstruction contexts, it is normatively underdetermined: it enables transformation but does not by itself determine how that transformation should be carried out. Without additional constraints, it risks reproducing the very patterns of concentrated and exclusionary lawmaking that characterized the previous regime. For this reason, a two-thirds majority is essential, but not enough.

Until a new constitution is adopted, one way to pursue constitutional and democratic reconstruction in Hungary is arguably through a dual strategy: the adoption of reconstructing pieces of legislation, including constitutional amendments, through procedurally demanding lawmaking processes capable of generating enhanced legitimacy and an EU-friendly reinterpretation of constitutional identity that accommodates the primacy of EU law. The first underscores the constitutional majority's democratic commitment; the second more readily supports reintegration into European constitutional discourse after a period of detachment; and both serve as tools and constraints and can be employed together or separately. This interpretation and the use of the Fundamental Law should not be understood as a form of constitutional whitewashing. It does not make the Fundamental Law less illiberal overall. What is offered here is a pragmatic response to democratic concerns until a full constitutional replacement is feasible. Let's start with a brief discussion of this issue before turning to questions of heightened democratic legitimacy and structural challenges.

EU-friendly interpretation of the Fundamental Law

A central starting point is that the Fundamental Law itself contains the constitutional resources for an EU-friendly reading of Hungary's legal order. Its provisions on Hungary's participation in the European Union authorize the joint exercise of certain constitutional competences through EU institutions and recognize that EU law may lay down generally binding rules of conduct (Article Q). At the same time, the Fundamental Law affirms Hungary's obligation to ensure conformity with international law (Article Q) and defines the domestic hierarchy of legal acts without incorporating EU law into that hierarchy (Article T). These provisions make it possible to argue that EU law occupies a distinct place in the Hungarian legal system and may prevail where conflict arises. Critics might say that Article R (2) does not include the term "EU law", when it establishes that "The Fundamental Law and the laws shall be binding on everyone", therefore, EU law shall not be binding on everyone. Nevertheless, the careful reading of this paragraph, together with Article T), expresses that it is the Fundamental Law itself which establishes the binding nature of EU law. From this perspective, the prevalence of EU law does not follow from a norm external to the constitution, but from the way the Fundamental Law itself situates Hungary's participation in the European legal order and the EU law within the domestic legal system. This

reading is compatible with the Constitutional Court's interpretation of the matter in 2019.

It is a commonplace in the literature on Hungary that the interpretation rules of the Fundamental Law (Article R) and its constitutional identity (Article E, National Avowal) were the cornerstones of entrenching autocratic and illiberal rule. Nevertheless, recent scholarship emphasizes the dynamic character of constitutional identity and how it can be mobilized through interpretation. The question, therefore, is whether the meaning of constitutional identity – read in light of the constitutional text and the Constitutional Court's jurisprudence – can also support a non-abusive or non-illiberal interpretation. If Hungary's constitutional identity is interpreted in a non-abusive manner, taking into account the EU clause, Hungary's international obligations, and the historical and positive elements referenced in the National Avowal, as required by Article R(3), it can serve as a supporting argument for the primacy of EU law. On this interpretation, EU membership becomes a genuine constitutive element of constitutional identity, rather than a mere ornament or argument against it, which is itself what EU membership and the CJEU require.

Why not simply get rid of the provisions of constitutional identity? First, because they have become a constituent part of the Hungarian constitutional system and also the European constitutional discourse. Eliminating it from the text will not delete it from existence. Second, the approach advanced in this piece suggests that constitutional identity, as a dynamic and interpretive construct, can be mobilized to support Hungary's reintegration into the European constitutional space.

With this interpretation, the explanatory memorandum accompanying any regime-change legislation, including constitutional amendments, could lend such laws greater constitutional legitimacy. Now, the question is how to enhance democratic legitimacy as well, to avoid the accusation of autocratic legalism.

Procedural legitimacy and reconstruction

Even if dismantling entrenched illiberal structures is legally possible, reconstruction efforts inevitably raise rule-of-law concerns. Measures adopted to restore democratic institutions may themselves appear to challenge legality, legal certainty, or institutional stability. In this situation, the legitimacy of reconstruction becomes inseparable from the quality of the lawmaking process. This is what the Venice Commission also recognized in its Updated Rule of Law Checklist.

Over the past decade, many of Hungary's most consequential legal changes were adopted through accelerated legislative procedures that limited parliamentary debate, excluded meaningful consultation, and reduced transparency. European institutions and scholars have repeatedly criticized these practices for undermining democratic lawmaking and overall weakening the rule of law.

Democratic reconstruction, therefore, requires not only substantive reform but also a transformation of the legislative process itself. In reconstruction contexts, adopting laws through participatory, transparent, and evidence-based legislative procedures, with heightened expectations for public justification and parliamentary deliberation, can generate ex ante legitimacy for potentially contested reforms. In the case of a constitutional majority, such a process can elevate and further strengthen this legitimacy. Reforming the lawmaking process, in both design and practice, is legally possible and politically desirable, even if it may not seem to be the highest priority. Most constitutional systems, including the Hungarian, already contain procedural frameworks that can be strengthened or reactivated. Supranational and international standards are in place, even if scattered, which – as mentioned – already guide rule-of-law-consistent reconstruction efforts. Normative requirements based on constitutionalism and various theories, such as the militant rule of law, the democracy-friendly theory of the rule of law, and rule deviation, are available to support this move toward a potential constitutional interpretation of how the quality of the lawmaking process can be reconsidered in the context of reconstruction.

The procedural integrity of lawmaking thus functions as an additional safeguard for reconstruction

reforms, strengthening and disciplining the exercise of the constitutional majority. It ensures that attempts to dismantle illiberal structures do not reproduce the procedural and democratic deficiencies through which those structures were originally established. Instead, it deepens democratic authorization and legitimacy by grounding the process in the principles of the rule of law, democracy, and human rights.

Key veto players as a structural uncertainty

The effectiveness of this dual strategy, however, is conditioned by institutional constraints that cannot be ignored. Most importantly, it relies, at the end of the day, on the captured Constitutional Court and the loyalist President, who must promulgate the laws.

Whether the Constitutional Court adopts such reasoning, of course, remains uncertain. It could continue to rely on its doctrines of interference in the legislative process on procedural grounds, or on the illiberal reading of constitutional identity. In such cases, it may feel compelled to strike down reconstruction legislation when it appears to conflict with rule-of-law principles or constitutional identity, even if such decisions ultimately hinder democratic reconstruction. In the case of the Hungarian Court, given its composition, it might even be a matter of meeting political expectations.

Nevertheless, judicial behavior in such environments is not entirely predictable. Opportunism, institutional self-preservation, and the prestige associated with serving as a constitutional court justice may influence judicial conduct. The Hungarian Constitutional Court's own jurisprudence illustrates this ambiguity. For example, during the COVID-19 pandemic, the Court distanced itself from the government by refraining from fully endorsing restrictions on freedom of expression. Instead, it formulated constitutional requirements governing the application of the relevant legislation, thereby limiting its enforceability.

Similarly, even constitutional identity – as interpreted in decision 22/2016 (XII. 5) and 32/2021. (XII. 20.), which is often invoked in constitutional discourse with illiberal implications – does not necessarily have to remain confined to that interpretation. These decisions still allow EU- and international-law-consistent interpretations, which could leave room for the new reconstruction-oriented governments to justify the direction of reconstruction laws through public justification, emphasizing the primacy of EU law (as presented above), and for the Court to accept those arguments.

Yet, judicial responses remain uncertain. But uncertainty does not necessarily imply impossibility. Besides, this uncertainty makes the legitimacy of the lawmaking process even more important. Political decision-makers and other actors involved in the legislative process – including NGOs, human rights institutions, and the broader public – play a crucial role in ensuring that reconstruction reforms are adopted through procedurally legitimate processes grounded in demanding rule-of-law principles. This broad participation has democratic and political leverage. Moreover, the EU institutions will probably appreciate it as well considering its rule of law dimension. Finally, this participation may prove relevant when key constitutional actors, including the President, decide on promulgation or on a political or constitutional veto.

Péter Magyar, in his victory speech, called for the resignation of key constitutional actors, such as the President of the Republic, the presidents of the Constitutional Court and the Curia (supreme court), and the National Judicial Office. They might or might not do so. Nevertheless, a constitutional majority – either through a constitutional amendment or an ordinary piece of legislation – can be used to remove them or, with the exception of the President, reorganize their structure in a way that reduces their internal and external power and increases the independence of the renewed or restructured body. Whatever the choice, for the sake of constitutional and democratic reconstruction and in light of the responsible use of the highest level of voter authorization in Hungarian history, procedural legitimacy needs to go beyond mere reference to a two-thirds majority. It is especially true if the removal of these key veto players is planned to be effected by a constitutional amendment, which could potentially run counter to certain rule of law princi-

ples, such as legal certainty, legitimate expectations, and, in the case of the apex courts, paradoxically, judicial independence.

Constitutional and democratic reconstruction in Hungary will, for a while, inevitably operate under conditions of legal continuity and institutional constraints. A two-thirds majority creates the possibility of change, but it does not resolve the legitimacy dilemmas that such change entails. By combining an EU-consistent interpretation of the constitutional framework with a procedurally demanding approach to lawmaking, reconstruction can be anchored not only in electoral authorization but also in the principles of the rule of law, democracy, and human rights. In this sense, what matters is not only whether change is possible, but how it is carried out.

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