The Case for Constitutional Disobedience

Political and Legal Considerations in Light of Hungary's Constitutional Moment

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With Péter Magyar's landslide victory in the Hungarian parliamentary elections in April 2026, hopes of a return to democracy and the rule of law have rarely been as high as now. Magyar's Tisza party is set to follow a 16-year reign by the Fidesz party, which considerably eroded fundamental constitutional values. The recent electoral victory thus has the potential to turn into a constitutional moment for Hungary. Yet this potential is overshadowed by a profound constitutional dilemma: Hungary's current constitutional framework, shaped by Fidesz, contains mechanisms that may obstruct meaningful reform. Key institutions, like the constitutional court, are staffed with regime loyalists, and constitutional rules could prevent democratic rebuilding instead of facilitating it.

This raises a pressing question: Is it justified to disobey the constitution in order to rebuild democracy and the rule of law? I argue that constitutional disobedience may not only be justified, but is legally required under certain conditions. In fact, both genuine fidelity to substantive constitutional values and Hungary's membership in the EU support a legal duty to disobey the constitution in favour of democratic rebuilding.

The paradox of an anti-constitutionalist constitution

Hungary's current constitutional situation exhibits a problematic constitutional paradox: the constitution, which aims to establish and uphold values like democracy and the rule of law, is abused to undermine precisely those values. The current Hungarian constitution, for example, restricts minority rights, erodes the separation of powers, and entrenches the power of the ruling party. The constitution served as a basis for a vast number of legal reforms, which ultimately resulted in a legal system in which democratic erosion was masked by formal legality. Requirements for legislative supermajorities, changes in appointment terms for public officials, as well as the capture of courts jointly ensured that even an electoral defeat does not necessarily lead to a change of governing power.

In such a context, strict obedience of the constitution does not preserve democracy – instead, it perpetuates democratic erosion. The Hungarian constitutional dilemma is therefore characterised by colliding legal duties: the duty of formal fidelity to the constitution clashes with the duty to re-establish and uphold constitutional values, particularly democracy and the rule of law. This raises the question whether the duty of strict constitutional obedience can be replaced with a duty of constitutional disobedience if it favours substantive constitutional values. Initially, a duty to disobey can be construed from multiple points of departure. In the following, I investigate a political and a legal justification for constitutional disobedience.

The political case for constitutional disobedience

The political case for constitutional disobedience rests on the premise that the constitution is an expression of the will of the people. Thus understood, constitutions are not self-justifying instruments but are instead instruments of democratic self-government. However, when a constitution erodes its own democratic foundation, the duty to obey it is weakened.

Democracy essentially expresses the idea of a people's self-government. The current Hungarian constitution clashes with this idea in two senses: first, the constitution was essentially enacted by Fidesz without the participation of opposition parties. This raised substantiated doubts about the constitution's democratic credentials. For a constitution created without regard for the plurality of existing societal

values can hardly be said to reflect the will of the people as a whole. Second, the constitution notably undermines democratic values by entrenching government power and considerably weakening the separation of powers, which enabled the government to rule essentially unrestrained. Moreover, the constitution restricts fundamental rights. Hence, the constitutional text itself, which already rests on a shaky democratic basis, further facilitates the erosion of the democratic infrastructure and democratic values. When the constitution actively undermines its own aims, disobedience is politically justified.

Another political argument for constitutional disobedience can be construed from the electoral results. The act of voting is not just the exercise of a political right, but an act that carries normative weight. The overwhelming electoral victory of the Tisza party, which promised constitutional change, can be interpreted as a clear democratic mandate which relies on a renewed expression of the people's will. When the existing constitutional framework prevents the realisation of the expressed will of the people, disobeying that framework is politically justified. This does not mean that politics precede the law in general. However, in exceptional cases, it means that the democratically expressed will of the people can override a constitution with weak democratic credentials.

The legal case for constitutional disobedience

While a political case for constitutional disobedience can be made, this approach is subject to limitations. It is difficult to frame such a political duty in legal terms. Appeals to the will of the people do not contain concrete standards according to which law-applying institutions can make decisions. Hence, the political justification, while compelling, cannot carry the sole argumentative burden for constitutional disobedience. Instead, the case for constitutional disobedience must be grounded in the law itself. In fact, it is possible to construe, based on the current Hungarian legal system, a legal duty to disobey the constitution in order to rebuild democracy. This duty relies, on the one hand, on Hungarian constitutional law and, on the other hand, on Hungary's membership in the EU.

Regarding the first legal pathway, Hungary's current constitution – although enacted as an instrument to mask authoritarian efforts as constitutional endeavours – contains express commitments to the values of democracy and the rule of law. These values need not be hollow phrases devoid of actual meaning. When they are taken seriously, substantive fidelity to the constitution requires that constitutional provisions undermining these values must be actively disobeyed. When constitutional rules undermine the separation of powers, prevent democratically legitimate governance, and restrict fundamental rights, which are closely linked to a substantive understanding of democracy, a strict interpretation of the constitution would paradoxically undermine the commitment to democracy and the rule of law. Hence, constitutional disobedience is not only justified, but constitutionally necessary to enforce substantive constitutional values.

The second legal pathway to constitutional disobedience relies on Hungary's membership in the EU. The new government will not exist in a legal vacuum. Rather, it will operate within the framework of EU law. Within this framework exists a duty to interpret national legal provisions, including those of constitutional law, consistently with EU law. When this is not possible, national law must be disapplied. This obligation is especially relevant in light of Article 2 TEU, which enshrines democracy and the rule of law as fundamental EU values. The recent decision in *European Commission v Poland* (C-448/23) illustrates especially well that Article 2 TEU does not just contain political commitments, but legally enforceable values that create tangible legal obligations for EU Member States. Hence, a national constitution which actively erodes democracy and the rule of law directly clashes with obligations under EU law. Consequently, the duty of EU-consistent interpretation requires that constitutional rules which obstruct the values of Article 2 TEU be set aside.

The foregoing shows that Hungarian constitutional law and EU law mutually reinforce each other in creating a legal duty to disobey constitutional provisions which undermine democracy and the rule of law.

In this case, constitutional disobedience is only formally against the law. On the substantive level, constitutional disobedience expresses fidelity to a legal commitment that is both grounded in the national constitution and EU law. This argument notably points toward a preference for substantive constitutional governance over strict, value-neutral adherence to the constitutional text.

Conclusion: law, not politics

Hungary's constitutional moment forces us to address uncomfortable questions about the limits of constitutional obedience. When constitutional infrastructure is eroded and constitutional values are undermined, constitutional disobedience constitutes a powerful counter-instrument. Case in point, in the process of rebuilding Hungarian democracy, Tisza can disobey constitutional provisions which go against express constitutional values. This is not just a political possibility, but a legal necessity grounded in the constitution itself and EU law. This dual legal basis not only normatively strengthens the duty but simultaneously offers a safeguard against the potential problem of selective compliance: of course, if constitutional disobedience can be legally justified, the question arises what prevents selective disobedience for self-serving motives. The answer lies in the external constraint of EU law: disobedience is not only commanded by Hungarian constitutional law, but it is also subject to supranational review by the CJEU. This prevents selectivity.

The Hungarian situation therefore shows that, under certain conditions, substantive constitutional governance precedes strict constitutional formalism by requiring constitutional disobedience. When the practice is not framed as a political possibility but as a legal necessity, it is possible to move from abstract debates to tangible, enforceable standards. For political justifications for constitutional disobedience, while perhaps rhetorically powerful, are difficult to operationalise in institutional terms. A legal duty, in turn, enables national authorities to navigate the complex field of democratic rebuilding.

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