# Blaming the People is not a Good Starting Point

A reflection on Prof. Weiler's editorial

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A few days ago a very thought provoking article written by Prof. J. H. H. Weiler was published on ICONnect blog. I very much agree with the core of his argument that we need to pay more attention to the popular support enjoyed by the Orbán government and we cannot blame everything and anything on him alone. However, there are several points in his argumentation which I would like to address.

## The myth of Orbán's widespread popular support

Prof. Weiler repeats several times that the Orbán government was voted into power and has been reelected twice by a significant majority of the Hungarian people. If we look at the voter turnout of the previous general elections we can see that 64,2% of the electorate (46,6% in the second round) went to the ballot boxes in 2010, this figure dropped to 61,2 % in 2014 and four years later it went up to 69,5% (the second round was abolished after 2010, making it more difficult for the opposition parties to join forces).

More important is the gap between the results of the popular vote and the number of parliamentary seats won by Fidesz. The support of 52,73% of those who cast a vote was enough to yield a two-thirds majority in the National Assembly in 2010. The 2014 elections showed that a rigged electoral system can secure a qualified parliamentary majority for the governing parties with only 44,87% of the popular vote in their pocket. And in 2018 Orbán's party yet again returned to power with two-thirds of the mandates despite that fact that just 49,27% of the voters supported Fidesz.

So, in sheer numbers the 2018 elections looked like this: 8 312 264 Hungarians had the franchise, 5 732 283 people cast a valid vote and 2 824 551 voters supported Fidesz (49,24% of the popular vote and 33,9% of the whole electorate). It is true that due to their electoral system the governments of well-functioning democracies do not necessarily enjoy a stronger popular support either. But my point is that looking exclusively at the number of seats in the parliament does not tell the full story about the popular support of the Orbán regime.

## The expression of the popular will

Prof. Weiler argues that the Hungarian parliament „is a more or less accurate and true reflection of the popular will" and he makes a very brief reference to the fact that the "the information and deliberative processes have been perverted". Let me elaborate on that a little bit. Since 2011, Orbán's governing majority has systematically re-regulated every single aspect of the electoral system to create a tilted electoral playing field. The numerous changes can be summarized in the following trends: (i) enhancing the majoritarian character of the system, (ii) favoring the stronger parties at the expense of the smaller ones (including a weird system of 'winner compensation', (iii) dividing the opposition by legislative measures and making their cooperation more difficult, (iv) guaranteeing the dominance of the governing majority in the media, (v) ensuring the political loyalty of the electoral supervisory organs and (vi) making the effective enforcement of the electoral rules complicated.

In addition, the electoral game is played in a media environment which is far from being free. The 2018 ODIHR report summarized very well the campaign tactics employed by the governing coalition such as the exclusion of paid political ads from public TV channels, the biased coverage of candidates in the public media, the lack of distinction between government communication and the campaign of the govern-

ing parties (as candidate organizations), the shrinking possibilities for opposition parties to reach out to the voters and so on. The report shows very clearly that the 2018 elections were free but not fair.

Just a few weeks ago, Hungary's largest online news portal, Index, was brought to its knees. (N.B. in 2016 Hungary's largest opposition newspaper, Népszabadság, was forced to close down as well.) Everybody suspects government oligarchs behind the scenes. And the efforts to completely undermine media freedom do not face any serious challenges. For example, the Hungarian Constitutional Court has recently concluded that the Executive's decision declaring the acquisition of certain media companies by the government controlled Central European Press and Media Foundation a matter of national strategic importance was perfectly compatible with the constitution.

Long story short, the Hungarian Parliament is not an accurate and true reflection of the popular will. I completely agree with Prof. Weiler that we should not fall into the trap of "deresponsiblizing" the People, the nation, the electorate. But we should equally reject the assumption that in Hungary, where the electoral system is rigged, and the media is only partly free, the Fidesz government expresses the will of the vast majority of the electorate. The "consent" of the God-given people is still the most powerful legitimizing force, so Orbán uses seemingly democratic elections to cement his power but not to allow people to express their free will.

## Arbitrariness vs cruelty

Prof. Weiler warns us not to call Orbán a dictator because he is nothing like Franco, Pol Pot or Ceaușescu. The Orbán regime is definitely not as cruel as the dictatorships of the 20th century were. But it is primarily because he does not need the classic toolkit of dictatorial rule to stay in power and execute his will. Much more subtle legislative measures, administrative tricks and political tactics can yield very similar results.

The opposite of the Rule of Law is arbitrariness, not cruelty. Cruelty is only the most visible sign of arbitrariness. The essential characteristic of the Orbán regime is the arbitrary exercise of power. If we enjoy a certain degree of freedom in this country, it is not because the political power is limited or controlled, but only because Orbán still shows some mercy. But make no mistake. Scholars are regularly targeted by government mouthpieces, the Academy of Sciences has recently been stripped of its research centers, universities are chased away from the country or deprived of their autonomy, administrative proceedings are launched against opposition parties, independent news portals can be dismantled from one day to the next, and so on. And these are just a few examples from the last couple of months having nothing to do with the extraordinary powers obtained by the government during the pandemic.

## Blaming the people

I fully support Prof. Weiler's idea of paying more attention to the will of the people, focusing more on the channels of democratic will-formation and breathing new life into the honorable traditions of republican democracy. However, I would like to address several (explicit and implicit) points of Prof. Weiler's argumentation leading up to his conclusion.

Firstly, we need to make a clear difference between the observation that the Orbán government has sufficient electoral support to stay in power and the argument that the people are responsible for keeping him and his party in office. The first is a simple statement of fact which is undeniable – although the rigged electoral system should not be forgotten –, but the second is a value judgment which, I think, can be problematic for several reasons.

Firstly, ever since the fall of the socialist dictatorship in Hungary the political, economic, and cultural elite has monopolized the political decision-making. Apart from a few rather symbolic gestures (typically in the form of a referendum), the Hungarian citizens have been relegated to the simple role of voting machines called to the ballot boxes every four years. Citizens have always had very limited access to the institutionalized channels of democratic will-formation. How can we hold the very same people who have been constantly excluded from the political sphere respon-

sible for not exercising their democratic rights more actively and responsibly?

Secondly, I do not think it is fair to have high expectations of the people, especially if the country's elite is unwilling to set a good example. Yes, there are intellectuals and public figures who criticize the government very harshly. But the political, economic, and cultural elite has so far failed to produce any form of coordinated, effective resistance to the Orbán regime that people could join or support. It is not by chance that András Jakab wrote an article a few weaks ago about the moral dilemmas of teaching constitutional law in an autocratizing country (Hungary.) Even some lawyers – well educated people of the upper class – are afraid to speak up or simply chose to ignore the problems. Why do we expect ordinary people living in much less privileged circumstances to win those battles that the elite is simply too lazy to fight?

Thirdly, in a multiparty democracy it is primarily the responsibility of the political parties to offer the electorate a viable political program and convince the people that they are ready and able to govern. Opposition parties achieved significant success at the 2019 local elections. Hope was in the air because it seemed to be the beginning of a long chain of positive changes. But it turned out to be a delusion. The opposition parties have not gained much strength and their cooperation has not become more coordinated.

People cannot oust the Fidesz government from power without voting a new political party (or coalition) into office at the same time. Not to mention that many significant reforms would require a qualified parliamentary majority. We cannot hold the people responsible for the failure of the opposition parties to do their homework. Empirical research indicates that the majority of the Hungarian population is actually receptible to social-democratic values, the evaluation of the Orbán government's performance is not so positive and euroscepticism is not widespread. So, it would not be impossible for a strong coalition of the opposition parties to win the elections (despite every legal and administrative hurdle). But expecting the vast majority of the electors to rebel against the Orbán regime for such abstract values as separation of powers and the rule of law would be a clear sign of naivety.

Finally, let me mention a rather practical reason why blaming the people can be a dangerous strategy. Every time the Hungarian government is criticized by foreign and international stakeholders, Orbán pretends that it is the nation which is under attack. In addition, scholars and NGOs are already labelled as „foreign agents" and „Soros mercenaries" conspiring against the country. In these circumstances one has to choose her words very carefully.

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