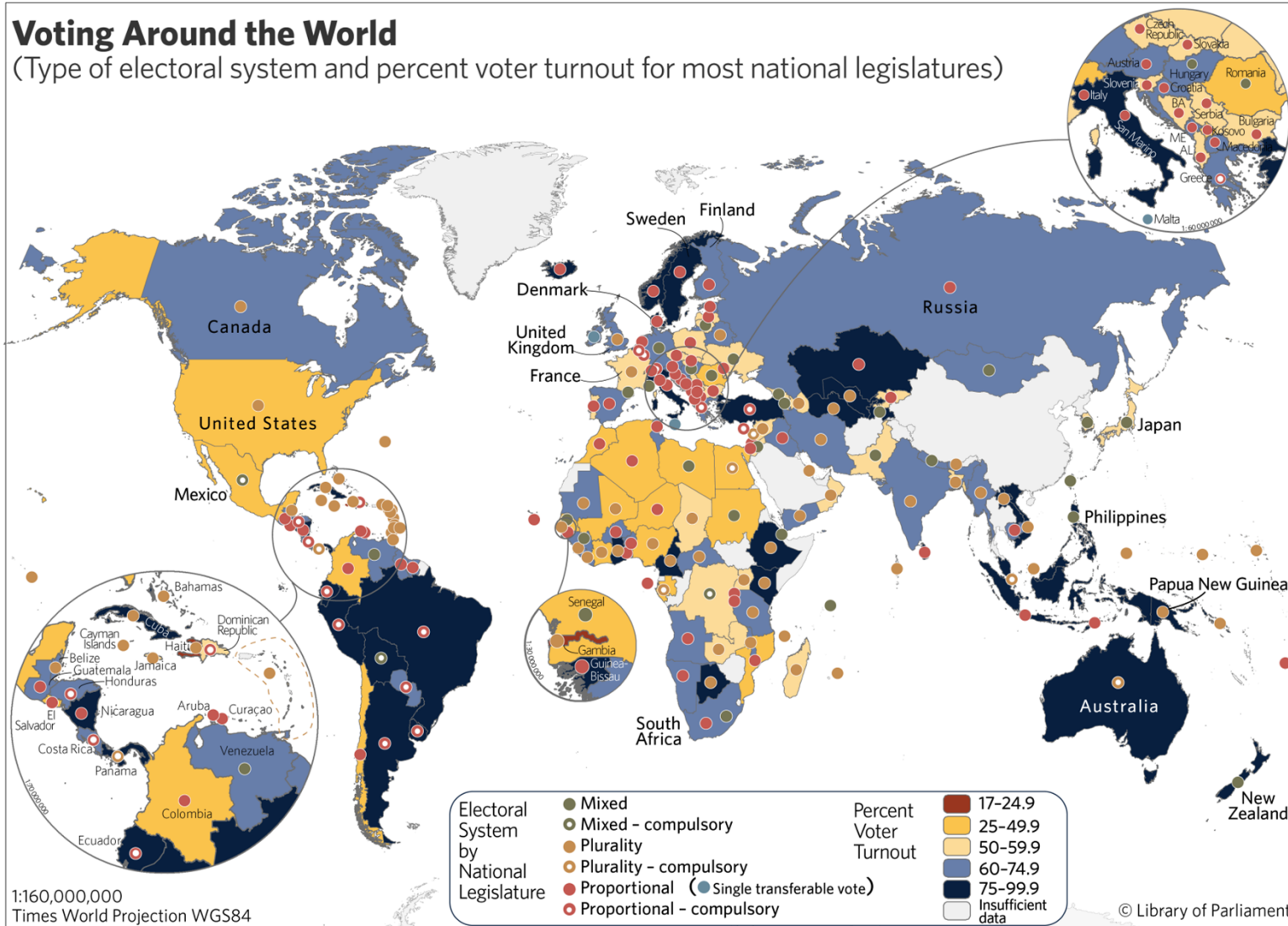


Kim Lane Scheppele, Princeton University

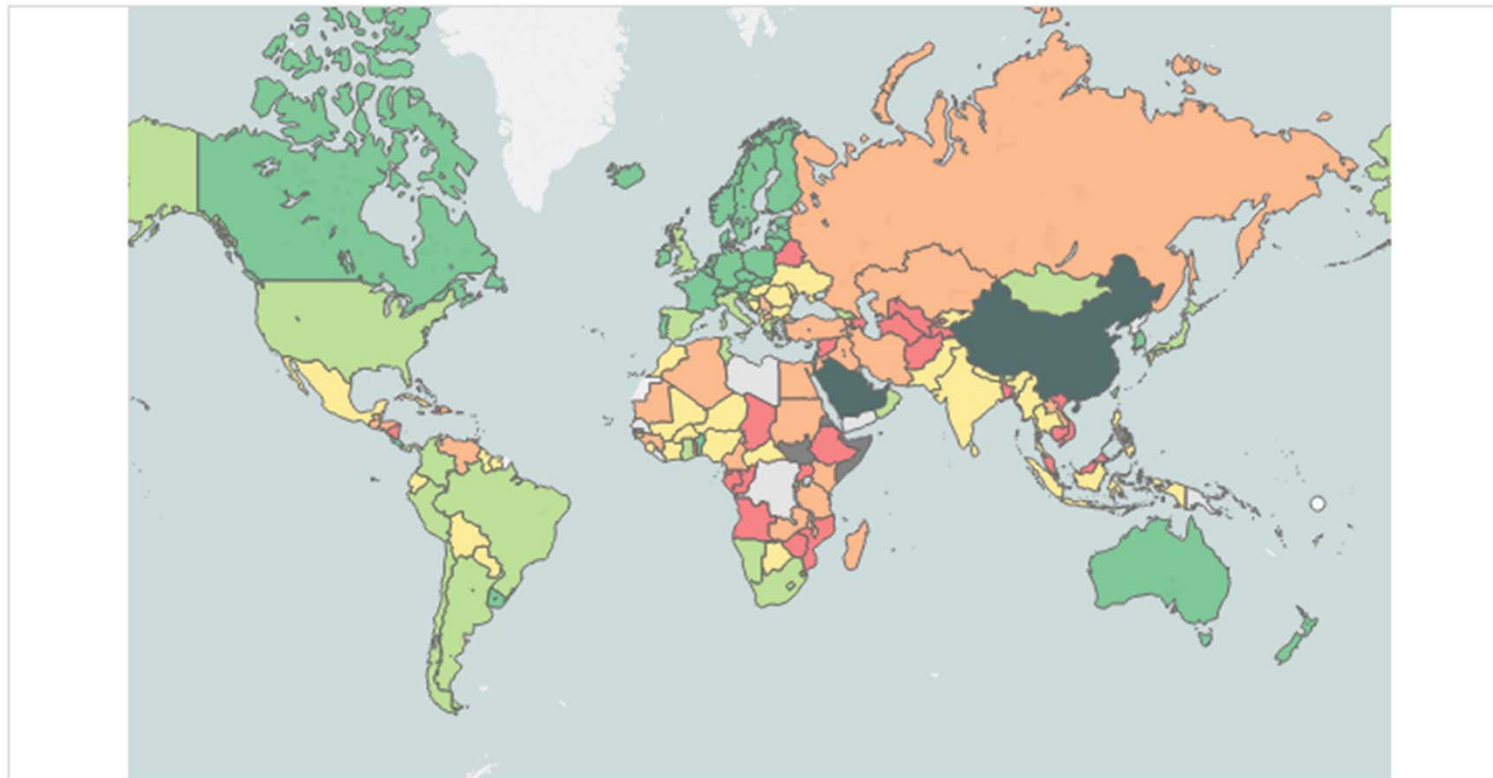
Election Law for Autocrats

Types of electoral systems world-wide

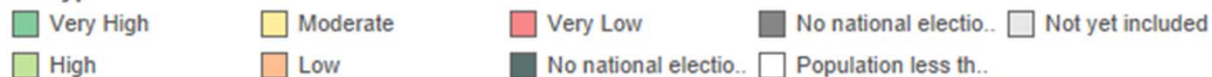


Election integrity worldwide

PERCEPTIONS OF ELECTORAL INTEGRITY BY COUNTRY (2012-mid-2017)



PEI type



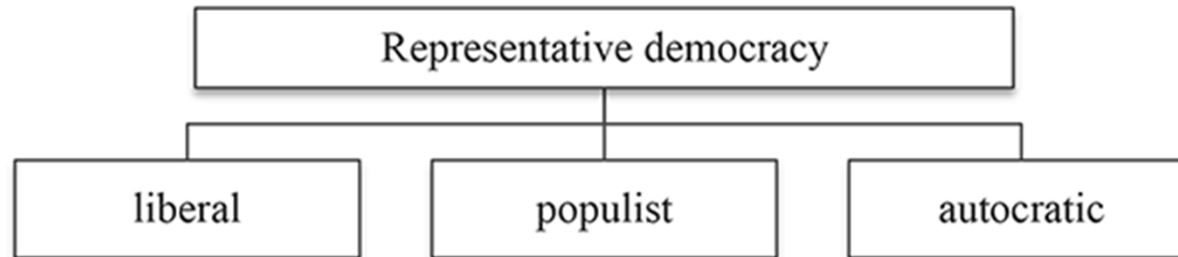
Only a few countries in the world fail to hold elections –

but few countries in the world hold high quality elections.

Holding elections is not the same as having a democracy.

From: <https://www.electoralintegrityproject.com/the-year-in-elections-2016-2017/>

Not all governments with elections are alike



Liberal leaders:

- Respect checks on power – know executive action must be limited by law.
- Accept rotation of power – office holding is temporary.
- Take responsibility to protect rights, particularly rights of minorities.

Populist leaders:

- Rule in personalized fashion without intermediary institutions.
- Put election results above legality – elections justify major legal (and perhaps illegal) change.
- Rule in the name of a unified “people;” elevates majority rights above minority rights.

Autocratic leaders:

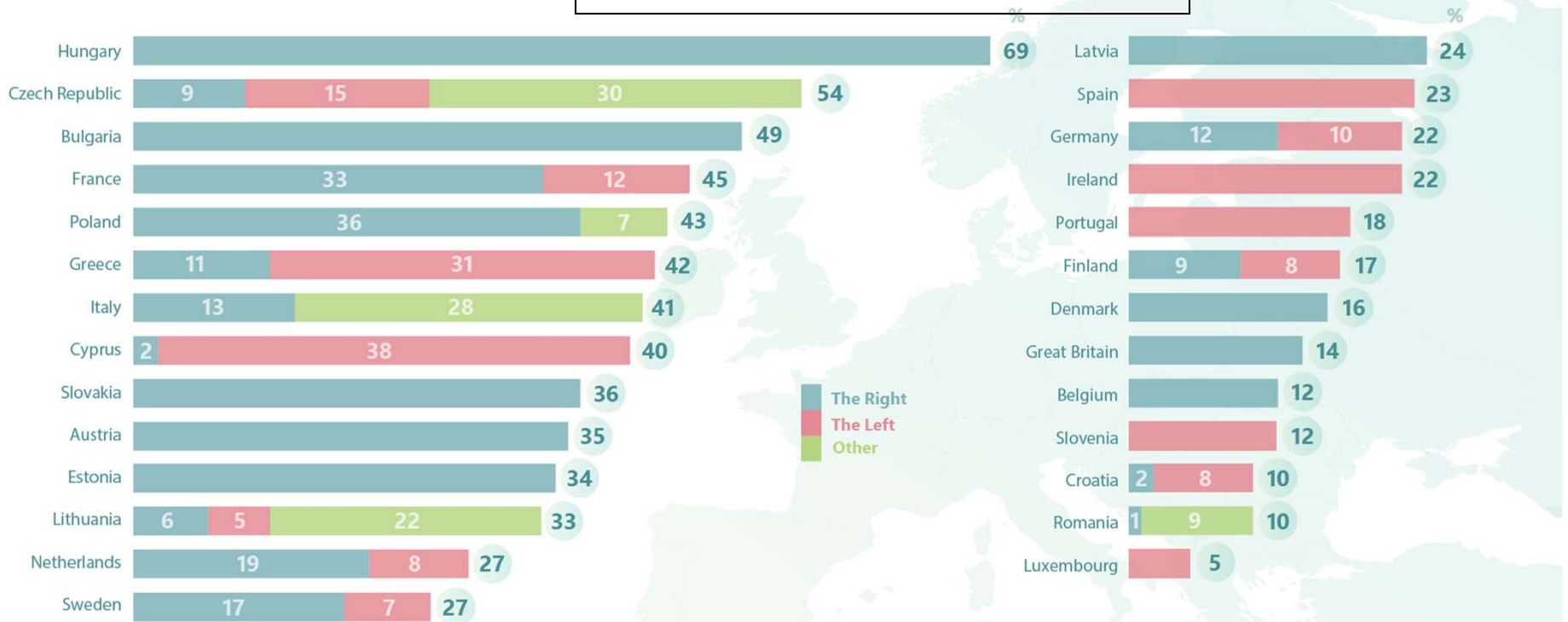
- Lock in power so that it is neither limited nor rotated.
- Eliminate pluralism in media, civil society and government.
- Hold elections as certification of their own status, not an open choice by an electorate.

Populism creates a risk of autocracy – but what tips it over the edge?

Populism in the European Union

Today, I'll focus on Hungary, the most populist country in the EU, which has already become autocratic.

POPULISTS' SUPPORT LEVEL | DECEMBER 2016
SURVEY OF POTENTIAL VOTERS



Drive Insight

Source: The Progressive Post Magazine
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The autocrat's playbook



How to consolidate power and eliminate challenges to one's rule:

- Win an election and use that victory to legitimate everything that comes next.
- Attack constitutional checks and balances by attacking restraints on executive power.
- Curb independence of judiciary, media and civil society.
- Put loyalists in charge of the repressive institutions (military, security services, police and intelligence services).
- De-legitimize the political opposition.
- **Change the electoral laws.**

How populists become autocrats through election law reform



One example of a populist turned autocrat: Viktor Orbán in Hungary.

In 2010, Orbán's party (**Fidesz**) won 2/3rds of the seats in the Hungarian Parliament "fair and square" under the pre-existing election rules – which gave extra seats to the party gaining the largest share of the vote.

By the next election in 2014, Orbán won 2/3rds of the seats again, even though he lost nearly 25% of his base.

He did so by rigging the rules to maintain his constitutional majority.

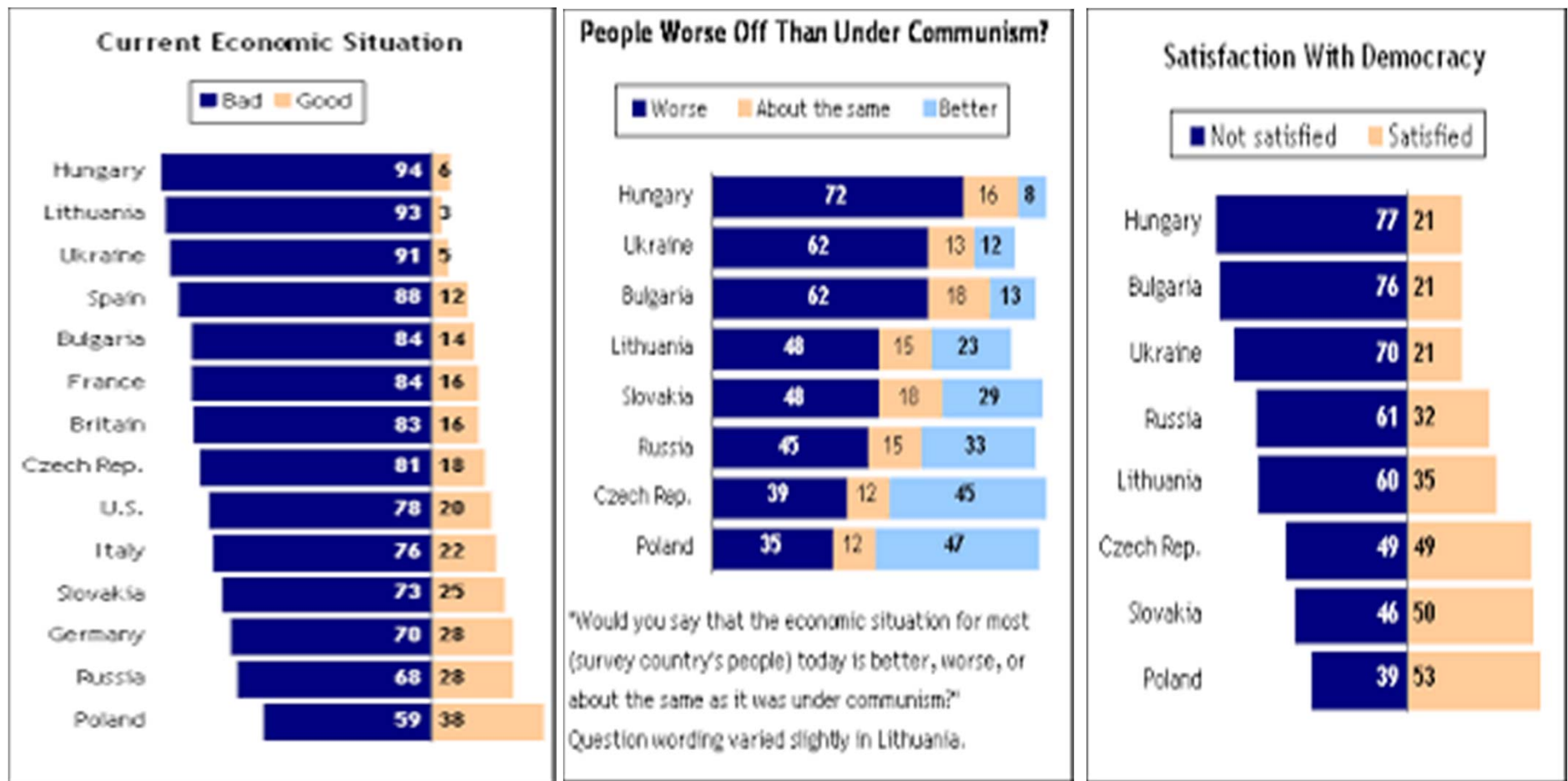
The Hungarian political system



A unicameral parliamentary government with “mixed-system” elections.
Roughly half of the seats in parliament are filled in single-member constituencies
and the other half is filled through party lists.
A constitutional majority = 2/3rds of the seats.

Hungarian elections 2010: Fidesz beat unpopular incumbents

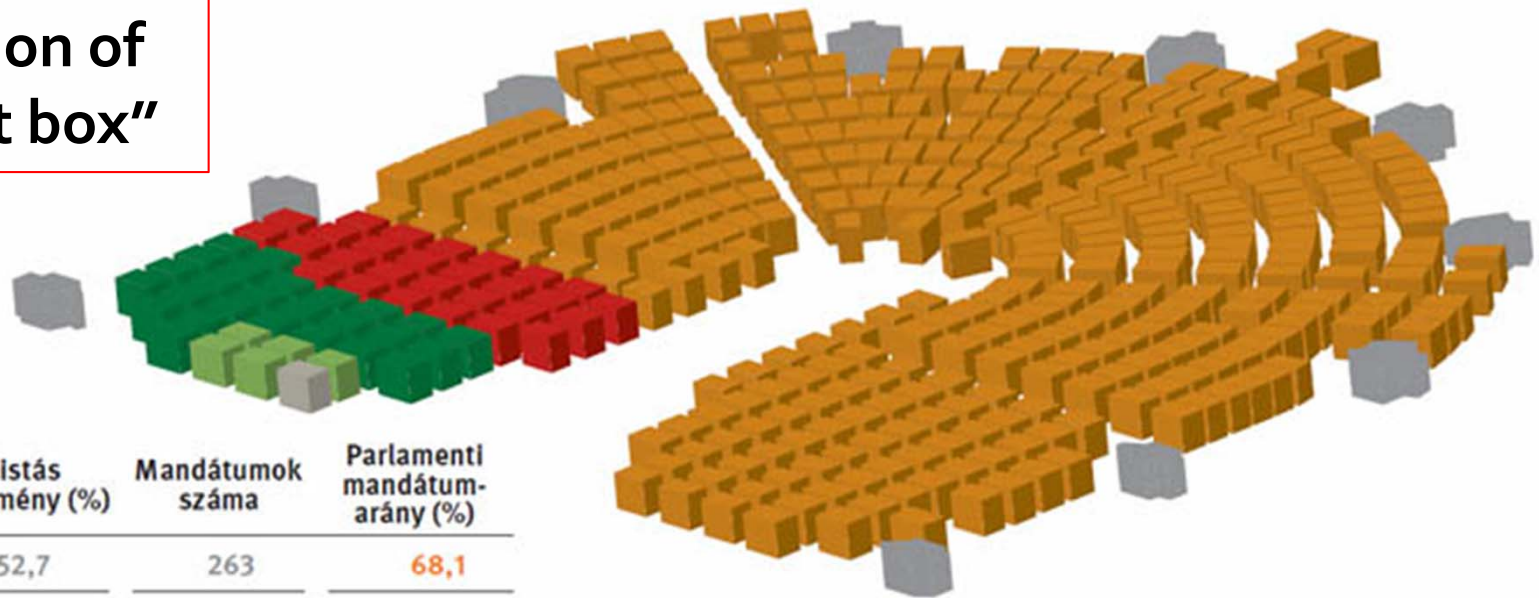
Pew Global Poll in 2009 showed Hungary ripe for political change



Hungarian elections 2010

Fidesz's
“revolution of
the ballot box”

Az új Országgyűlés összetétele



Pártok	Listás eredmény (%)	Mandátumok száma	Parlamenti mandátumarány (%)
Fidesz-KDNP	52,7	263	68,1
MSZP	19,3	59	15,3
Jobbik	16,6	47	12,2
LMP	7,7	16	4,1
Független Molnár Oszkár		1	0,2

Under the old rules, Fidesz won 68% of the seats with 53% of the vote.
The constitution can be amended by a single 2/3rds vote of the unicameral parliament.

Constitutional amendment 2010: Changing the size of the Parliament



A constitutional amendment, backed on party lines by Fidesz's 2/3rds vote, cut the size of the Parliament from 386 seats to 199 seats.

This had two effects:

- Increased party discipline within Fidesz.
- Required redistricting the whole country.

(Note that Emmanuel Macron has proposed cutting the size of the French National Assembly in half – beware the effects!)

Capturing election administration

Hungarian National Election Commission:

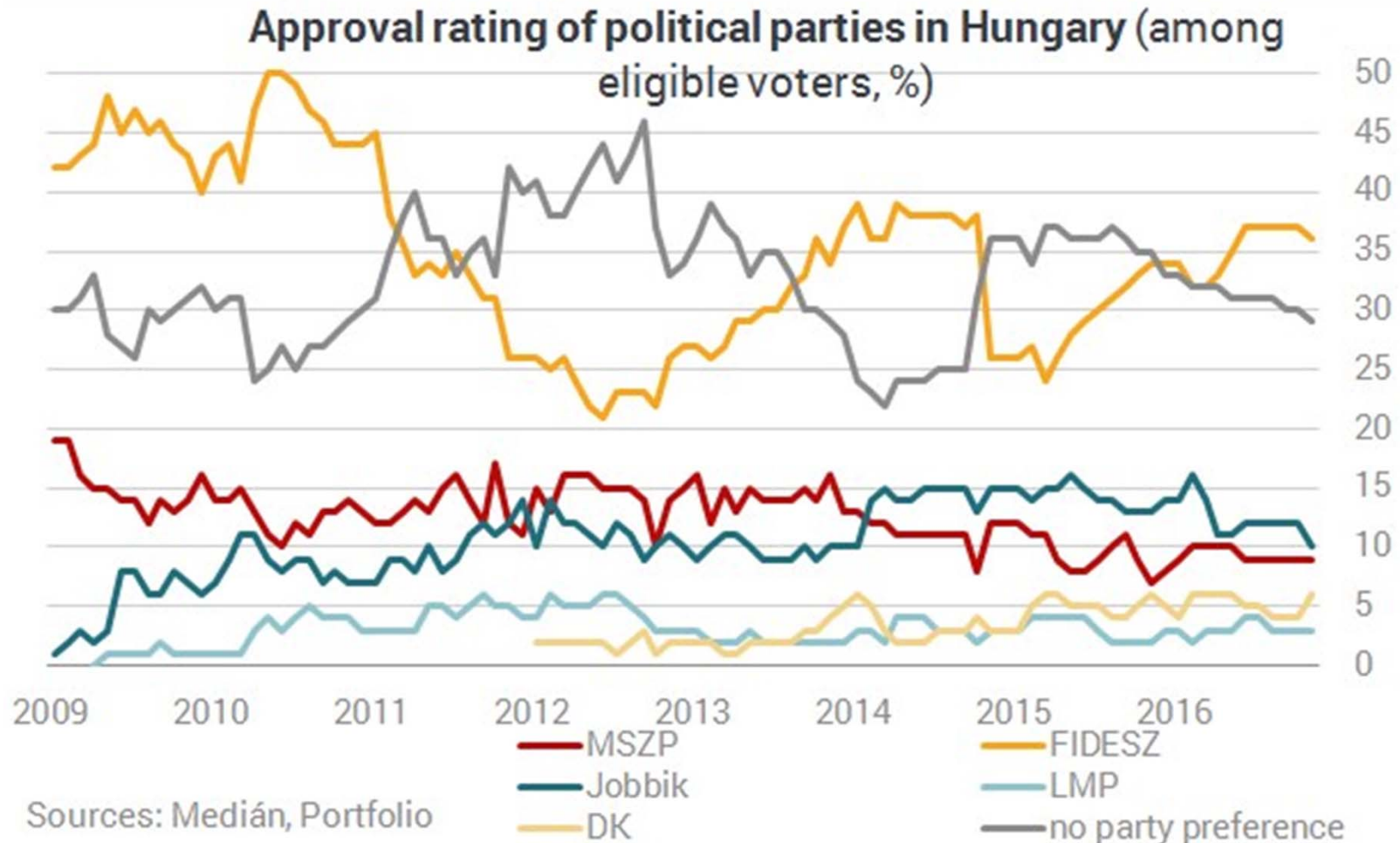
- **2010 law** required that entire composition of the Commission be changed after each election, effective immediately.
 - All previous commissioners were immediately fired and the parliament elected new ones – all Fidesz affiliated.
- **2013 law** changed the Election Commission again – all new commissioners elected again for fixed 9-year terms (through 2022). They can only be replaced by a later 2/3rds vote.
 - All previous commissioners were fired, effective immediately, and the parliament elected new ones – all Fidesz affiliated.



The Hungarian National Election Office (civil service) administers elections.

The current director is Ilona Pálffy (above), former political counsellor to PM Viktor Orbán.

Orbán's challenge for 2014: Failing support



Election April 2010

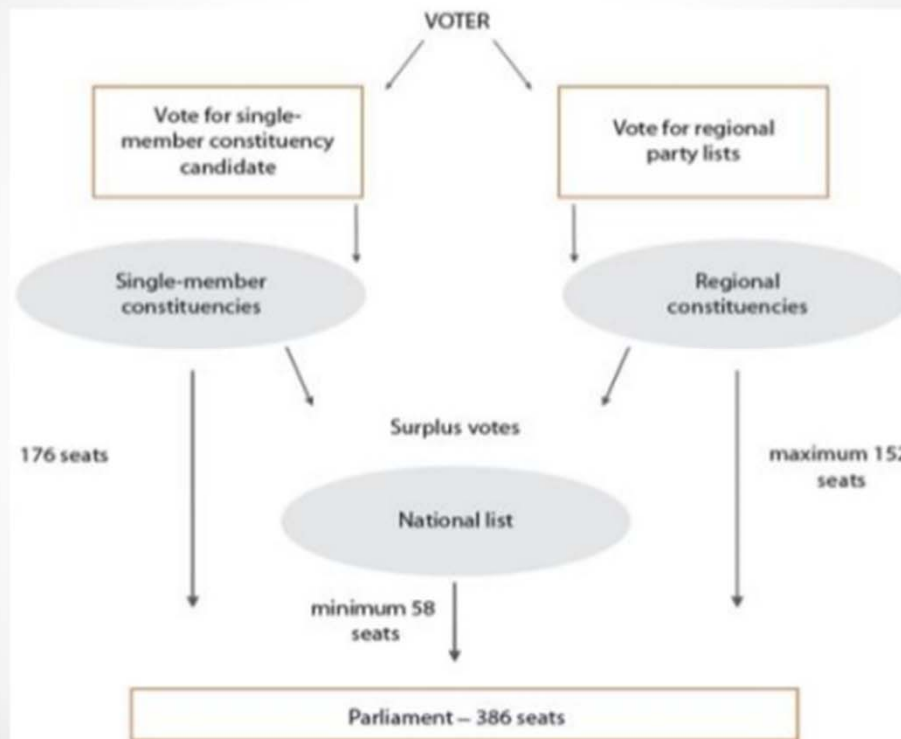
Election law reform 2012-3

Election April 2014

Hungarian election reform in a “mixed system”

Slide courtesy of Vadym Zhygadlo at <https://www.slideshare.net/VadymZhygadlo/description-of-some-of-electoral-systems-on-parliamentary-elections-55984746>

Electoral system in Hungary before 2012



There was a second round run-off among the top three candidates → if no candidate won 50% in the first round.

Party list votes were aggregated at the regional level – not centralized.

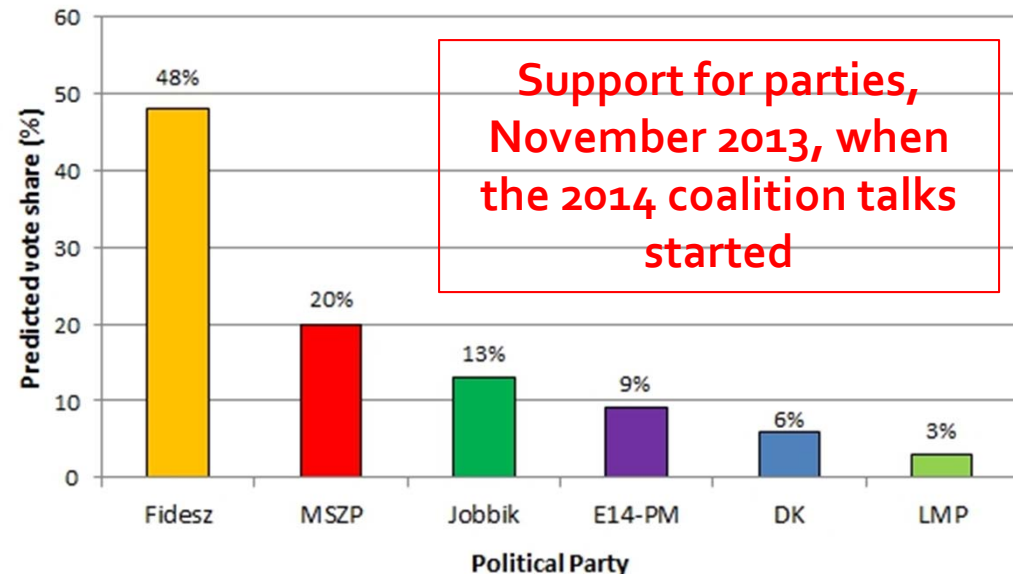
The system was very difficult to “game” because it was very complicated.

“Surplus votes” from individual mandates + regional party lists were aggregated to create a pool of votes distributed proportionally to national party lists.

Individual constituency reform, part I: One-round plurality voting

Election law 2013
**eliminated second-round
run-off** (just like the UK):

Plurality parties can now
win in one round.



If all of the LEFT parties joined together, they would have 38% against Fidesz's 48% - enough to win in a number of districts, particularly in cities.

MSzP = Socialists = 20%

LEFT = E14-PM = Together/Dialogue = 9%

DK = Democratic Coalition = 6%

LMP = Greens = 3%

But forming the Left Coalition was painful and, in the end, LMP refused to join.

LMP's defection cost the Left Coalition 6 seats in 2014.

Individual constituency reform, part II: Redrawing electoral district lines

STEP 1: Redistricting/Gerrymandering

Fidesz redistricted the whole country by setting the precise boundaries of each district in a law that could only be changed by a 2/3rds vote of the parliament.

Who drew the boundaries? This remains a mystery. The Election Commission was not involved. But the results were clear – Fidesz benefited.

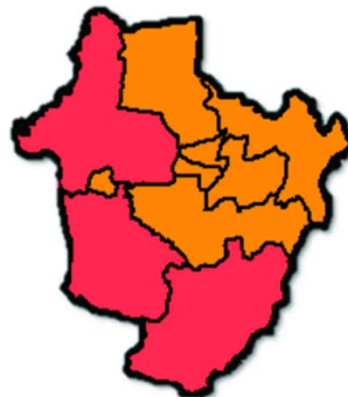
Redistricting Hajdu-Bihar County:

LEFT: The actual 2006 election results in that county when the opposition won handily nationwide. The Socialists won 3 districts.

RIGHT: The 2006 results mapped into the new districts. The Socialists would be frozen out.

HAJDÚ-BIHAR MEGYE 2006

EREDETI VÁLASZTÁSI RENDSZER



MSZP: 3, FIDESZ: 6

ÚJVÁLASZTÁSI RENDSZER



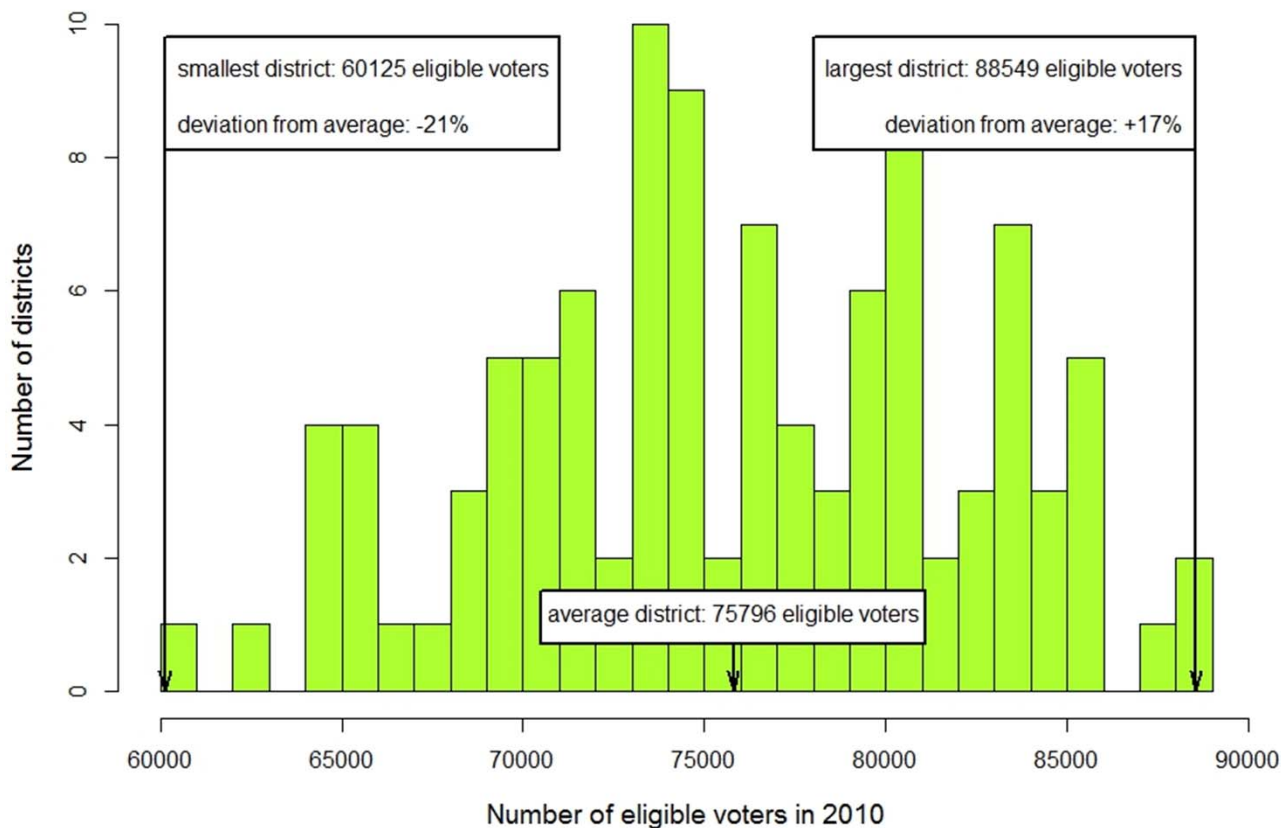
MSZP: 0, FIDESZ: 6

Gerrymanders without equality

Hungarian election districts by size after the Fidesz reform
(number of districts on the vertical axis and number of voters on the horizontal axis)

Calculations by
Gábor Toká, CEU

The distribution of the 106 new single-member districts by size



Council of Europe standards allow districts to vary by 10% overall.

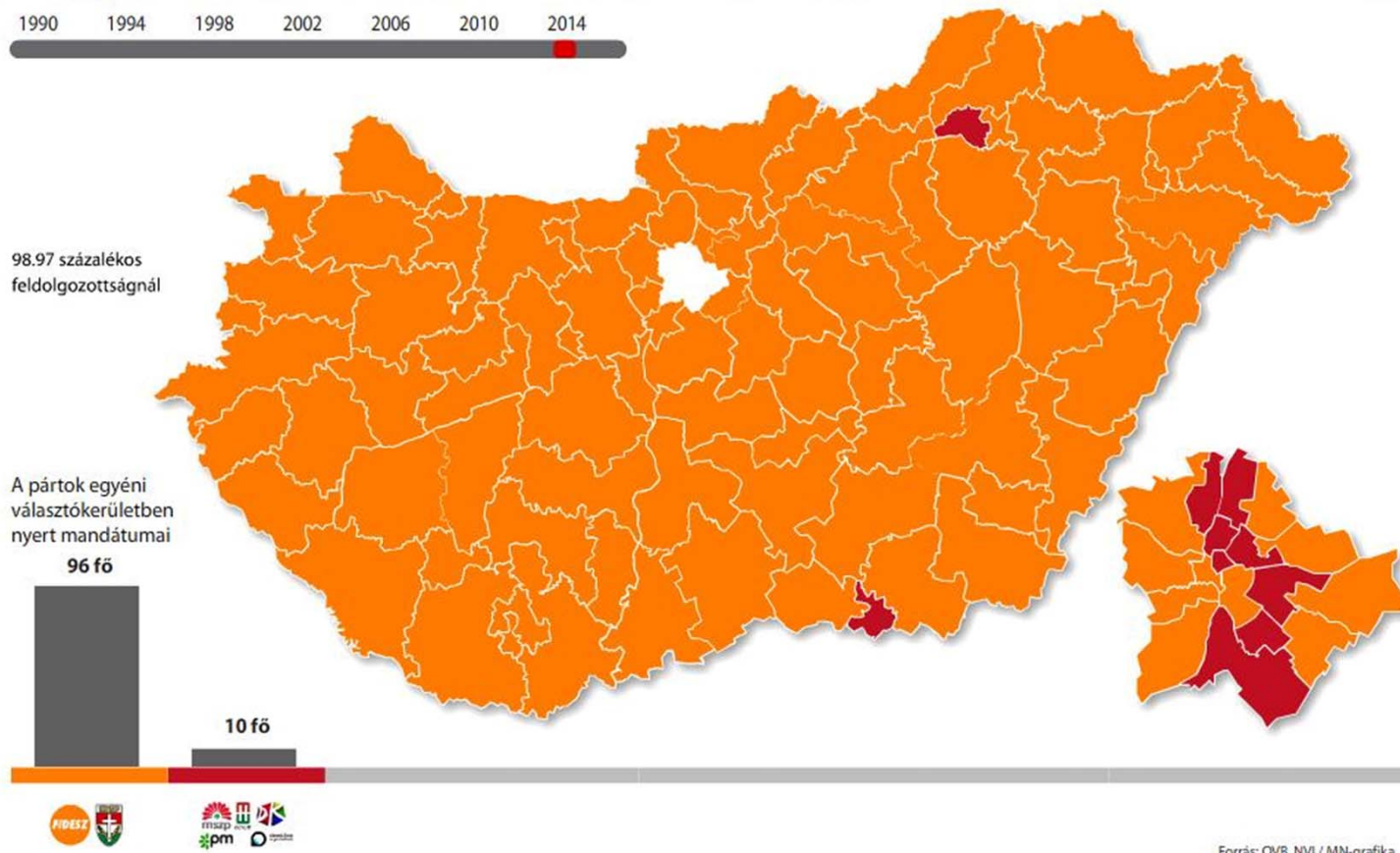
Hungary claimed to follow Germany, where districts vary by 10% above and below a mean.

Hungary's unequal districts exceeded even that – the largest districts were 50% larger than the smallest ones.

2014 election results in individual constituencies: Fidesz won 96 of 106 districts

Az egyéni választókerületek eredményei az országgyűlési választásokon

1990 1994 1998 2002 2006 2010 2014



Orange = Fidesz = 96/106 seats with 43% of the vote.

Red = Left opposition coalition = 10/106 seats with 26% of the vote.

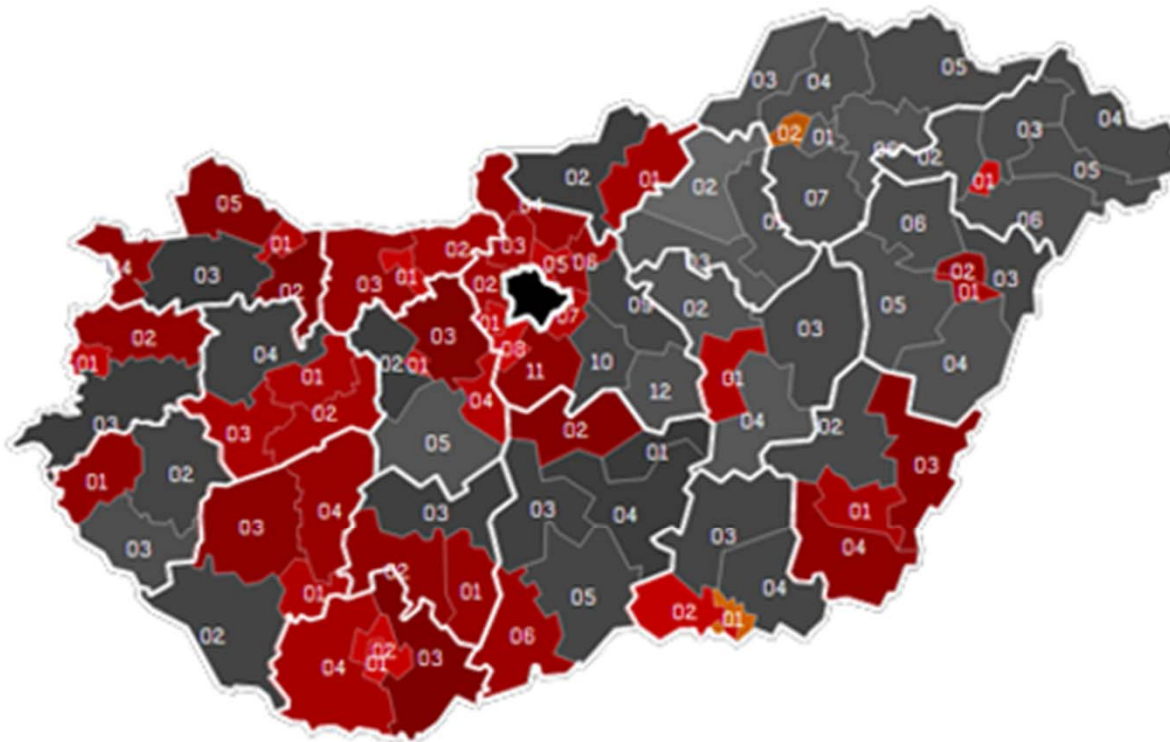
Far right = Jobbik = no seats with 21% of the vote

A majority of voters voted for parties other than Fidesz.

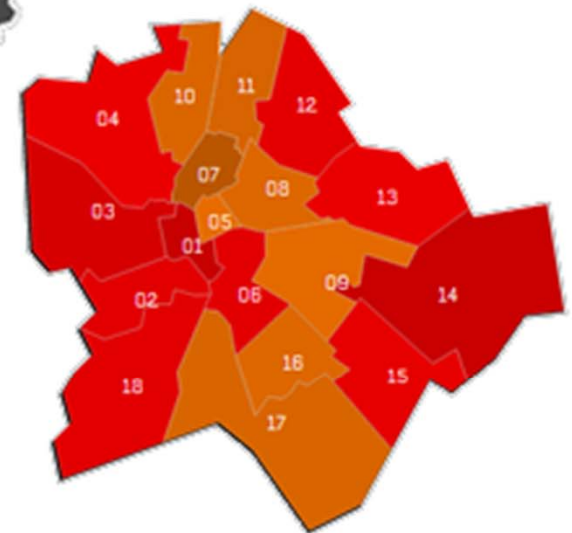
2014 election: Second place parties

2014 Hungarian general election results--second place by electoral district

- JOBBIK
- LMP
- FIDESZ
- Opposition alliance

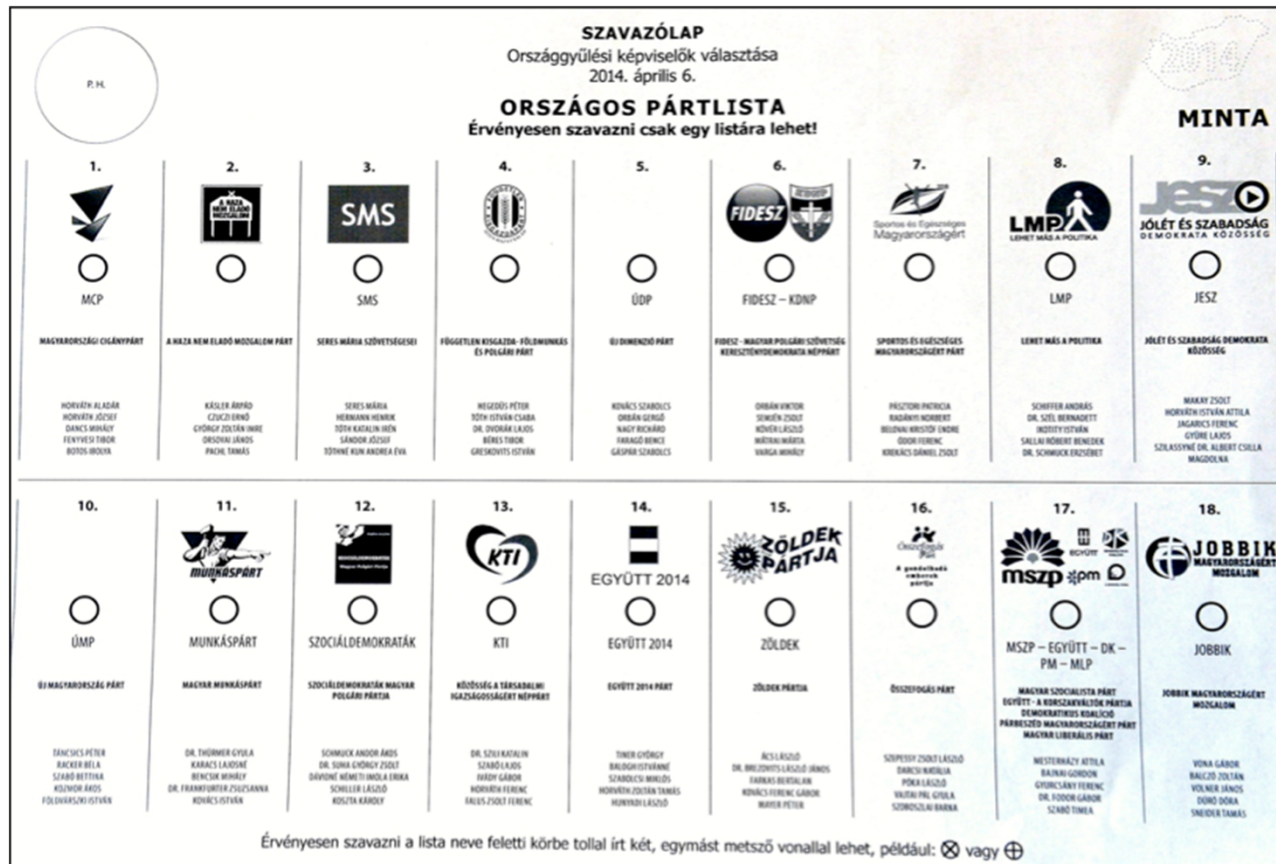


Countryside (98 electoral districts)



Budapest (18 electoral districts)

Election reform II: Party list voting



← Encouraged many small parties to register (and split the opposition vote) so that 18 parties ran national lists.

(This was a trick borrowed from Russia.)

Maintained 5% threshold to enter parliament.

(Above) The party list ballot in 2014 – 18 parties competed; many were new but had names similar to existing parties. Note that the two largest opposition parties were listed #17 (Left coalition) and 18 (Right = Jobbik).

Changing the calculation of "surplus" votes

Surplus votes in Hungary: 2010 vs 2012 electoral law

till
2010

single-member constituency's results	amount of votes cast in SMC	amount of surplus votes to be added to a relevant party-list votes nationwide	nationwide constituency's results
1 – Red party	500	0	= n
2 – Green party	200	200	= n + 200
3 – Yellow party	100	100	= n + 100

after
2012

single-member constituency's results	amount of votes cast in SMC	amount of surplus votes to be added to a relevant party-list votes nationwide	nationwide constituency's results
1 – Red party	500	$500 - (200+1)$	= n + 299
2 – Green party	200	200	= n + 200
3 – Yellow party	100	100	= n + 100

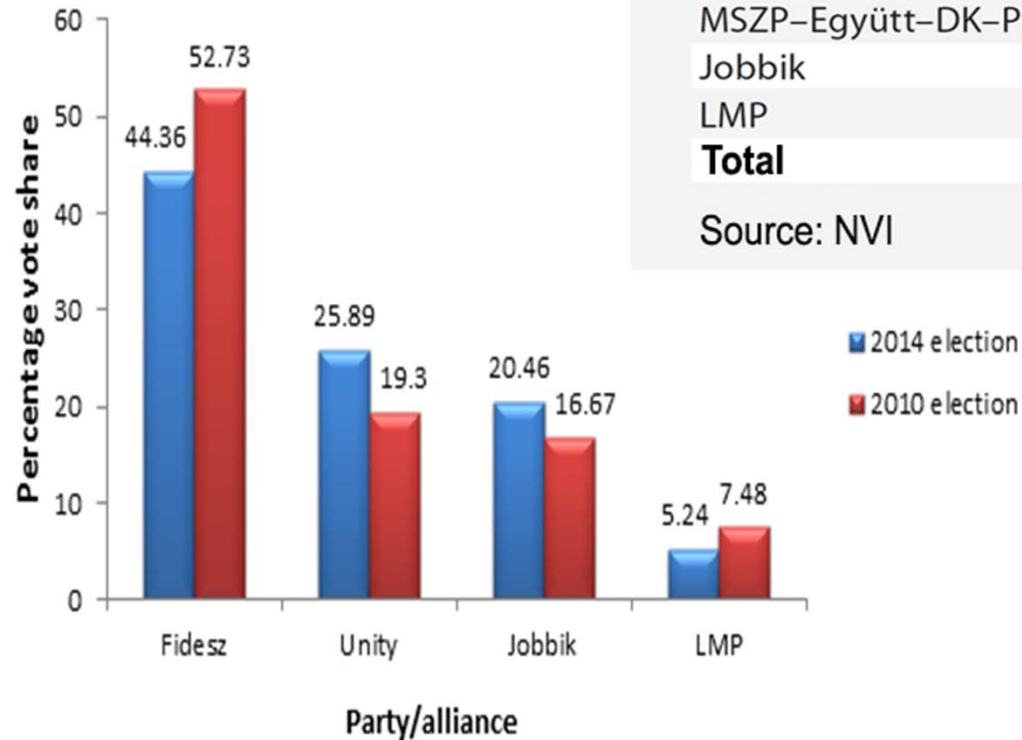
Before 2014, only green and yellow party votes would count as "surplus" (or "lost") votes.

Election reform 2012 allowed "winner compensation" (red) votes to be transferred as well.

(The Hungarians borrowed this trick from Berlusconi.)

Party list results Hungary, 2014

Below: % of the party list vote won by each party in 2010 (red) and 2014 (blue)



Final results of national parliamentary election of 6 April 2014

Fidesz-KDNP	96	37	133 (66,83)
MSZP-Együtt-DK-PM-MLP	10	28	38 (19,10)
Jobbik	-	23	23 (11,56)
LMP	-	5	5 (2,51)
Total	106	93	199 (100)

Source: NVI

Above:

- First column = number of constituencies won
- **Second column = number of party list seats won**
- Third column = total seats won (with percentage of total parliamentary seats).

“Winner compensation” gave Fidesz 6 seats compared with the old system of allocating surplus votes.

Changing the voters Part I: Adding new voters



Ethnic Hungarians from neighboring states (light green areas) were given the right to become citizens in 2011 and to vote for party lists in Hungarian elections in 2014.

More than 400,000 new citizens became eligible to vote (nearly 10% of the electorate).
Citizens without residence could vote by mail with absolutely no integrity checks.

Fidesz won 95% of this vote – or 1.5 parliamentary seats.

Changing the voters Part II: Disenfranchising ex-pats abroad

Hungarians who HAD lived in Hungary and were voting abroad in 2014 faced hurdles:

- Had to register to for an absentee ballot with exactly the same information that was on file in Budapest (with picky standards).
- Had to cast the vote at an embassy or consulate (and some key consulates were closed right before the election).
- Had to bring different identification documents than if voting at home (passport and not just domestic ID card).
- And the election office gave out misleading information (e.g. wrong London poll location)

Widespread reports of voters rejected – most likely opposition voters.



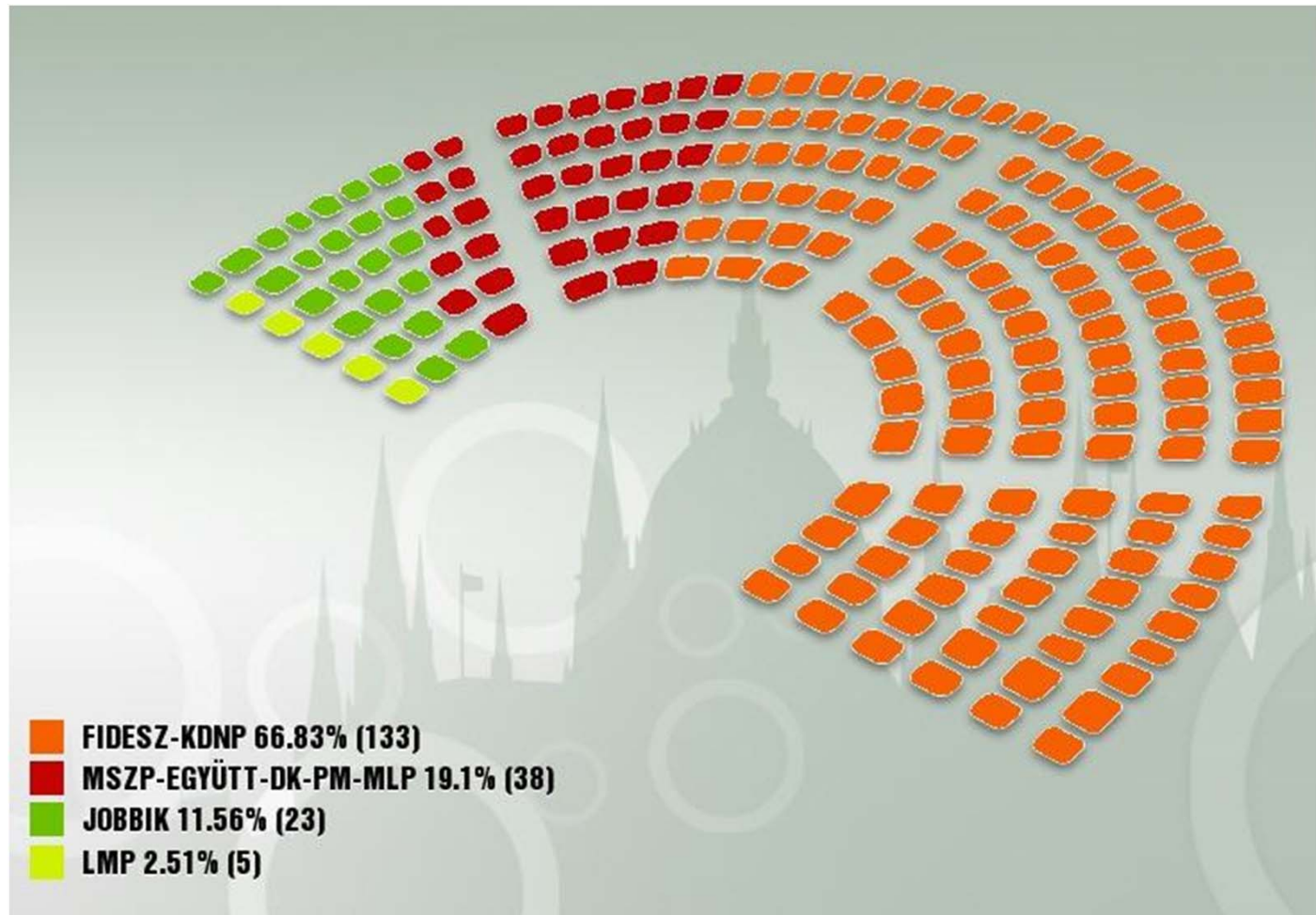
Between 2010 and 2014, about 500,000 Hungarians left the country because:

- Universities became the most expensive in the world.
- Members of the political opposition were fired from their jobs.
- And politics had become unbearable.

The 2014 Hungarian Parliament

In the end, Fidesz maintained its 2/3rds majority with only 43% of the domestic vote.

Despite the fact that a majority of voters voted against Fidesz, Fidesz retained its constitutional majority.



Election 2018?

- Of course, Fidesz will win again, as it controls the rules and all state offices, including the election administration.
- It has already started to use new tricks:
 - On 7 December, the largest opposition party, Jobbik, was fined \$2.5 million USD for violation of campaign finance rules.
 - On 21 December 2017, four of the Left Opposition parties were fined from up to \$100,000 USD each for violation of miscellaneous campaign rules.
 - This morning – State Audit Office announced an audit of all foundations affiliated with the opposition parties.



And the election is still four months away – April 2018.

Take-away lesson 1

Legal borrowing is not always good because even good systems have bad rules.



Election hell is where:

- The gerrymandering is American.
- The district sizes are German.
- The first-past-the-post rules are British.
- The surplus vote rules are Italian.

Take-away lesson 2

**Election law is a
SYSTEM.**

**The rules should not be
evaluated in isolation
from their context and
effects.**

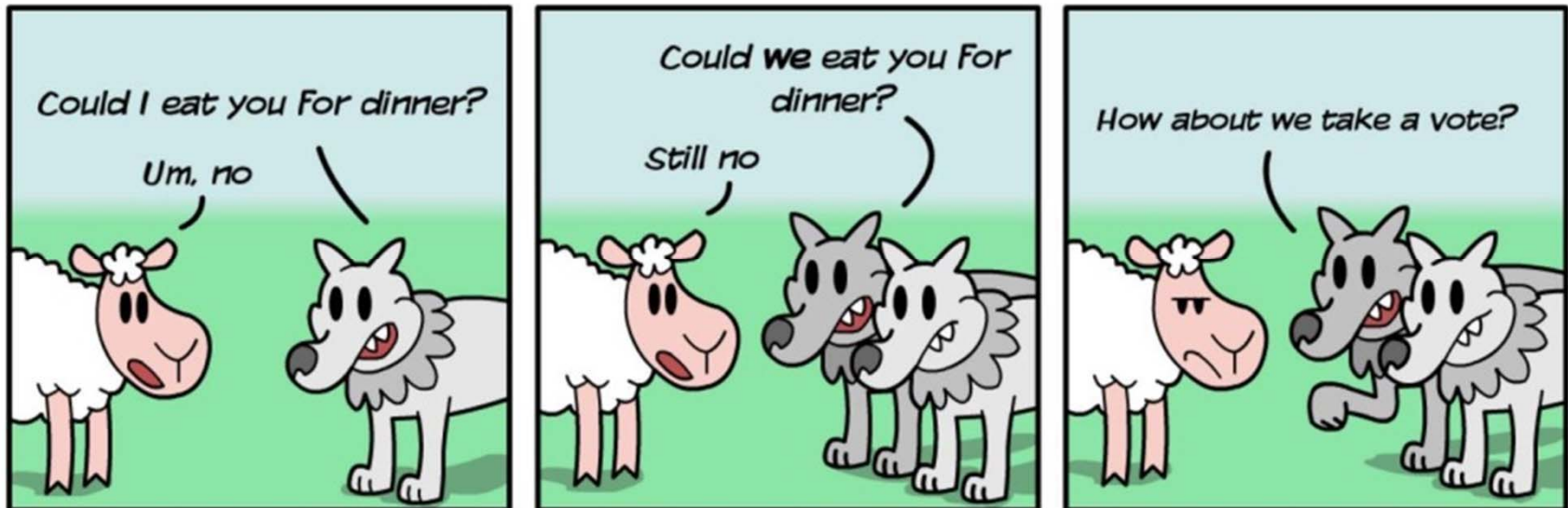
**Election law experts
need to do better than
checklists.**



The Frankenstate (Scheppelle, 2013):

- Where the whole is more than the sum of the parts
- Like Frankenstein's monster – who was stitched together from what had been normal body parts of normal people.

Take-away lesson 3



Just because election law changes are made by a leader who was elected –

It doesn't make those changes democratically self-sustaining.

The end?