Illiberalism in the European Union: Establishment Approaches to a Democratic Crisis

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Seniors Honors Thesis
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April 9, 2018

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Introduction

In recent years, there has been a crisis in global democracy. The rise of nationalist, far-right parties and governments have swept Europe into a new tide of illiberalism. In Western Europe, the drift towards the nationalist right has taken shape in the success and notoriety of politicians like Marine Le Pen in France and Geert Wilders in the Netherlands. Even the United Kingdom’s exit from the European Union indicates the far-reaching trend of conservative nationalism. In Eastern Europe, a number of the formerly communist Member States have become hotbeds of illiberalism within the European Union, where illiberal parties and policies are deeply integrated into state structures.

The illiberal grip on Eastern European Member States creates political friction in the dynamics between the EU and its Members. The European Union has been lauded for its effective spread of liberal democracy and its inclusion of civil protections and liberal principles in its laws. However, the illiberalism sweeping through Europe presents an existential question about the European Union’s authority and ability to maintain liberal democracy within its borders.

This paper will explore the European Union’s attempts to influence and penalize its Member States’ illiberal policies. What post-accession leverage mechanisms does the European Union employ with Member States to attempt to correct illiberal behavior? The post-accession leverage mechanisms refer to both the formal and informal pressures, including the punitive infringement procedure and implicit economic pressures. Once the European Union engages in corrective measures with a Member State, what domestic and European factors limit the European Union’s ability to contain illiberalism? The issues of
Member States’ quality of democracy within the European Union and the European Union’s ability to maintain liberal democracy are significant for understanding current and future European Union internal relations.

**Methods and Data**

In order to research the European Union’s post-accession leverage against illiberal Member States, this paper will take a qualitative case-study approach. The hypotheses of this study are hinged on the terminology of soft and hard, or informal and formal, pressures that will be outlined in the literature review. The cases for this study will include Hungary and Poland.

There are three main hypotheses for this study, all of which pertain to the role of domestic factors on the given set of known mechanisms of EU influence.

*H1*: If the EU is exerting both judicial and economic pressures, illiberal behavior can only be corrected if the Member State is economically vulnerable or if the incumbent government is politically vulnerable.

*H2*: If the incumbent government’s delegates to the European Parliament have strategic value to their party caucus, the EU will not be able to fully exert economic and/or social pressures.

*H3.A*: When the EU exerts post-accession pressure, if it includes ideology-based social pressure, determined illiberal governments will not modify their behavior.

*H3.B*: The more the EU utilizes ideology-based social pressure, the more likely the Member States’ incumbent illiberal government will be to resist the EU.
The hypotheses above are not mutually exclusive, but rather potentially compounded to illustrate the full political and economic landscape of post-accession maintenance of liberal democracy.

The independent variables throughout this study will be the type of EU pressure, domestic Member State economic factors, and Member State political factors. The types of EU pressure are hard, which refers to the infringement process, and soft, which includes economic and social mechanisms. Domestic economic factors will measure economic vulnerability with common indicators, such as unemployment, annual percent GDP growth, and deficit to GDP. Political factors for Member States pertain to the Member State’s relationship with the European Parliament (i.e. any party loyalty or advantageousness), the domestic status of the main illiberal actors (i.e. internal power shifts, election loss, coalition conflict), and any significant leaders’ statements on illiberalism and European politics.

The dependent variable will be compliance and quality of democracy. The dependent variable will be measured by observable changes in behavior, like reversing an illiberal policy after exertion of EU pressure, and the V-DEM liberal democracy score. While compliance does not necessarily directly or immediately equate to enhanced quality of democracy, compliance to EU norms and values relates to correction of illiberal behavior. Consistently low scores on the liberal democracy index may also indicate worsening of illiberalism despite surface-level, observable changes in behavior.

Data for the Hungary and Poland cases will focus on episodes of illiberal activity since 2004, after both case countries were granted EU membership. Hungary and Poland are the chosen cases for study because they are Member States with notable illiberal
behavior. Moreover, all two cases have had illiberal governments, not just fringe parties or other sub-national actors. It is important to note that while the case countries are in Eastern and Central Europe, this study is not aimed at making a specific argument about democracy in all Eastern European Member States.

Data for the case studies will come from news articles and various databases. The tracing of illiberal events and behavior will be cited from news articles from major sources like the BBC, The Guardian, The EU Observer, The New York Times, and the Financial Times. Electoral data to track the domestic political circumstances of the illiberal actors will come from the online database Election Resources, with supporting information from contemporary news coverage of the elections. Information on EU statements and activity will come from a range of online databases from the EU’s network of websites and resources, such as the database on press releases, infringement processes, Parliament members, and annual funding. The economic factors of GDP growth and unemployment will be sourced from the World Bank database on national economies. The national deficit to GDP indicator is from the EU’s statistical resource Eurostat. The liberal democracy score is based on the annual V-DEM liberal democracy indicator.

**Literature Review**

The question of the European Union’s democratic merits is not a new area of study. There are both strong critics and strong proponents of the European Union’s impact on regional democracy. With the recent groundswells of illiberal movements, parties, and Member State governments, the conceptual debate has taken on real consequences for the European people.
Beneath the tensions stirring in the European Union lies a greater global tension that warrants a brief summary: the dissonance between liberalism and illiberalism in democracies. For this paper, in accordance with the common academic definition, liberalism is the political system characterized by “the rule of law, a separation of powers, and the protection of basic liberties” (Zakaria 1997). In contrast, an illiberal democracy is an elected regime that lacks or actively undermines institutional and individual liberties. In *The Rise of Illiberal Democracy*, Zakaria (1997) argues the global spread of democracy does not necessarily spread liberalism (27). Zakaria’s distinct separation of democracy and liberalism ultimately blames democratization before development of liberalism as the central cause for rising illiberal democratic regimes. However, in *Liberalism and Democracy: Can’t Have One without the Other*, Plattner (1998) builds on Zakaria’s separation of liberalism and democracy, but instead argues that electoral democracies are preconditional for liberalism.

The distinction between democracy and liberalism is important for understanding the European Union’s current problem. Both Zakaria and Plattner identify a temporal and ideological issue within the spread of democracy that potentially lays the groundwork for future illiberalism in the regime. The European Union has a unique method of democratization, commonly referred to as the Integration Model. The Integration Model is democratization through European Union membership. In *Europe Undivided*, Vachudova (2005) describes the membership accession process in three key terms: meritocracy, active leverage, and passive leverage. In this approach to the European Union’s integration model, countries have the means, supervision, and incentive to become liberal democracies. The meritocratic nature of the membership process
manifests as oversight and yearly reports that show progress towards membership with progress towards full compliance with EU laws and standards. The candidate countries must also integrate the EU legal system the *Acquis Communautaire* as well as the additional requirement of the Copenhagen Criteria, in which many of the protections for ethnic groups are implemented. The three principles of the Copenhagen Criteria include institutional democratic stability, open market economies, and adherence to EU standards (EU 1993). Lastly, the European Union’s vast market provides implicit encouragement for the full compliance of the EU’s rules.

The existing understandings of the Integration Model, and arguments of its success, are important for this research because the illiberal governments within the European Union undermine two core beliefs about the relationship between the EU and its Member States: membership guarantees liberal democracy; the European Union’s economic appeal is enough to secure high commitment levels in current and potential Member States. Dimitrova and Pridham (2004) also analyze the European Union’s Integration Model in *International Actors and Democracy Promotion in Central and Eastern Europe*, where they identify the economic and political appeal of the EU as a significant factor in the effectiveness of the dual membership-democratization process. Essentially, the economic pull of the European Union overrides the conditionality of adherence to the *Acquis Communautaire* and Copenhagen Criteria. In this framework, the Integration Model situates liberalism as contingent on the political and economic allure of the European Union. Dimitrova and Pridham also highlight the temporality of the accession process as a driving factor of commitment (109). The long duration of the membership process puts pressure on candidates to fulfil the conditions and wards against
stalemates and total fallouts. The various elements of contingency and commitment discussed in the literature surrounding the Integration Model emphasize the significance of pre-accession processes, while assuming consistency in the post-accession relationships. The Integration Model’s high conditionality vanishes upon the candidate’s entry into the European Union. As a Member State, a country is not subject to the same leverages and conditions that function to secure liberal democracy in candidate states.

Democratic backsliding within the European Union despite the meritocratic and highly conditional membership process is at the crux of the problem in Eastern Europe today. The issue is discussed in Sedelmeier’s *Anchoring Democracy from Above? The European Union and Democratic Backsliding in Hungary and Romania after Accession*. Sedelmeier (2014) argues that partisan politics and weak normative consensus limits the European Union’s ability to penalize infringing members and use the Article 7 sanctioning mechanism that revokes a Member State’s vote. Sedelmeier (2014) also identifies three alternative means of attempted behavior-shaping by the European Union: social pressure, infringement procedures, and issue linkages. In the cases of Hungary and Romania, Sedelmeier (2014) found that changes to Romania’s illiberal practices were potentially a result of increased vulnerability to economic pressure from the European Union, although attempts to correct illiberal behavior were curbed mainly by partisanship within the European Parliament. The inclusion of European Parliament politics contextualizes the decision-making and European-Member State relationships in a political environment, rather than a vacuum.

Distinguishing types of post-accession leverage in conjunction with analyzing domestic factors are integral to the inquisition into democratic backsliding in the
European Union. Like Sedelmeier, Iusmen in *EU Leverage and Democratic Backsliding in Central and Eastern Europe* seeks to contextualize the EU’s efforts to correct behavior in Member States. In Iusmen’s approach to intervention, it is necessary that a set of domestic political factors align for a country to be amenable to European Union influence. In the case of Romania, Iusmen (2015) identifies three main domestic factors that influenced the European Union’s attempts at corrective pressures: political miscalculations, coalition tensions, and opportunistic actions (17). Altogether, the critical focus is on domestic political disorganization and self-interest as conditions that made Romania pliant to EU corrective pressures. According to Iusman (2015), illiberal actors in Member States can be influenced if they are concerned about loss of power, either within a coalition or with the electorate.

The relationship between EU post-accession leverage and domestic factors extends beyond self-interest and political vulnerability. There are multifaceted political and economic relationships involved in EU-Member State corrective interactions. In *A Test of European Union Post-Accession Influence*, Gherghina and Soare (2016) formulate post-accession strategies based on the assumption of Member State commitment. For example, in contrast with the other analyses of post-accession leverage, Gherghina and Soare (2016) suggest an *additive* approach to influence. In this additive approach to EU intervention, increased funding and socialization are meant to bring straying members closer to the political and economic community of the EU. This argument differs from the other descriptions of post-accession leverage that highlight the threat of benefit loss and social alienation as means of influence. However, Gherghina and Soare (2016) acknowledge the role of decreased funding in shaping Member State behavior. They note
that in Romania’s case, their status as one of the poorest Member States has made the concern of reduced EU funding a tool for post-accession conditionality (Gherghina and Soare, 810). Connecting to Iusmen’s (2015) understanding of domestic factors as conditions for effective influence, Romania’s political and economic status as a low-earner made it particularly more pliant to EU intervention.

In addition to partisanship connections between Member States and the European Parliament preventing full implementation of post-accession leverage, political complications within the EU also strain the corrective relationship with illiberal Member States. Gherghina and Soare (2016) focus on the impact of political disagreements within the European Parliament rather than partisan dynamics discussed by Sedelmeier (2014). Their research found that conflicting political interpretations of illiberal violations, as well as the core concepts of liberal governance at hand, such as the rule of law hindered EU pressure (Gherghina and Soare, 810). There was also an issue of institutional voice; the EU’s various entities and political actors had difficulty sharing a common position (Gherghina and Soare, 810). This kind of political inconsistency within the EU expresses the reality of deliberation, but also illustrates the negative impact of fragmentation on EU intervention. Overall, politicalization of penalty procedures disadvantage the European Union’s authority and ability to correct illiberal behavior.

Ideological domestic factors are an important dimension of evaluating the efficacy of EU influence on Member States. Gherghina and Soare (2016) argue that post-accession compliance to EU norms and values is couched in a desire to be a high-performing, respectable Member State (801). In this perspective, commitment to the community begets commitment to EU norms and values. While Gherghina and Soare’s
concept of a respectable Member State reinforces the earlier ideas of political and economic appeal outweighing the conditionality of membership, it also seems to be based on the assumption that there is post-accession meritocracy or rewards system for well-behaving Member States. A defining characteristic of European Union membership is the lack of a formalized internal rewards system for compliant behavior. Rewards for compliance is a main attribute of the pre-accession political landscape, in which candidates are rewarded with EU membership after demonstrated progress and adherence. Additionally, the theory that Member States are driven to commitment and good behavior by respectability and community approval excludes the role of Euroscepticism in the Member States undergoing nationalist trends.

Within the issue of the European Union’s post-accession influence, there is also the matter of the various supervisory and punitive entities and mechanisms within the European Union. For the purpose of this paper, two entities will be discussed as they appear in the extant literature: the infringement procedure and Article 7. The infringement procedure is the standard structural instrument for behavior correction. The infringement procedure is a multi-step judicial process that leads to the European Court of Justice and involves multiple opportunities for Member States to settle their cases through early correction. Scholars’ evaluations of the infringement procedure vary slightly in terms of its overall effectiveness. In *Can courts rescue national democracy? Judicial safeguards against democratic backsliding in the EU*, Blauberger and Keleman argue that judicial processes alone are not adequate tools for halting or preventing democratic backsliding (321). They suggest that political intervention, such as social pressure and sanctions, in conjunction with the infringement procedure is necessary for
any actual influence over a Member State (Blauberger 2017, 332). In *Fines against member states: An effective new tool in EU infringement proceedings?*, Falkner acknowledges the difficulty of penalization within the existing infringement procedure framework and outlines the “hard” and “soft” enforcement tools employed by the EU during infringement (47). Falkner (2016) finds that while judicial processes alone are ineffective, the concurrent use of “soft pressure” in the form of social shaming is also ultimately ineffective (47). Both Falkner (2016) and Blauberger et al. (2017) argue for a diversification of the EU’s pressure mechanisms used during infringement proceedings, but also recognize the importance of judicial penalties in Member State behavior correction.

Article 7 is a pivotal instrument in the landscape of EU influence, penalty, and behavior correction in its Member States. Different from the other judicial processes or economic sanctions, Article 7 penalizes offending Member States by suspending EU voting rights. On the issue of Article 7’s role in post-accession leverage, Gherghina and Soare (2016) argue that difficulties with implementation and operability, as well as fragmented inter-institutional consensus and political dynamics hinders the credibility of Article 7 and the EU’s ability to safeguard liberal democratic standards (800). Within their argument, the politicization of the Article 7 penalty and the political dimension of “going nuclear” plays a large role in the EU’s reluctance to trigger the Article 7 proceedings (Gherghina et al. 2016, 812). In *Political safeguards against democratic backsliding in the EU: the limits of material sanctions and the scope of social pressure*, Sedelmeier frames Article 7 framed as the ultimate form of material leverage, or membership-based leverage. Besides the vast political obstacles to triggering Article 7, Sedelmeier (2017)
argues that material leverage loses its efficacy in the face of determined illiberal Member States because the threat of losing EU rights, membership, and funding do not necessarily register to the illiberal leaders, whose main concern is maintaining power (342). Despite the literature’s variance in opinion on the effectiveness of social pressure, Sedelmeier (2017) suggests that social pressure, especially through formalized instruments that monitor Member States, is most effective when applied consistently and thoroughly (338). Sedelmeier’s discussion of illiberal governments’ impenetrability in the face of material leverage will be important in this paper’s contribution to the understanding of illiberal Member State’s resistance to the EU ideological authority.

The arguments put forth by scholars studying the European Union’s strategies of influence outline both the mechanisms and limitations of post-accession leverage. There are economic, judicial and social pressures that the European Union can deploy in attempt to correct illiberal behavior. Limitations of the EU’s ability to influence Member States are rooted in European partisanship and concerns over post-accession Member State commitment. When analyzing relations between the European Union and individual Member States, certain domestic factors are also significant indicators of limitation or amenability. Political fragmentation and economic vulnerability are two main domestic circumstances identified in the literature that increase the likelihood of compliance. However, the literature does not clearly explore the domestic factors that may make compliance less likely.

In contribution to the literature, this paper will focus on the limitations of EU post-accession corrective behavior due to domestic factors in conjunction with institutional shortcomings. This paper will also analyze the impact of political
discreditation of the European Union by illiberal governments on the EU’s attempts of post-accession leverage. As the political landscape in Eastern and Central Europe continues to develop, it is important that academia reacts and adapts to changes in the state of democracy.

**Hungary**

This section on Hungary will analyze illiberal activity since its entry into the EU in 2004 and the European Union’s mechanisms of post-accession intervention against democratic backsliding. First, I will briefly describe the historical underpinnings of Hungary’s nationalist illiberalism. Then, I will trace the illiberal activity in Hungary, based on the ways in which FIDESZ has violated the laws, norms, and values of EU liberal democracy. This section will define episodes of illiberal activity including constitutional reform, the refugee crisis response, and the marginalization of civil society and the press. The following subsections will discuss the interactions between Hungary and the European Union’s various post-accession leverage mechanisms. I will divide those sections into analysis of “Hard Pressure,” the judicial penalty system, and “Soft Pressure,” economic and social pressures. The next section will identify and discuss the domestic factors that predispose Hungary to be resilient to EU influence. The purpose of this case study is to outline the ways in which the Orban-led FIDESZ regime has created a political environment that simultaneously erodes the fundamentals of liberal democracy and resists EU attempts at behavior correction.

Hungary’s current illiberalism has foundations throughout the twentieth century. A significant theme in Hungary’s path towards far-right nationalism is irredentism, a movement to reclaim lost land. After World War I, the victors punished Hungary with the
Treaty of Trianon signed in 1920. The treaty’s terms defined Hungary’s new postwar boundaries, which resulted in Hungary losing 71.4% of its territory and 63.6% of its population, including millions of ethnic Hungarians (Vardy 1983). With a solid one-third of the Hungarian nation dispersed behind the borders of neighboring states, a new dynamic of minority-relations and diaspora was formed in the region. Hungarian irredentism is significant to consider before analyzing post-accession illiberal activity because it provides insight into the historical underpinnings for the conservative nationalist rhetoric driving illiberal politics. Hungary’s particular strain of ethnic nationalism gave a way for illiberal actors to gain political capital, and ultimately escalate the country into illiberalism.

The main illiberal actor is the far-right FIDESZ party, led by Prime Minister Viktor Orban. After the fall of the Soviet Union, FIDESZ started out as a liberal and pro-West, but the 1990s witnessed a platform shift towards nationalist economic protectionism against foreign capital and influence (Hockenos 2011). Between 1998 and 2002, the exposure to power and Hungarian elites connected Orban with far-reaching resources for his national populist message (Hockenos 2011). Orban and FIDESZ gradually came to dominance in parliament. Between 1998 and 2010, FIDESZ has gained a powerful supermajority in the parliament. Their main political rival is the Jobbik party, also a far-right nationalist party.

Illiberal Activity

In this subsection, the tracing of illiberal activity will demonstrate the deep, structural nature of FIDESZ’s impact on the Hungarian government. Many of FIDESZ’s violations of liberal democratic norms and values have made international news.
Headlines describe Orban as a “troublemaker” and an “authoritarian” with FIDESZ as an iron trap around the whole of Hungary. Illiberal activity includes legislation pushed through by FIDESZ, but also public rhetoric and non-legislative activity, such as state mistreatment of refugees.

A pronounced and early example of the Orban-FIDESZ government undermining liberal democracy in Hungary is the 2011 ratification of a new constitution. In the 2010 elections, FIDESZ obtained 52.7 percent of the vote and a resulting parliamentary supermajority (Election Resources, Hungary). With the supermajority, the 1949 constitution was nullified on the basis that it was the foundation of communist tyranny in Hungary (Dempsey 2011), which rendered its history of case law invalid. The 2011 constitution entrenched FIDESZ and its ideology into the state structure while endangering necessary checks and balances. Within the FIDESZ Constitution are Cardinal Acts, which are specifying amendments regulating issues of varying weight, including “the election of Members of Parliament [and] the protection of families” (The Hungarian State website). The Cardinal Acts operate as placeholders in the constitution for FIDESZ to later pass fundamental laws with a two-thirds majority (The Fundamental Law of Hungary 2012, Article T(4)). In a report on the new constitution, the Venice Commission criticized the use of Cardinal Acts, which they argue include detailed regulations instead of just basic principles (2013). Illiberal changes in the FIDESZ Constitution are largely entangled in the Cardinal Acts and amendments.

The judiciary was arguably most impacted by the 2011 constitution ratification and period of swift structural reform following ratification. The retirement age of judges and agency of the Constitutional Court have both been directly under fire by FIDESZ
law. A 2012 law abruptly lowered the retirement age of judges and prosecutors from 70 to 62, within a transition period of just one year (European Commission, 2012). The law, without clear justification for the sudden eight-year adjustment, would trigger the loss of hundreds of judges in the Hungarian court systems. With the retirement age requirement, FIDESZ attempted to purge the judiciary and pack FIDESZ-aligned judges into the courts. A similar approach was taken to the Constitutional Court itself. Between 2010 and 2012, the number of judges allowed on the court was increased from 11 to 15, allowing Orban to pack it with FIDESZ allies, and then the jurisdiction of the court was strictly limited (Helsinki Committee 2015). The judicial review of the Constitutional Court was restricted to only laws that have impact on the budget, including tax and spending programs, unless those budgetary laws violate specific rights (Krugman 2011). Packing the courts and sharply undermining judicial review effectively renders the judiciary’s check on the FIDESZ legislative agenda futile.

A restricted judiciary has a great electoral impact in addition to legislative power dynamics. One of the significant changes made to the Hungarian constitution was the amendment to electoral supervision. The new constitution stipulates that the Election Commission is composed of members of the governing party, rather than a politically-diverse supervisory entity (Brodsky 2015). Electoral districts have also been manipulated under new law: a two-thirds majority has been instituted as the new requirement for redrawing district boundaries. Undermining the election supervisory capacity of the judiciary with changes to both the partisan composition and decision-making processes neutralizes any potential opposition. The reform to the Election Commission allows FIDESZ to predispose elections to their favor while ensuring that the Election
Commission would not investigate any FIDESZ victory. Ultimately, the amendments to the electoral process reinforce and perpetuate FIDESZ’s majority through long-lasting structural changes.

In conjunction with the electoral amendments protected by the new judiciary, FIDESZ’s constitution re-defined the Hungarian media landscape. Within the new constitution, FIDESZ bans “political advertising during the election campaign in any venue other than in the public broadcast media, which is controlled by the all-Fidesz media board” (Scheppele 2013). Mass media law also permits the government to sanction journalists and press outlets, as well as prior restraints on the press through a strict registration process (Council of Europe, 2011). Regulations on the media, and particularly political content and campaigning in the media, dangerously curb the freedom of the press. Through marginalization of the press, FIDESZ also smothers political opposition, further consolidating its rule.

One of the more visible cases of Hungary’s escalating illiberalism and devaluation of European Union norms is its reaction to the refugee crisis. In 2015, the influx of Syrian refugees was responded to with a series of propaganda campaigns, proposals for border walls, and mass arrests of refugees (Kingsley 2015). Hungary’s shutdown of the border, detention of refugees in “transit zones,” and widely reported abuse by the police (Samuels, Booth 2015) indicates a foundational disregard for international norm fueled by FIDESZ’s ethnic nationalist politics. The Hungarian government’s mistreatment of the refugees is in direct violation with the 1951 Refugee Convention, which demands signatories to provide certain human rights and protections to asylum-seekers (UN 2015). Moreover, Hungary’s blatant unwillingness to coordinate
with the rest of the European Union on relocation efforts during the crisis reveals the empowered, mutinous nationalist stance of the Orban government vis a vis EU decision-making. Since the relocation quota plan was introduced in 2015, Orban and other FIDESZ officials have rejected the quota system, accused it of violating Hungarian sovereignty, and refused to accept any migrants (UN 2015). Because the refugee crisis strikes at the core of FIDESZ’s ethnic nationalism and Euroscepticism, it provides a clear window through which to witness the Hungarian government’s distancing from European Union standards of policy and behavior.

Most recently, the Orban regime has crackdown on civil society in Hungary, with targeted legislation against Non-Governmental Organizations and universities with foreign funding. In 2017, parliament passed a law stating that any foreign-funded university in Hungary must sign an intergovernmental agreement and prove that the university operates in the home country as well (Keszthelyi 2017). The law effectively shut down the Central European University (CEU) in Budapest due to its founding by international financier and Orban-foe George Soros (Szakacs, Dunai 2017). While thousands protested the university’s closing, it did not prevent Orban from launching a similar attack against liberal civil society organizations with foreign funding (Reuters 2017). The crackdown on the CEU and civil society NGOs is a continuation of FIDESZ’s marginalization of opposition and a flagrant breach of freedom of association protected in the EU Charter of Fundamental Rights (Reuters 2017).

Hungary’s escalating pattern of behavior with the rise in power of the FIDESZ party illustrates the inability of the European Union’s post-accession leverage mechanisms to have any deep impact on the illiberal government. The eight years since
FIDESZ’s electoral landslide have been defined by serious acts against the rule of law, the judiciary, the freedom of the press, political opposition, civil society, multinational agreements, and human rights. Orban and FIDESZ’s changes to the Hungarian government have two significant qualities: they impose long-term structural change and attempt to perpetuate FIDESZ political authority.

**Post-Accession Hard Pressure**

This section will describe and analyze the interactions between European Union authorities and the Hungarian government regarding its illiberal activity. “Hard Pressure” post-accession mechanisms include the formal, supervisory processes within the EU such as the infringement procedure and Article 7. Hard pressure mechanisms are criticized for perceived ineffectiveness and political stigma, but are still deemed an essential instrument of the European Union’s authority over Member States.

Hard pressure was exerted by the EU in all cases described in the previous section. The table below outlines the implementation of hard pressure and the respective outcomes to related illiberal activity.

<table>
<thead>
<tr>
<th>Activity</th>
<th>EU Penalty</th>
<th>Response</th>
<th>Outcome</th>
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<tbody>
<tr>
<td>Ratification of new constitution (2011)</td>
<td>Infringement launched on concerns within the new constitution: independence of judiciary and central bank (Jan. 2012)</td>
<td>Orban backtracks on disputed central bank laws</td>
<td>European Commission states satisfaction with changes to central bank law; other aspects of constitution “will be monitored”</td>
</tr>
<tr>
<td>Judge Retirement Law (2012)</td>
<td>Infringement launched and quickly found the law in violation (Mar. 2012); Court of</td>
<td>After COJ decision, Parliament amends judge retirement age, now lowered to 65</td>
<td>Due to reduced severity of judge retirement, the infringement case is</td>
</tr>
</tbody>
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Justice declares law unjustified discrimination (Nov. 2012) over ten years (rather than 62 over one year) closed.

|-------------------------|-----------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------|

| Breaches during Refugee Crisis (2015-present) | Infringement launched against asylum law and lack of violation of refugee protections (Dec. 2015) | Hungary continues violations of EU values and refugee protections; launches a referendum to formally reject the EU quota mandate (2016) | Conflict is ongoing; the infringement procedure did not pressure Hungary into correction; Commission launches additional infringements (2017) |

| Marginalization of civil society and universities (2017-present) | Commission launches infringement against the higher education law (2017); Parliament passes resolution calling for Article 7 (May 2017) | Hungary makes retaliatory statements and passes similar law on foreign-funded NGOs (June 2017) | Conflict is ongoing; the infringement procedure did not pressure Hungary into correction; Commission launches additional infringements (2017) |

*Table 1*

The table illustrates two troubling patterns that arise when the European Union engages with Hungary in post-accession hard pressure: the superficial nature of behavior correction and the worsening neglect of the European Commission and Court of Justice’s directives within the infringement procedure over time.

One of the compelling cases of correction through hard pressure illustrated in Table 1 is the 2012 Judge Retirement Law. The infringement case itself lasted approximately a year, but the FIDESZ-rulled Parliament did not amend the law in question until the Court of Justice released its definitive decision that the law was in
breach of European Union standards. However, it is important to note that the Court of Justice decision opposed the law because it was “unjustifiable” and therefore discriminatory. When the parliament passed the amendment to slightly raise the retirement age and increase the transition period, the law was only technically adjusted to satisfy the authorities. The act of systematically eliminating judges in favor of FIDESZ-aligned appointments did not change in the amendment, only its immediacy. The substance of what the Court of Justice deemed “unjustifiable discrimination” was only superficially reconfigured to meet the standards of the infringement procedure. The 2012 Judge Retirement Law is a strong example of how hard pressure can yield correction of behavior, but that correction may be superficial.

The table also demonstrates a structural issue of the infringement proceedings: the asymmetry of scope in the Commission’s addressing of the potential breach. In all of the cases shown above, the infringement proceedings are hinged on the critique of a specific law or set of laws. However, the illiberal activity committed by the FIDESZ regime, was widespread, systematized, and restructured whole institutions. One of the most clear examples of this issue is the ratification of the FIDESZ Constitution in 2011. While the European Commission launched infringements on specific laws within the sweeping reforms and outlined the threat against rule of law in the related documents, the proceedings did not have the capacity to legally address the constitution as a whole, or the act of nullifying the old constitution. The narrow focus inherent to the legal nature of the infringement is not necessarily fit to address the breadth and depth of illiberal transformation of the state.
The specificity structured into the infringement proceedings did contribute to the correction of the central bank law that would entrench FIDESZ control. As seen in the table, parliament did backtrack on the law after the European Commission launched an infringement. However, the central bank law is an example of informal punitive mechanisms being used by the EU to influence behavior in conjunction with the infringement procedure. The additional informal instruments of post-accession leverage, used with and without hard pressure, will be discussed in the next subsection on soft pressure.

There were two instances in which the Members of the European Parliament threatened triggering Article 7 against Hungary. In 2015, Orban threatened to reinstate the death penalty, which is explicitly in violation of the Treaties and of the EU Charter of Fundamental Rights (European Parliament 2015). In response to Orban’s statements, the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs debated death penalty and passed a resolution stating that any serious attempt to reintroduce the death penalty would trigger Article 7 and revoke a Member State’s voting rights (European Parliament 2015). In this case, Orban did not continue to make inflammatory comments about the reintroduction of the death penalty.

In 2017, the European Parliament passed a resolution calling for the launch of Article 7 proceedings. The resolution cited Hungary’s transgressions against asylum-seekers and non-governmental organizations, particularly the shutdown of the Central European University (Keszethlyi 2017). The resolution represents the first phase of Article 7 proceedings, which is an inquisitive stage designed to prevent an actual breach in European Union foundations (Keszethlyi 2017). However, the European Parliament’s
call for Article 7 did not prevent or cease illiberal activity in Hungary, particularly the FIDESZ regime’s offense against civil society and asylum seekers. In this case, the illiberal activity continued without any modification, and the issues at stake were entrenched in FIDESZ’s nationalist frame.

In response to the resolution, Foreign Minister Péter Szijjártó stated “European institutions are clearly unable to accept the fact that despite the application of international pressure, the government of Hungary is continuing to practice a migration policy that is exclusively aimed at ensuring the security of Hungary and the Hungarian people… We are now witness to a new attack on Hungary by George Soros’ network” (Matthews 2017). Not only did the European Union’s exertion of hard pressure in this case fail to slow illiberal activity, it incited the illiberal government into a harder stance. Szijjártó’s statement demonstrates the negative politicization of EU hard pressure. Szijjártó uses the EU’s criticism to reinforce the FIDESZ policies on asylum and foreign-funding NGOs, both significant manifestations of the party’s nationalist ideology.

The interactions between the European Union formal penalty system and the FIDESZ government are characterized by superficial change, retaliative statements, and continued illiberal activity. The narrow focus of the infringement procedure not only fails to undertake the full reality of systemic illiberal reform, but it also has no compelling compounding effect in the face of Hungary’s neglect. In the sequences of illiberal activity regarding the refugee crisis and civil society, the addition of infringement cases launched against Hungary still did not alter behavior. In the case of Hungary, the lack of efficacy in hard pressure tactics reflects poorly on the conventional paradigm of penalty and post-accession influence in the European Union.
Post-Accession Soft Pressure

This section will analyze the interactions between Hungary and the European Union when the EU is engaging in informal instruments of influence, or “Soft Pressure.” Soft pressure involves attempts of post-accession leverage that do not include the infringement procedure: economic pressure, whether that be the withholding of funds or economic relief; social pressure from political actors, such as Members of European Parliament, and public outcry from groups both inside and outside the state.

Economic pressure is an important instrument within soft pressure because the European Union’s economic allure and reputation is an integral aspect of the EU’s pre-accession leverage. The table below illustrates both additive and subtractive methods of economic pressure employed by the EU in attempt to shape illiberal activity.

<table>
<thead>
<tr>
<th>Event</th>
<th>Additive</th>
<th>Subtractive</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judge Retirement Law (2011-2012)</td>
<td>EU resumes aid talks (April 2012)</td>
<td>Commission suspends the Cohesion fund and states that if there is no change by 2015 the resource is permanently withdrawn (Feb 2012)</td>
<td>Orban rejects conditions of EU-IMF aid, illiberal reform and retirement law persists (until 2013) and aid talks end</td>
</tr>
<tr>
<td>Constitutional Court and Media Reform (2013)</td>
<td>EU releases Hungary from excessive deficit procedure</td>
<td>None</td>
<td>Media amendment amended slightly, but no changes regarding independence of the judiciary</td>
</tr>
</tbody>
</table>

*Table 2*
As mentioned in the literature review, additive pressure involves cases in which the European Union increases resources for the Member State in attempt to deter or halt illiberal activity. Subtractive pressure is the withdrawal of resources to punish the illiberal behavior. The table includes the manipulation of aid talks, special funds, and the Excessive Deficit Procedure (EDP). The EDP is a process through which Member States with debt exceeding 60% of GDP reconfigure fiscal policy under EU supervision (European Commission 2017).

The manipulation of the 2011-2012 aid talks between the EU, IMF, and Hungary throughout the illiberal reforms reflects a series of back-and-forth exchanges between the EU and the FIDESZ government. During the initial period of constitutional reform in 2011 and the passing of a law that reduced the independence of the central bank, the European Union suspended financial aid talks. When parliament amended the central bank law to reinstate some independence, the EU resumed talks, only for them to end again when Orban publicly rejected the conditions of the IMF loan. Hungary’s lapse of behavior during the negotiations, oscillating between agreement and disagreement with continued lack of policy correction, demonstrates a similar pattern of superficial and impermanent responses as seen in the previous section on hard pressure. All the cases included in the table above were instances when both soft and hard pressures were employed by the EU.

The economic pressure implemented in the case of the Judge Retirement Law demonstrates an interesting use of combined additive and subtractive attempts of influence. Unlike the implementation of hard pressure, economic pressure may have a compounding impact with continued deprivation or supply of resources. However, in the
case of the Judge Retirement Law, no attempt at post-accession leverage was successful until the Court of Justice decision yielded the 2013 amendments. During the suspension of the Cohesion Fund, Commissioner Hahn stated that the decision was meant to reinforce the EU’s economic governance and was not meant to be “some kind of punishment” (European Commission 2012). Despite the Commissioner’s statement that the suspension of the fund was strictly budgetary, the assertion of EU authority during the time of parliament’s illiberal policy making and Orban’s uncooperation in negotiation was a significant reclamation of the EU’s mechanisms of governance.

Like the Cohesion Fund, the EU’s grant funding to Hungary may have been potentially manipulated to exert pressure, although less publicly. During the period of illiberal activity, there were sharp changes in the European Union’s grant funding to projects in Hungary. EU development grants dispense funds to small business, NGOs, and researchers for various projects in alignment with EU objectives (European Commission 2012).
The graph above illustrates a rise in the amount of grant funding to Hungary while a general decline in the number of grants recipients. From 2014 to 2015, the overall grant fund rose from approximately twenty-five million Euros to one hundred-and-twenty million Euros, with a sharp increase in 2016 to nearly four hundred-and-fifty million Euros dispersed among only seven hundred-and-sixty recipients. While the justification for the shift in funding is not described in a public statement or rationale, the increase in grant funds starting in 2014 coincides with the period of time in which the FIDESZ government began violating basic rights and freedoms with their policies. Moreover, the slight increase in 2011-2012 coincides with the initial major illiberal act ratifying the FIDESZ Constitution and its sweeping amendments. The funding information represents an overall trend towards additive pressure, or even potentially the intentional funding of EU-aligned entities and civil society groups in a country under a Eurosceptic and hostile government.

In addition to economic pressure, social mechanisms are also an integral aspect of soft pressure. Social pressure involves statements from individual politicians, like Members of the European Parliament, or groups, like political coalitions. In the case of the death penalty, which was discussed in the previous section on the threatening of Article 7, social pressure played a significant aspect in the controversy surrounding Orban’s statements. The day after Orban made the remarks on the death penalty, then-European Parliament President Martin Schulz issued a statement saying “[Orbán] had assured him that the Hungarian government had no plans to take any steps to reintroduce the death penalty and that the Hungarian government would respect and honour all EU Treaties and legislation” (European Parliament 2015). Schulz’s statement is an attempt to
both diffuse the tension and increase the public stakes of Orban’s commitment to honoring the EU policy on the death penalty. However, the day following Schulz’s phone call, Orban repeated his initial statements on the reintroduction of the death penalty (European Parliament 2015). While Shulz’s statements meant to publicly corner Orban, Orban’s lapse in position undermined Shulz’s attempt to uphold accountability.

Members of Parliament also attempted to exert coordinated social pressure in 2017 in an effort to slow Orban’s escalating illiberal trajectory. FIDESZ is a notable member of the European People’s Party (EPP), a conservative European political party. In an April 2017 party meeting, the delegate from Luxembourg Frank Engel stated, “They [Fidesz] have to understand that this circus - where every other month or twice a year at least, the whole EPP does nothing but defend Fidesz - is over. We will not do it anymore” (Zalan 2017). Another delegate, Esther De Lange, also criticized FIDESZ’s place in European politics: “Is your place among the autocratic leaders [like Russian president] Putin or [Turkey’s president] Erdogan, or do you belong to a Europe based on the core values that you yourself fought for in ’89?” (ibid). The statements from the other EPP delegates attempt to create a critical political environment for FIDESZ, and increase the pressure on both Hungary and EPP’s leadership. Both Engel and De Lange’s comments are steeped in an ideological and political critique of FIDESZ’s role in Hungary and in Europe. Engel’s statement is more of a structural social pressure within the EPP to hold FIDESZ accountable, while De Lange’s comment brings into question the entire ideological paradigm of European politics. In conjunction, the statements situate FIDESZ in an ideological crisis of European politics, with EPP as FIDESZ’s moderator in the EU. Engel and De Lange’s statements encapsulate the ideological nature
of social pressure, as well as the depth and breadth of critique that can be implicated with social pressure.

While the frustration from the EPP delegates indicates a massive political and ideological rift between Hungary and the EU, the EPP has also attempted to exert social pressure on Hungary on specific issues. During FIDESZ’s 2017 attack on civil society and the Central European University, party chairman Joseph Daul stated, “EPP asked FIDESZ and the Hungarian authorities to take all necessary steps to comply with the Commission’s request. Prime Minister Orban has reassured the EPP that Hungary will act accordingly” (news). Daul accompanied his statement with the assertion that the EPP will not condone the violation of the rule of law or the closing of the CEU. Daul’s statement represents an attempt to establish accountability with social pressure. However, Daul’s announcement was met with retaliative statements from Orban, who undermined the seriousness of the EPP’s pressure with facetious comments, such as “They told me to behave” (Zalan 2017) in regards to the critique. Furthermore, attempts at social pressure were weakened by EPP leader Manfred Weber, who tweeted congratulations to Orban after his re-election as chairman of FIDESZ (Zalan 2017). It is important to note that while EPP leadership and members mentioned consequences in vague terms, none threatened expulsion from the party or sanctions.

Although social pressure from Members of European Parliament did not yield any behavior correction, and actually incited retaliatory statements, there was one instance that social pressure resulted in change. In 2014, the FIDESZ government proposed an internet tax on data traffic that prompted large-scale protests (Thorpe 2017). Domestic public outcry and condemnation from the Commission, with a particularly harsh
statement from Commission Vice President for Digital Agenda Neelie Kroes, both occurred within a short window of a few days of the proposal (EURACTIVE 2014). Together, the social pressure from above and below resulted in Orban’s cancellation of the tax plan (Thorpe 2017). This case may imply the necessity of domestic pressure for EU social pressure to succeed.

The low effectiveness of economic and social pressure indicates a similar impact to hard pressure on illiberal activity in Hungary. However, the various types of soft pressure allow for increased flexibility and choice when European authorities attempt to correct behavior. From the series of interactions between the EU and the FIDESZ government, correction occurred mostly when the policy in question was of low ideological value. More technical laws distant from FIDESZ’s nationalist core-- such as the Judge Retirement Law, Media Reform, Central Bank Law, and the internet tax proposal-- are open to amendment. The next section will further analyze what factors make hard and soft pressure less likely to yield positive change.

**Domestic Factors**

This subsection will outline the domestic factors that contribute to Hungary’s escalating resistance to EU post-accession leverage. By discussing domestic conditions as significant determinants of behavior modification during post-accession leverage, I am arguing that EU pressures on Member States can only be effective to a certain extend according to the political and economic environment in the Member State. The three main domestic factors are FIDESZ political strength in both the domestic and European contexts, economic recovery, and the proliferation of nationalist, Eurosceptic rhetoric.
Discussed some in the previous subsection, Hungary’s relationship with the European Union via the European People’s Party (EPP) has complicated implications for accountability and implementation of leverage. The EPP leadership failed to sanction or expel FIDESZ from its ranks. As seen in the 2017 EPP meeting in which members debated the inclusion and behavior of FIDESZ, internal party pressure and criticism still did not yield a political or judicial consequence for Orban or FIDESZ. The conflict within the EPP demonstrated in the 2017 assembly also aligns with the argument that internal party disagreements and politicalization of penalty processes hinders post-accession leverage.

Considering FIDESZ’s electoral results on multiple levels is significant for evaluating the party’s weight in the EPP as well as its domestic political strength. Below is a table demonstrating FIDEZ’s electoral results in both domestic and European parliamentary elections, with the liberal democracy V-DEM score to track the patterns of illiberalism.

<table>
<thead>
<tr>
<th>Year</th>
<th>Domestic Election</th>
<th>European Election</th>
<th>V-DEM score</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>N/A</td>
<td>FIDESZ takes 12 out of 24 Hungarian seats</td>
<td>0.72</td>
</tr>
<tr>
<td>2006</td>
<td>FIDESZ wins 42% of votes, 164 seats</td>
<td>N/A</td>
<td>0.69</td>
</tr>
<tr>
<td>2009</td>
<td>N/A</td>
<td>FIDESZ takes 14 out of 22 Hungarian seats</td>
<td>0.71</td>
</tr>
<tr>
<td>2010</td>
<td>FIDESZ wins 53% of votes, 262 seats</td>
<td>N/A</td>
<td>0.64</td>
</tr>
<tr>
<td>2014</td>
<td>FIDESZ wins 44% of votes, 133 seats</td>
<td>FIDESZ takes 12 out of 21 Hungarian seats</td>
<td>0.59</td>
</tr>
</tbody>
</table>

Table 3
While FIDESZ has been a high-vote earning party since 2004, its political power came into force in 2010 when it won a two-thirds supermajority. It is important to note that one of FIDESZ’s changes to the election process included an amendment to the total number of seats in the parliament, with a sharp decrease from 386 to just 199 in 2014 (Mudde 2014). Therefore, the 133 seats won in 2014 still results in a constitutional supermajority.

While FIDESZ maintains the majority of Hungarian delegates to the European Parliament, FIDESZ membership takes on additional meaning in the context of the EPP’s own political strength. In 2004, the EPP had 68 more parliamentary seats than its closest rival, the Social Democrats. In 2009, the EPP had 81 more seats than the Social Democrats. However, the EPP’s gap narrowed in 2014 to only 23 seats more than the Social Democrats. As FIDESZ gained political control in Hungary, the EPP was losing its hold on the European Parliament, which could have potentially increased FIDESZ’s relative importance to the EPP’s political strategy. FIDESZ’s embeddedness in Hungarian politics in conjunction with the EPP’s increased need for parliamentary seats contributed to Hungary’s lack of change under pressure.

While Hungary’s economy experienced an overall pattern of recovery, there was one year in which the Hungarian economy took a downward turn: in 2012, Hungary’s annual percent GDP growth was -1.6, while the unemployment rate was at 11% (Eurostat). In that same year, FIDESZ bent to EU pressure and amended its criticized Central Bank Law. While Orban later backpedaled in the aid talks, the economic nature of the exchange during a particularly economically vulnerable year demonstrates the connection between domestic factors and the efficacy of EU pressure.
FIDESZ’s far-right nationalist, Eurosceptic rhetoric plays a significant role in Hungary’s resistance to EU hard and soft pressures. The previous section discussed how FIDESZ is more likely to make an amendment to a policy without strong ideological substance or importance to the party’s nationalist outlook. Additionally, the responses to highly ideological social pressure, as in the cases of the 2017 Article 7 threat and EPP critique of Orban, illustrate how social pressure with a basis in explicit liberal democratic values can incite retaliative speech and continued resistance.

Retaliative discourse is not the only source of nationalist, Eurosceptic rhetoric; illiberal rhetoric is produced by the FIDESZ regime to undermine European Union authority. In a 2014 speech, Orban famously declared his agenda to build an illiberal democracy (Mahony 2014). Orban argued that Western liberal democracies cannot remain globally relevant or competitive, citing the 2008 financial crisis and the rise of countries like Russia, China, and Turkey (ibid). Notably, Orban made two points that struck at the core of the EU’s ideological and judicial authority: “This means that we must break away with the liberal principles of society, the methods and the liberal understanding of society at all,” and later he said, “I don’t think that our European Union membership precludes us from building an illiberal new state based on national foundations” (Orban 2014). By claiming the ability to create an illiberal Hungarian nation-state inside the EU, Orban is undermining the political value of EU membership, as well as the enforceability of EU laws and directives. In the context of Hungary’s illiberal activity and the EU’s attempted corrections, the speech takes place just at the beginning of the refugee crisis in 2014, which also marks the point in time in which the FIDESZ government begins to escalate its neglect of EU corrective pressures. Orban’s
speech, as well as the instances of retaliative statements from other FIDESZ officials, illustrates the impact of illiberal nationalist rhetoric on the post-accession leverage process.

Throughout the seven years since FIDESZ’s first supermajority, the party has essentially altered the fabric of the Hungarian state and critically undermined the quality of democracy. The escalation in FIDESZ’s disregard of European Union values, laws, and post-accession pressures reflects the consolidation of FIDESZ’s power in Hungary, as well as the proliferation of anti-EU rhetoric. The domestic factors of political strength, economic recovery, and illiberal rhetoric create political and economic conditions that make FIDESZ less likely to yield to EU pressures.

**Poland**

This section on Poland will analyze the illiberal activity since its entry into the EU in 2004, although the bulk of illiberalism has taken place in recent years, and the respective mechanisms of post-accession leverage enacted by the European Union. First, I will provide a brief overview of Poland’s history with illiberalism. Then, I will track the illiberal activity in Poland, with a focus on the Freedom and Justice Party (PiS) as the main actor. In the following subsections, I will discuss the interactions between Poland and the EU’s various post-accession leverage mechanisms, with a particular focus on the triggering of Article 7 that took place in late 2017. Lastly, I will analyze the domestic political and economic factors in Poland that impacted the EU’s post-accession influence. The purpose of this section is to outline Poland’s illiberal activity defined by PiS and compare the cases of Hungary and Poland through the enactment of Article 7.
Historical context is integral to understanding the rise of illiberalism in Poland. The construction of a Catholic Polish nation is at the foundation of the PiS government’s conservative nationalist perspective. While the vast majority of Poles are Catholic due to the massive cleansing of Jewish Poles in the Holocaust, the Catholic identity has been entwined into Poland’s political narrative. Catholicism under Soviet rule and Pope John Paul II 1979 homecoming were important factors to driving the Solidarity movement, which ultimately negotiated the first free elections in 1989. During his historic visit, Pope John Paul II proclaimed that “without Christ it is impossible to understand the history of Poland” (Porter 2001). While the Pope’s statement clearly speaks to a theological perspective of history, it also encapsulates the importance of Catholicism to the Polish national identity. In the context of the current illiberalism, the conceptualization of Poland as a distinctive Catholic nation is essential to understanding the policies based in religious conservativism, focus on the family as a national unit, and the religious-nationalist arguments against the acceptance of refugees.

The Freedom and Justice Party (PiS) is a far-right nationalist party lead by Jaroslaw Kaczynski. PiS has been in power twice: once between 2005 and 2007, and again in 2015. When PiS first governed in 2005, it upheld the ratification of the Lisbon Treaty and guided Poland into the initial years of EU membership; meanwhile, the PiS government engaged with the EU to obtain more voting power (Pawlak 2016). With an electoral upset in 2015, PiS has now a governing majority in parliament and the presidency.
Illiberal Activity

This section will identify the significant violations of liberal democracy in Poland by PiS, with a focus on the attacks against the Constitutional Court, freedom of the press, and entrenchment of PiS policy in Polish law. The bulk of illiberal behavior will have taken place since 2015.

A major aspect of illiberal activity in Poland is PiS’s legislation against the judiciary. Unlike FIDESZ, PiS did not ratify an entirely new constitution upon coming into the majority. However, the PiS legislation similarly undermines the independence of the judiciary and the normative configuration of the state. Between 2015 and 2017, PiS launched a series of reforms, including new requirements for Constitutional Court rulings. A 2015 law required the Constitutional Court to make decisions on the basis of a two-thirds majority, instead of the former simple majority, as well as the presence of thirteen judges, instead of the previous nine (The Guardian 2015). The PiS government also installed five of its own judges on the fifteen-member Constitutional Court, while refusing the validity of appointments made by the Civic Platform government (The Guardian 2015). The court-packing and restrictions on the Constitutional Court sharply restrict the judiciary’s check on PiS power in both houses of the legislature and the presidency. Legislation against the judiciary resurged in early 2017 with a series of bills. One of the laws allowed the justice minister to immediately fire and replace any Supreme Court justice, and another allowed the justice minister to name all the heads of the lower courts (Davies 2017). In this case, President Duda, also a member of PiS, vetoed all the laws but one: the widening of the justice minister’s ability to appoint lower court heads. Later in 2017, another set of bills were introduced to purge all judges not appointed by
PiS from the courts, effectively giving PiS full control over the judiciary (Lyman 2017). The undermining of the judiciary by PiS demonstrates the government’s structural, systemic approach to consolidation of power and disregard for institutional independence.

In addition to illiberal judicial reform, PiS also passed restrictive media legislation throughout its majority reign. In 2015, PiS passed a law reconfiguring management of public television and radio, handing supervisory and appointment power to PiS authorities (Rettman 2015). In 2016, PiS released a ban on journalists’ access to legislators (Al-Jazeera 2016). The restriction of media freedom actively violates liberal democratic values, as well as creates a political environment with weakened mechanisms of domestic accountability. In the case of the 2016 media ban, parliament lifted the ban in response to public outcry, but still made no move to reinstate any greater degree of press freedom (Goettig 2016). Crackdown on media access, as well as the consolidation of public press management, demonstrates both a disregard for protected liberties and a direct attempt to reduce oppositional spaces within the media.

PiS have not just undermined the freedom of the judiciary and the press, but it has also asserted its ethnic nationalist ideology into official political discourse. Like FIDESZ, PiS has refused to accept asylum seekers. In 2015, just before the PiS electoral victory, party leader Jaroslaw Kaczynski made comments claiming refugees were a public health risk, a factor to the spread of disease (Reuters 2015). Later, after PiS assumed power, the PiS European affairs minister stated that Poland would only accept refugees on the condition of certain security measures, associating asylum seekers with terrorist threats (Reuters 2014). The 2015 comments later escalated to full reversal of Poland’s
commitment to the EU quota resettlement plan, with then-Prime Minister Szydlo claiming that there had been no formal agreement made between the EU and the former government (Dearden 2017). The anti-refugee rhetoric transformed into defining state policy as PiS took power. The PiS stance against refugees reflects the ethnic nationalist underpinnings of their party ideology, as well as the party’s disregard for EU agreements.

The pattern of illiberal activity in Poland under PiS governmental control indicates a lack of escalation, meaning an immediate use of state power to consolidate rule and undermine institutional freedoms. Unlike FIDESZ, which enacted legislative and rhetorical attacks on a wide variety of freedoms, illiberal activity under PiS was swift and concentrated on the judiciary and the media. Moreover, FIDESZ enacted much more deeply structural reform essential to the configuration of the government, with changes to the electoral system and even the decision-making processes within parliament. The timeframe of PiS illiberal activity was also much more compact than in Hungary; FIDESZ was implementing illiberal policies since 2010, whereas PiS only came into power in 2015. The illiberal behavior in Poland by PiS demonstrates the immediacy of authoritarian policies and rhetoric upon electoral victory.

**EU Pressures in Poland**

This section will discuss both the hard and soft pressures enacted by the EU in attempt to alter the illiberal behavior. The most significant case of EU post-accession pressure in Poland is the 2017 triggering of Article 7 for the transgressions against rule of law and liberal democracy made by the Freedom and Justice Party. The purpose of this section is to illustrate how EU post-accession influence in Poland mainly
took the form of multiple infringement procedures, with the social pressure being facilitated by the massive domestic protests.

Protests within Poland, joined by solidarity actions elsewhere in Europe, yielded the only three instances of the PiS government modifying their illiberal behavior. While protests are not instances of EU soft pressure, they may provide a platform for statements of solidarity by introducing social opposition to the discourse surrounding the legislation.

The table below outlines the instances of domestic protests and their efficacy.

<table>
<thead>
<tr>
<th>Event</th>
<th>Protest Activity</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional Court reform (2015)</td>
<td>Tens of thousands march in Warsaw against PiS</td>
<td>No change</td>
</tr>
<tr>
<td>Abortion ban and criminalization (2016)</td>
<td>Thousands of women strike in a nationwide demonstration for abortion rights</td>
<td>Parliament backs of criminalization law</td>
</tr>
<tr>
<td>Surveillance Law (2016)</td>
<td>Thousands march in Warsaw to protest against increase in government’s surveillance powers</td>
<td>No change</td>
</tr>
<tr>
<td>Media Ban (2016)</td>
<td>Immediate protests of thousands inside and outside parliament building</td>
<td>Parliament lifts ban</td>
</tr>
<tr>
<td>Series of bills on the authority of justice minister (2017)</td>
<td>Protests in Warsaw at Presidential Palace</td>
<td>President vetoes two out of three laws</td>
</tr>
</tbody>
</table>

*Table 4*

As seen in the table, domestic protests had some effectiveness in pressuring the PiS government into behavior correction. In the cases of the Abortion Ban, Media Ban,
and 2017 judiciary laws, either the parliament or the president responded with total correction (i.e. completely removing the law) or partial correction, as seen in the president’s vetoes. It is important to note that during this time period, Poland was simultaneously under investigation or engaged in infringement proceedings regarding the rule of law and freedom of the press.

During instances of domestic protest, European authorities spoke out against PiS policies. For example, Guy Verhofstadt, Belgian politician and President of the Alliance of Liberals and Democrats for Europe, released statements via Twitter in solidarity with the Abortion Ban protests (Lindrea 2016). Terry Reintke, a German Member of European Parliament, also stated her support of the protesters against the Abortion Ban (Lindrea 2016). During the 2017 protests against the series of judiciary laws, European Union officials, including Vice President of European Commission Frans Timmermans, made statements regarding the laws’ threat to liberal democracy (Boffey, Davies 2017). The statements exemplify how the protests created a platform in public discourse for European officials and politicians to exert additional social pressure on the PiS government. The protests and solidarity statements from EU authorities represented a compounded kind of social pressure from both above and below on the PiS government.

Soft pressure also includes economic leverage. Unlike the Hungary case, there was not the leveraging of financial aid. However, there was an instance in 2017 when the Cohesion Fund for Poland was indirectly threatened by a proposal to freeze funds to rule-breaking Member States (Eder 2017). Additionally, in 2017, European Commissioner for Justice Vera Jourová proposed that distribution of EU funds should be contingent on the Member States’ adherence to EU principles (Becker 2017). In response to the potential
for a punitive cut in funding, the PiS government dismissed the threat; Prime Minister Szydlo claimed that the threat was empty because the proposal violated EU legality (Kelly and Goettig 2017). The proposals of EU funding reform based on Member State behavior is not just an instance of soft pressure, but an example of how the EU is systematically responding to illiberalism in Member States. As the Commission experiments with proposals to reconfigure the funding process, the grant funding to Poland experienced a sharp increase as the illiberal activity increased. In 2014, before the PiS victory, Poland received around twenty-nine million Euros. In 2015, when PiS took power and began illiberal behavior, grant funding increased to nearly two hundred-and-eighty million Euros. The 2017 grant funding peaked at just over seven-hundred million Euros. The increase in funding with the increase in illiberal activity is a pattern also seen in the Hungary case, reinforcing the concept of additive economic pressure to influence Member State behavior.

The rest of the section will discuss hard pressure, with a particular focus on the triggering of Article 7. Since the PiS came into power in 2015, the European Commission has launched multiple infringement procedures against Poland on the issues of rule of law, violations against the judiciary, refusal to accept refugees, and the undermining of press freedom. However, there is not a single instance in which the PiS government reacted to an infringement procedure with any behavior modification. In response, the European Commission has used unprecedented measures in attempt to cease illiberal activity and democratic backsliding: the rule of law framework, and Article 7.

The rule of law framework is a recently established mechanism designed to address systemic threats in Member States during a time of crisis (European Commission
The rule of law framework is meant to deescalate a Member State’s transgressions before the need to trigger Article 7. The mechanism’s process is similar to the infringement procedure; it involves an assessment of the Member State’s activity and a Commission recommendation. However, if the Member State does not adhere to the recommendation, the Commission will directly trigger Article 7. The rule of law framework was enacted against Poland in July 2017. In November of 2017, the European Parliament passed a resolution calling for Article 7 against Poland (Bodalsk 2017). By December 2017, the Commission brought forth Article 7(1), the first step in suspending membership rights, including voting rights. The quick succession of hard pressure punitive measures indicates both the Polish government’s continuance of illiberal activity and the government’s refusal to engage in dialogue. In the Commission’s announcement of the Article 7 proceedings, the preference for deescalated dialogue is clear: “Whilst taking these unprecedented measures, the Commission maintains its offer for a constructive dialogue to remedy the current situation” (European Commission 2017). The PiS government’s continued neglect of EU standards, recommendations, and directives despite the use of unprecedented mechanisms undermine the institutional gravitas of such procedures.

Unlike Hungary, the PiS government did not demonstrate any trace of engagement with the EU’s attempts at correction. The EU’s swift implementation of hard pressure on the PiS government did not result in any acknowledgement or behavior modification. Illiberal behavior was impacted mostly by domestic social pressure in the form of protests, without EU authorities acting as the central source of soft pressure. As in the Hungary case, the few instances of the PiS government correcting behavior
pertained to laws that did not have great ideological significance to the party or complete party support. The PiS government’s meager responses to social pressure and total lack of response to hard pressure represent a stark political reality in which the mechanisms multilevel governance within the European Union fail to enact change.

**Domestic Factors**

In this section, I will outline domestic factors that contribute to the PiS government’s disregard of EU pressures despite the escalating severity of EU hard pressure mechanisms. Domestic factors include PiS electoral strength in Polish and EU races, the shifting economic needs of the electorate, and the rhetoric of Polish nationalism and sovereignty. In regards to the contextual relationship between Poland and the EU during the development of the PiS government’s illiberalism, it is important to note that the European Council president since 2014 has been Donald Tusk, the former Polish Prime Minister for the Civic Platform government and political rival to PiS leadership.

The PiS party’s electoral history is an unstable one. On a national level, the PiS party briefly held power within a coalition government in 2005, just after Poland’s accession into the EU, but lost to Civic Platform in 2007. The PiS presidential and parliament electoral victories in 2015 were upsets, with PiS suddenly gaining seventy-eight seats in one election (Election Resources Poland). The PiS electoral history is included in the table below:

<table>
<thead>
<tr>
<th>PiS Electoral Strength</th>
<th>Year</th>
<th>Domestic Election</th>
<th>European Election</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2004</td>
<td>N/A</td>
<td>PiS wins 7 out of 54 seats for Alliance for Europe of the Nations (AEN)</td>
</tr>
</tbody>
</table>
The table illustrates two concurrent patterns of electoral activity for PiS: over time, the PiS won an increasing share of votes in both domestic and European elections; however, the party’s positionality within its political institutions is shifting in and out of prominence. Unlike FIDESZ, PiS does not have an advantageous relationship in the European Parliament, particularly because of its change in affiliation from one minority party to another minority party. The lack of advantageous partisan ties may also be an important factor in making Poland vulnerable to the hard pressure mechanisms EU authorities have not exerted against Hungary.

The sudden electoral success in 2015 plays a significant role in the pattern of PiS behavior described previously in the section. The success of the 2015 election domestically emboldened the PiS to enact illiberal policies while ignoring EU attempts at constructive engagement. However, unlike FIDESZ, the PiS government did not attack the electoral system. While PiS did weaken the judiciary, and therefore the supervisory

<table>
<thead>
<tr>
<th>Year</th>
<th>Vote Share</th>
<th>Seat Win</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>PiS wins 27% of votes, takes majority</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>N/A</td>
<td>PiS wins 15 out of 50 seats for AEN</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>PiS wins 29.9% of votes, loses majority to Civic Platform</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td>N/A</td>
<td>PiS wins 19 out of 51 seats for European Conservatives and Reformists (ECR)*</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td>PiS wins 37.6% of votes, takes majority</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>

*The AEN dissolved in 2009 and PiS affiliation shifted to the ECR.

Table 5
check on the PiS government, parliament did not pass laws altering the geographic and political structures defining the basis of elections. And while PiS did reconfigure the management of public media, it did not specifically legislate on the issue of opposition campaigning. Because the PiS did not entrench its majority in law like FIDESZ, PiS remained domestically vulnerable despite its electoral success, which is a significant context for the instances of behavior correction during protests.

The economic environment in Poland is a significant domestic factor for the PiS government’s disregard of European Union post-accession pressure. During the 2008 global financial crisis, Poland was the only economy in the European Union to not go into recession (Piatkowski 2015). In recent years, economic indicators have shown macro-level trends of overall enhancement.

In the graph above, there is a pattern of decreasing unemployment and gradual relief of government debt. Especially since 2014 and 2015, there has been a more discernable change in the economic indicators. Within the context of macro-level economic positive change, the PiS has taken a stance of strong national involvement in the economy. The PiS government, unlike previous governments, put forth a comprehensive welfare program that involves unconditional monthly cash payments to all families with more than one child (Adekoya 2016). The PiS welfare policy was hinged on a nationalist rhetoric, as seen in statements from then-candidate Beata Szydlo: “The state has abandoned too many people. There are too many divisions. We need to eliminate those divisions to ensure everyone feels the state is on their side” (Pawlak, Goettig 2015). The welfare program is an example of the PiS uses its economic policy to articulate nationalist, family-oriented rhetoric. Other PiS economic policies include
statements on government regulation of property rights and banks, as well as lowering the retirement age (Politico 2016). In the party’s 2014 plan, there was a strong connection between the economy, sovereignty, and the family unit: “A sovereign state… where Polish families can continue and develop… [A sovereign state] is possible if we develop as a nation… as a community of Polish families” (PiS). While the macro-level economic indicators suggest a larger narrative of success, the PiS populist economics center the Polish family as a symbol of nationalist values to protect. The shift from the pro-EU, pro-free market Civic Platform government to the nationalist populist PiS government indicates a marked prioritization of nationalist economics. Poland’s economic strength in conjunction with the PiS government’s populist policies and nationalist framing ultimately devalues the EU’s market-sourced authority, situating the EU as an implicit threat to the Polish family.

PiS nationalist rhetoric in all sectors is a significant domestic contributor to the lack of behavior correction throughout the EU’s implementation of hard and soft pressure. Polish sovereignty and exceptionalism within the European Union is at the center of PiS rhetoric designed to diminish the EU’s political and ideological significance in Poland. After Brexit, Prime Minister Szydlo and PiS leader Jaroslaw Kaczynski made statements about the “non-consensual” nature of EU decision-making and Poland’s focus on the protection of “sovereignty” within the EU (Pawlak 2016). In reference to the refugee resettlement quota system, Prime Minister Mateusz Morawiecki, who replaced Szydlo in 2017, stated “We will not accept refugees, migrants from the Middle East and Africa. This is our sovereign decision” (Kelly, Pawlak, 2018). Sovereignty is also invoked in PiS party materials, as seen in the discussion of PiS nationalist economic
rhetoric. In the party materials, a sovereign state is framed as an aspirational vision of Poland, with realization of that dream contingent on a centering of the Polish nation and Polish families in politics. While approximately eighty percent of Poles support EU membership (Pawlak 2016), PiS rhetoric is integrating a version of Polish separatism within the framework of EU membership rooted in the invocation of sovereignty.

PiS domestic electoral victory, economic success, nationalist populist economic policies, and significance of Polish sovereignty in PiS rhetoric create a political-economic environment in which the EU’s authority and liberal social policies are sharply devalued. The PiS government’s complete failure to constructively engage in dialogue with the EU regarding policy correction is not simply a reflection of escalating illiberalism, but also an indicator of diminishing multilevel governance.

Analysis

This section will analyze the two case countries in the framework of the hypotheses. The purpose of this section is to emphasize the role of the Member State’s domestic political and economic environment as a moderator of the EU’s post-accession influence.

The first hypothesis pertains to the role of domestic political and economic health in the EU’s ability to exert change in misbehaving Member States. **H1: If the EU is exerting both judicial and economic pressures, illiberal behavior can only be corrected if the Member State is economically vulnerable or if the incumbent government is politically vulnerable.** In both the Hungary and Poland cases, the illiberal governments were resistant to behavior modification. In Poland and Hungary, economic strength and recovery made the illiberal governments less likely to alter behavior. Even in the example
of the EU exerting economic pressure during a time of economic weakness, Hungary’s change in policy was superficial and technical. While FIDESZ reduced their political vulnerability with electoral and judicial laws, the PiS government’s political vulnerability made them liable to alteration during popular protests. Both cases reinforced the assertion of H1 that domestic economic strength and political security make illiberal governments less likely to alter their behavior.

The second hypothesis relates to the role of the relationship between the illiberal government and their affiliated European party on the EU’s ability to hold Member States accountable. \( H2: \) If the incumbent government’s delegates to the European Parliament have strategic value to their party caucus, the EU will not be able to fully exert economic and/or social pressures. As seen in the case studies, FIDESZ has a strategic relationship with the powerful EPP, while PiS has had shifting affiliations with minority European parties. While EPP members demonstrated tension with FIDEZ and Orban’s illiberalism, EPP leadership continued to protect FIDESZ and avoid internal party penalties. In contrast, the PiS became the subject of the unprecedented judicial measures to influence illiberal behavior. While partisan relationships may not have a direct causal impact on implementation of EU pressure, the different positionalities and experiences of implementation between FIDESZ and PiS endorses the hypothetical idea that parliamentary relations influences the extent of EU corrective mechanisms.

The third hypothesis pertains to the ideological nature of social pressure and is broken down into two parts. \( H3.A: \) When the EU exerts post-accession pressure, if it includes ideology-based social pressure, determined illiberal governments will not modify their behavior. In both cases, ideologically-based social pressure did not yield
behavior changes. It is also important to note that any behavior modification by illiberal governments was made under multiple forms of pressure, not social pressure alone. **H3.B: The more the EU utilizes ideology-based social pressure, the more likely the Member States’ incumbent illiberal government will be to resist the EU.** According to the third hypothesis, ideology-based social pressure is not only ineffective; it incites further resistance and retaliative rhetoric. Retaliative rhetoric is particularly clear in the Hungary case, where criticisms couched in liberal terms were met with defiant statements from FIDESZ officials. However, PiS governments did not engage with retaliative rhetoric. While the Hungary case supports the hypothesis, the Poland case illustrates an exception to the issue of social pressure and retaliative rhetoric; the PiS failed to engage with the EU in any substantive dialogue.

Together, the cases of Hungary and Poland demonstrate the importance of domestic political and economic factors in moderating the EU’s influence. Analysis of FIDESZ and PiS also exhibits the increasingly relevant role of Eurosceptic rhetoric in the discrediation of EU authority. Not only is hard pressure limited, the proliferation of nationalist Eurosceptic rhetoric limits soft pressure as well. Rhetoric deployed by FIDESZ and PiS uses sovereignty and nationalism to question the EU’s right to define and enforce liberal values. By framing relations with the EU as a struggle of sovereignty, the illiberal governments invalidate the ideological underpinnings of the EU’s infringements and criticisms.

**Conclusion**

This paper has argued that domestic factors, such as political security of the illiberal actor, advantageous relationships within the European Parliament, economic
strength, and proliferation of nationalist Eurosceptic rhetoric modulate the efficacy of the European Union’s mechanisms of post-accession leverage. This paper placed emphasis on illiberal rhetoric’s role in discrediting post-accession leverage and the EU’s authority.

At the crux of this research is the crisis of the European Union’s ideological leadership. As more Member States fall to illiberalism, the European Union must adapt their post-accession leverage mechanisms to the new demands of preventing democratic backsliding. Today, anti-EU sentiment and illiberalism is threatening democracies in Macedonia, the Czech Republic, Bulgaria, and Romania. To cope with the rise in illiberalism among Member States, the European Union should question the carrot-stick paradigm underlying its post-accession leverage mechanisms and the politicization of enforcement measures by decision-makers.

One of the limitations of this study is the close proximity to unprecedented events, such as the triggering of Article 7 against Poland. Future studies will be able to analyze the impacts of Article 7 on the EU’s relationships with all illiberal governments. It is necessary to study illiberal democracy in the European Union in order to understand the ways in which misbehaving Member States threaten the ideological and judicial structures of the EU.
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