

On Stateform of Hungary between 1920 and 1944: Applicability of the Term „Monarchy without a King”

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Abstract

The official stateform of Hungary between 1920 and 1944 was „monarchy”. Since she did not have a king for a long time, however, it is often interpreted, even in academic analyses, in a way that it was, in fact, a kingdom with an unspecified monarch, viz without a king that could have been determined. At the level of stateforms, this ambivalent situation of a „kingless kingdom” is expressed by the category „monarchy without a king”. Some legal scholars consider this category to be one of the particular variants of monarchy, while others argue that it might be conceived at a certain point on the scale between the two main types of stateforms, namely between monarchy and republic. This paper analyzes the origin of the term „monarchy without a king”, its meaning in public law and its interpretation within the framework of Hungarian legal history. In the latter respect, it raises the questions whether the term can be used to define and characterize the Hungarian stateform in the Horthy era, and if so, what specific meaning it conveys.

Keywords: Stateform; constitutional history of Hungary; claim of Charles I of Austria (Karl I from the Dynasty Habsburg-Lothringen as emperor of Austria; Karl III as king of Bohemia; and Karl IV as king of Hungary) to the Hungarian throne; legal regulation of powers and competencies of the regent of Hungary between 1920 and 1944; the political meaning of stateform.

The term „monarchy without a king” is a denomination of a special stateform.¹ As it suggests something incompatible with the nature of monarchy, some scholars consider it to be a problematic category. Thus, the stateform and form of government of Hungary between 1920 and 1944 are called „regency” in the English literature,² even at the price that the actual Hungarian situation did not correspond to the traditional concept of *regency*. It can be argued that a monarchy without a king is neither a real monarchy nor a (real) republic. Therefore, some do not employ this term arguing that it is semantically incorrect and even misleading. Others only use it between quotation marks in order to emphasize its unreal, fictional or even illusionary character. Those who employ the term face difficulties in establishing its precise meaning for a specific state. Furthermore, many argue that it has a pejorative and malicious connotation, which indicates some criticism already at the terminological level. The criticism lays in the assertion that the term „monarchy without

a king” cannot be used to define stateform. I discuss this view below.

1. General Meaning and Origin of the Term „Monarchy without a King”

As for stateform, the term „monarchy without a king” carries in itself the sole implication that the throne remains unfilled in a particular state in the longer term. This, namely the unfilled nature of the throne refers to some sort of anomaly in the case of monarchy as a stateform suggesting continuity and perpetuity (cf. *Le roi est mort, vive le roi*). An unfilled throne in a monarchy is an exceptional situation which – in case the person to fill the throne is known but cannot exercise his/her power – can be remedied by public law in various ways.

In the Middle Ages and in the Late Middle Ages such remedies included *regency* with a *regent*, or in some cases with a *regency council*. Regency as an institution allowed someone else to

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¹ Throughout this paper, the terms „stateform” and „form of state” (Germ.: *Staatsform*, Czech: *forma státu*) are used to designate the public law structures that reflect and reinforce the most significant elements of political relations. In this general sense, these forms – although they have several classifications and typologies – have usually been categorized into two main classes („monarchy” and „republic”) since the 16th century. In the English literature this general meaning is sometimes also referred to as „form of government” (Germ.: *Regierungsform*, Czech: *forma vlády*).

² This usage was established in the 1930 s (see Rutter, Owen, *Regent of Hungary. The Authorized Life of Admiral Nicholas Horthy*. London: Rich and Cowan, 1939) and is still common today. For the latter see, e.g., Romsics, Ignác: Changing Image of Miklós Horthy, in: Vít, Michal – Baran, Magdalena M. (eds.), *Transregional versus National Perspectives on Contemporary Central European History. Studies on the Building of Nation-States and Their Cooperation in the 20th and 21st Century*. Stuttgart: Ibidem Press, 2017. pp. 253–268. Different authors draw attention to the contradiction differently. Helmut David Baer, for example, puts it in this way: „Thus Horthy was regent for the king – only Hungary had no king... Hungary in the Horthy period was technically a monarchy. It was a monarchy without a king, governed by a temporary regent whose position was permanent.” See Baer, Helmut David, *The Struggle of Hungarian Lutherans under Communism* (Texas: A & M University Press, 2006) ch. 1. 10.

exercise the power of the ruler in the case of his/her minority, illness or longer absence.³ The regent was, in fact, the „proxy” or „deputy” but not the „substitute” or „vice” of the ruler. In the Hungarian official usage during the Middle Ages, the *regent* was denominated by the word *gubernator* of Latin origin (cf. governor, Hung.: *kormányzó*) which was used to emphasize his strong military and political-administrative role. A well-known *gubernator* was, for example, János Hunyadi (1446-1453; during the minority of Ladislaus V; as King of Bohemia: Ladislaus I Posthumous, or Ladislav Pohrobek), and Mihály Szilágyi (in 1458, during the time between the death of Ladislaus and the crowning of Matthias I).

Occasionally, the ruler had to be substituted and represented for different reasons: the *procurator*, or in some cases *locum-tenens*, represented the ruler only in a specific area – owing to its territorial size or distance from the centre. This office had several equivalents and variants: in the case of old Franks, it corresponded for instance with *marquis* (or margrave, in German: *Markgraf*). In Hungary between 1000 and 1848 well-known variants included *palatine, a deputy and substitute of the king*; however, this office was left unfilled in tragic circumstances in 1848 (when it was intended to be made part of the constitutional monarchy). Since this office and institution was incompatible with the government accountable to the parliament, it ceased to legally exist after 1867. In specific cases, more modern, non-medieval political communities elect or „create” *governors* (in some cases: *protectors or vicegerents*) in order for the state to have at least a kind of emergency president. Thus, the office of the governor is sometimes argued to have the feature of emergency state presidency.⁴ Finally, in the practice of Hungarian public law, *homo regius* (the „man of the king”) was some sort of trustee and representative (in modern usage: proxy) of the king which can be regarded as a special 20th-century mixture of the governor (*gubernator*) and

procurator. The *homo regius* was a confidential person of the king entrusted with resolving complicated issues.⁵

The term „monarchy without a king” is used when the throne is left vacant in the longer period because it is unknown – *viz*, undecided – who should or could fill it. It is not exceptional but irregular, not unusual but abnormal, and not paradoxical but contradictory if this situation lasts too long.

The term of „monarchy” or „kingdom” „without a king” was first used for describing the contradictory nature of a certain political situation, and not as a stateform yet, by an Austrian historian, Adolf Beer. In his book on the first partition of Poland Adolf Beer, who was otherwise the representative of Moravian towns in the Imperial Council (*Reichsrat, Říšská rada*) in Vienna between 1873 and 1897, employed this term to describe „the orphaned political situation”. According to him, this situation is like „a motherland without a mother, a kingdom without a king, a senate without a leader, a sceptre without a hand, a subject without a lord, a republic without a soul”.⁶ Beer’s words recall an old French saying, according to which „a monarchy without a king is like imagining a hand without fingers, a singer without voice, a country without laws, or a life without joy”.⁷ The term has been employed relatively often in the recent academic literature; however, not as a stateform but due to its awareness-raising nature. For instance, a German historian, Maria Rhode used the term to describe seven actual but short *interregnums* in Poland,⁸ while an English historian, Robert Beddard employed the term in the title of his collection of the 1688 *interim government’s* documents and minutes.⁹

It was first used as a denomination of stateform in the case of Hungary to describe the post-1921 situation in an anecdotal or even ironic way. According to the alleged anecdote, the Hungarian state is a „monarchy without a king governed by an admiral without a fleet in a country without a coast.”¹⁰ Aside

³ One of the best-known regent in history was Marie de’ Medici who held this office three times: first, when her husband, Henry II, temporarily left the kingdom for the campaign of Metz (1552); second, when his second son, Charles IX, was still a minor (1560–1563); and third, when his third son, Henry III, went to Poland. The person of the king was known in all three cases. The case of Prince George, *Prince Regent* of Great Britain during the incapacity of his father, George III (1811–1820), is another well-known example of regents. In Bohemia – after the emperor Frederick III as guardian of the young king Ladislaus entrusted him with the administration of the country –, the diet assembled in 1451 in Prague conferred the regency on George of Poděbrad, namely Jiří z Kunštátu a Poděbrad.

⁴ To that effect was Lajos Kossuth regarded a governor who was elected „governor-president” on 14 April 1849, the day of the adoption of the Hungarian Declaration of Independence and the dethronement of the House of Habsburg.

⁵ For example, Archduke and Field Marshal Joseph August von Habsburg-Lothringen who became „full-fledged Hungarian commissioner” (Germ.: *Reichsverweser*) of Charles I of Austria on 26 October 1918. He appointed Mihály Károlyi to the office of Prime Minister and – after he had declared himself governor (*Reichsverweser*) of Hungary on 7 August 1919 – István Friedrich as well who had overthrown the Peidl government in a coup d’état-like event. A couple of days later he resigned and supported Miklós Horthy ex „imperial and royal rear-admiral” (Germ. *ehem. „k. und k. Konteradmiral”*) who was elected regent on 1 March 1920 by the Hungarian National Assembly.

⁶ Cf. „das Vaterland ist ohne Vater, das Königreich ohne König, der Senat ohne Oberhaupt, das Scepter ohne Hand, die Unterthanen ohne Herrn, die Republik ohne Seele” (emphasis added); see Adolf Beer, *Die Erste Teilung Polens* (Vienna: Carl Gerold’s Sohn, 1873), Vol. 1, p. 106.

⁷ Cf. *Imagine un royaume sans roi, une main sans doigts, un chanteur sans voix, un pays sans lois, une vie sans joie c’est sûrement moi loin de toi.*

⁸ Cf. Maria Rhode, *Ein Königreich ohne König. Der kleinpolnische Adel in sieben Interregna* (Wiesbaden: Harrassowitz Verlag – Deutsches Historisches Institut Warschau, Quellen und Studien 5, 1997).

⁹ Robert Beddard, *A Kingdom without a King. The Journal of the Provisional Government in the Revolution of 1688* (Oxford: Phaidon, 1988). As to the literature of the nearly same period from recent years, see Benjamin Woodford, *Perceptions of a Monarchy Without a King: Reactions to Oliver Cromwell’s Power* (Montreal: McGill–Queen’s Press, 2013).

¹⁰ It can be found in many publications, always in an anecdotal sense. From the recent years see for example Francis Tapon, *The Hidden Europe. What Eastern Europeans can teach us.* (s.l., Thomson Press, 2012. p. 224) and Dawn Kazmierzak, *Time to Chose. Growing up under Hitler and watching history repeat itself* (Bloomington, Ind.: West Bow Press, 2014.) p. 4.

from a French rarity¹¹, the throne was left unfilled for a longer period of time in two instances in the 20th century, mostly due to the movement or even will of political forces: first, in Hungary between 1920 and 1944; and second, in Spain between 1947 and 1975. The first became known as the Horthy era while the second is remembered as the Franco era. Both were associated with specific but similar political structures.¹²

According to the official view, the stateform of Hungary between 1920 and 1946 was monarchy,¹³ where most of the prerogatives of the king were exercised by the regent (who could be substituted by a vice regent after 1942). Since the throne was left *de facto* unfilled for two and a half decades, several authors called the public law relations at that time – sympathetically but slightly contradictorily – „provisorium”.¹⁴ However, this is a contradictory term here since monarchy is the stateform of *continuity* while provisorium implies a *temporary* or *interim* condition. Hungarian international lawyer László Buza argued in his public law lecture in the academic year 1939/40 that „the terms monarchy and provisorium are necessarily mutually exclusive. A monarchy can on no account be a provisional monarchy.”¹⁵ This contradiction is reflected in the often-raised argument that the real stateform of Hungary was „monarchy without a king” adding – as if it was a source of shame – that it is a sort of unofficial category.

In the context of the Hungarian state, the term was first used by German literary historian Klabund, or Alfred Henschke, although it is highly likely that he had borrowed it from the common talk. In the chapter on Hungary of a 1923 publication of the history of world literature he argued as follows: „Now even

mentioning the name of [Endre Ady, poet of the 1918 revolution] is forbidden in Hungary. The intellectual life is paralyzed by strict censorship. The republic without republicans was followed by a monarchy without a king.”¹⁶ In 1932, a Hungarian sectoral gazette drew attention to the fact that an article on Hungary in the American edition of National Geographic published a few years prior had mentioned the following two hungaricums: „twin city” (Budapest) and „monarchy without a king” (Hungary itself).¹⁷ From 1945 on, the term became more widespread in Hungary and was mainly used with a critical connotation.¹⁸

Before 1945 the term „Hungarian Monarchical Republic” was more widespread in Hungary which, on the one hand, recalled the Polish *Rzeczpospolita Polska* and, on the other, had some sort of sarcastic connotation. Sándor Propper, a social democratic representative in the Hungarian National Assembly, argued the following way in his speech on 10. January 1924: „I am seeking consolidation regarding constitutional law – since, at last, it has also gained importance – and what conclusion do I reach? We do not have a stateform; we are a monarchy, without a king. Recently, I have read in a foreign journal that Hungary is playfully called »Royal Republic of Hungary«. There is no king; it is not allowed to create propaganda for the sake of the republic since one gets convicted for that...”¹⁹

2. Some Issues and Problems about Stateform of Hungary

The difference, or even conflict, between *de jure* and *de facto* stateforms – beyond the unique and paradoxical nature of the

¹¹ With this term (*un royaume sans roi*), the French refer to the special legal status of one of their overseas territories, the Wallis and Futuna Islands. Under an 1887 international treaty, the French Republic recognizes the three local kingdoms existing on the territory (Uvea, Sigave és Tu'a) and that the traditional monarchical institutions have the power to decide in civil matters. It, however, does not recognize the kings even though the local public takes them into consideration. This system – in case one wished to denominate it – would in fact correspond to a „monarchy without a king” instead of a „republican monarchy” or „monarchical republic”.

¹² Political science considers authoritarian regimes; for reasons of space, however, it cannot be discussed here.

¹³ At the level of legal provisions, monarchy was declared by a prime ministerial decree on 18 March 1920 and a law on 6 November 1921 (not by Law I of 1920). The end of the so-called Horthy era (the *coup d'état* by the Arrow Cross Party on 15 October 1944 and the resignation of the regent on 16 October 1944) did not bring about a change in stateform. It has only meant that not only the throne but also the office of the regent were left unfilled. After „4 April” 1945 there arose a unique public legal situation in which until 1 February 1946 the power of the head of state was officially exercised by the three-member High National Council established on 17 April 1945. At the same time, Joseph Mindszenty – appointed by the Pope as Archbishop of Esztergom on 8 September 1945 and inaugurated on 7 October – considered himself regent of Otto Habsburg, son of Charles I.

¹⁴ See for instance Kálmán Molnár, *Alkotmányos jogrendünk és a közjogi provizórium* [*Our Constitutional Legal Order and the Public Law Provisorium*] (Pécs: Dunántúl Rt. Egyetemi Nyomdája, 1926) and *A két világháború közötti provizórium közjogi mérlege* [*The Public Law Balance Sheet of the Provisorium in the Interwar Period*] (Pécs: Karl L., 1945); as well as Béla Túri, *Mai közjogi berendezkedésünk természete* [*The Nature of Our Current Public Legal Framework*] (Budapest: Stephaneum, 1928), pp. 49–63: „Az 1920:I. tc. és a közjogi provizórium [Law I of 1920 and the Public Law Provisorium]”. (In the context of Hungary, only authors loyal to the House of Habsburg applied the term „provisorium” for the following two eras: the *Bach era* (1850–1859) – in order to avoid calling it autocracy – as well as the temporary restoration of absolutism by Anton von Schmerling (1861–1865) – for roughly the same reasons.)

¹⁵ László Buza, *Magyar közjog* (Buza László előadásai alapján összeállította Beller István) [*Hungarian Public Law* (edited by István Beller on the basis of the lectures of László Buza)] (Szeged, 1939). Manuscript. Cited in: Gábor Schweitzer, „Közjogi provizórium, jogfolytonosság, új közjogi irány. Az 1919/1920–1944 közötti magyarországi alkotmányjog-tudomány vázlata” [*Public Law Provisorium, Legal Continuity, New Public Law Orientation. Outline of the Constitutional Legal Science of Hungary between 1919/20–1944*]. Parts 1-2, *Közjogi Szemle*, Vol. 7, Issue 2014/1–2 (pp. 8–16 and 9–20), p. 15. On this issue, see also László Buza, *A királykérdés nemzetközi jogi vonatkozásai* [*The International Legal Aspects of the Issue of the King*] (Budapest: Pallas Ny., 1928) (Offprint from Issue 1928/10 of *Magyar Jogi Szemle*).

¹⁶ See *Geschichte der Weltliteratur in einer Stunde* (Padeborn, Salzwasser Verlag, 1923), cf. pp. 100–103., written by the German writer, Alfred Henschke, better known by his pseudonym Klabund. Moreover, the book refers to Horthy as *Reichsverweser*. The parts referring to Hungarian literature was published in Hungary in 1929 in a journal, see *Irodalomtörténet*, Vol. 17 (1929), p. 142. For international journalism, see István Csekey, „Das Königreich ohne König”, *Reichspost* [Vienna] (25 February 1925).

¹⁷ *Vasúti és Közlekedési Közlöny*, Issue 51 (1932), p. 488.

¹⁸ Cf. József Kardos, „A király nélküli királyság a szent korona jegyében” [Monarchy without King in the Spirit of the Holy Crown] in *A magyarországi polgári államrendszerek* [*Hungarian Civil State Systems*], ed. Ferenc Pölöskei and György Ránki (Budapest: Tankönyvkiadó, 1981), pp. 438–469.

¹⁹ *Nemzetgyűlési napló* [*Diary of the Hungarian National Assembly*], Volume XIX (Budapest: Athenaeum, 1924), p. 90.

issue – raised difficulties in three aspects: first, because of the claim of Charles I to the Hungarian throne; second, because of the expansive legal regulation of powers and competencies of the regent acting in the function of the head of state; and third, for political reasons. In the given period, such contradictions were tolerable in the eyes of many as they considered the situation to be temporary. However, the situation remained „temporary” for two and a half decades – the same way it happened later on a few more occasions in this historical landscape. The paradoxical nature of this issue can well be illustrated by the argument of the late legitimist lawyer, Tibor Farkas (1883–1940) who claimed that in the case of monarchy, institution and person, *by its nature*, belong together. He argued that a monarchy without a king is as inconceivable as a „gold pengő” (a special currency of the time) without gold, or „national unity without the unity of spirits”.²⁰

2.1 The Claim of Charles I to the Hungarian Throne and Related Problems

The first difficulty, namely the claim of Charles I to the Hungarian throne, can only be evaluated in a specific historical context which needs to be discussed in detail. The difficulty in this regard was triggered by the defeat and dissolution of the Austro-Hungarian Empire in and in the wake of the First World War and the wave of revolutions that evolved simultaneously. Although in a proclamation on 16 October 1918²¹ Charles I claimed that he wants to transform the monarchy into a federal state, the political communities of stronger nations such as the Czechs, Slovaks and Croats seceded from the monarchy in late October, and independent Austria was also established. In late October 1918, the so-called Aster Revolution broke out in Budapest.²² The *homo regius* (governor) substituting the king with omnipotence revoked János

Hadik’s appointment as Prime Minister from three days prior and appointed Mihály Károlyi as Prime Minister who formed a „people’s government” with the representatives of the three parties of the Hungarian National Council and solemnly swore in as head of government on 31 October. On the same day a military unit, in circumstances still unclear, murdered former Hungarian Prime Minister István Tisza, the main political opponent of Károlyi.

A revolution took place in Vienna as well where the Austrian National Assembly – after Charles I had, at the persuasion of his confessor, renounced „all kinds of participation in the Austrian state affairs” in a declaration on 11 November 1918 declaring that „[he] recognize[s] in advance the decisions the Austrian people make about its future stateform”²³ – proclaimed the Republic of Austria on 12 November 1918. The day after, a Hungarian delegation paid a visit to the emperor in his hunting lodge in Eckartsau who made a declaration in the presence of the delegation as well. According to the declaration, „[e]ver since I took the throne, I have sought to liberate my peoples from the horrors of war, in the outbreak of which I had no share. I do not want my person to hinder the development of the Hungarian nation, towards which I remain to feel a deep affection. Therefore, I withdraw from any participation in state affairs and recognize in advance the decision of Hungary to establish her future stateform.”²⁴

Three days later, on 16 November 1918, the National Assembly decided upon a „people’s resolution” (law) which was proclaimed on the square in front of the Hungarian Parliament and published in the Hungarian *corpus juris*.²⁵ It declared that „Hungary is independent of every other country and is an autonomous people’s republic”. Four months later (on 21 March 1919), this republic – with Mihály Károlyi appointed as interim president on 11 January 1919 – was transformed into a coun-

²⁰ *Zalamegyei Újság* (13 March 1935). As cited in Zoltán Paksy, „Nagypolitika kicsiben: parlamenti választás és társadalmi háttér Zalaegerszegen 1935-ben” [High Politics in Small: Parliamentary Election and Its Social Background in Zalaegerszeg in 1935], *Korall. Társadalomtörténeti folyóirat*. Issue 17 (2004), p. 93.

²¹ This proclamation of 16 October 1918 – declaring that Austria would be a „federal state [...] in which every people forms a separate state community on its territory of settlement” – called upon the different national communities to establish their own national assemblies. Accordingly, the Hungarian National Assembly was established on 24 October in Budapest with the chairing of Mihály Károlyi. For an evaluation of the role of high politics and the issue of nationality in the dissolution of the Austro-Hungarian Empire see Ferenc Fejtő, *Requiem egy hajdanvolt birodalomért. Ausztria-Magyarország szétrombolása* [Requiem for a Late Empire. The Disruption of Austria-Hungary] (Budapest, Atlantisz Könyvkiadó, 1990); and Oszkár Jászai, *A Habsburg-Monarchia felbomlása* [The Dissolution of the Habsburg Monarchy]. trans.: Judit Zinner (Budapest, Gondolat Könyvkiadó, 1982).

²² In essence, this meant the following at that time: soldiers who gathered in the streets waiting to be transported (replacing their cap buttons with asters) prevented – along with the revolutionary masses who had been protesting for days – the launching of march companies, seized some of the strategically important locations of the city and freed the political prisoners. The revolution of high politics – which sought to comply with the forms of legality until 20 March 1919 (today we would put it the follow way: it was „ruled by the rule of law”) – took place in palaces in the downtown and in the Parliament. At the same time, revolutions broke out in several German constituent states (in early November 1918 the republic was proclaimed in Bavaria and then in Berlin).

²³ As a matter of fact, the text of the Austrian declaration was the result of a carefully crafted compromise as the Austrian government had discussed the issue for almost a day. Since the majority of ministers did not agree with dethronement, the view was adopted that the ruler should not give up the throne but only his participation in state affairs.

²⁴ Secondary sources sometimes publish the text of the declaration with different wording. The main variation in text is the presence of the phrase „I resign” instead of „I withdraw” in some of the sources. (The most comical source in this regard is a Wikipedia page, cf. https://hu.wikipedia.org/wiki/Eckartsau_i_nyilatkozat, where „I withdraw” stands in the html text while the attached jpg file says „I withdraw”). Later on, Charles I argued that the declaration shall be deemed invalid since he signed it under coercion.

²⁵ It was published in Issue 16 of the Hungarian *Corpus Juris* (Országos Törvénytár) on 22 November 1918. The law is not published by several contemporary legal collections – for instance the online database *Laws of 1000 Years* (Wolters Kluwer, 2015) whose material between 1918 and 1929 starts with the year 1920.

cil republic,²⁶ mainly because of the political weakness of its founders (which was closely linked to international relations as well). The Council Republic, however, failed after 133 days.

In autumn and winter 1919, under consolidated power relations, the first and second law of the National Assembly – which convened on the grounds of the January 1920 elections – laid the foundation for the public legal order that was unequivocally defined by Prime Ministerial Decree No. 2394.

Law I of 1920 – as its title suggests, *temporarily* – „settled” „the exercise of the competence of the public authorities” and – according to its own interpretation – „restored” constitutionalism. Its Preamble declared that „the exercise of royal power” ceased to exist on 13 November 1918, while the „functioning” of the parliament summoned in 1910 was „terminated” on 16 November 1918. The legislator interpreted this situation – recalling the constructive methods of cunning lawyers – in a way that, for these reasons, „the exercise of the competence of the public authorities became impossible under the ordinary arrangements of the constitution”,²⁷ which ruled out the question whether it was the ordinary arrangements of the constitution that failed. Although in a slightly circumstantial way, he established that what had been hitherto bound „in an indivisible and inseparable way” (*indivisibiliter ac inseparabiliter*), namely the Austro-Hungarian Empire, dissolved; thus, Hungary became independent and the elected representatives formed a national assembly. Later on, „the National Assembly” declared itself the „legitimate representation of Hungarian state sovereignty” which – as he put it – is entitled to arrange for „the additional methods of the exercise of state power” „pursuant to our constitution”. On these grounds, it contained a nullity provision as well. According to its Section 9, „any provision issued by bodies of the so-called people’s republic or Soviet republic by way of people’s acts, decrees or any other form of legislation

is invalid”, therefore it needs to be deleted from the Hungarian *corpus juris*.

The most significant problem of the text was that „under our constitution” at that time, *this law could not be regarded valid law of the legal system* – in case we consider „our constitution” to be the historical constitution. This, according to any interpretation of the historical constitution, would have necessitated an approval of the upper house as well as a royal assent. As legitimist constitutional lawyer Kálmán Molnár formulated a few years later, „according to the Doctrine of the Holy Crown, the king and the representatives are equally indispensable elements of the highest manifestations of the public authorities.”²⁸ Not only legitimists but also social-democrats emphasized the fact that Law I of 1920 had essentially created an *unconstitutional situation*. For instance, Sándor Propper based his view on this fact in his above-mentioned speech in 1924 when he questioned the legitimacy of the National Assembly.²⁹

The Preamble of Law II of 1920 set out that the National Assembly had „elected” Miklós Horthy as „regent of Hungary on its session on 1 March 1920”, and since he had sworn in as regent „before the National Assembly” it inducted him into office. The so-called operative part of the law set out the following: „The National Assembly hereby enacts the election of Miklós Horthy de Nagybánya as regent of Hungary” (Section 1), then it determined his remuneration. In other words, this law was not too wordy. It remains an open question whether this regent was an „emergency president”, „representative of the king” or perhaps deputy of the king (and if so, of which king). This law was also not „approved” by the ruler but signed and provided with a promulgating clause by the regent himself authorized by the National Assembly.

The text of Law I of 1920 did not deal with the nature of stateform; in fact, it did not even mention it. It only contained

²⁶ For an evaluation of the aspects of stateform of the Hungarian Council Republic, see Imre Takács, „Az államforma változásai a polgári demokratikus és proletárforradalom államában” [Changes in Stateform of the Civil Democratic State and the State of Proletarian Revolution], in *A tanáshatalom jogpolitikája 1919-ben* [The Legal Policy of Council Power in 1919], ed. Kálmán Kovács (Budapest: Magyar Jogász Szövetség. Jogtörténeti Értekezések, 1979), pp. 16–32.

²⁷ On an evaluation of the fine details emerging during the drafting of the law – for instance, the difference between the terms „its exercise is suspended”, „is terminated” and „is not being exercised” –, see István Szabó „Az államforma kérdése 1919/1920 fordulóján” [The Issue of Stateform at the Turn of 1919/1920], in *Ünnepi tanulmányok Máthé Gábor 65. születésnapja tiszteletére* [Anniversary Studies in Honour of the 65. Birthday of Gábor Máthé] (Budapest, Gondolat, Bibliotheca iuridica, 2006), pp. 585–597. See also I. Szabó, „Az alkotmányosság helyreállítása 1920-ban” [The Restoration of Constitutionalism in 1920], *Győri Tanulmányok*, Issue 20 (1998), pp. 90–96.

²⁸ Kálmán Molnár, *A szent korona-tan kifejlődése és mai jelentősége* [The Evolution of the Doctrine of the Holy Crown and Its Significance Today] (Pécs, Dunántúli Egyetemi Nyomda, 1927), p. 10. For an evaluation of Kálmán Molnár and the moral difficulties of university education in public law, see Gábor Schweitzer: „Molnár Kálmán és a két világháború közötti alkotmányjogtudomány dilemma” [Kálmán Molnár and the Dilemmas of Constitutional Legal Science in the Interwar Period], *MTA Law Working Papers*, Issue 2015/33.

²⁹ See Nemzetgyűlési napló [Diary of the Hungarian National Assembly], *op. cit.* (1924), *ibid.* (Social-democrats questioned the legality of the first National Assembly as well, arguing that the Hungarian public law at that time did not recognize such an institution and that it had no right to regard itself a depository of sovereignty.) On this issue, see also György Wiener, „Jogfolytonosság és megszakítottság a történeti alkotmányosság rendjében” [Legal Continuity and Discontinuity in the Order of Historical Constitutionalism], in *A szabadságszerető embernek – Liber Amicorum István Kukorelli* [To the Freedom-Loving Man – Liber Amicorum István Kukorelli], ed. Nóra Chronowski – Zoltán Pozsár-Szentmiklósy – Zsolt Szabó – Péter Smuk (Budapest: Gondolat Kiadó, 2017), pp. 391–403, in which the author regards the law as the first significant departure from the historical constitution. A further view – which I myself share – emphasizes the other side and supplement of the interruption of legal continuity. According to this view, this law constituted the first step toward the establishment of the public law construction of a new Hungarian state – „Hungary after the Trianon Treaty” (small Hungary) –, namely toward the *foundation of a new state*. As a starting point for this issue, see Ákos Szilágyi, „A sivatag törvénye. Auschwitz és Trianon” [The Law of the Desert. Auschwitz and Trianon], 2000 [Kétezer]. Vol. 27, Issue 2015/1–2, pp. 3–8. If this is a defensible view, it can be argued – in a slightly ironic way – that the „new state founders” attempted to re-establish the monarchy as well, even though they „did not let anyone know”, therefore they failed. For an evaluation of the more serious historical and international implications of this issue (with content different from that discussed here) see Iván Halász, *Az állam összeomlása és újjáépítése* [The Collapse and Reconstruction of the State] (Budapest, NKE, 2014), pp. 140–177 (esp. p. 162).

the quoted nullity provision and determined the rights of the regent (Sections 12–18). It was Decree No. 2394/1920. M. E. that declared (and partly „explained” – in an unusual way for a legal norm) that the stateform of Hungary is kingdom.

It should be noted that some scholar argue that Law I of 1920 – in contrast to my above-mentioned view – took a stand on the issue of stateform³⁰ since, on the one hand, it restored constitutionalism „in line with the historical constitution” (and accordingly, Hungary was monarchy until 1918) and, on the other hand, both its justification (explanatory memorandum aimed to persuade members of national assembly) and parliamentary debate referred to the stateform. Regarding the former aspect, my counterargument is as follows: this law cannot amount to the restoration of historical constitutionalism but to its breach as well as to the first step toward the establishment of a *new constitutionalism*. That is why it should have taken an open stand on the issue of stateform. The evaluation of the latter argument would raise problems of legal interpretation that I cannot discuss in detail here; however, it might only be required to raise the following question: what kind of a legal standpoint is one that is not included in the text of the law but is hidden in the justification?³¹

The decree in question was signed on 18 March 1920 by Sándor Simonyi-Semadam as „Hungarian Royal Prime Minister” who had been appointed by Horthy. According to the decree, Law I of 1920 „provide[d] for the temporary exercise of the duties of the head of state only in the case of an actual cessation of the exercise of royal power for the period until the manner of exercising the powers of the head of state becomes

definitively regulated, and for this period of time the National Assembly transferred the exercise of rights embodied in royal power to the regent within the constraints set out in Section 13 [of Law]”. The decree – following a period of nearly nine months of hesitation³² – took the following unequivocal stand on the issue of stateform: „The legal stateform of Hungary remains monarchy”.³³

However, Charles I – who emphasized that the Eckartsau Declaration was made under coercion and is thus invalid – was not invited to Hungary. The entente played the biggest role in this which – not wanting to see a serious great power emerging in Central Europe – observed in approval how nations striving for independence are tearing the Austro-Hungarian Empire apart but only savoured the effects of the breakup of the centuries-old Habsburg power. In such circumstances, Charles I attempted to return at least to the Hungarian throne in 1921 on two occasions,³⁴ and – depending on the concept – sought to occupy the throne of Hungary (after the Treaty of Trianon): the first time in Spring, with negotiations; the second time by forming an opposition government and leading armed groups which were easily defeated by a battalion consisting of a few hundred university students in the so-called Battle of Budaörs (23 October). Subsequently, the Hungarian National Assembly declared the termination of his rights as ruler on 6 November 1921.³⁵ Thus, Hungary became an elective monarchy at the legislative level as well: as the Dethronement Law set out, „the prerogative of electing a king reverted to the nation”. However, the nation was unable to exercise this right for two and a half decades. Admittedly, it did not even try to. Probably because it did not even want to.

³⁰ See for example J. C. Swanson’s position, who stated – in my view a bit hastily – that this law „restored the kingdom”; cf. John C. Swanson, *The Remnants of the Habsburg Monarchy. The Shaping of Modern Austria and Hungary, 1918-1922*. (s.l., Boulder, East European Monographs, 568, 2001.) p. 194.

³¹ Interestingly, it resembles the stand taken on the state name in Article A of the Foundation of the Hungarian Fundamental Law of 2011 which calls Hungary „our country” and not the state, and only indicates in its “explanatory memorandum” aimed to persuade members of national assembly that „our country” stands for the Hungarian „state”, arguing that Article A, ultimately, renamed the state. See Péter Takács, *A rózsá neve: Magyar Köztársaság. Az államok nevééről és a magyar állam átnevezéséről* [*The Name of the Rose: Republic of Hungary. On the Names of States and the Renaming of the Hungarian State*] (Budapest, Gondolat, 2015), pp. 94–109.

³² Here I mean that at the very beginning of the era governments – by way of decrees – often „tampered” with the stateform; and „smudged” the name of the state. On 2 August 1918, only a day after the collapse of the Hungarian Soviet Republic, the government of Gyula Peidl declared the stateform prior to communism (*People’s Republic of Hungary*) which was „renamed” *Republic of Hungary* by the government of Stephen Friedrich on 8 August 1918.

³³ See *Magyarországi Rendeletek Tára*, Vol. 54 (1920), pp. 140–142. According to the decree, state authorities, agencies and institutions shall appear as „authorities, agencies and institutions of the Kingdom of Hungary”, therefore, „they shall indicate the prevailing stateform of Hungary in their denomination” and „thus shall be supplemented with the attributes »royal« or »Hungarian royal«”. Furthermore, it set out that „the Holy Crown as the symbol of Hungarian public authorities shall be applied in the coats of arms of the Hungarian state”. The act of „smudging” remained subsequently present in a particular area: court judgements – which were made until 1918 *in the name of His Majesty*, and in 1918/19 *in the name of the Republic* – were delivered after 1920 not *in the name of the king* but *in the name of the Hungarian State*. It was replaced in 1930 with the phrase *in the name of the Hungarian Holy Crown*. (In 1945 – in line with Decree No. 539/1945. M. E. – state courts returned to the use of the phrase *in the name of the Hungarian State*, while people’s courts – in accordance with Annex 1 of Law VII of 1945 – adjudicated *in the name of the Hungarian people*. Law I of 1946 required the use of the phrase *in the name of the Republic of Hungary* in both cases.)

³⁴ According to the antilegitimist argumentation, it did not have such a right since the Pragmatica Sanctio – at least, in their view – was repealed at the dissolution of the Austro-Hungarian Empire. (An examination of this issue in the context of state succession could provide an answer to the question whether it happened this way; however, for reasons of space such an analysis cannot be undertaken here. See Ferenc Szávai, *Az Osztrák-Magyar Monarchia felbomlásának következményei. Az államutódlás kérdései* [*The Consequences of the Dissolution of the Austro-Hungarian Empire. Issues of State Succession*] (Pécs: Pro Pannónia, Pannónia Könyvek, 2004); with a general scope: Mónika Ganczer, *Állampolgárság és államutódlás* [*Citizenship and State Succession*] (Budapest – Pécs: Dialóg Campus Kiadó, 2013.)

³⁵ According to Law XLVII of 1921, „the royal prerogatives of Charles I were terminated” (Section 1), the 1723 Pragmatica Sanctio was repealed „and thus the prerogative of electing a king reverted to the nation” (Section 2), and the „nation upholds the ancient stateform of kingdom and postpones the filling of the royal throne” (Section 3). According to legitimists, the Dethronement Law was invalid as well since, among others, it was proclaimed by Miklós Horthy acting as „regent of the king”. (Moreover, Law I of 1920 – in contrast with the historical constitution – contained provisions on the promulgation of laws without a royal assent.)

2.2 The Legal Regulation of Powers and Competencies of the Regent

Another difficulty concerned the legal powers and competencies of the regent which – because of the *mixed* nature of the office – were impossible to regulate homogeneously, while the regulation – which otherwise appeared to be spontaneous – was exclusively dominated by the power considerations that aimed at building up an authoritarian system.

The regent – as the throne was left unfilled – did not substitute for the person of the king but „represented” the royal institution (acting as someone who is head of state in his own right). Employing the term used by contemporary constitutional lawyers, he was conferred with rights of the head of state implying at first „soft” and then „medium” power. His legal status did not, in turn, resemble the legal status of presidents: his assignment was not restricted to a definite period of time, and – at least after 1937 – he could not be held liable for any breach of the constitution or laws.³⁶

Pursuant to Law I of 1920, those elements of the powers and competencies of the regent were characteristic that distinguished him from a king: he could not grant nobility (although he could grant „titles”, awards and ribbons), he did not have the right to assent laws, only the right to promulgate laws (a right known from the public law of the Republic), he could not act on the supreme patronal right of the king to grant Catholic ecclesiastic offices (*ius supremae patronatus*), he could exercise the right to declare war only with the consent of the National Assembly,³⁷ and – on top of that – he was not entitled to the form of address „His Majesty”. His person was, however, inviolable and was under the same criminal legal protection as the king. Later on, elements invoking the powers and competencies of a king came to the fore. After the restoration of the upper house (1926), he as head of state could appoint 40, later 87, people to it for a lifelong period of time influencing the

composition of the parliament. He had veto right in the legislation, which was further extended in 1937. Under certain conditions, he could postpone or dissolve the parliament, and his relevant restrictions were terminated in 1933. After 1937 he acquired the „right to recommend a successor” while in 1942 the office of the vice regent was created who could act as acting regent. The vice regent – who was elected in the person of the regent’s son, István (Stephen) Horthy, in 1942 – could, under the law – although with certain restrictions, e.g. the right to appoint a successor – exercise the powers and competencies of the regent in case the office of the regent is left unfilled.³⁸

This might suggest that some preparations were made to fill the throne with a national king, where the names of Miklós Horthy, one of his sons or eventually his grandsons arose.³⁹ However, this is an unfounded conclusion. Horthy as a Calvinist did not have a real chance to ascend the throne of an „Apostolic Kingdom” which – according to the public perception of the period – could only be filled by Catholics. (Therefore, some argued that the office of the governor should be denominated as *duke*). Regarding the person of the new king, several people at the time „came into play” or directly „made themselves part of the play”. One of them was Archduke Karl Albrecht of Austria-Teschen who – beyond his involvement in counterfeiting French francs (1925), his divorce and his *mésalliance* second marriage – did not have a real chance for the Hungarian throne as he could not have been a national ruler – the way the majority of electors wished. Another possibility was a, *horrible dictu*, Romanian-Hungarian personal union with the reign of one of the traditional dynasties, for instance with the members of the House of Savoy or an Italian prince, but these had no reality even if they left their marks in diplomatic correspondence or in any other way. A Prince of Teck was also mentioned who was, to a certain extent, of Hungarian blood, namely because he was a descendant of Rédey and had family ties to the British royal

³⁶ On the scope of powers of the regent, with a general scope as well, see Gábor Gyula, *A kormányzói méltóság a magyar alkotmányjogban [The Dignity of the Regent in the Hungarian Constitutional Law]* (Budapest: Athenaeum, 1932), Egyed István, „A király helyettesítése és a nádori intézmény felújítása” [Substitution of the King and the Restoration of the Office of the Palatine], *Jogállam*, Vol. 20, Issue 1921/8, pp. 281–291 and Barna Mezey, „Staatspräsident und Reichsverweser. Republik oder Monarchie? Der Weg der Staatsform in Ungarn 1919–1920”, in *Das Staatsoberhaupt in der Zwischenkriegszeit*, ed. Wilhelm Brauneder – István Szabó (Budapest: Pázmány Press, 2011), pp. 11–22.

³⁷ For an evaluation of the rights of the regent in respect of the military organization and within, see Roland Kelemen *A katonai igazságszolgáltatás Magyarországon 1867–1949 [Military Jurisdiction in Hungary 1867–1949]* (Budapest: Gondolat, 2017), pp. 180–181.

³⁸ The extension of the scope of powers of the regent had an extensive literature at that time too. See, among others, József Bölöny, *A kormányzói jogkör kiterjesztésének kérdéséhez [On the Issue of the Extension of the Scope of Powers of the Regent]* (Budapest: Gergely, 1936) and *Az 1937. XIX. t.-c. a kormányzói jogkör kiterjesztéséről és a kormányzóválasztásról [Law XIX of 1937 on the Extension of the Scope of Powers of the Regent and his Election]* (Budapest: Gergely, 1937); László Buza, „A kormányzói jogkör kiterjesztése” [The Extension of the Scope of Powers of the Regent], *Jogállam*, Vol. 36, Issue 1937/3–4, pp. 109–115; András Téglássy, *Utóhang a kormányzói jogkör kiterjesztésének kérdéséhez [Epilogue to the Issue of the Extension of the Scope of Powers of the Regent]* (Szerencs: Farkas E., 1937); István Csekey, „A kormányzói jogkör reformja” [The Reform of the Scope of Powers of the Regent], in *Acta Litterarum e Scientiarum Reg. Universitatis Hung. Franciscus-Josephinae [Szeged]*, Sectio Jur.-Pol. Tom. X. Fasc. 5, pp. 105–161; Béla Zsedényi, „A kormányzói jogkör kiterjesztése” [The Extension of the Scope of Powers of the Regent], *Magyar Jogi Szemle*, Vol. 18, Issue 1937/3, pp. 81–101; Lajos Tihanyi, „A kormányzói jogkör kiterjesztése és a királykérdés” [The Extension of the Scope of Powers of the Regent and the Issue of the King], *Magyar Jogi Szemle*, Vol. 18, Issue 1937/2, pp. 3–77; László Ottlik, „A kormányzói intézmény reformja” [The Reform of Regency], *Magyar Szemle*, Issue 1937/3, pp. 215–230. For an evaluation of the vice regent, see István Egyed, „A kormányzóhelyettes” [The Vice Regent], *Magyar Szemle*, Issue 1942/6. (178), pp. 281–283. From the more recent literature see István Szabó, „A kormányzó jogállása 1920–1944” [The Legal Status of the Regent 1920–1944], in *Publicationes Universitatis Miskolciensis Sectio Juridica et Politica* (Miskolc, 1996), pp. 117–172.

³⁹ Today it is impossible to decide whether Horthy really had dynastic plans. Nevertheless, it is highly likely that it was not his „idea to found a dynasty”, he only did not object it. For an evaluation of the issues pertaining to the possibilities to fill the throne, see Zoltán Speidl, *Végállomás: Madeira. Királykérdés Magyarországon (1919–1921) [Final Destination: Madeira. The Issue of the King in Hungary (1919–1921)]* (Budapest: Kairosz Kiadó, 2012). See further Serédi Jusztinián, *herceprímás, feljegyzései 1941–1944 [Notes of Prince-Archbishop Jusztinián Serédi, 1941–1944]*, ed. Sándor Orbán and István Vida (Budapest: Zrínyi Kiadó, 1990), in particular pp. 29, 91 and 115.

family as well; however, it is likely that these ties were backed by the *spin doctors* of the time instead of serious politicians. In the 1930s the possibility of a royal election was, nevertheless, on the agenda in some political groups, especially in the extreme right,⁴⁰ the authoritative political forces of the country, however, was not serious about it.

2.3 Political Problems

Thirdly, the situation between 1920 and 1944 brought about political difficulties. Partly, they related to the already complex political spectrum of the era which was further complicated by the conflict between legitimists and free electors. Those who would otherwise agree on most of the issues joined different political groups.

More importantly, the unsettled nature of the stateform did not enable the constitutional legal consolidation of the system, and – given the ideological emphasis on the interrelation of authority and order, the Doctrine of the Holy Crown, as well as the significance of the monarchical principle – even led to difficulties of *delegitimation*. For what kind of a kingdom is one that – while the thousands-year-old legitimisation potential of the monarchy is being attempted to be utilized – literally chases away a king! It is possible to argue that it is not simply a „monarchy without a king” but uprightly an „anti-monarchical” kingdom. And what is possible to argue is surely argued somewhere by someone.⁴¹

There were, and still are, two characteristic views on the *nature* of stateform between 1920 and 1944.

According to one view, the Hungarian state „remained” *monarchy* in the given period. This view was formulated by the laws and suggested by state agencies and institutions. Most of the period’s public lawyers characterized Hungary as a kingdom, and it is still considered to be the majority view. In order to reveal the legal truth within this view, there was a need for the legal fiction contained in the so-called nullity law. Moreover, the historical-sociological treatment of this view necessitated the acceptance that this fictional assumption is true: „let us act as if nothing happened between 15 October 1918 and January 1920!” A slightly modified version of this view would have been that the stateform „became” *monarchy again* in 1920 – and at the

legislative level in 1921 –, provided that the dethronement law is undoubtedly committed to the monarchy. This latter view – in my opinion – could have been reasonable and sustainable for some time; however, I think it says a lot that – at least to my knowledge – this view was not held by anyone at that time.

To decide whether the stateform of Hungary „remained” or „became” monarchy in 1920/21 depends on one’s approach to the issue of *legal continuity*. The public law literature of the period intensively discussed this issue, though with a distinction between the formal and material legal continuity – which, in my view, rests on false criteria. According to the former – held by Kálmán Molnár, among others –, the public law relations of the country can only be modified „by the relevant factors set out in the constitution”, *as provided for under the constitution*. According to the latter – majority but fragile – view (which was emphasized by István Egyed and Móricz Tomcsányi), the changes need to correspond to the *spirit* of the historical constitution while formalities are unimportant.⁴² Since the argument of legal continuity favoured Charles I in 1920/21, the latter argumentators – explicitly or implicitly – accused the former ones of being pro-Habsburgs. This was clearly an exaggeration since the former argued that on the grounds of formal legal continuity one can reach any royal house, or even the republic, though only with the observation of formal requirements. Revolutions, as is known, do not show much respect for the formalities of law. The debate was – at that time – centred upon the validity of the Eckartsau Declaration. According to legitimists, it could not be considered the abolition of the monarchy, consent to that or even a valid abdication since these would have required – beyond the formal requisites (such as counter-signature) – the consent of the Hungarian Parliament. (It should be noted that the date of the interruption of legal continuity – in light of the still pending nature of the issue of discontinuity-continuity in 1918/19 – has gained renewed constitutional significance through the declaration of the Hungarian Fundamental Law; cf. the loss and „restoration” of state sovereignty on 19 March 1944 and 2 May 1990, respectively.)⁴³

Whether the Hungarian state became or remained monarchy in 1920/21, it is a fact that (following the dethronement) there was no king in sight. Moreover, there was no real chance that

⁴⁰ About one of these attempts see Róbert Kerepeszki, „'Éljen I. Miklós, Magyarország Királya!' Egy politikai gyűlés háttere és körülményei” [„Long Live Miklós I, the King of Hungary!” Background and circumstances of a political meeting], in *Emlékkönyv L. Nagy Zsuzsa 80. születésnapjára* [Festschrift for Zsuzsa L. Nagy, for her 80th Birthday], eds. Zoltán Kovács and Levente. (Püski. Debrecen: s.n., 2010.) pp. 135–152.

⁴¹ Cf. Krisztián Orbán, „Száz év szorongás” [Hundred Years of Anxiety], in *Hegymenet [Uphill]*, ed. András Jakab and László Urbán (Budapest: Osiris, 2017), p. 78.

⁴² See Schweitzer, *op. cit.* (2014) and Wiener, *op. cit.* (2017). See further István Szabó, „A királyi trón betöltése körüli viták a két világháború közötti Magyarországon” [Debates around Filling the Royal Throne in Interwar Hungary], *Iustum Aequum Salutare*, Vol. 2, Issue 2006/1–2, pp. 171–189.

⁴³ See on these questions Zoltán Sente, „A historizáló alkotmányozás problémái – a történeti alkotmány és a Szentkorona az új Alaptörvényben” [The Problems of Historicizing Constructionism – The Historical Constitution and the Holy Crown in the New Hungarian Fundamental Law], *Közjogi Szemle*, Issue 2011/3, pp. 1–13; and Endre Orbán, „Az alaptörvény paradoxonjai – átmenetből? átmenetbe!” [Paradoxes in the Hungarian Fundamental Law – From Transition? To Transition!], *Közjogi Szemle*, Issue 2013/2, pp. 51–58. To my knowledge, the date 19 March 1944 was first formulated by Joseph Mindszenty in his letter to the United States Deputy Secretary of State on 10 January 1958: „On the grounds of legal continuity, we have to return to this date [viz 19. March 1944]. Only 1944 can be regarded a »normal« year.” As cited in Margit Balogh, „Mindszenty József primás-érsek és az államforma kérdése 1945–1946-ban” [Archbishop Joseph Mindszenty and the Issue of Stateform in 1945–1946], *Magyar Egyháztörténeti Vázlatok*, Issue 2010/3–4, p. 119.

the throne – in case it still existed⁴⁴ – „would be filled without serious political conflicts, by wide social consensus”.⁴⁵ Therefore, this view needed to be differentiated. This differentiation involved the distinction between *de jure* and *de facto* stateforms as well as the distinction between stateforms on a „legal” and „political basis”, the usage of the terms „quasi-monarchy” and „quasi-republic”, and the odd view that the legal status of the governor can be deduced from that of the „unthroned king”.⁴⁶ The theoretical tampering of the issue also occurred often; for instance when the question of stateform was answered by the denomination of the form of government, or not answered at all.⁴⁷

According to the latter view, Hungary was, in fact, a *republic* in the period between 1920 and 1944. This is, and was, undoubtedly a radical position. No Hungarian author has ever taken it. However, foreign authors did not show much politeness, if I could call this way the acceptance of the existing situation. The well-known Austrian public and administrative lawyer, Adolf Merkl unequivocally stated in his analysis of the *legal status of the head of state*, in 1925 that „on the grounds of the legal regulation of the legal status of the head of state, Hungary of today must be classified as a republic”. Later, he formulated this view in general terms as follows: „Today [viz in 1925] Hungary – irrespective of her monarchic past and perhaps monarchic future – is a clear cut and genuine republic.”⁴⁸ Merkl – who, as a pupil of Hans Kelsen, differentiated between the sociological and legal concepts of the state – obviously based his argument on the sociological understanding of state as laws since 1921 suggested differently.

This view is supported by contemporary authors as well. Péter Kende – an analyst who can be regarded, in part, as a foreigner since he lived in exile for a long time – argued in 2003 that the „realist approach” „considers Horthy to be president

with no temporal limitations”. Accordingly, „the facts that Hungary in this period had no royal courts, Hungarian royal railways and [royal] mail cannot be considered to provide conclusive proof against the substantial circumstance that the position of the king was occupied by an elected head of state from an ordinary background.”⁴⁹

Some attempted to find a solution that mediates between and bridges these two views. The use of the above-mentioned distinctions *quasi* this / *quasi* that and *de jure* this / *de facto* that also imply this ambition. Béla Zsedényi, the later ill-fated professor of law from Miskolc, found a more ingenious solution to the problem arguing – by way of a kind of auxiliary theory – that the revolutions created a legal vacuum, *vacuum iuris*. This *vacuum iuris* – in my view (although Zsedényi would perhaps not agree with me) – can be regarded as a *legal gap* in public law and lasts until the strongest powers of the new order, practically in an illegitimate way, establish a new law that would constitute the basis of the new legal system.⁵⁰ This argument – recalling the theories of Georg Jellinek and Bódog Somló – emphasizes that there are situations where the drafting of the constitution as well as the constitutional legislation create *new legality*. However, Zsedényi did not express the view – which I myself am tending towards – that this could mean the legality of a *new state* – re-established in the wake of wartime and revolutionary collapse. In order for it to mean the legality of a new state, this new state authority needs to be *legitimate* as well – in line with its historical tendency, thus in the long term – since in this regard only legitimacy can establish legality.

3. Concluding Suggestion

In my view, the category of *monarchy without a king* as a denomination of stateform can be used – even in an official context – until we decide whether the state authority of the period

⁴⁴ There was naturally a throne room at the Buda Castle (as a matter of fact, two throne rooms: one for the king and one for the queen) even though photographs from the 1920 s suggest that the chair looked more like a comfortable armchair of a ballroom than a canopy throne.

⁴⁵ Levente Püski, *A Horthy-korszak 1920–1941 [The Horthy Era 1920–1941]* (Budapest: Kossuth Kiadó, 2013), p. 261.

⁴⁶ See Ferenc Faluhelyi, *Magyarország közzjoga [Hungarian Public Law]* (Pécs: Karl Könyvesbolt, 1926), Vol. 2, p. 6. Regarding this issue, Gábor Schweitzer argued as follows: among university public lawyers, „it was only Ferenc Faluhelyi who – even though in a very moderate way – expressed his support for the quasi-republic stateform of Hungary” claiming that the stateform of Hungary „today [in 1926] actually resembles the stateform of republics”. On the other hand, István Egyed „did not consider it fortunate to emphasize that the stateform of our country resembles the stateform of republic. In his view, the legal status of the regent can be deduced from that of the [yet] »unthroned king«,” Schweitzer, *op. cit.* (2014), p. 13. See further Gábor Schweitzer: „A „magyar királyi köztársaságtól” a magyar köztársaságig” [From the „Royal Republic of Hungary” to the Republic of Hungary], *Acta Humana. Emberi jogi közlemények*. Vol. 5, Issue 2017/1, pp. 27–38.

⁴⁷ According to Béla Zsedényi, „our stateform is still a constitutional, parliamentary monarchy”; c.f. Béla Zsedényi, *A magyar alkotmányjog fejlődése 1918-tól 1938-ig [The Development of Hungarian Constitutional Law from 1918 to 1938]* (Miskolc: Ludvig, 1939), p. 3. In his booklet *A kormányformák értelme és tartalma [The Meaning and Content of Stateforms]* (Budapest, Pfeifer, 1928), Rezső Ruzsnák, on the other hand, does not mention whether Hungary has (any) stateform – even though he analyzes the Hungarian constitution as well.

⁴⁸ Adolf Merkl, „A mai Magyarország államformájának kérdéséhez” [On the Issue of the Stateform of Today’s Hungary], *Jogtudományi Közöny*, Vol. 60, Issue 1925/1 (33–35.), p. 34. Furthermore, Merkl argued that the issue of stateform is connected with the issue of state succession as well: „Thus, with the change in stateform state identity has also ceased to exist legally on Hungarian soil three times since 1918. Monarchy was followed by three different republics: democratic republic, Bolshevik republic and the current aristocratic republic with royalist features”; cf. *ibid.*

⁴⁹ Péter Kende, „A republika a magyar történelmi tudatban” [Republica in the Hungarian Historical Consciousness], in *Még egyszer a párizsi toronyból [Once Again from the Paris Tower]* (Budapest: Új Mandátum Könyvkiadó, 2003), p. 217.

⁵⁰ Béla Zsedényi, *A vacuum iuris [Vacuum Iuris]* (Miskolc: Magyar Jövő, Miskolci Jogászélet Könyvtára, 1928), p. 34 and *A magyar alkotmányjog fejlődése 1918-tól 1938-ig [The Development of Hungarian Constitutional Law between 1918 and 1938]* (Miskolc: Miskolci Jogászélet Könyvtára, 1939). See also József Ruzsoly, *Három borsodi öröktagyó [Three Testators from Borsod]* (Miskolc: Felsőmagyarországi Kiadó, 1992), pp. 117–171 and István Stipta, „Zsedényi Béla alkotmányjogi nézetei” [The Views of Béla Zsedényi on Constitutional Law], in *Tanulmányok Zsedényi Béla születésének 100. évfordulójára tiszteletre [Studies in Honour of the Anniversary of Béla Zsedényi’s 100th Birthday]*, ed. Tamás Csiki (Miskolc: Hermann Ottó Múzeum, 1995), pp. 17–23.

in question was legitimate or not. There is no wide consensus in this question for the time being⁵¹. This category needs to be understood as „monarchy with a governor in the position of the king” instead of „monarchy with a governor (regent) as head”. Monarchy without a king interpreted this way is indeed a unique phenomenon; something that had come to the mind of no other people before. In the sense described above, this special stateform has only developed and become accepted in Hungary (1920–1944) and Spain (1947–1975). In this regard, I share the view of Gyula Gábor (1868–1936), today partly forgotten lawyer, military judge and legal histo-

rian. Gábor argued that „the anomalous public legal situation regarding the issue of head of state that characterizes Hungary today [*viz* in 1932] does not have a precedent in the history of either our own country or anywhere else in the world.”⁵² By employing the term „monarchy without a king” as stateform we naturally recognize the *fact* that Hungarians were unable – and perhaps unwilling – to elect a king for two and a half decades. As a matter of fact, this is the unclear ambivalence – or to put it differently: the struggling between principles as firm as granite and wallowing pragmatism⁵³ – that I explained elsewhere.⁵⁴

⁵¹ For a comprehensive evaluation of the Horthy era from the recent academic literature see Dávid Turbucz, *Horthy Miklós* (Budapest: Napvilág Kiadó, 2011); Levente Püski, „Demokrácia és diktatúra között. A Horthy-rendszer jellegéről” [Between Democracy and Dictatorship. On the Nature of the Horthy Era], in *Mitoszok, legendák, tévhitek a XX. századi magyar történelemről* [Myths, Legends and Misconceptions about Hungary's 20th Century History], ed. Ignác Romsics (Budapest: Osiris Kiadó, 2002), pp. 206–233; Krisztián Ungváry, *A Horthy-rendszer mérlege. Diszkrimináció, szociálpolitika és antiszemitizmus Magyarországon* [The Balance Sheet of the Horthy-System. Discrimination, Social Policy and Antisemitism in Hungary] (Pécs: Jelenkor, 2012); Ferenc Zetényi Csukás, *Horthy* (Budapest: HK Hermanos Kiadó, 2014); István Nemeskürty, *Búcsúpillantás. A Magyar Királyság és kormányzója 1920–1944* [Farewell Glimpse. The Kingdom of Hungary and its Regent 1920–1944] (Budapest: Szent István Társulat, 2014); Catherine Horel, *Horthy* (Budapest, 2017) and Ignác Romsics, *A Horthy-korszak* [The Horthy Era] (Budapest: Helikon Kiadó, 2017).

⁵² Gyula Gábor, *op. cit.* (1932), p. 185.

⁵³ In one of the „stories of his grandfather”, László András Magyar illustrates in a concrete context very well what I mean by „wallowing pragmatism”, see László András Magyar, „Nagyapám történeteiből. Hogyan lett Horthy Miklós Magyarország kormányzója?” [From the Stories of My Grandfather. How did Miklós Horthy become Regent of Hungary?], *Holmi*, Vol. 24, Issue 2012/1, pp. 72–73.

⁵⁴ See Peter Takács, *A rózsza neve: Magyar Köztársaság. Az államok nevééről és a magyar állam átnevezéséről*. [The Name of the Rose: Hungarian Republic. On Names of States and on Renaming Hungarian State (in 2011)] (Budapest: Gondolat Kiadó, 2015) pp. 121–122.

VOL. 10 / 2019

No. 2

JOURNAL ON EUROPEAN HISTORY OF LAW



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JOURNAL

VOL. 10 / 2019 NO. 2

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JOURNAL ON EUROPEAN HISTORY OF LAW

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Printed in the EU.

ISSN 2042-6402