

Gábor Schweitzer:

**Responses in Hungarian constitutional theory to the so-called anti-Jewish laws
(1938-1943)**

I. More than half a million Hungarian Jews fell victim to the Holocaust during World War II. The physical extermination of Jews was preceded by their economic and social marginalization and their ostracism from intellectual and public life. The overture of the process was Act no. XXV of 1920 and its executive decree, which introduced the *numerus clausus* – 'closed number' – regulation, limiting the proportion of Jews admitted to universities and colleges of higher education to the proportion of Jews within the general population.¹ The legislator justified the constraints, which constituted severe infringements of the principle of legal equality and the freedom of education, by claiming that at certain faculties, such as medical school, law school and the faculty of political science, the proportion of Jewish students was too high. The limitations were aimed at reducing the proportion of Jews in certain professions. Although during the period of political consolidation, from the end of the 1920's, the *numerus clausus* rules were less stringently applied at universities and colleges, from the second half of the 1930's, political antisemitism gathered new impetus in Hungary, and as a result, government measures were introduced to exclude the country's Jewish population from much wider areas than just higher education. In what follows, I shall review the reflections of the scholars of constitutional theory to these measures curtailing and corroding fundamental constitutional rights, in particular the legal equality of citizens, particularly the so-called first and second anti-Jewish laws, adopted in 1938 and 1939.

II. The Hungarian legislature began to adopt the so-called anti-Jewish laws, which demolished the equality of citizens before the law and incorporated racist, discriminative rules, from 1938.² The first antisemitic law of the period was Act no. XV of 1938, on the more effective assurance of balance in social and economic life.³ Its adoption did not come as a surprise to

¹ According to the 1920 census, 473,764 citizens of the Isrealite denomination were living in Hungary, representing 5.9% of the total population. For the *numerus clausus*, see Kovács, M. Mária: *A numerus clausus Magyarországon: 1919-1945* in: *Jogfőztás – 90 éve. Tanulmányok a numerus claususról*, ed.: Molnár, Judit, Budapest, Nonprofit Társadalomkutató Egyesület 2010, pp. 29-59.

² During the period 1938-44, the Hungarian legislature passed 21 anti-Jewish laws, while the number of such decrees is in the hundreds. Karsai, László: *A magyarországi zsidótörvények és rendeletek 1920-1944*, *Századok*, 2004/6 issue, pp. 1285-1304.

³ Ladányi, Andor: *Az első zsidótörvény megszületése*. *Múlt és Jövő*, 2010/2 issue, pp. 102-121.

Hungarian society; the speech given by Prime Minister Kálmán Darányi on 18 April 1937, at the general assembly of the governing National Unity Party had already foreshadowed the necessity of resolving the so-called Jewish question and the governmental level. The prime minister considered the Jewish question to be primarily an economic problem: he claimed that while Hungary had a large proportion of Jews in the general population, they were significantly overrepresented even relative to that ratio in business. Hungarian society – as he put it – was “*irritated*” by the alleged “*instinctive commercial greed*” of the “*Galician*” infiltrating it from the East, and the government was going to apply strict measures in order to put a stop to that infiltration.⁴ As the report of the German embassy emphasized at the time, the plans announced by Kálmán Darányi, such as the tax reform, the increase in corporate tax, the involvement of business and finance in eliminating white-collar unemployment were primarily going to be harmful to affluent Jews, and as such, in their effect, they could be considered measures “*of an antisemitic character*”.⁵

III. **Kálmán Molnár** (1881-1961), a professor at the faculty of Hungarian constitutional law at the University of Pécs was the first scholar of constitutional theory to note the dangers inherent in Kálmán Darányi’s speech. This was no accident: he had been fighting against extremist and antisemitic incidents that occurred at the Pécs university for several years. He intended to respond to the prime minister’s speech in a newspaper article. He summarized his thoughts in a piece entitled “Hatred Is Not a Constructive Power”, dated 1 May 1937, but, as he later wrote on the first page of the manuscript, the papers all refused to publish it.⁶ What was the article about? According to Professor Molnár, there were some aspects of the Jewish question on which there was agreement on the “*Christian side*”. As regards the economic causes of the Jewish question, he agreed with the prime minister, but he expressed the conviction that such a grave economic and social issue could only be approached with composure, circumspection and responsibility, rather than hate and the desire to do harm. He felt it was beyond doubt that Hungary, standing guard at the Eastern gate of European, Christian civilization, could only resolve the Jewish question “*in an European, Christian*

⁴ Magyar Távirati Iroda (*Hungarian News Agency*). Napi hírek/Napi tudósítások. (1920-1944). 18 April 1937, pp. 17-18.
http://mol.arcanum.hu/mti/opt/a100929.htm?v=pdf&q=WRD%3D%28%FCzleti%20moh%F3s%E1g*%29%20and%20DATE%3D1937.04.15--1937.04.30_&s=SORT&m=0&a=rec

⁵ Report by Budapest Embassy Councillor Werkmeister to the Foreign Ministry, Budapest, 20 April 1937. In: A Wilhelmstrasse és Magyarország. Német diplomáciai iratok Magyarországról 1933-1944. Editors: Ránki, György – Pamlényi, Ervin – Tilkovszky, Loránt – Juhász, Gyula. Budapest, Kossuth Könyvkiadó, 1968. p. 214.

⁶ Molnár Kálmán: A gyűlölet nem építő erő. Manuscript archive of the Library of the Hungarian Academy of Science, Ms 6217/253.

spirit". The great problems of public life cannot be resolved with finality using the methods of "Eastern barbarism". "In our land, the louder the proclaimers of grandiloquent slogans, the less dangerous they are." In order to find the correct solution, "the principles must be cleared up first". In relation to that, he wrote that he considered the inclusion of converted Jews in the category of Jews to be an "unchristian, unlawful and unreasonable" demand. Unchristian, because it is contrary to the commandments of Christianity. Unlawful, because the constitutional law of Hungary only recognized the Jewish religion, but "there is no Jewish race". And the endeavor was also contrary to the spirit of the Hungarian constitution, as accepting racial theory would "explode the very pillars of the state organization of the Holy Crown". That was because the Holy Crown, as the embodiment of Hungary's statehood and national unity "connected and united everyone", the nobility, the serfs, "settlers of foreign races", and even the Jews, who were under royal protection. He believed that including converts among the Jews to be contrary to reason as well because there were not enough Hungarians to be able to afford excluding those whose ancestors "were sons of a foreign race". The notion was also unacceptable to Kálmán Molnár because he considered assimilation to be the "most reassuring" solution to the Jewish question. "The original Jewry is practically assimilated already. That process should not be disturbed but assisted." He also considered the views urging the banishment of the great majority of Hungarian citizens of the Jewish religion – according to Kálmán Molnár's data, some 450,000 people⁷ – to be irresponsible incitement, rabble-rousing demagoguery. Even the German Reich, which was certainly not using "kid gloves", had been unable to do that. The more extreme and unreasonable the antisemitic incitement, the more people with moderate and "gentlemanlike" ways of thinking would be repelled by this "manhunt", which is foreign to the Hungarian spirit. According to his summary statement, the mad excesses of antisemitism would result in increasing numbers of people becoming sympathetic to the Jews as the "pitiable victims of spiritual brutality".⁸ Kálmán Molnár's article, written from a Christian humanist perspective, was clearly opposed to the racist attitudes poisoning public opinion as well. Consistently with the Hungarian tradition of constitutional law, he claimed that in Hungary, Jews belonged in a religious rather than a racial category. Contrary to the demands aimed at the institutional expulsion of Jews, he supported assimilation as a means of facilitating social integration.

⁷ According to the 1930 census, there were 444,567 citizens of the Israelite denomination living in Hungary, representing 5.1% of the country's total population.

⁸ Molnár Kálmán: A gyűlölet nem építő erő. Manuscript Archive of the Library of the Hungarian Academy of Science, Ms 6217/253.

On 5 May 1938, when the parliamentary debate on Bill no. XV of 1938 began, a group of emphatically Christian authors, artists and scientists published a protest in the daily paper “Pesti Napló” (*Pest Journal*). “*We are impelled by our Christian faith, our patriotic convictions and our insistence on the country’s European convictions and our national independence to abide by the principle of the equality of citizens before the law, achieved by the best minds of European Hungarians during the most beautiful period of our history.*” – they emphasized.⁹ They claimed that the bill degrades “*the Christian middle class*”, as it assumes that through contempt for the principle of equality before the law, they hope to assure their livelihood by “*the stripping of rights, a humiliating paternalism and the use of coercion*”. The bill also ascribed to the Christian middle class “*the moral aberration*” of attempting to succeed and prosper at the cost of stigmatizing their fellow citizens and robbing them of their civil rights. Two of the Hungarian scholars of constitutional theory signed the protest: Kálmán Molnár, and **Ödön Polner** (1865-1961), a retired professor of constitutional law at Szeged University. Their arguments, which appealed to Christianity, European ideals and patriotism, failed to dissuade the legislator of its original purpose.

The provisions of Act no. XV of 1938, promulgated on 29 May 1938, reduced the permitted ratio of Jews in the so-called freelance professions (e.g. solicitors, public notaries, engineers, journalists, actors) to 20%, as well as at financial, commercial and industrial ventures employing more than ten people. According to the Act, not only members of the denomination of Judaism, but also people who had converted after 31 July 1919 were to be considered Jews. The so-called first anti-Jewish law jeopardized the jobs of some 15 thousand people and, including family members, it had an impact on some 50 thousand people.¹⁰

Barely six months after the introduction of Act no. XV of 1938, and after Kálmán Darányi was replaced by Béla Imrédy in the prime minister’s chair, the government began to prepare the so-called second anti-Jewish act, eventually adopted as Act no. IV of 1939, which prescribed more severe limitations of constitutional and civil rights, and which was based much more firmly on racial principles, and thereby affected a wider range of people.¹¹

⁹ A declaration by authors, artists and scientists to Hungarian society and members of the legislature. Pesti Napló, 5 May 1938.

¹⁰ Tilkovszky, Loránt: The anti-Jewish laws as antecedents of the Holocaust. In: The Holocaust in Hungary: Fifty Years Later. Edited by: Randolph L. Braham – Attila Pók. New York, Columbia University Press, 1997. 124.

¹¹ Ladányi, Andor: A második zsidótörvény. Századok, 2013/6 issue, pp. 1423-1458.

At the turn of 1938/39, Kálmán Molnár opposed the proposed curbing and elimination of rights in public, in the daily paper “Magyar Nemzet” (*Hungarian Nation*). “... every single Hungarian who is already able to think (...) has a tremendous responsibility for that which is happening in these fateful days for Hungarians. Today, when we hear so frequently the thunderous words and curses of intimidation and menace, when so many write and scream: Jews, beware, and the Christian stooges and the lapdogs of Jews, beware even more, I feel I must make my application. (...) So my request to those keeping the list of the proscribed is as follows: should my name not be on that list already, please add me to it now. I have never been, and I am still not a hunter of men.” – he wrote, and continued: “It were not the Jews that made me a defender of the Jews, but the un-Hungarian Hungarians and the Christians who have turned away from Christ”.¹² A few weeks later he published another article in Magyar Nemzet. He explained that in his view, the disturbed balance of social and economic life certainly did have to be redressed, “the unjustified predomination of Jews has to be eliminated, the just proportions need to be restored”, but all of that should not be achieved at the cost of “a severe disturbance of social peace, restfulness and cooperation”. He believed that it was wrong to establish a constitutional ghetto for the Jews. Instead of a constitutional ghetto, the ghetto “should be swept clean”, irrespective of religious denomination. The full force of the law should be applied to criminals, Jewish and non-Jewish alike. On the other hand, “the patriotic, industrious and unimpeachable Jews who have shared our fate for centuries may expect justice, understanding and fairness from us”. The yellow patch, Professor Molnár reminded his readers, places a mark of shame on the foreheads of “those who wish to attach it to the clothing of their fellow men”. His sober, placatory words fell on deaf ears once again.¹³

Among Kálmán Molnár’s documentary estate, there remains a draft letter he addressed to Károly Rassay, the leading figure of the parliamentary opposition that opposed the anti-Jewish laws bravely and consistently, during the parliamentary debate of the second anti-Jewish law. According to Professor Molnár, Rassay’s speeches to the house of representatives would prove for posterity that “even during that sorrowful age, there were still jurists who saw statutory law not only as the instruments and forms of power, but as the human expression and practical implementation of our divinely inspired sense of justice”. Rassay’s contributions would also prove that “even in that age, there were legislators who were able to

¹² Molnár, Kálmán: Mindenki felelős. Magyar Nemzet, 30 December 1938.

¹³ Molnár, Kálmán: A magyar múlt tanulságai. Magyar Nemzet, 4 February 1939.

think logically; who endeavored to produce statutes that were clear and free of internal contradictions, and which precluded tyranny and suitable for bona fide application by humane enforcers; and not suitable for use for the spiritual and bodily torture of decent people. They will prove that even during that age, there were some spiritually Christian people.”¹⁴

Around the same time, Professor Ödön Polner expressed his opinion about the new anti-Jewish act under preparation in an interview published in the 6 January 1939 edition of the “Esti Kurír” (*Evening Courier*) newspaper. His view of the bill was that it was sharply opposed to the direction of Hungarian legislation from the 1848 bourgeois revolution to the period of World War I. His comment was referring to the liberal legal policies of that period. In that regard, the bill took a retrograde step. At the same time, the legislator introduced “*a new legal category of classes*”, that of race, which – we could add – had been previously unknown in the Hungarian tradition of constitutional law. And the regression was also perceptible in humanitarian, cultural and economic areas. In its intentions, the anti-Jewish bill considered itself right-wing, patriotic and Christian. If the direction towards eliminating freedom and introducing constraints and limitations was the right-wing one, then, indeed, the anti-Jewish bill was right-wing. And if patriotism is the support of that which is in the interest of the nation – which is “*useful, expedient or necessary*” for it – then opinions may differ on that count. But Ödön Polner was convinced that the bill was not in “*Christ’s spirit*”, as the Savior – contrary to those that composed the bill – was of the opinion that “*all people are our brethren, irrespective of nation or race*”.¹⁵

Those sober words were once more in vain. Act no. IV of 1939, promulgated on 5 May 1939, reduced the proportion of Jews employed by industrial and commercial firms from the earlier 20% to 12%, while the permitted proportion of Jews or rather persons classified as Jews among free-lance intellectuals was reduced to 6%, essentially their proportion in the total population. The proportion of Jews admitted to universities and colleges of higher education was limited to 6% with the exception of the technical university, to which a limit of 12% was applied. The right to sell goods under state monopoly was denied to Jews altogether. The political rights of Jews were severely restricted, resulting in almost a hundred thousand people

¹⁴ Kálmán Molnár’s draft letter to Károly Rassay. Pécs, 27 April 1939. Manuscript Archive of the Library of the Hungarian Academy of Science, Ms 2413/80.

¹⁵ Polner, Ödön: Jobboldali, nemzeti, keresztény? Szakvélemény a zsidójavaslatról. Esti Kurír, 6 January 1939.

losing their national and local municipal franchise. Jews on local municipal boards who received their places on account of being the largest taxpayers were stripped of their membership. With the exception of the representative of the Israelite denomination, retained until 1940, no Jew could be a member of the Upper House, either. Jews were completely barred from the civil service. As a result of the regulations, 60 thousand people became unemployed, impacting 150 thousand people including their family members.¹⁶

Kálmán Molnár and Ödön Polner explicitly rejected the so-called first and second anti-Jewish laws, which incorporated discriminative regulations into Hungarian law. They believed it was unacceptable that these provisions contradicted the principle of equality before the law, and they also objected to the fact that due to their racist character, the anti-Jewish laws were in contradiction not only with the Hungarian tradition of constitutional law but also with the Christian ethos. After the adoption of Act no. XV of 1938, Kálmán Molnár clearly stated in one of his books – though in 1938, the government were still trying to deny this – that the provisions of the anti-Jewish law had eliminated the equality of citizens in respect of Jews and persons considered to be Jews¹⁷. Any imbalances in social and economic life could not be remedied by the false promise of proportionality accompanied by the destruction of the legal equality of citizens.

Paradoxically, at the time of the adoption of the first anti-Jewish law, the government even attempted the constitutional absurdity of reconciling the principle of legal equality and the curtailment of rights. During a joint session of parliamentary committees (for constitutional law, economy and transport, public education and justice) where the bill was debated, Prime Minister Kálmán Darányi attempted to establish such a reconciliation. In his address, he claimed that “*the great principles*” – such the equality before the law – should be protected, “*but not in a formalistic fashion, but, rather, in their essence*”. Accordingly, as far as possible, equal preconditions should be provided to make a living through the reduction of the economic inequality, which, according to the prime minister, had been brought about and maintained at certain ventures by the Jews. In his view, the bill did not infringe the provisions of Act no. XVII of 1867 on the civil and political emancipation of Jews, but he also

¹⁶ Tilkovszky, Loránt: The anti-Jewish laws as antecedents of the Holocaust. In: The Holocaust in Hungary: Fifty Years Later. Edited by: Randolph L. Braham – Attila Pók. New York, Columbia University Press, 1997. 127.

¹⁷ Molnár, Kálmán: Alkotmányjogi reformjaink az 1937 és 1938 években. Pécs, Dunántúl Pécsi Egyetemi Könyvkiadó, 1938. p. 163.

emphasized that any law could be changed in time.¹⁸ During the parliamentary committee debate of the bill, Minister of Justice Ödön Mikecz also touched on the issue of legal equality. The Hungarian legislature, as he put it, had never considered legal equality to be a supreme principle that had to be maintained above all, “*to the detriment of the nation’s life*”. When it has become necessary in order to prevent the loss of balance between certain social or economic strata of the nation or the alleviate conflict between them, the legislature had constrained the principle of legal equality in the interest of the state.¹⁹ The difference in the attitudes of Prime Minister Darányi and Minister of Justice Mikecz is quite clear. While Darányi denied the claim that the bill curtailed legal equality, Mikecz found the curtailment of legal equality acceptable for the public good. The interpretation of legal equality was also raised during the debates of the bill in the House of Representatives and the Upper House. While the liberal and democratic opposition was unanimous in the view that the bill was in infringement of the principle of equality before the law, the supporters of the bill either attempted to refute the claim that equality was being infringed, or claimed that the curtailment of equality was justified in order to achieve the economic and social objectives they insisted on.²⁰

Others among the scholars of constitutional law also voiced their reservations about the direction of the anti-Jewish laws, albeit in a more cautious fashion than Kálmán Molnár and Ödön Polner. In a study reviewing the changes of Hungarian constitutional law in the period 1918 to 1939, **Béla Zsedényi** (1894-1955), professor at the Miskolc Evangelical Academy of Law, mentioned the first and second anti-Jewish laws, among others, when discussing the changes involving the rights and obligations of citizens. “*Among those laws*”, he wrote, “*a few represent quite significant opposition to the old tenets and even the principles of the constitution*”, as they bear the mark of the ideals and the new world-view of the new age with

¹⁸ Magyar Távirati Iroda (*Hungarian News Agency*). Napi hírek/Napi tudósítások 1920-1944. 26 April 1938, p. 25.

http://mol.arcanum.hu/mti/opt/a100929.htm?v=pdf&q=WRD%3D%28dar%E1nyi%29%20and%20DATE%3D1938.04.15--1938.04.30_&s=SORT&m=18&a=rec

See also Munkácsi, Ernő: A magyar zsidóság és a zsidó vallású magyarok jogi helyzete az 1938: XV. tc. után. In: Ararát. Magyar Zsidó Évkönyv az 1939. évre. Ed.: Komlós, Aladár. Budapest, 1939. pp. 17-25.

¹⁹ Magyar Távirati Iroda (*Hungarian News Agency*). Napi hírek/Napi tudósítások 1920-1944. 26 April 1938, p. 42.

http://mol.arcanum.hu/mti/opt/a100929.htm?v=pdf&q=WRD%3D%28dar%E1nyi%29%20and%20DATE%3D1938.04.15--1938.04.30_&s=SORT&m=18&a=rec

²⁰ For the parliamentary debates of the so-called first anti-Jewish law, see K. Farkas, Claudia: Jogok nélkül. A zsidó lét Magyarországon, 1920-1944. Budapest, Napvilág Kiadó, 2010, pp. 50-75.

great certitude.²¹ **József Bölöny** (1903-1990), a Budapest solicitor and a lecturer at the University of Pécs, in his summary of constitutional law published in 1942, merely noted that the effective anti-Jewish laws “*constrained the equality of citizens before the law.*”²²

IV. Constitutional theory justifications of the anti-Jewish laws can be found in the contemporaneous writings of **Vilmos Szontagh** (1885-1962), professor at the Miskolc Evangelical Academy of Law, and **Albert Kaas** (1885-1961), professor of constitutional law at the Budapest University of Economics.

Vilmos Szontagh first addressed issues associated with the constitutionality of Act no. IV of 1939 in a newspaper article, which he then followed up in a comprehensive study. In his view, the question of unconstitutionality may be raised in relation to any law if the provisions of that law are not consistent with the interpretation of the constitution in effect at the time of its adoption. Under that approach – in his view – Act no. IV of 1939 could not be considered unconstitutional, as its provisions were consistent with the current interpretation of the constitution at the time. At the time of adoption of Act no. XVII of 1867 on the emancipation of Jews, the “*liberal constitutional approach*” had dominated, but when Act no. IV of 1939 was passed, the “*nationalistic constitutional approach*” governed. And the nationalistic constitutional approach, he claimed, will not tolerate the selfish success of classes, orders, “*racess*” to the detriment of “*the ideal of nationalism*” and “*national statehood*”.²³ Therefore, it was not Act no. IV of 1939 that was unconstitutional, but rather the “*liberal state of law*” whose elimination was the actual purpose of Act no. IV of 1939 itself. In his work entitled “*The anti-Jewish law from the perspective of the theory of law*”, published in 1939, he expounded the same, hardly justifiable views more precisely: he drew a distinction between formal unconstitutionality, and material unconstitutionality, which is relevant to the present review. In his view, a law is to be considered unconstitutional in the material sense if the provisions of the formally faultless statute contradict “*some previous written or unwritten constitutional tenet of law*”. But as “*the spirit of the constitution*” varies from age to age, there can be no objection on the grounds of unconstitutionality against Act no. IV of 1939. Even he acknowledged, however, that as a result of the provisions eliminating legal equality, the

²¹ Zsedényi, Béla: A magyar alkotmányjog fejlődése 1918-tól 1938-ig. Miskolc, Ludvig István Könyvnyomdája, 1939. p. 11.

²² Bölöny, József: A magyar közjog időszzerű kérdései. Budapest, Gergely R. Könyvkereskedése, 1942-43, p. 285. Quoted in: Lehotay, Veronika: Szabadságmegvonó intézkedések a Horthy-korszakban, különös tekintettel a zsidótörvényekre. PhD dissertation. Miskolc, 2012, p. 24.

²³ Szontagh, Vilmos: A zsidótörvény és a magyar alkotmány. Magyar Élet, 28 May 1939, p. 7.

Jewish population had been put in a less favorable situation, and hence the injury to their interests is “*beyond doubt*”.²⁴

In his paper published in 1938, Albert Kaas reviewed the Jewish question not with respect to changes in constitutional approach, but through aspects of economic and social life. “*In Hungary, the Jewish question was made vital and permanently relevant by the fact that they achieved a disproportionate domination within the economy, that they became aware of their indispensability at the end of the last century, and then wished to assert it in every field.*” His reasoning, based on generalizations, crossed into the field of constitutional theory when he derived the possibility of constraining legal equality from the necessity of the struggle for existence. “*The decisive thing is not human rights, nor is it the principle of equality before the law; it is the struggle for existence.*” In his view, legal equality and human rights have only been respected by states to the point where does principles of justice didn’t threaten the universal interests of the community. “*And if the true salus rei publicae demanded it, they constrained them*”. The Jewish question – in his view – could be resolved if the Jews gave up the advantage they had enjoyed for decades and renounce their “*selfishness*”.²⁵

V. In addition, several of the scholars of constitutional theory interpreted the discriminative regulations essentially consistently with the legislature’s intentions. The group includes **Móricz Tomcsányi** (1878-1951), professor at the University of Budapest, whose textbook on Hungarian constitutional law published in 1940 discussed the theoretical aspects of the anti-Jewish laws in relation to personal liberties. In agreement with the official approach, he considered the purpose of the anti-Jewish laws to be the harmonization of the economic and social position of Jews – which had jeopardized the development of “*the Hungarian race and the Hungarian nation*” – with their proportion within the national population. In his opinion, the principle of equality before the law could be made consistent with the criterion of the proportionality of rights and obligations. From the perspective of legal policy, he believed all restrictions to be acceptable provided they were truly necessitated by the “*vital interest of the nation*”²⁶

²⁴ Szontagh, Vilmos: A zsidótörvény jogtudományos szemléletben. Miskolc, Ludvigh István Könyvnyomdája, 1939, pp. 3-5.

²⁵ Kaas, Albert: A zsidókérdés. Budapest, Stádium Sajtóvállalat Rt., 1938, p. 14.

²⁶ Tomcsányi, Móricz: Magyarország közjoga. Third, revised and extended edition. Budapest, Királyi Magyar Egyetemi Nyomda, 1940, p. 187.

István Egyed (1886-1966), professor of constitutional law at the Budapest University of Technology, expressed a similar position in his summary entitled “**Our constitution**”, published in 1943. He claimed that the constraints introduced in the economy, in social and public life were aimed at “*maintaining the Christian character of the state*”, “*protecting the purity of the race*” and “*ensuring a leading role for the majority*”. As regards equality before the law, he emphasized that the principle does not preclude “*certain groups of the national society being constrained to proportional success*”.²⁷ It is important to note that at the time of writing of his book, Act no. XV of 1941, the so-called third anti-Jewish law, which prohibited marriage between Jews and Christians for “racial protection” purposes, was already in effect. Act no. VII of 1942, which encroached upon the legal status of the Israelite denomination by reclassifying it from a so-called accepted denomination to a so-called recognized one, and which, among other things, prohibited conversion to Judaism by law, had also come into effect by that time.

László Buza (1885-1969), who gave the main series of lectures on Hungarian constitutional law at the University of Szeged in the 1939/40 academic year, was of the opinion that while Act no. IV of 1939 may have contradicted the formal requirement of equality before the law, state intervention had nevertheless been necessary. The reason was that the suspension of legal equality was required in order to avert some obstacles to actual equality. As an example, Professor Buza noted that in the economy, social conflicts between citizens, particularly large inequalities of wealth, could be eliminated in that fashion.²⁸

The views of **István Csekey** (1889-1963), professor at Szeged and then at Kolozsvár University, were little different to those of László Buza. In his book published in 1943, entitled “**The constitution of Hungary**” he claimed that the curtailment and suspension of the principle of legal equality (equality before the law) had been justified in order to stop Jews being successful in economic and social life beyond their proportion within the population. As he put it: “*By suspending the formal requirement of legal equality the state aimed to remove some striking obstacles to actual equality*”. Although he admitted that the restrictive measures against Jews were contrary to legal equality, he claimed that legal equality itself could only be a means to achieving actual equality.²⁹ However, in relation to Professor Csekey’s views it

²⁷ Egyed, István: A mi alkotmányunk. Budapest, Magyar Szemle Társaság, 1943, p. 159.

²⁸ Magyar Közjog. The lectures of university lecturer Dr. László Buza in the 1939/40 academic year [...]. Manuscript Archive of the Library of the Hungarian Academy of Science, Ms 4740/1.

²⁹ Csekey, István: Magyarország alkotmánya. Budapest, Renaissance Könyvkiadó, 1943, pp. 224-226.

must also be noted that on several occasions, for instance in his speech entitled “**Race and nation**” at the 1939 closing conference of Szeged University, he clearly opposed Nazi racial theory.³⁰

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The representatives of Hungarian constitutional theory did not form a united position on the so-called anti-Jewish laws adopted after 1938. In addition to their honorably consistent opponents, the discriminative statutes also had their committed legitimators and, allied to the latter group, their loyal interpreters as well. The scholars of constitutional theory were obviously aware of the fact that the anti-Jewish laws had impacted the fundamental issues of Hungarian constitutional law. It is a conspicuous fact that they failed to agree even on the interpretation of legal equality, or equality before the law, a cardinal concept for constitutional theory.³¹ Yet legal equality can hardly be said to exist if the proportions of positions in economic, social and intellectual life are limited to the proportions of a denomination within the total population of the country and if jobs are granted or withheld on that basis. The theory of “predomination” and the construction of “ratios” were only the government’s tools for providing some sort of legitimization for the constraint and elimination of equality before the law, or, in other words, the institutionalization of discrimination. In closing, I would like to quote a sentence from **Kálmán Molnár**’s 1945 study, “**The constitutional law balance of the provisional period between the two world wars**”. In Professor Molnár’s opinion, the anti-Jewish laws didn’t simply have the fateful consequence of eliminating equality before the law, previously considered the soundest cornerstone of constitutional law – they also destroyed the rule of law as a whole.³² Despite the fact, we may add, that the most eminent and courageous Hungarian scholars of constitutional theory had warned of their inherent dangers in good time.

³⁰ Csekey, István: Faj és nemzet. Szeged, M. Kir. Ferenc József-Tudományegyetem, 1939.

³¹ Kiss, Barnabás: A jogegyenlőség problémája a magyar közjogi irodalomban 1945-ig. In: Emlékkönyv Dr. Szentpéteri István egyetemi tanár születésének 70. évfordulójára. Ed.: Tóth, Károly. Szeged, 1996, pp. 279-286.

³² Molnár, Kálmán: A két világháború közötti provizórium közjogi mérlege. Pécs, Karl Lajos Könyvkiadó, 1945, p. 21.