

Arkadiusz Górniewicz and Bogdan Szlachta (Eds.)
The Concept of Constitution in the History of Political Thought

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Ferenc Hörcher¹

7 Is the Historical Constitution of Hungary Still a Living Tradition? A Proposal for Reinterpretation

A similar ideal constant is the constitution, the moral territory and property, as it were, of Hungarians. This is again a fix point in the universe. The constitution can be violated a thousand times, and it is possible to govern without it or against it. But even if this goes on for centuries, a true Hungarian will nevertheless regard the constitution as living and valid (Babits, 1939, 70).

7.1 The Historical Constitution of Hungary: A Diffuse Concept

To write about the historical constitution (*történeti alkotmány*) of Hungary is not easy for more than one reason. First of all, because the meaning of the term is not readily detectable: it is not a well-defined corpus of written legal norms. Hungarian legal and political life was until the end of the 19th century based on (written or unwritten) customary law, and its constitutionality was not an exception to that (Rady, 2015); second, because its birth is unclear. Although one of its acclaimed cornerstones was a rather early legal document, the Golden Bull from 1222, often compared in this tradition to the Magna Charta's role in the constitutional tradition of the United Kingdom (Hantos, 1904), the idea that this piece and other legal norms, statutes, decrees and their legal principles and customary procedures could be taken together as the body of a constitution took a long time to take hold, from the early 16th century, when István Werbőczy collected the private laws of the country,² through the early seventeenth century revolt of István Bocskai, whose arguments in defence of his activity was based on quasi-constitutional grounds (Zászkaliczky, 2012), up until the short 18th century, when the estates actually worked out the system which used as one of its central pillars the idea of the “ancient constitution” (*avita constitutio*, *őszi alkotmány*). Accordingly, In László Péter's interpretation, the historical constitution is in fact in power only from the end of the eighteenth century: “Between 1790 and 1918, the nobility's ancient constitution, *avita constitutio*, provided a potent and enduring source of a shared Hungarian past” (Péter, 2012b, p.191).

¹ Pázmány Péter Catholic University and Hungarian Academy of Science.

² The privately published law collection, which had no official status, gained authority through the constant reference to it in the courtrooms and local and national diet chambers of the country. There is a recent English translation of its text with commentaries (Stephen Werbőczy, 2005, usually referred to simply as *Tripartitum*).

While the birthdate of the constitution is still debated, there is an agreement among scholars that it was at the end of the eighteenth century that an awareness of the constitutional practice of the country awakened, and that the short interval of political upheaval, following the death of Joseph II and the outbreak of the French Revolution, resulted in an unprecedented outburst of constitutional debate and constitutional activity as well, during the diets of 1790-1791, and 1792 (Szijártó, 2005) (Concha, 2005). Inspired by the legal theories of the Enlightenment (in particular by Montesquieu, whose reference to Hungary made him a popular author, and his opus magnum, *The Spirit of the Laws*, “the bible for the nobility”³ (Péter, 2012, p.156), real efforts were made to reform the constitutional settings of the country, resulting in the composition of long documents of reform legislation plans. The Committees of the diet put together long lists of suggestions (called *operatum*) in the fields of commerce, law, *urbarium*, and so on, which were meant to be discussed during the next diet. However for political reasons they were sent to the archives of the chancelleries, and were only reconsidered four decades later, in 1831 and 1832. In spite of this cancellation of the fulfilment of constitutional reforms, the hot constitutional debates of the early 1790s represent the creation of a public constitutional discourse in Hungary.

A further point which makes the task so challenging is the so called doctrine of the Holy Crown. This idea was claimed to originate in medieval times, and to consist in the view that “from the Middle Ages the king and the diet (later parliament) have jointly possessed the Holy Crown, in which Hungary’s legal and political sovereignty resides” (Péter, 2012c, p.148). The textual basis of the doctrine is Section I Tit 4 (1) of the *Tripartitum*, but the doctrine depends on a contested interpretation of the text. According to Péter, who is rather critical of the reading which substantiates the doctrine, “In Werbőczy’s view, the nobility through its customary rights shared, together with the counties and the diet, power *with* the crown, rather than with the king *in* the crown” (Péter, 2012c, p.149). According to his reconstruction of the growth of the doctrine, it appeared sometimes in the early 19th century and became more fully elaborated in the 1830s. It was refined by legal historians and political theorists, including Imre Hajnik, Győző Concha and Ákos Timon, but “the most effective promoter of the doctrine” was “the eloquent Count Albert Apponyi” (Péter, 2012c, p.150). Interestingly the doctrine survived the disintegration of the original Hungarian state, of the Habsburg Empire and the devastating effects of the Trianon peace treaty (1920), which left the kingdom of Hungary one of the losers of the Great War, without many of its inhabitants and territories, and served therefore as one of the pillars of the official neo-baroque ideology

3 This is Montesquieu’s famous reference to the Hungarian nobility: “The house of Austria has ever used her endeavours to oppress the Hungarian nobility; little thinking how serviceable that very nobility would be one day to her. She would have drained their country of money, of which they had no plenty; but took no notice of the men, with whom it abounded” (Montesquieu, 1777, Vol. 1. Book VIII, ch. 9).

the interwar Hungarian regime, called Horthy-era (Péter, 2012d). During its long and troubled history, the doctrine of the Holy Crown served as the foundation stone of Hungarian exceptionalism, an idea that Hungarian history and the constitution that grew out of it, in some ways represented a unique colour in European history, a kind of *Sonderweg*, which excludes any easy comparison with other countries' historical achievements. The doctrine itself lost its relevance during the Communist takeover, but it was reborn in late Kádárism (1970s and 1980s) and at the time of the transition (1989-1990), and it still embodies a virulent political subculture in Hungary.

After we have considered these difficulties, we can define the aims of the present paper. It is going to be an exercise both in the history of political thought and in normative political philosophy. The aim is to give a *longue durée* account of the constitution, by which we can summarise some of the main achievements and a few of the main failures of its history. Before that, there will be a theoretical section, which examines the way a reconstruction of constitutional thought may reveal a more generally Hungarian “constitutional culture,” which can serve for the abstraction of a constitutional philosophy. By drawing conclusions from its failures and achievements the paper will undertake to propose a philosophical reinterpretation of the meaning of the constitution, connecting it with some parts of the new Fundamental Law, but trying to avoid the legitimacy issue of the latter.

7.2 Political Thought, Constitutional Culture and the “Philosophy” of the Constitution

Political thought is closely related to political action and agency and political action is in turn closely related to human ideas and even ideology. The history of political thought is, therefore, a reconstruction of thought to shed light on human action and agency.⁴ It is therefore not separable from political history. If you want to understand what a certain political statement in the past really meant, you have to understand how it was related to human action. The way a historical protagonist thinks about a political situation does not necessarily determine the way she reacts, but knowing how she thought about it is most probably very informative of the possible choices she could make of potential actions. So the reconstruction that is made possible by the history of political thought of the thought of political agents might turn out to be quite useful for political historians as well. The mutual connection between the history of political thought and political history is therefore rather close.

⁴ In addition to the writings rooted in Cambridge-style history of political thought, the following methodological argument was inspired by R.G. Collingwood and Michael Oakeshott.

However, there is a further dimension to the nature of political thought to consider. The concept of rational choice is not always the best description of how political agents decide and act. Certainly emotions and other irrational impulses also have an important role in the decision making process of political agents. And crucially, as in other types of activity, there is a large field of political action, where people behave in an unreflective manner. Routine is an important part of politics, and social routine is directed by individual habits and custom. Politicians have a large *reservoir* of experience of the past, and they can rely on it when they choose. When they act out of routine, they rely on this unreflective, habituated knowledge of how to do things. In other words, they rely on what their experiences and education, on their character (as it was called from the ancients up to the end of the early modern period) or, as Bourdieu would call it, on their habitus. Character – and habitus – formation is mostly the responsibility of the agent’s environment, it depends on the kind of exchanges one earlier had with others and with the hard facts of the world, and the way they configured the agent’s character. In the case of politics, this external environment reflected in the character or habitus is rightly considered the specific political culture of the specific community.

The analysis of linguistic utterances to reconstruct the discourse is the primary aim of the history of political thought. It should, therefore, shed light not only on the way people acted, but also on the way agents’ ideas and actions interacted, and were already preconditioned by the particular political culture of their environment. In other words, expressed human thoughts can help the interpreter to reconstruct the outline of the particular political culture the given individual was formed by, and was also part of. This claim is based on the Heidegger – and Wittgenstein – inspired recognition that a political speaker/author is overtaken by the language she uses. But language is only one form of the way tradition actually controls the agent’s behaviour and thinking: culture manifests itself in a number of other ways, too, some of which are not even identified by the agent, who, paradoxically, displays the features of a common political culture in the very moment when she becomes an autonomous personality, with her own style of thinking and action. By comparing the linguistic performances of different members of the same political culture history of political thought hopes to distinguish what is characteristically personal, and what belongs to a common political culture characteristic of the community to which the agent belongs.

The following analysis of the Hungarian historical constitution develops from the assumption that it is not simply a collection of written laws or well defined norms, but a certain political culture, a constitutional culture (Sólyom, 2015). Therefore, the aim of the analysis is not simply to make sense of the ideas of particular political agents – for example, those of the particular members of the nobility who forced Andrew II to issue the Golden Bull, or of Stephan Werbőczy when he collected the civil law customs of his country, or Bocskai or Rákóczi rebelling against the Habsburg monarch pleading to the constitutional tradition, but rather to understand what exactly did

it mean to refer to the historical constitution for any members of the political community. A constitutional culture will certainly prefigure the political agents. In other words, through a short analysis of its vocabulary, this essay would like to outline the constitutional culture of the historical constitution.

7.3 Historical Layers of Constitutional Life in Hungary

If we want to reconstruct the historical development of constitutional life, which includes constitutional thought and action in Hungary, we have to understand that one of its central elements is its traditional nature. For the historical constitution is principally a way of thinking that relies on the wisdom of earlier precedents to gain insight into constitutional questions of the present. This attachment to tradition is the more surprising that this was a country characterised by a rather discontinuous and staggered history, resulting in an uneven development of constitutional thought. Its birth was not signalled at once, but may be traced back retrospectively, and therefore the tradition's starting point fades into the mist of time immemorial.⁵ Its application requires a backward looking technique of legal argumentation, and such a procedural obligation means that new contexts will necessarily reconfigure the past, in order to update the actual content of the law. In other words, history builds layers upon layers, in an unplanned, spontaneous manner. As this spontaneous growth results in a rather uneven development, there is no point in a paper like this to try to tell it as a continuous story in a full, rounded narrative. Rather, we will try to plumb testholes here: samples from different political contexts, in a chronological order, in order to show the full dimension of the constitutional architecture, with all its different historical layers.

7.4 Founding the Historical Constitution? The Golden Bull

The Golden Bull is a “decretum, a royal charter of liberties” (Péter, 2012e, p.115), issued by King Andrew II of Hungary in 1222⁶ (Zsoldos Attila, 2011) (Rady, 2014). We know it from a letter by the king to Pope Honorius III that a large crowd of the nobility demanded “that he should confirm the liberties that St Stephen, the holy king, had granted to the nobility.” In other words, in its very starting point the constitutional practice is backward looking, using a historical argument. The demand was based on a suspicion that Andrew II was responsible for “harmful practices which amounted

⁵ It is noteworthy that a reference to times immemorial is a common element of the Hungarian and the British constitutional thought (Pocock, 1987).

⁶ The text of the decree is by now available in English and Latin (Werboczy, 2005).

to abuses of royal authority.” The demanded confirmation included privileges, such as “the exemption from taxes, limits on the military duties of the nobles and their right not to be arrested without first being summoned and sentenced by due judicial process.” This is again important because it gives ample proof that the subjects of the decretum belong to an exceptional minority, the nobles who can claim particular exemptions and privileges on a traditional basis. This was explained by the fact that the distinction of noble and non-noble assigned the chance to participate in the political life of the country, and participation granted the “ancient” liberties to those who actually contributed to the common good. Through this decretum the nobles wanted to get guarantees to defend their position against the new barons, and therefore the Golden Bull was not interested in trying to weaken royal power. Due to the fact that the specific constitutional standing of the nobility has proven to be surprisingly stable during the centuries, one of the most important characteristics of the Hungarian constitution is that it is traditionally a noblemen’s constitution. A further point of the Golden Bull that needs to be stressed is the fact that it only reaffirmed what is called by Joachim Bahlcke the culture of liberty (*Libertaskultur*): a political culture where the participation in the political system was based on the liberties that were donated by the king as an expression of personal trust (Balcke, 2005) (Zászkaliczky, 2012) (Varga, 2004). This centrality of the notion of liberty became again a key notion of constitutional thinking in Hungary, where the special privileges of the individual noblemen came to mean first the liberty of the order or estate of nobles, as a whole, and later that of the country (*ország*), the political community of the Hungarians as instituted by the constitutional tradition itself.

7.5 Stephen Werbőczy

As we have seen, the Golden Bull already referred to liberty in the past tense, as something which was secured by the great king earlier, this decretum itself became the most important reference point later when, quite irregularly, political debates were fought with arguments which referred to earlier customs of royal privileges to the nobles as precedents. Martyn Rady, in a paper dedicated to its relevance, makes the following, seemingly contradictory claims: “In the century following its issue, all mention of the Golden Bull disappeared,” and yet “Perhaps indeed, as Henrik Marczali slyly observed, the whole history of Hungary’s constitution was, like Bishop Stubbs’s observation on Magna Carta, a commentary on the Golden Bull” (Rady, 2014) (Marczali, 1896, p.79). Yet this contradiction dissolves as soon as Rady makes it obvious that references to the Golden Bull were sporadic in the first decades because the text of it turned out to be too radical, including the famous resistance clause.

However, this backward referencing, which is already characteristic of the language of the Golden Bull, becomes notorious with Stephen Werbőczy’s painstaking efforts to put down into a legal collections the customary law of Hungary. The

connection between the Golden Bull as the precedent, and the Tripartitum, as the collection came to be called, as the interpretation of it, is made obvious by Rady, too: “The Golden Bull was additionally used by the lawyer and politician, Stephen Werbőczy, to lend the semblance of antiquity to what he claimed were the inviolable privileges of the Hungarian nobility” (Rady, 2014, p.106). In the modern English translation of the collection of customary norms, which the protonotary of the courts of the judge royal and voivode of Transylvania presented to the diet of 1514, and as judge of the *personalis* (*személynök*) published privately in Vienna in 1517, without winning the official consent of the king, became the most important reference point itself, for later discussions of the content of the ancient constitution of Hungary (Rady, 2005, xxvii). “Its principles and provision laid down the substantive law of noble landholding, the special privileges enjoyed by the Hungarian nobility, and the practices and procedures to be followed by the royal courts” (Rady, 2005, p.xxvii). Werbőczy’s collection is important because it remained the most notorious point of reference whenever issues of constitutional significance were brought up. In this way, it was regarded as the final authority, even if the exact meaning of its provisions were sometimes hotly debated. But it served as a written proof of what the *consuetudo* or in more general terms the law of Hungary contained. Péter László is ready to regard it, therefore as a handy summary of “Hungary’s ancient constitution,” perhaps not meant as such in the time of its creation, but regarded as such by all participants of Hungarian political and legal life (Péter, 2005, p.xiii). This could happen because of the continuous labour invested into the interpretation and reinterpretation of it, allowed by the specific nature of customary law. It allowed legal practitioners to regard law as “not made or created” but as “*ius*, right, which exists as the approved habits and usages of the commune” (Péter, 2005, p.xiv). In other words, the Tripartitum enjoyed a special status, an authority of the law, coming from its continuous use by the whole community, transforming it into “the *tacitus consensus populi*,” the tacit consensus of the populace, which of course meant the nobility only, and its relation to the Crown “a kind of contract between the king and the diet of the *ország* (noble community)” (Péter, 2005, p.xv). This contract had two partners, the crown and the *totum corpus* of the *ország*, the latter offering constant loyalty to and armed defence to the Crown in times of emergency, the latter providing the liberties of the nobles, which could be enforced according to the resistance clause six of Chapter Nine in the First Part of the Tripartitum. This clause referred back to the Golden Bull, claiming that if the ancient privileges were damaged, the nobles (as a corpus) had the “liberty to resist and oppose him without the taint of infidelity” (Werboczy, 2005, p.57.) One should not wonder that in the 18th century, when Hungarians learned from the legal theorists of the Enlightenment that what they possessed was a kind of contract, on which however a whole edifice, a “system of a ‘constitution’” was built, they became so obsessed with it, that they were not ready to give it up in the wholly changed atmosphere of the 19th century as well, when as a result of the settlement between the two countries, the Kingdom of Hungary coalesced with the Habsburg territories of Austria, they still kept

it, and it remained the source of constitutional ideology up until the first written constitution drawn by the communists after the second world war.

7.6 Stephen Bocskai

The special status of the Tripartitum is partly due to a further fact: during the centuries it came to serve as the basis of reference for the fight for independence of the country. After the Turkish invasion when the country was cut into three parts, we see constant struggle in the country between rivals to get the Hungarian throne. On the one side we find the Catholic Habsburg rulers, who claimed power mostly over the North-Western territory, while Hungarian and Transylvanian candidates fought for the independence of the country. One of the contenders was Stephen Bocskai (1557-1606), a protestant nobleman, who served in the Habsburg chancellery in Prague and Vienna and later became prince of Transylvania, the eastern part of the territory, present day part of Romania. His fight for the crown represents in paradigmatic form the agonistic opposition between country (*ország*) and court (*udvar*), in a situation when the nationality and the religious affiliation of the royal family is different from the main body of the nobility. While the Habsburgs were interested in widening their control over the whole territory, the Transylvanian Hungarians played a strategic game of oscillating between the power-centres of Vienna and Constantinople. They tried to win support against that power which seemed to be momentarily the more dangerous, in order to preserve some kind of a balance of power between the three parts of the country. The conflict over sovereignty between the Habsburg court and the Transylvanian princely court was, of course, coloured by a confessional antagonism: the reformation proved to be very successful in the Eastern and Northern part of the country, which made a counter-reformation seem quite necessary for the Catholic Habsburg dynasty. Both of these dimensions of the conflict (territorial control, confessional rivalry) were present in the ideological basis of István Bocskai's movement, which led to a short, but quite successful War of Independence in 1605. As a result of it he could negotiate on both sides, with the Turks as well as with the Habsburgs.

When analysing his political thought, in the historiographical tradition Bocskai is represented either as one who was relying heavily on the resistance clause of the Golden Bull, as it was transmitted by Werbőczy⁷, or as using the Golden Bull only as a cover up in the ideological warfare, while his really radical idea of armed resistance was rooted in a Calvinist reformed theological conviction.⁸ It is unquestionable that

⁷ Benedek Varga attributes roughly this position to historians like Ferenc Eckhart, Imre Révész and Gyula Szekfű (Varga, 2006, p.29).

⁸ Varga lists in this camp Kálmán Benda, László Makkai and with a slightly different orientation, Katalin Péter.

the political system of estates, often called feudalism, incorporated into its own practice the defence of religious freedom as an ancient right and liberty. It was Bocskai who firmly established the final argument of rebellious resistance against the unconstitutional measures of the court, which came to characterise Hungarian politics time and again afterwards for three centuries, resulting in quite a number of lost fights of liberty against more powerful monarchs. But Bocskai himself succeeded to show that religious freedom can also be defended by reclaiming ancient rights. The estates learnt that it is rewarding ideologically if they refer back to their ancient rights, and as a result ever since they kept referring to the Golden Bull and the Tripartitum, which helped the latter document to gain unparalleled position in Hungary's constitutional life: it came to be seen as the main form of expression of the Hungarian feudal ideology, of the ancient constitution (Zászkaliczky, 2015, p.22). Bocskai's innovation led to an ideological unification as well: the political theology of Hungarian Protestantism integrated the paradigm of ancient constitutionalism, which on the other hand had an impact on this latter discourse as well: the resistance clause won an unparalleled priority in the constitutional thought of the country, which indicated that in case the Habsburgs keep enforcing their own vision of politics (i.e., a centralised empire with a united legal system), the Hungarians will never give up their fights to adhere to their own constitutional tradition, which included the right to resistance as well (Zászkaliczky, 2012b). After expelling the Turks from the central parts of the territory of the Kingdom of Hungary, the Habsburgs could successfully enforce their will, and let the Hungarians exclude from the body of constitutional norms the resistance clause; but the idea itself remained, and was easily available even in the political turmoil of 1848. To sum up: "the Bocskai revolt and its legal results brought about the integration and final emancipation of the Protestant Churches into the estates polity (*Ständestaat*) as well as the emancipation of the political theology of Hungarian Protestantism, the first steps towards a modern political culture" (Zászkaliczky, 2012, p.294).

7.7 Transforming and Reflecting Upon the Historical Constitution: The Eighteenth Century

While the political struggle in the 17th century was largely fought along confessional lines, the 18th century saw in the Kingdom of Hungary a transformation of political life, leading from what is called in the historiography "confessional" estates polity to a "constitutional" estates polity (*ständisches Konstitutionalismus*) (Szijártó, 2012).⁹ While earlier the confessional confrontation could have been manipulated by the

⁹ I am grateful to Professor Szijártó for the email correspondence in which he suggested to provide the German equivalent for the latter expression.

ruler, now the confrontation shifted to the opposition of the diet and the court. In questions of defending their “constitutionally guaranteed” privileges, the nobility was united, independently of their confessional identity. It is also interesting that in this new situation the lower nobility (*bene possessionati*) gained the upper hand from the aristocracy, which earlier was regarded as *pars sanior* (Szijártó, 2012, pp.39, 47). It was in this context, and as a result of learning from Montesquieu that the estates of the nobility were actually in possession of a constitution, that actual references to the term constitution appeared in the constitutional legal discourse. They learnt it from *The Spirit of the laws* that a system of rights and privileges is nothing less but a constitution. As László Péter put it: “They discovered, not unlike Molière’s burgher who learnt that he was speaking ‘prose’, that what they possess was a ‘constitution’ rather than just a collection of customary rights” (Péter, 2012, p.156). It is also from this period that the dualist character of the constitutional arrangement becomes obvious – while earlier king and the diet worked hard to cooperate and to find compromises, from this time on there is a constant struggle between them over questions of sovereignty. Although it was undebatable that the Crown, meaning in this case simply the king was superior to the diet, the king was obliged by custom to negotiate with the diet, which latter had certain techniques of enforcing that their views be taken into account by the king (including the tactical use of their votes for more tax or military support).

It is from the end of the 18th century that references to a venerable ancient constitution began to be used. Szijártó specifically refers to the diet of 1790, when the deputy instructions of the deputies of Somogy county explicitly use the term constitution.¹⁰ He also claims that the analysis of the ceremonial speeches of the diet signal the latin word „constitutio” (speeches at the diet in those years were mostly given in latin) from 1792, in which year both the primate József Batthyány, and the personalis József Ürményi used it, the former calling attention to the aim of preserving the “ancient constitution” (Szijártó, 2015, p.27). Péter László refers to Article X of 1790 as “the first statutory reference to the ‘constitution’”.¹¹

Part of the reason for this transformation of the terminology might have been that the direct state intervention with the aim of radically transforming the constitutional arrangements by king Joseph II provoked strong resistance. No doubt this unprecedented conflict with the king, who withdrew most of his reforms on his deathbed, as well as the American experience, the Dutch and French revolutions, which introduced hot debates of constitutionalism on an international scale, took part in the

¹⁰ Beside his own findings, Szijártó also refers to (Melhárd Gyula, 1906, p.60.) He admits that in these texts the expression used is *sarkalatos alkotmány* (appr. cardinal constitution).

¹¹ The Article „enacted that the kingdom had to be ‘ruled and governed according to its own laws and customs’ because it had its own character and constitution (*proprium habens consistentiam et constitutionem*)” (Péter, 2012b, p.193).

sequel in the first half of the last decade of the 18th century, which was an unprecedented fermentation of constitutional thought in Hungary. One should not underestimate the relevance of this phenomenon because of the seemingly dead end of all these efforts when the king, using the Martinovics conspiracy as a shop window case, closed down all possibilities of constitutional reforms. We are reminded by Szijártó that the simple fact that political participation was so high is a secure proof that this turn towards the constitutional discourse within the institutional framework of the estates, mainly using the country assemblies and the national diet, prepared the way for a more modern democratic political culture. In this respect Szijártó himself refers to the views of other researchers like Ambrus Miskolczy and Károly Kecskeméti, who again emphasise the importance of the late 18th century developments (Szijártó, 2015, p.27; Miskolczy, 2005, p.199; Hörcher, 2016). However, Szijártó offers a few cautionary remarks as well. First that this special kind of “constitutionalism” did not have a democratic content in the modern sense of the term, and in fact the absolutist opponent of this movement, the Habsburg government, was more forward-looking in a number of issues, including its peasant policies and religious toleration. And, second, that although the sharp political conflicts of the dualist model foreshadowed the kind of party politics which is characteristic of modern parliamentary systems, in fact a lot was lost with the eclipse of a cooperative model between court and country, characteristic of the earlier system, and still in work in the first half of the 18th century (Szijártó, 2012, p.48). We shall have to return to this apparent contradiction in our assessment of the failures and achievements of the historical constitution.

7.8 The Golden Age of Historical Constitutionalism: The Nineteenth Century

If the 18th century created the preconditions of a thriving constitutional life in the country, the 19th century can comfortably be called the heyday of the historical constitution of Hungary. Starting with a period of latent reform work on what was called linguistic neologism (*nyelvújítás*), it continued with an intense period of a two-decade-long constitutional reform movement, when the political class got widened up, by members of the lower classes of the nobility and non-noble intellectuals (called *literati* by Péter), which led to the legal revolution of the April laws of 1848, followed by a War of Independence, which was lost, but regained in the form of the 1867 Settlement, which created the new state-formation of the Austro-Hungarian dual monarchy.

Péter, in one of his seminal papers, chose two simple aspects to describe the specificity of Hungarian political thought and action in the 19th century, the struggles around language and the idea of the “ancient constitution” (Péter, 2012b). Analysing an article by the editor of one of the earliest political journals, *Hazai Tudósítások*, by its editor, István Kultsár, entitled “Who are Hungarians?” comes to the conclusion that

“the term *magyar nemzet* (Hungarian nation, FH) may not have acquired its modern senses before the language movement of the literati fused with the political reform programme that emerged within the nobility to establish a civil society based on the principle of legal equality” (Péter, 2012b, p.188). The linguistic reforms proved more successful than the constitutional struggle. It started in 1792 with article VII, which “introduced Hungarian as an ordinary subject in grammar school” and led through “Article III of 1836,” which “declared the Hungarian text of the laws (rather than the Latin) to be authentic,” to 1844 “when Law II made Hungarian the sole language in which laws were enacted” (Péter, 2012b, p.189).

With the constitutional reform the development was not quite so linear. For reformers (aristocrats, nobles, and non-nobles) had to fight on two fronts: they had to defend the ancient constitution (in other words the liberties and privileges of the nobles – representing by now the whole nation¹²) against the centralising trespasses of the court and its government), and fight to break down those very privileges in order to let the people enter behind “the ramparts of the constitution” (*az alkotmány sáncái*).¹³ While the first front was obvious by then, the second front was one in which the nobles had to turn against their own interests. The solution to this political riddle was the strategy of the extension of rights (*jogkiterjesztés*) instead of a termination of privileges, which would have perhaps a more radical (more democratic) internal effect, but should have annulled the ancient constitution and should have authorized Vienna to provide a new constitutional framework or even a non-constitutional form of government. After the bloodless revolution of 1848, the April Laws “broke the back of the old order based on hereditary right and introduced independent, representative and responsible government” (Péter, 2012b, p.195). Although the new regime was forced into a hopeless war of independence where the Hungarian civic militia was crushed down with the help of the overwhelming power of the Russian Tsar’s army, 1848 “set a standard for Hungarian politics that outlasted even the Monarchy.” In the 1867 Settlement, the lost constitution was “repossessed” and a new balance was created between the Crown and the nation” (Péter, 2012b, 195). However, the story is once again unfinished: “Although the drawbridge of the constitution was lowered in 1848 and in 1867, the gates were not flung wide open.” (Péter, 2012b, p.195).

Even more importantly, a serious distortion was introduced during the 19th century: a constitutional doctrine that worked as an ideology, which led astray the constitutional development of the country. This is the famous doctrine of the Holy Crown, the idea that the constitutional history of the kingdom is unparalleled, as it was based on an acclaimed thousand years of history, and represented a specific vision of politics. In a long and detailed investigation, Péter traces back the birth of

¹² “When Kossuth makes the claim that Hungary ‘belongs to the Hungarians’ and refers to ‘our constitution’ the referent is no longer the nobility but the nation led by the nobility” (Péter, 2012b, p.195).

¹³ The expression, used by Pál Felsőbüki Nagy in 1827, became a famous adage of the period.

the doctrine to the oppositional figure of Count Albert Apponyi, a “magnetic personality and oratorical brilliance,” who in the 1889 Great Defence Debate provided the political context of the Holy Crown doctrine, a joint production of the exceptionally talented and influential theorist Győző Concha, the excellent Vienna educated legal historian and legal theorist Imre Hajnik, and Ákos Timon, another representative of the turn-of-the-century Hungarian style, but Germanic (dogmatic) historical school of law, all the three of them having chairs at Budapest University. The terminological shift that prepared the way for the doctrine was that *ország* (country) was replaced by the more modern notion of *állam* (state). While earlier there was “a dualist division between king and *ország*, according to the new doctrine “ ‘the subject of sovereignty was the Holy Crown’ which comprised the crowned king and, ‘in former times through ennoblement, today through the franchise’, the members of the crown.” In other words the modern (German *Staatsrecht*) concept of the state was always there in the Hungarian historical constitution, only called the Holy Crown, which led to the conclusion that “neither the Monarch nor the People but the State itself ought to be regarded as the subject of state sovereignty” (Péter, 2012f, p.225). This innovation served the function to widen up the space for the Hungarian government once again on two fronts: against the Monarch, who tended to rely on his ancient *ius reservata* (the reserved right of the sovereign), and against the individual rights of citizens and the institutions of civil society. This distortion of the original balance of king and parliament was most obviously expressed in the autocratic principle of the law, which Péter regarded as a common feature of the Habsburg Monarchy and imperial Germany, and he found it as the major obstacle to democratic (rule of law) developments in Hungary, which brought with it in Hungary a fatal obstruction of the growth of civil rights (unlike in the other half of the Dualist Monarchy) (Péter, 2012g; Cieger, 2015). His fulminatory view of the doctrine is due to the fact that he regarded it as “constitutional radicalism” which “resulted in the introduction of an instability in the political life of the Hungarian part of the Monarchy” (Péter, 2012f, p.224).

7.9 Anachronistic Afterlife, Death and Revival (?) of the Historical Constitution: The Twentieth Century

The instability led to government crises in the early 20th century, but the regime could survive until the outbreak of the First World War. However, as Hungary lost the World War, the the Allies revenged with a fatal blow: the kingdom of Hungary lost the majority of its historic territory and population. This moment should have been seen as the end of its constitutional tradition and the occasion to redraw its constitution (Romsics, 1999, p.81). Because the historical constitution, as noted, was part of an ancient, customary kind of constitutional culture, it managed to survive even this political catastrophe. The new political system that came into power after long

months of authoritarian regimes in power (first the red revolution of the Hungarian Republic of Councils, later what is called the white terror of a radical right counter-revolutionary regime), and which was stabilised around the personal charisma of the would-be regent, Miklós Horthy, an earlier admiral of the Dual Monarchy, kept the state's form of kingdom, except that it did not allow the Habsburg dynasty to take the throne. Horthy himself served as an uncrowned king at the top of the political regime that, as many other interwar regimes in the region, had an authoritarian character (Turbucz, 2014). While Hitler's takeover was due to the fiasco of the Weimar constitution of Germany, the Kingdom of Hungary did not work because of its anachronistic nature. This anachronism is captured by the term phrased by Gyula Szekfű, who called the contemporary Hungarian society a "neo-Baroque society" (Szekfű, 1920/1938). The official ideology of this state was a kind of revisionism or irredentism, which radically questioned the justice of the Trianon treaty and expressed the hope of Hungarians that the lost territories and the lost native population can be regained – a major cause of Hungary joining Germany at the outbreak of the Second World War. Keeping the constitution was also a political manifesto, which sent the message: Hungarians do not accept the external constraints of the stronger, and keep to their own constitutional tradition.

In reality, however, the historical constitution lost its credibility, as after the collapse of the dual monarchy there was in fact no need to keep the "*közjogi kérdés*" (the question of public law) on the agenda, except for territorial demands, which, however, were largely determined by the foreign political constellation, and could not be hoped to bring any positive results by simple techniques of elaborate legal disputes. The historical constitution, however, had two further aims which it could very well serve: first, to hinder a democratic turn by the introduction of universal suffrage which was on the agenda in more and more European countries in those years, and with it to postpone the defence of individual rights. The anti-democratic tendencies could be recognised in the party system as well, or in the workings of the Parliament, where real competition could be avoided. And second, to hinder social mobility, by ensuring that the historical liberties and privileges of the nobility and the aristocracy (including the system of large landed estates) were defended, and this way a wide spectrum of society could not in fact avoid experiencing extreme poverty. Beside those of the traditional estates (the aristocracy, the nobility and the Church) the state served the interest of the so called Christian-national middle classes – as opposed to the large groups of agrarian paupers, and those city-dwellers who were of non-Hungarian origins, including the Jews, against whom they introduced a whole series of legislation, and half a million of whom they left preys of the anti-Semitic Nazi regime of the German Reich after the outbreak of the Second World War.¹⁴ That this sort of

¹⁴ For a contemporary critique of the anachronistic social structure and the prevailing antisemitism of the interwar period and during the Second World War, see Bibó, 1982-1984; Bibó, 1982-1984b.

scapegoat mechanism could be so easily operated against a group of citizens is a sure sign that at that time the historical constitution was not able to serve the function which we expect from a constitution, meaning a defence of individuals against the monopoly of state power. The illusion of gaining back earlier territories blinded the political elite, including the regent, and made the country the prey of Hitler, who used the Hungarian political class for his own purposes and then occupied the country to make sure of their loyalty. After the suicide of Prime Minister Pál Teleki, in 1941 there was no real leadership in the government, which resulted first in the Nazi takeover in 1944, and then in the total surrender of the country before the 1945 Soviet communist invasion.

There is no wonder that the newly consolidated communist regime wanted to get rid of the historical constitution. Following the Soviet example of the Stalinist constitution, a new statutory constitution was introduced in 1949, ending the long story of the historical constitution, and starting a new era of quasi-constitutionalism under a totalitarian kind of rule. This was a written constitution, which ascertained the leading role of the communist party, and this way operated an oppressive party-state system, along the teaching of the official Marxist-Leninist doctrine. Although communist rule was interrupted by the revisionist revolution of 1956, led by the earlier communist leader, Imre Nagy, János Kádár, the new first secretary backed by the Soviets once again consolidated a slightly milder system, and ensured its survival and his personal leadership in it until 1989. There is no need to dwell long on this period, as it was a shop-window kind of constitutionalism, which did all that it could to encumber the external recognition of its real nature, which remained totalitarian down to the bottom.

The transition of 1989 prepared the way for a new constitutional regime after a fair general election in 1990. The election laws were collated among the participants of the National Roundtable Agreements, and this way it ensured the transition to a genuinely democratic system. Although a lot of political commentators had serious worries about the new political settlement, which were originally meant to be only transitory, no government majority could again put on the agenda constitution drawing. However, a two-third majority enabled Fidesz to draw a new constitution once again, claiming that the 1990 one was based on the earlier, illegitimate 1949 one. The new Fundamental Law of Fidesz, which was itself illegitimate according to its critics, because the parliamentary opposition had not participated in the drawing of it, and the population did not formally accept it, made an effort to revitalise the historical constitution. In its ideological orientation, called the National Avowal, it provides the following historical judgement:

We do not recognise the suspension of our historical constitution due to foreign occupations. ... We do not recognise the communist constitution of 1949, since it was the basis for tyrannical rule; therefore we proclaim it to be invalid. ... We date the restoration of our country's self-determination, lost on the nineteenth day of March 1944, from the second day of May 1990, when

the first freely elected organ of popular representation was formed (The Fundamental Law of Hungary, 2011, National Avowal).

There are serious problems of legal technique with a constitutional text that claims to be rooted in the earlier constitution, but which calls the former constitutional regime annulled, because of the fact that it served a totalitarian regime. But a more significant problem is that the new Fundamental Law is open to charges of illegitimacy because of the opposition being left out from the procedures of drawing it. As a result it is not yet certain whether it can survive the next election – although it has already survived one, but that election was won by Fidesz, the same party that has drawn the Fundamental Law. Consequently, its heroic effort to turn back time, and to reintroduce what is called the achievements of the “historical constitution” is still rather doubtful.¹⁵

The success of such an innovative step depends on the reaction of the constitutional court, which is accused of being full of Fidesz-friendly constitutional judges, but which wants to preserve its own professional reputation based on the decisions of the first period of its history, when it was led by its first president, László Sólyom, whose heritage of the constitutional culture of the post 1990 Hungary is still relevant for the present constitutional court. This tension between the spirit of the new Fundamental Law and the constitutional culture of the constitutional court cannot be easily resolved. Some of the norms of the fundamental law try to reshuffle the sense of the constitution, like in article R where it is claimed that “The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal contained therein and the achievements of our historical constitution” (Fundamental Law, 2011). However, so far there is no agreement how to identify the real “achievements” of the historical constitution in the above quoted text. The constitutional court, of course, has all the powers to make sense of this imprecise term; but apparently it is not too keen to do so, and constitutional or legal historical scholarship has not achieved too much so far, either (Hörcher, 2015).

¹⁵ See the text of the National Avowal: “We honour the achievements of our historical constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungary’s statehood and the unity of the nation” (The Fundamental Law of Hungary, 2011). I think that the close conceptual link drawn here between the historical constitution and the Holy Crown makes a potential interpretational breakthrough rather difficult, because of the strong reactions amongst lawyers against a return to the veneration of the Crown.

7.10 The Achievements and the Failures of the Historical Constitution

In a relatively early writing, published in 1994, the later constitutional court judge, and even later president of the constitutional court, Péter Paczolay gave his thoughts on the relation between the historical constitution and conservative legal thought (Paczolay, 1994). Paczolay, who was a legal theorist and political scientist before he became a judge, claimed that:

The historical constitution characteristically and necessarily interlocks with the conservative philosophy of state and law: with the principle of continuity and gradual development. The changes of Hungarian public law had a conserving nature, beside its natural progression. The stability behind the reforms, the adaptation of the ancient principles to the new circumstances, about which the Hungarian public law theorists tended to write, echo the ideas of Burke (Paczolay, 1994, p.33).

In his historical reconstruction Paczolay points to two historical events that broke the continuity of the traditional historical constitution: these were in 1919 the establishment of the Soviet type Republic of Councils and in 1949 the Communist written constitution of Rákosi. While neither of them was legitimate, the latter, written (*kar-tális*) constitution is claimed to have actually terminated the historical constitution. In Paczolay's view even if Hungary wanted to, it could not turn back to the historical constitution, as it is by now unfortunately discredited. Using a traditional metaphor he claims that the constitution's building was totally destroyed by the storms of the 20th century. It cannot be brought back, and no new historical constitution can be created, it is conceptually impossible. It is inevitable, therefore, he claims that Hungarians will live under the jurisdiction of a charta-like constitution, which however has to preserve from the ancient Hungarian constitution whatever is possible to be preserved. He thinks that the 1989 constitutional process was not the "most fortunate" but he takes it even so legitimate, and finds in it in some aspects a return to the pre-1949 one. The most important point where he thinks that the customary nature of the historical constitution can be reintroduced is the judge-directed development of law (*bírói jogfejlesztés*). While this possibility was excluded from the socialist concept of the law (which had as its ideal the Kelsenian type of legal positivism), after 1989 there is a chance to return to the Hungarian legal traditions in this respect through the Kúria's role in the development of the law. Through the legal interpretation of the judge the lacunas of the law can be filled up, which was quite naturally achieved in the historical constitution due to the customary nature of the law and precedents. The constitutional interpretation of the law by the judge is a new development which helps to inject a customary-historical element into the constitutional life even if the constitution itself is written.

Paczolay's ideas were realised at the same time by the activist self-perception and practice of the first president of the Hungarian constitutional court, László Sólyom. His ideal, the so-called "invisible constitution," was the custom of the court to build around the written norms of the constitution a context of interpretations, in their judgements, which, in order to dig out the constitutional principles behind the text of the particular norm, sometimes went recognisably beyond the original intention of the lawgiver. Interestingly, however, it was exactly the conservative lawyers and politicians who criticised the practice, claiming that the practice of the constitutional court stretched much beyond what was originally intended for them in the model of the separation of powers. Here, of course, a similar argument appeared as the one used in the case of the United States Supreme Court, where conservative judges try to adhere to the original meaning of the text as the norm, and claim that activism in interpretation can dangerously miss the original intention of the lawmaker or simply the original meaning of the text of the law (Pilon, 2001). Sólyom's original intention was to try to build a coherent system of the interpretations of particular debated issues in the light of the text of the constitution, and this way to fill in the gaps of the constitutional text and logic and to defend the constitution from any spontaneous constitution drawing intentions of the parliament for pragmatic political purposes.¹⁶ In a later writing Sólyom made it clear that he saw the point of the criticism, but thought that it was based on a misinterpretation of his metaphor, when it was understood as referring to "activism and countermajoritarian aspirations of the Court" (Sólyom, 2000, p.41).

László Sólyom's understanding of the historical constitution became once again relevant in the context of the debate about the new Fundamental Law, drawn by the two-thirds Fidesz majority in 2010-2011. Sólyom provided a serious critique of the new venture that he thought might endanger the whole edifice of the invisible constitution. When he realised the importance attached to the notion of historical constitution by the drafters of the Fundamental Law, he innovatively rephrased his former concept, claiming that in fact the real meaning of the historical constitution was exactly the invisible constitution built around the text of the written constitution by the court, in the way implied by Paczolay's earlier essay. In other words he suggested that if there is a constitutional demand to return to the historical constitution, one should look at the court's jurisdiction during its 20 years history: "the Fundamental Law states that its provisions shall be interpreted in accordance with the achievements of the

¹⁶ According to Sólyom: "The Constitutional Court must continue its effort to explain the theoretical bases of the Constitution and of the rights included in it and to form a coherent system with its decisions, which as an 'invisible Constitution' provides for a reliable standard of constitutionality beyond the Constitution, which nowadays is often amended out of current political interests; therefore this coherent system will probably not conflict with the new Constitution to be established or with future Constitutions" (Decision 23/1990, 2000, p.126).

historical constitution – but the achievements which can be used today evolved after 1990. The new constitution of that period incorporated also the achievements of 1848 and 1946. And the constitutional court, since then kept writing a historical constitution, if you want” (Sólyom, 2011).

But there is a further step in Sólyom’s innovative interpretation of the historical constitution. He claims that in fact constitutional life consists of written or unwritten norms, and a certain form of constitutional culture attached to it. “A new constitution cannot repeal the legal culture, into which it is born. These two mutually form each other in the long run... Constitutional culture is continuous, it takes shape slowly – so far it is comparable to the historical constitution. A written constitution can also follow the radical transformation of social demands and the ever new face of constitutional culture” (Sólyom, 2011). Obviously his hope is that in spite of the constituent power’s intention, the new Fundamental Law – the text of which is to a large extent simply taken over from the 1989-1990 constitution – cannot cut itself away from the constitutional reality which consists of the written constitutional norms and of the constitutional culture into which these norms are born.

It is too early as yet to judge whether Sólyom’s hope will be fulfilled. But it is sure that his understanding of the historical constitution is heavily bottlenecked. Neither Paczolay nor Sólyom could accept the revival of the idea of the historical constitution cherished by Babits in our motto. They absolutely doubt that the historical constitution could survive the four decades of the written Soviet-type constitution, which they both claim to be illegitimate.

The present paper is based on a different assumption. According to this assumption, constitutional reality is a social construction, which means that it can be deliberately changed – perhaps not too abruptly, but slowly and gradually. If there is a consensus among constitutional lawyers and other legal practitioners, politicians, and the opinion mongers that the historical constitution should be regarded as still valid, it is only a question of time, interpretational innovation, and invested energy to draw the conclusions of this consensus in the long run. As already the title of the new constitution (i.e., Fundamental Law) suggests, the intention behind its drawing was that it will serve as a key text in the process of reconquest of the historical constitution, one which in the same time takes responsibility also for its renaissance.

Certainly there posit serious obstacles that hinder the realisation of this intention. Most importantly one should be careful not to get anachronistic or simply foolish by taking some parts of the historical constitution verbatim. After all, who wants to revive feudal social conditions, the *ius reservata* of the kings, or anti-semitic legislation? Only the carefully chosen key elements should be saved for the benefit of future legal argumentation, and a special care should be paid to neutralize the negative effects of the potential survival of its failures. Undoubtedly a more thoroughgoing analysis than what is possible in this paper is required to address this pressing issue. This paper can only argue that a written Fundamental Law does not *per definitionem*

exclude the possibility of the legal presumption that the historical constitution is still alive, the only problem being that we cannot as yet define properly the content of it.

But one further step may be taken here: to formulate a proposal about the direction towards which the new interpretation of the reborn historical constitution could be switched.

7.11 How to Reinterpret the Tradition of the Historical Constitution?

One of the key problems of the 1989/1990 Hungarian constitution was that ordinary citizens could hardly identify with the view of politics that it presented. Instead, the general public regarded the document as the constitution of law professors, legal experts and lobby groups primarily interested in individual rights. This was partly due to the fact that its text and the court's interpretation tried to join the Western constitutional discourse, without taking due care about the home ground. Therefore, a lot of the members of the political elite could not easily catch up with it. Consequently it quickly lost those otherwise interested in politics but not interested in present-day constitutional theoretical nuances or human rights lobbying.

But what is the guarantee that the historical constitution, a theme offered by the new, 2012 Fundamental Law, would look more sexy in the eyes of its present audience? A strong conviction tells us that the future of the Fundamental Law is in the hands of professional constitutional lawyers and the courts. Theoretically oriented lawyers' interpretation of it should lend it a cogency, and their job it has been offer a vision of the rebirth of the historical constitution which is compelling to the next few generations. In other words, the interpretation of the past should be tuned to the expected tastes of the future. But, certainly, traditional Kelsenist lawyers are naturally not in favour of it. And the constitutional lawyers of the last twenty years, mostly from a younger generation, who were brought up on the vision of the constitution transmitted by the constitutional court, or directly picked up at fashionable or second-rate European or American universities, in fact reside on the other side of the debate. And Hungarian conservatism, which has overthrown the earlier constitution, is not yet sufficiently intellectually robust to take up the challenge to make sense of the references in the Fundamental Law to the achievements of the historical constitution.

To conclude, I respectfully offer my own, non-legal suggestions how to use the historical constitution today. My starting point is the social constructivist assertion that if there are good reasons why to refer to the historical constitution as a living document, it could be done. Next, I admit that, as Paczolay already saw, the historical constitution was destroyed in the 20th century. But I would add, presumably in agreement with such diverse authors as Szekfű and Bibó, that since the end of the dualist period (late 19th early 20th centuries) the Hungarian constitutional mindset wandered

seriously astray. And third, let me suggest that historical deadlocks can offer lessons from which important conclusions or lessons might be drawn.

Thus, here are a few of the lessons of the earlier discourse of the historical constitution which I take to be relevant even today constitutionally. First, obviously, one should reconsider one of the most important trait of the historical constitution, its dualist nature. As shown, the doctrine of the Holy Crown was quite a late arrival, but the cast itself has a long history, where the king and the country (*ország*) obviously represent the two scales of the balance. The lessons from this old constitutional division include the one István Szijártó has drawn: that there is a republican element in the way the *ország* functioned in the 18th century. Yet it is also remarkable that due to this dualist structure, the diet was forced to cooperate with the king and to look for viable compromises in these negotiations. In other words, at least until the second half of the 18th century, the dualist structure brought with it less an agonistic struggle and more a constitutional culture of compromises. It is only since then that a sharper, zero-sum game has been started in the political arena.

Second, another early experience was the confessional division of the constitutional life of the kingdom. It was partly due to the fact that the Habsburg dynasty was emphatically Catholic – although Szijártó also mentions that there were occasions when their political interests could override their confessional identity. The early success of the reformation, mostly in the northwestern parts of the country, is relevant because it could contribute to the schizophrenic nature of the population, inhabitants of the three parts spoke different political languages, and the theological controversies explain the early politically motivated cultural wars which were occasioned by the confessional struggles. It also explained the persistent existence of rival historiographies – the loyal Catholic ones talked about loyalty, while the protestant ones cried in a non-compromising manner liberty.

Third, if we turn to the heyday of constitutionalism, the long 19th century, a key question concerned the fate of the county or local assembly, which had a power to take over a lot of the burdens of political life, but this way frustrated the state's central authorities. This conflict is also easy to explain in the language of despotism (Viennese central authority) versus liberty (local communities), but already the centralists, a group of well educated, politically active intellectuals, from the 1940s were keen to call attention to the general misfortunes caused by geographic and institutional fragmentation. On the other hand, local communities could accumulate practical knowledge about political necessities, which again lead to a political (or constitutional) culture based on political participation and the demand of autonomy and self-government.

Fourth, a further question is the returning historiographical commonplace that Hungary arrived late in liberating not only its serfs, becoming the country of three million beggars, but also in offering constitutional rights to its bourgeois middle classes, in particular the city-dwelling burghers. The issue called the question of cities (*városi kérdés*) became quite hot during the Reform era, but was not solved in

a proper manner even in the April Laws. And although the period between the Settlement with Austria and the First World War saw an unprecedented urban growth, Hungary remained comparatively underdeveloped, as far as urban centres, industry and commerce is concerned in the last decades of its being a kingdom. And even more importantly, social mobility turned out to be even slower and severely limited, which could have been one of the key indirect reasons behind the anti-Semitic feelings, legislation and the state's betrayal of its Jewish citizens during the time of the Holocaust.

Fifth, and finally, a further dimension of the historical constitutional experience of Hungarians might be relevant even today: that the kingdom of Hungary was constitutionally part of a larger whole, called Habsburg empire. Although the political elite since the time of Werbőczy tried to play on the national monarch's issue, and regarded the dualistic arrangement only as a concession, when they accepted the system, they also participated in stabilising it. In a comparison of the Hungarian kingdom and Austria, in or after 1848, the Hungarian part seems to be much more liberal than the other side of the political spectrum, as it had its own well defined and practiced constitutional arrangement, while Vienna, which was on other hand more urbane and unchecked, followed in a much slower tempo the fate of Western capitals, by checking the monarch's direct power. It would be nice to see how the general public in Hungary relates to these issues nowadays, when the imperial logic of Europe towards the small countries is once again easily felt and seen, for a population which learned from the Russian invaders that autonomy matters.

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