

## 9. LAW I OF 1946 AND LAW XX OF 1949: CONTINUITY OR DISCONTINUITY IN TRADITIONAL HUNGARIAN CONSTITUTIONALISM?

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### **Introduction**

The constitutional evolution of Hungary in the aftermath of World War II (in 1945–9) has continuously attracted the intense attention of historians and legal scholars. In general, their pieces either provide a predominantly descriptive analysis of the era's major legal acts<sup>1</sup> or familiarize the readers with the course of subsequent political events.<sup>2</sup> Contrary to this descriptive reading, this chapter tries to offer an analysis of a different quality as it will focus on the two major legal acts of this period – Law I of 1946 on the State Form of Hungary and Law XX of 1949 on the Constitution of the Hungarian People's Republic – from the perspective of the modern Hungarian constitutional tradition which is grounded in the idea of historical constitutionalism.<sup>3</sup> Further, as Stalinist principles were the primary inspiration for Law XX of 1949, the concept of external legal assistance will also be discussed. It is hoped, therefore, that new insights may be revealed through this approach and these may enrich our knowledge of Hungarian constitutional history. In sum, the evolution of legal and constitutional ideas in postwar Hungary is the main topic of this chapter. Consequently, its scholarly scope is necessarily restricted as compared to a general historical outlook. History, as a socio-political background, will be referred to as the context of the constitutional changes studied, but the main aim of the chapter will remain the discussion and analysis of the constitutional development in its own right.<sup>4</sup>

### **Thesis and Overview**

The main thesis of this chapter is a relatively simple point. Centuries-long Hungarian constitutional traditions were broken by Law XX of 1949, and not by Law I of 1946 as is conventionally stated in the literature.<sup>5</sup> Undoubtedly, Law I of 1946 is a key point in twentieth-century Hungarian constitutional history as it transformed the former monarchical constitutional framework into a modern republican one. As its title – on the state form of Hungary – suggests, it set forth that the post-World War II state-form of Hungary would be a republic with a president, a new autonomous political actor in the Hungarian public scene. Nevertheless, the usual understanding of this constitutional act is oversimplified as it does not take into account the embeddedness of Law I of 1946 in the tradition of historical constitutionalism. Therefore, it was Law XX of 1949, which introduced the first codified constitution in the modern history of Hungary,<sup>6</sup> that marked the real break with the past. This constitution relied on the application of Stalinist principles – and thereby imported a vision of constitutionalism that had no roots in Hungarian constitutional traditions and explicitly denied any connection to the former historical constitutional tradition.

In order to explain this thesis, this chapter will first outline the historical context of the birth of Law I of 1946, and then the major provisions of this Act. Following on from this descriptive introduction, the problem of how this Act may be interpreted in the light of traditional Hungarian constitutionalism will be discussed, and at that point the chapter will invoke the findings of László Péter on the nature of the 'ancient' or 'historical' Hungarian

constitution. As a next step the chapter will argue for a more ‘empathic and realistic’ reading of Law I of 1946, namely, it will argue for taking into account its strong ties with the substance of historical constitutionalism. The next section will briefly point out how the political climate of the country changed after 1947 and how the Hungarian Workers’ Party emerged as a new and omnipotent power centre. Thereafter, Law XX of 1949, the very first codified constitution of the country, will be analysed, and the role and impact of Soviet legal assistance will be highlighted. Finally, a concluding section will present the main lessons of this inquiry into these two episodes of constitution-making in the first years after World War II.

### **A Constitutional Moment? The Years 1945 and 1946**

It can be argued that the years 1945 and 1946 in Hungary are to be defined as a constitutional moment in the same sense that the American scholar Bruce Ackerman used this term.<sup>7</sup> Through an in-depth study of modern US political and constitutional history Ackerman pointed out that there are specific historical moments in the ‘life’ of a country, which he termed ‘constitutional moments’. During these periods, fundamental questions concerning the organization and the interests of the political community are discussed. The distinction between ‘normal politics’ and ‘higher lawmaking’ is based on this insight.<sup>8</sup> Ideally, a constitutional moment begins with the formulation of the need for political reform, obtains the broad support of the public and concludes with legal codification. Naturally, the codification phase is preceded by political discussions and debates as well as the search for a proper legal vocabulary to express the reformist vision.<sup>9</sup> Obviously, constitutional moments do not necessarily succeed; failure is also a possible outcome of these political disturbances.

The end of World War II and the fall of both the political regime presided over by Miklós Horthy, who served as Regent of Hungary between 1919 and 1944, and the short-lived national socialist dictatorship presided over by Ferenc Szálasi during the final months of World War II, created the opportunity for a thorough reconstruction of Hungary. In fact, the country lost a considerable portion of its population due to war acts, the Holocaust, the relocation of the *Volksdeutsche* to Germany and deportations to the Soviet Union. In addition, the country’s industrial capacity and public facilities were seriously damaged by the war.<sup>10</sup> However, contrary to all these unpromising circumstances, a vivid discussion had started on the socio-political future of the country almost immediately after the arrival of the Soviet Red Army. And the argument that Hungary needed a Western-style re-establishment of the country’s political and constitutional system could freely be formulated and promoted, too. Although, naturally, there was no chance of a swift consensus as there was a wide range of proposals regarding Hungary’s future political development, politicians and public intellectuals all agreed on one question: the ‘heritage’ of the past had to be overstepped.<sup>11</sup>

It should not be forgotten that the international context also looked to be very favourable and supportive for this open and lively future-oriented political discussion from a general perspective.<sup>12</sup> The Declaration on Liberated Europe that was formulated by the victorious Allied Powers specifically prompted the people of Europe ‘to create democratic institutions of their own choice’ and called for free elections to be held in all liberated countries. Such language implied that the Hungarian people would be consulted about their future development. The first postwar general elections were held on 4 November 1945 and the centrist and middle-class oriented Party of Independent Smallholders (FKGP) obtained a clear majority of the votes and seats in the newly elected parliament.<sup>13</sup> However, due to diplomatic pressure from the Stalinist Soviet Union, whose military and intelligence services now operated throughout the country, a coalition government was formed in which almost all parties in the parliament participated including Social Democrats and Communists. This coalition government, led by centrist and Western-oriented political forces, had to establish a new constitutional order<sup>14</sup>

under the constant political pressure of those politicians who were obedient to the interests of the Soviet Union.

### **Law I of 1946: An Overview**

Law I of 1946 is certainly not among the longest bills in Hungarian constitutional history: its length is only 1,430 words.<sup>15</sup> In addition, its codification was surprisingly rapid. It was discussed by the Public Law and Constitutional Law Committee (Közjogi és Alkotmányjogi Bizottság) of the parliament and the plenary session of the parliament during January 1946,<sup>16</sup> and it was promulgated on 20 February 1946.<sup>17</sup> As for its structure, it was composed of a short preamble and 19 articles. In sum, the provisions of the Act are to be grouped around three major points.

### **Codification of Human Rights and Fundamental Constitutional Principles**

The Act enumerated the citizens' fundamental freedoms and rights for the first time in the modern history of Hungary. That is, an explicit 'bill of rights' was prepared to precede the detailed constitutional law provisions. These were as follows: (i) personal freedom; (ii) the right to have a life free from repression, fear and deprivation; (iii) freedom of thought and opinion; (iv) the free exercise of religion; (v) freedom of assembly and association; (vi) the right to property; (vii) the right to personal security; (viii) the right to work and to a worthy existence, (ix) the right to culture, (x) the right of participation in public life (on both a national and a local level). Although the historical constitution had also incorporated some of these rights and freedoms, it had done so in a fuzzy and incoherent way.<sup>18</sup> Thus, this 'bill of rights' can be regarded as a major development in the history of Hungarian constitutionalism as it ensured that the country conformed to general Western standards. Interestingly, and surprisingly, all these freedoms and rights were mentioned in the preamble of the Act.

That is, their legal status was not as obvious since the normative power of preambles is an evergreen question of constitutional theory. The post-World War II practice of constitutional courts, on both sides of the Atlantic, diverges when the normativity of constitutional preambles is at stake. One may argue that a preamble to a constitution is nothing more than a simple declaration, while its normative relevance may also be argued convincingly in a different constitutional context. That is, a consensual understanding of this problem has not come up thus far in Western constitutionalism.<sup>19</sup>

Further, the Act also declared the principles of due process and non-discrimination as foundations of the entire legal order. However, again, this was stated in the preamble, so the earlier disclaimer on the questionable legal status also applies here. Lastly, the republic as the state form of Hungary was also solemnly declared by the Act.<sup>20</sup>

All in all, it should be noted that most of the by now elementary constitutional principles (fundamental rights, due process and non-discrimination) are only a part of the preamble. This structural position of this 'bill of rights' might have given rise to doubts on their real legal status and relevance before the courts. However, once the legal culture of the country was transformed in 1949 this question lost its practical importance. That being said, Hungarian courts simply had no time – in historical terms – to discuss the consequences of the problem that all fundamental freedoms were part of the text of the preamble, but not included in the corpus of the Act.

### **The Status of the President of the Republic**

As a main point, the Act established the institution of the president of the republic in Hungarian public law. The president was to be elected by two-thirds of the members in the National Assembly.<sup>21</sup> The main privileges of the president were as follows.

- (i) The promulgation of all Acts of the National Assembly and a soft veto right in the legislative process. The president had the right to send back a legislative proposition for discussion once during the process, but the second version submitted back to the president upon a second reading had to be promulgated.<sup>22</sup>
- (ii) Postponement of the sessions of the National Assembly without any justification once parliament had convened.<sup>23</sup>
- (iii) The right to dissolve the National Assembly if it was requested by the government or by two-fifths of its members.<sup>24</sup>
- (iv) Representation of Hungary in international relations.<sup>25</sup> However, any executive acts related to war (such as declarations of war, peacemaking, the use of force) could only be made on the basis of prior authorization by the National Assembly.<sup>26</sup>
- (v) The power to grant pardons and a general power to grant exemptions from specific legal provisions that could impede the rights of the citizen.<sup>27</sup>
- (vi) The appointment and removal of the prime minister and all other ministers, albeit in consultation with the prime minister and always with respect to the principle of majoritarian rule.<sup>28</sup>
- (vii) The appointment of high State functionaries and judges based on the relevant ministers' proposals.<sup>29</sup>

It can immediately be observed that the position of the president was certainly not merely symbolic.<sup>30</sup> He was intended to have a stronger position in his dealings with the National Assembly, even though the exercise of any of his executive powers required a counter-signature.<sup>31</sup> Furthermore, the National Assembly was also under scrutiny by the president as he had considerable privileges that allowed him to promulgate acts and even dissolve the assembly. In sum, this balanced solution provided a constitutional framework in the new Hungarian republic which authorized the president to occupy a relevant place among the main constitutional powers.

### **The Invalidity of the Monarchical Provisions**

Lastly, the Act incorporated an explicit declaration about the invalidity of all constitutional provisions related to the earlier state-form of monarchy and the position of the former Regent.<sup>32</sup> At this point – by giving such an explicit declaration – the Act obviously broke with the former monarchical tradition, which is regarded as one of the cornerstones of the centuries-old Hungarian constitutional tradition. However, the Act did not contain any provision that would have explicitly declared the denial of the historical constitutional tradition as such. So, the main question is whether the invalidity of monarchical components of the former tradition would imply the political and legislative intent to discredit and disrupt the entirety of the historical constitution.

### **General Assessment**

Undoubtedly, Law I of 1946 transformed the constitutional setting of the Hungarian political scene in qualitative terms. With the 'bill of rights' in the preamble, it apparently linked it to the human-rights-centred Western tradition,<sup>33</sup> while by eliminating the monarchical tradition in such a symbolic way it also modernized it in accordance with a modern republican spirit. Moreover, the new republic even tried to ensure the respect of human rights by the instruments of penal law. Law X of 1946 set forth that disrespect by any state bureaucrat of the human rights included in the preamble of Law I of 1946 must be regarded as a criminal offence and if established, it might be sanctioned with a maximum term of five years' imprisonment.<sup>34</sup> However, with the recognition of all these developments, the question remains whether this

modernizing turn in constitutionalism is equal to the end of Hungarian historical constitutionalism as such.

### **Law I of 1946 in the Light of Former Constitutional Traditions**

The above-discussed features of Law I of 1946 may easily convince the reader of its modern and innovative nature with respect to the Hungarian constitutional tradition. Article 19 on the invalidation of all the provisions related to monarchy may certainly strengthen this view and may suggest that this Act is the starting point of a completely new era. However, if one applies László Péter's theses on the nature of 'ancient constitutionalism', this clear-cut and simple-looking interpretation may also be questioned from various directions.

As a first step, László Péter's main points have to be summarized. Firstly, he claimed that one of the main features of Hungarian historical constitutionalism was the lack of a codified constitution, meaning that there was no single document containing all the relevant constitutional norms, provisions and conventions. Thus, the boundaries of both the constitution and constitutional law were imprecise and were subject to harsh controversies among the various political actors participating in public life.<sup>35</sup> Secondly, also an essential point, the real basis for the everyday functioning of the various constitutional institutions was a set of customs and conventions recognized by all the constitutional actors. That is, the political life of the country was organized by unwritten but broadly accepted customs. Therefore, the political actors considered these as general guidelines for their activity; specific legislative acts with a constitutional relevance were always regarded as exceptions to the general rule. Thirdly, constitutional law – in its broadest sense – contained privileges and obligations, and their major subjects were the parliament representing the country in its entirety (*ország*) and the Crown.<sup>36</sup>

In sum, the substance of the so-called 'ancient constitution' was composed of the rights and obligations of the nation, and the rights and obligations of the king. The constitutional system had a strikingly dualistic nature based on the relationships of the *ország* (the country) and the Crown. Furthermore, due to this bifurcated structure, the Hungarian constitution was always interpreted differently by the representatives of the country and the representatives of the Crown, and they were often in conflict, for example over the crucial question of whether the source of the Crown's powers derived from free election or the hereditary principle.<sup>37</sup>

Moreover, Péter also argued that the Hungarian constitutional tradition as it was conceived under the umbrella term of 'ancient constitution' at the beginning of the nineteenth century, had not disappeared from the public mind and constitutional scholarship of the end of the nineteenth century, but had instead incorporated certain modern concepts mostly due to the German intellectual influence (*Staatslehre*).<sup>38</sup> That is, even though the conceptual basis of constitutional thinking was certainly renewed in an intellectual and conceptual sense, its basic tenets and structure remained rather solid.

Why is the nature of nineteenth-century historical constitutionalism vital when assessing an Act from the mid-twentieth century that had a pronounced republican character? Although the contents of the Act and its spirit seem to be very modern in a Western constitutional sense, the *travaux préparatoires* (with special regard to the explanatory notes of the prime minister) also indicate that this Act had a much stronger connection to the former constitutional tradition than can be assumed at its first reading. There were, for example, numerous references to the historical constitution in the explanatory notes of this republican Act. That is, one can easily find arguments based on a clear historical – or traditional – understanding of constitutionalism in the preparatory notes, and this phenomenon cannot easily be explained if one regards the Act as the end of historical constitutionalism.

Let us have a closer look at these references. Firstly, these notes and explanations argue that the Hungarian constitution never recognized the absolute nature of the king's power, and that these powers were always transferred by the nation to the king; that is, they had a limited

scope by their very nature.<sup>39</sup> In other words, limiting sovereign political power through public law had been a constitutive component of the Hungarian tradition for a longer while.

Secondly, they also point out that the system of the Hungarian constitution was based on the idea of an elected and constitutionally limited monarchy. In the eyes of the legislator of 1946 this fact, again, could be regarded as a precursor of the republican tradition. That is, the concept of monarchy was a paramount component of the traditional constitutional setting but certainly not an imperative one without which this tradition could not exist.

Thirdly, the notes give a detailed explanation that popular participation in the exercise of parliamentary powers had been widening during the previous centuries. In the end, it had become one of the constitutional traditions, and this centuries-long process resulted in the establishment of the first democratic republic, in which legislative powers are exclusively exercised by the parliament.<sup>40</sup> That is, Law I of 1946 was seen as a ‘natural’ or – to use a more proper term in the context of historical constitutionalism – ‘organic’ development of the historical broadening of democratic participation in Hungarian constitutionalism.

Fourthly, the explanations remind the readers that the republican idea is not irreconcilable with Hungarian traditions; moreover, it is not even contrary to the ‘properly understood organic legal evolution’, and it is also in harmony with the will of the parliament. In other words, a monarchical form of government was not considered as the final phase of this organic constitutional development, but instead should be understood as a stage of development that ultimately led to the creation of a republic.

Lastly, the notes emphasized the fact that this Act was not a simple copy of a specific foreign model but was instead tailored to the ‘specific claims of our country’.<sup>41</sup> The notes thereby echoed the idea of original and *sui generis* Hungarian constitutional development widely shared by most of the constitutional lawyers. Again, this remark proved that contemporaries regarded this Act as part of the historical tradition.<sup>42</sup>

In conclusion, this modern and innovative Act was legitimized by robust historical arguments, which implied that the new republic and the creation of the office of the president were not a problem for the requirements of the constitutional traditions. This official argumentation challenges the current scholarly consensus which celebrates the Act as a symbolic break with earlier traditions. If this had been the case in 1946, clearly the prime minister would not have sought to provide legitimacy for the Act by excessive references to constitutional traditions.

Besides this strong historical and traditionalist argumentation there were other – structural – components in the Act that may remind us of the heritage of the concept ‘ancient constitution’. Firstly, it is not too difficult to discover the impact of the former dualistic tradition on the details of the provisions on the president. The president is entitled to all privileges necessary for the exercise of his powers, and the parliament’s powers are to a certain extent constrained. Again, the parliament has its own – much broader – reserved scope of actions (cf. *reservata* in the former construction), too, which cannot be interfered with by the president. Surprisingly, however, this Act establishing basic power relationships in the new-born Hungarian republic – therefore called by many contemporaries the ‘small constitution’ – contains only one single reference to the judiciary, while the status of the third branch of powers is not discussed in detail at all. That is, this setting of the division of powers within the State which focused on only two prominent actors may also remind us of the idea of power-balancing between the two major political actors (the king and the country, later nation) of the monarchical era that was one of the key points of nineteenth-century constitutionalism, as argued by László Péter.

Moreover, there is one explicit reference to the historical constitution in the explanation when the provision on the election of the president by the parliament is explained. When justifying this provision the explanatory note *expressis verbis* invokes the historical constitution

in the argumentation. It argues that ‘our constitution does not know the institution of referendum,’<sup>43</sup> therefore the election of the president has to be assigned to the parliament, the sole representative of the will of the people. This remark was not only of conceptual relevance but it also had a role to play in the political discourse around the new state-form. Cardinal Mindszenty, who considered himself the last legitimate representative of the Hungarian monarchy as the prince primate (the archbishop of Esztergom), passionately argued against the ‘constitutional reforms’ at the end of 1945. In addition, he proposed to hold a referendum on the introduction of the republic.<sup>44</sup> Thus, this remark may also be considered as a counter-argument against the political claims of the prince primate.

### **Towards a More ‘Empathic and Realistic’ Reading of Law I of 1946**

The above interpretation requires a reassessment of this Act. Clearly, Law I of 1946 should be regarded as a much more organic constitutional development than it has hitherto been interpreted as by recent Hungarian legal scholarship. Though this Act introduces a qualitatively new model of the state-form for the country – as compared to the former monarchical pattern – it does so by invoking either the spirit or some components of the constitutional tradition. That is, the Act did not disrupt the former constitutional tradition in its entirety. It certainly set aside the monarchical component, but it also preserved some elements on a more abstract level (for example, the dualistic nature of power sharing, the lack of a single constitutional document, and the demand of historical legitimation).

In sum, the spirit of Law I of 1946 – in the sense of Montesquieu’s understanding of the term *l’esprit* – was that of a modern, Western-styled democratic political system centred around both the parliament and a president. This novel setting was in conformity, by and large, with the structural features of the centuries-old Hungarian constitutional tradition, except its monarchical component. That is, it proved that modernism in a public law sense and organic constitutional development were not irreconcilable with each other in post-World War Hungary. However, the dramatic change in post-World War II geopolitics that began in 1947 and resulted in the complete submission of Central Europe to Soviet influence did not allow history to test the functioning of the new constitutional order partially inspired by the spirit of tradition.<sup>45</sup>

From the second half of 1946 the political life of the country started to deviate from the original intentions of centrist coalition government step by step. At the end of March 1946 the parliament enacted Law VII of 1946 devoted to the protection of democracy and the republic by criminal law provisions.<sup>46</sup> Originally, this Act was intended to protect the new constitutional order; however, as the police and state security services were under Communist rule, it became an efficient tool in the hands of the Communist Party to dismantle its centrist and Western-minded competitors. For instance, Béla Kovács, general secretary of the Independent Smallholders Party, a widely known and popular opponent of growing Communist influence, was arrested on the basis of this Act in the last week of February 1947. This event made it obvious that the new constitutional framework created by Law I of 1946 would not be able to function properly, and the manifestly growing – Soviet-backed – Communist political power would simply disregard it in practice. In addition to this apparent undemocratic political pressure, the transformation of the economy had also started with the nationalization of the banks in November 1947,<sup>47</sup> which predicted the future weakening of the private-property-based free market system, and it had almost totally been realized by 1948.<sup>48</sup> All in all, the gradual narrowing of the room for democratic politics became a reality under swiftly growing Communist pressure from 1947 onwards, and it also gravely challenged the freshly established constitutional order and rule of law in the country.

The story of the first and second presidents of Hungary also illustrates this democratic and constitutional backlash process. The first president, Zoltán Tildy, one of the leading

personalities of the centrist Independent Smallholders Party, only spent two years in office, as he had to resign when a strongly biased lawsuit was started against his son-in-law. From 1 August 1948 to 20 August 1949 a Stalinist representative of the Hungarian Workers' Party, Árpád Szakasits, was elected president of the republic and he also became the first president of the Presidential Council (A Népköztársaság Elnöki Tanácsa) established by the newly codified Stalinist constitution in the autumn of 1949. His appointment to these positions in 1948 suggested that his high position was nothing more than a device by which the Soviet-backed Communists could demolish the political-constitutional system of the country.<sup>49</sup>

### **The Emergence of the Hungarian Workers' Party as a Political Power Centre**

The resignation of Zoltán Tildy as president of the republic, under external pressure from his Communist opponents, also illustrated that the political climate of the country had already begun to change drastically in the aftermath of the passing of Law I of 1946. In 1947, the Communist Party and its allies won the general election, although the fairness and legality of this vote were put into question by the extent of the fraud and intimidation that marred the voting.<sup>50</sup> The new coalition government was dominated by the Communists who, in mid-1948, forced the already domesticated Social Democratic Party to unite with the Communist Party. As a result, the Hungarian Workers' Party was founded in order to impose a Stalinist vision of socialism upon Hungary under the leadership of Mátyás Rákosi. Finally, a new general election was held in May 1949 in which, contrary to the earlier multi-party traditions, there was only one list of candidates, all of whom had been approved by the government. This list, the so-called Hungarian Popular Front of Independence (*Magyar Függetlenségi Népfront*), formally united the representatives of the previously competing political parties but, in practice, it meant that the Communist politicians were able to control the composition of the new parliament in an exclusive way.<sup>51</sup> Needless to say, irrespective of their formal party membership, solely Communist-friendly politicians took up their seats in the parliament due to this change in the spring of 1949.

Obviously, this dramatic transformation of the country's political regime, highlighted by the transition from a multi-party system to the formation of a Soviet-minded one-party regime, must have been reflected in the constitutional setting, too. Naturally, neither the presidential system based on Law I of 1946, nor the former constitutional traditions were able to prevent the establishment of the new totalitarian regime. Instead, the creation of a Communist dictatorship paved the way for a new codified constitution which totally disrupted the former constitutional tradition. This disruption should not only be understood in the formal sense that a qualitatively new form of constitution appeared in the history of Hungarian constitutionalism, but also in a substantive sense, as the new constitution embodied pure Stalinist socio-political principles.

### **Law XX of 1949: An Overview**

The idea of a new and codified constitution and the creation of an entirely new legal framework had already been mooted during the summer of 1948 when the Hungarian Workers' Party accepted a programme declaration, that is, a broad guideline for future activities, in which the necessity of constitution-making was emphasized.<sup>52</sup> In February 1949, a proclamation of the Hungarian Popular Front of Independence (*Magyar Függetlenségi Népfront*) also stressed the importance of a new constitution to replace the former traditions.<sup>53</sup> As a consequence, following the first general election to take place under the one-party system and the comprehensive dominance of the Hungarian Popular Front of Independence, a Preparatory Committee (*Előkészítő Bizottság*) was formed by the Council of Ministers to work out the text of this new constitution. This committee was led by Mátyás Rákosi, the all-powerful leader of the Hungarian Workers' Party. Experts on Hungarian constitutional history agree that two



members, Imre Szabó and János Beér – devoted Communist lawyers at that time, who became leading personalities of Hungarian Socialist legal scholarship later – had the real impact on the final text.<sup>54</sup> The draft had been prepared by the beginning of August 1949, and was followed by a ‘general social discussion’ of the draft from 5 to 10 August. According to the reports of the official media, the population generally backed the text, although some points raised by these ‘consultations’ were supposedly incorporated into the final text. On 17 August the revised draft was submitted to parliament, where a two-day session was held after the bill was formally proposed by Rákosi. Finally, the proposal was unanimously supported by the members of the parliament and the new constitution came into force on the day of its proclamation, on 20 August 1949.<sup>55</sup>

### **General Features of the Communist Constitution**

Needless to say, the spirit and general attitude of this new constitution qualitatively differed from former constitutional traditions, though the text was surprisingly neutral and technical. Apart from some references to the power of the working class<sup>56</sup> and the establishment of socialism as a new social order,<sup>57</sup> the text does not reveal too much about the political intent of the regime.

However, contemporary public law commentaries were open about the revolutionary nature of the new constitution. János Beér, who had undertaken a substantial share of the preparatory work as an expert on constitutional law and edited both the first commentary on the constitution<sup>58</sup> and the first socialist manual of constitutional law,<sup>59</sup> prepared a six-point list of the novelties of the constitution, which he compared to the previous constitutional setting. As a preliminary point, he argued that the new constitution was not concerned with declaring various legal ambitions but instead a summary of the Hungarian achievements on the road of socialist development. Secondly, all its provisions originated from the doctrines of Marxism–Leninism, which it faithfully reflected. Thirdly, a main goal of the constitution was to create a social order that would be beneficial to the working class. Fourthly, he claimed that the new constitution rejected the idea of nationalism and a ‘dominant nation’, and instead endorsed proletarian internationalism, which was mirrored in the relevant provisions, such as those regarding the rights of Hungary’s ethnic minorities.<sup>60</sup> Fifthly, the idea of ‘real democracy’ had inspired the constitution, and its provisions were intended to make the people free to rely on their democratic rights in public life without restrictions. Finally, the constitution codified fundamental rights through precise and detailed provisions which ensured that they would be respected.<sup>61</sup> In summary, the new constitution sought to incorporate the principles of Marxism–Leninism to the maximum extent possible.<sup>62</sup> Thereby it aimed at transforming the traditional, settled, constitutional and political framework that had emerged in a more-or-less organic way during the last two centuries, and had developed both a Western European character and some national peculiarities.

### **The Structure of the Constitution**

The Constitution of the Hungarian People’s Republic contained 71 articles and a three-sentence preamble explaining the ‘Rákosist’ narrative of the recent past. These 71 paragraphs were divided into 11 chapters. Chapter I on the Hungarian People’s Republic had a dominantly ideological character as it declared the political dominance of the working class and also stressed the political alliance between the workers and the so-called ‘working’ peasantry.<sup>63</sup> In addition, it set forth that the final source of political power is the ‘working people’,<sup>64</sup> that is, a Marxist interpretation of the concept of popular sovereignty was echoed here. The last chapter, chapter XI, contained certain functional closing provisions, i.e. the date of entry into force and the need for additional, subsidiary legislation.<sup>65</sup>

The majority of the other nine chapters dealt with the organization of the society and the new Communist state. Chapter II explained the new social principles that determine the functioning of a Socialist society. The next five chapters, chapters III to VII, provided a detailed description of the main state bodies, that is, the formal structure of state administration was presented in this part.

According to chapter III, state power was represented by the parliament, which was vested with full legislative power,<sup>66</sup> while some limited – mostly international – executive competences were exercised by the so-called Presidential Council of the People's Democracy (A Népköztársaság Elnöki Tanácsa).<sup>67</sup> This was a collective organ, with a president, two vice-presidents, a secretary and 17 additional members.<sup>68</sup> The head of the administration was the so-called Council of Ministers (Minisztertanács), as was explained in chapter IV. In fact, this council was the focus of executive powers as it was responsible for the execution of legislative Acts and also had a general power to control the work of ministries.<sup>69</sup> Further, this organ had the competence to issue general decrees that were, in fact, considered as the most important legal sources besides laws.<sup>70</sup> Local administration was based on the concept of local councils<sup>71</sup> – soviets in Soviet state law – and these were organized into greater units (i.e. county councils, sub-county (*járás*) councils and city councils).<sup>72</sup> Chapters VI and VII set forth the basic rules for the structure of the judiciary and the body of public prosecutors. In sum, the backbone of the Socialist administration was prepared by the constitution, while the real functioning of the various State organs was animated by specific laws, lower-level decrees and political practice.

In addition, chapter IX set forth the basic rules of election; however, the one-party nature of the political system was not mentioned at all. Symbolic questions were incorporated in chapter X, which described the coat of arms, the flag and the capital of the new-born People's Republic.

### **A Socialist 'Bill of Rights' for Workers**

The most interesting part of the new constitution, in legal terms, was chapter VIII, which enumerated citizens' rights and obligations. As mentioned earlier, Law I of 1946 was the first piece of modern Hungarian legislation that contained a 'bill of rights'-like component. Likewise, the 1949 constitution contained a specific chapter superficially devoted to upholding basic human rights. This chapter, however, listed citizens' rights and obligations, that is, it did not speak about human rights in general – as was the case in 1946 – but instead endowed all citizens with specific rights that were contingent on their citizenship. By doing so, the new constitution emphasized the crucial role of the State in guaranteeing these rights, underscoring that the new Communist regime was the ultimate guarantor of these rights and freedoms.

In theory, the constitution provided quite an impressive list of basic rights: the right to work, the right to health, the right to education, equality before the law, the prohibition of any discrimination, the equality of men and women, religious freedom and freedom of conscience, the freedom of association, personal freedom, and the right to privacy.<sup>73</sup> Nevertheless, Article 58 (1) placed a serious curb on the universality of these rights. It stated that 'the Hungarian People's Republic guarantees these freedoms for all workers who live on its territory.' In a socio-political system where victory in the class struggle was one of the prominent goals, the preamble explicitly condemned 'the masters and defenders of the old order',<sup>74</sup> and implied that all those who were not allied to the Socialist revolution were excluded from the exercise of the aforementioned rights.

Moreover, supporting the formation of the people's democracy and military service were mentioned as the obligations of every citizen.<sup>75</sup> Indeed, in spite of the anti-clerical and aggressively secular character of the new regime, military service was described in the constitution as a 'holy duty for all citizens' to stress its preeminent importance.<sup>76</sup>

## General Assessment

The enactment of Law XX of 1949 was the real turning point in modern Hungarian constitutional history. It was designed to reinforce the Stalinist transformation of the country, and was clearly inspired by classic Marxist–Leninist principles and the example of the Soviet Union’s own constitution. Obviously, former constitutional traditions could have no influence on subsequent legal developments as they were the product of a ‘bourgeois’ understanding of law, politics and society that had been defeated in the new ‘people’s republic’ (*Népköztársaság*). That is, the explicit disregard of the former traditions and the intent to break with these<sup>77</sup> were natural consequences of the new dominant Marxist–Leninist view.<sup>78</sup>

## The Role of Soviet Legal Assistance in the Birth of Law XX of 1949

Thus, the constitution-makers of the summer of 1949 found a completely new source of inspiration for their work.<sup>79</sup> This was the impact of Soviet legal assistance.<sup>80</sup> As János Beér, again, explains, the presence of Soviet troops on the territory of Hungary proved to be a revolutionary factor as it weakened reactionary activities and defended the country from imperialist intervention. Thus, the material basis of the socio-political transformation was created. In an ideological sense, the teaching of Stalin – considered to be a ‘true friend of Hungarians’ – was the most important source of inspiration and motivation. That is, the ideological background for the transformation was also imported from the Soviet Union. More explicitly, to stress the role of the Soviet Union in the establishment of the Socialist regime, the preamble to the constitution began by lauding the ‘armed forces of the great Soviet Union’ and mentioning the ‘generous support of the Soviet Union’ provided for the country in the post-World War II years.<sup>81</sup>

However, besides these rather broad political and intellectual influences, the new constitution was also drafted with specific legal assistance from the Soviet Union. Beér argued that the Soviet constitution of 1936, often termed a Stalinist constitution, was the absolute ideal for the Hungarian constitution-makers. In fact, he described its principles as ‘the common treasure of all progressive people’. That is, Soviet legal culture and its influence was a key element in the birth of the new Hungarian constitution. This was even declared by the first commentary as it pointed out that ‘the Soviet constitution and the Soviet legal order were an inexhaustible source of lessons for our people’s democracy.’<sup>82</sup>

The structural similarities of the 1949 Hungarian constitution and the 1936 Soviet constitution are apparent. The chapters of the Hungarian constitution largely followed the pattern of the 1936 Soviet constitution although the Soviet chapters dealing with the federal organization of state power (for instance, chapter IV on the highest organ of state authority in the Union of Republics) had no counterparts in the Hungarian text. Another example may be the already discussed chapter VIII in the 1949 Hungarian constitution that was nothing more than a word-for-word recitation of the relevant Soviet chapter. In fact, Hungarian constitution-makers generally did no more than incorporate the relevant Soviet articles into the corpus of the constitution, albeit with slightly different wording. Strikingly, the Hungarian constitution was, in places, more restrictive than the Soviet Union’s 1936 constitution which had, for example, extended the various rights that it listed to all citizens of the USSR, while the Hungarian version extended these basic rights only to the ‘working people’.<sup>83</sup>

In sum, the members of the preparatory committee not only subscribed to the teaching of Marxism–Leninism but also actively sought to copy the Soviet Union’s legal framework and constitutional traditions. Needless to say, this ‘Eastern turn’ in constitutional thinking led to a complete disregard for former Hungarian constitutional traditions and, stemming from the conception of A.J. Vyshinsky, the leading personality of the Stalinist Soviet Union’s legal academia, endorsed a socialist normativist<sup>84</sup> and, therefore, ahistorical understanding of both constitutionalism and constitutional law.

## **The Afterlife of Law XX of 1949**

Needless to say, this constitution was nothing more than a so-called ‘façade constitution’. These ‘façade constitutions’ usually have the appearance of conventional constitutions, which was certainly the case of Law XX of 1949; nevertheless, in practice, they are unable to guarantee the limitation of the arbitrary use of state powers. That is, although they may set up a formal hierarchy of institutions and various legal sources, they can be considered as ‘dead letters’ from the aspect of basic constitutional guarantees (*garantiste* function).<sup>85</sup>

This feature of ‘façade constitutions’ was promptly illustrated by the waves of so-called ‘judicial terror’ which occurred between 1950 and 1953. The political elite of this era – dominated by the oligarchic group of Mátyás Rákosi, Ernő Gerő and Mihály Farkas – proclaimed the need for a ‘judiciary strove serving the class struggle’ and the personnel of police, internal intelligence and judiciary bodies made a considerable effort to meet this standard. As a consequence of this politically motivated attitude, one in three Hungarian families was involved in these fake political processes and trials.<sup>86</sup> In addition to this repression of society in general, based on vague and ambiguous legal provisions,<sup>87</sup> the judiciary was also used as a prominent instrument against possible political opponents and internal party rivals. See, for example, the trials of László Rajk et al. (1949) and Imre Geiger et al. (1950); László Sólyom et al. (1950); Árpád Szakasits et al. (1950); József Grósz et al. (1951); János Kádár et al. (1951); and Gábor Péter et al. (1953).<sup>88</sup>

A broad gap existed, therefore, between the provisions of the constitution and the totalitarian reality of the emerging ‘popular democracy’ in the 1950s. However, the development of world politics during the period of détente or ‘mutual coexistence’ from the second half of the 1960s, as well as the ‘softening’ of the Socialist bloc after the death of Stalin in 1953 and the Hungarian revolution of 1956, besides many other socio-political impacts, led to a reform of the constitution. This reform, enacted in 1972,<sup>89</sup> tried to harmonize the constitutional setting with the requirements of the New Economic Mechanism integrating some elements of market economy into the system of economic planning,<sup>90</sup> and also consolidated some parts of the constitution in a less Socialist normativist spirit.<sup>91</sup> Symbolically, as regards basic rights, it extended the scope of these provisions to the ‘citizens’ of the Hungarian People’s Republic in general<sup>92</sup> in place of the earlier, essentially Rákosist, category of ‘workers’.

## **Conclusion**

The chief argument of the above discussion is that the enactment of Law I of 1946 cannot be regarded as the closure of historical constitutionalism. In reality, this Act could also be regarded as an attempt to revitalize the traditional constitutional setting in the light of modern Western constitutionalism. The ideas of human rights and republicanism had considerable influence. Furthermore, the historical experiences of the working of a ‘monarchy without a monarch’ constitutional setting during the interwar period led to the elimination of the monarchical component from traditional constitutionalism. However, this did not result in the abandonment of the historical constitutional traditions as such, as was clear from the preparatory notes made by the Prime Minister. Law XX of 1946 demonstrated, therefore, that a modern interpretation of constitutionalism and organic constitutional development were not regarded as irreconcilable by Hungary’s politicians in 1946.

Therefore, the real disruption of the traditional Hungarian constitutional culture actually occurred with the enactment of Law XX of 1949. It must be emphasized that this in turn would have been impossible without the military, political and ideological support of the Soviet Union. This new constitution was a near-complete copy of both the letter and the spirit of the Soviet Union’s 1936 constitution. Its central objective was to legalize the Hungarian Communist Party’s complete takeover of State powers and the introduction of a new, Soviet-styled socio-

political model. This newly codified constitution, because of the copy-and-paste approach, had no relation to earlier ‘bourgeois’ constitutionalism. As a result, a new approach, which regarded the law as an instrument of socio-political transformation rather than a guarantee of individual freedoms,<sup>93</sup> was imposed on a country whose constitutional order had hitherto been based on a unique and rather developed historical constitutionalism considerably inspired by the classic Western liberal model.<sup>94</sup>

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<sup>1</sup> See, for example: Attila Horváth, “‘A köztársaság az egyetlen lehetséges államforma.’ Az 1946. évi I. törvény megalkotása, a köztársaság kikiáltása’, *Acta Humana* v/1 (2017), pp. 7–20; Zoltán Péteri, ‘Constitution-making in Hungary’, *Acta Juridica Hungarica* xxvi/3–4 (1994), pp. 152–3; Gizella Föglein, *Államforma és államfői jogkör Magyarországon (1944–1949)* (Budapest, 1993), pp. 60–122; József Ruzsoly, ‘A “Magyarország államformájáról” szóló 1946: 1. tc. létrejötte és előzményei’, *Jogtörténeti Szemle* iv/2 (1992), pp. 16–28.

<sup>2</sup> See, for example: László Kontler, *Millennium in Central Europe. A History of Hungary* (Budapest, 1999), pp. 391–404; István Vida, ‘Sovietization and the nation’s response’, in M. Ormos and B.K. Király (eds), *Hungary. Governments and Politics. 1848–2000* (New York, 2001), pp. 275–313; György Gyarmati, ‘From “tentative democracy” to communist rule’, in I. Gy. Tóth (ed.), *A Concise History of Hungary* (Budapest, 2005), pp. 551–70; Bryan Cartledge, *The Will to Survive. A History of Hungary* (London, 2006), pp. 434–48.

<sup>3</sup> For a general discussion in English see Sir Paul Vinogradoff, ‘A constitutional history of Hungary’, *Law Quarterly Review*, 21 October 1905, pp. 426–31, and Péteri, ‘Constitution-making in Hungary’, pp. 150–2.

<sup>4</sup> In addition, this chapter subscribes to the intellectual tradition (where ‘tradition’ is used as applied by Michael Oakeshott referring to patterns being inherent in human activities, cf. Michael Oakeshott, ‘Rational Conduct’, in M. Oakeshott, *Rationalism in Politics* (London, 1962), p. 105) coined by István Bibó, Jenő Szűcs and László Péter – see for example István Bibó, ‘A kelet-európai kisállamok nyomorúsága’, in Bibó István, *Válogott tanulmányok. 1945–1949* (Budapest, 1986), pp. 185–265 (shedding light on the role of political hysteria as a major driving force in the political cultures of Central Europe); Jenő Szűcs, *Vázlat Európa három történelmi régiójáról* (Budapest, 1983) (arguing that the politico-cultural setting of Central Europe, including Hungary, gravitates towards the West (*mundus occidentalis*), but the actual attachment of Central Europe to either the West or the East has always been dependent on external historical tendencies of European politics); and László Péter, ‘Autokrácia Kelet-Európában’, in P. László (ed.), *Az Elbától keletre* (Budapest, 1998), pp. 37–59 (submitting that autocracy has always been a dominant political tradition in Eastern Europe during modernity and it seriously deformed the understanding of politics in the region). A common point for Bibó, Szűcs and Péter was that they attempted to conceptualize Hungarian history by locating it within a broader regional context, namely the region of Central Europe. Therefore, their work had a broader vision, which challenged the conventional, nation-focused approach that has traditionally dominated Hungarian public opinion. Hopefully, this chapter may also be capable of offering some new conclusions when analysing and interpreting these two major Acts in their unique constitutional context: Hungarian historical constitutionalism.

<sup>5</sup> Cf. Barna Mezey (ed.), *Magyar alkotmánytörténet* (Budapest, 1996), pp. 252–3; Ruzsoly, ‘A “Magyarország államformájáról” szóló 1946: 1. tc.’. In addition, this position is also advocated implicitly by Föglein when arguing that this Act established a new ‘public law basis’ for the Hungarian state – see Föglein *Államforma és államfői jogkör Magyarországon (1944–1949)*, p. 92.

<sup>6</sup> One may argue that the very first codified constitution in the history of Hungary was the constitution of the Hungarian Soviet Republic (*A Magyarországi Szocialista Szovjet Köztársaság Alkotmánya*) promulgated on 28 June 1919. However, this constitution was in force until 1 August 1919, when the government of the Hungarian Soviet Republic resigned and left the country. That is, in fact, it was in force a little bit longer than one month. In addition, at this period, the existence of the country as such was in question as the final borders were still unsettled. In sum, it cannot convincingly be argued that this ‘document’ is to be considered as a real constitution that had an impact on the country’s socio-political life.

<sup>7</sup> Bruce Ackerman, *We the People, Volume I: Foundations* (Cambridge and London, 1993).

<sup>8</sup> *Ibid.*, p. 267.

<sup>9</sup> *Ibid.*, pp. 266–7.

<sup>10</sup> Mária Schmidt, “‘Most majd mindent úgy csinálnak, mint az oroszoknál.’ A kommunizmus kiépülése Magyarországon’, in L. Lőrincz (ed.), *Egyezünk ki a múlttal! Műhelybeszélgetések történelmi mítoszainkról, tévhiteinkről* (Budapest, 2010), pp. 91–2.

<sup>11</sup> In László Kontler’s words, ‘Among different geo-political circumstances, the astonishing dilapidation, the near-tabula rasa that remained after the war, could have even proved advantageous for the future of the country [...] This was indeed how the history of Hungary, as well as that of the other countries of Central Europe, seemed to

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start anew: with free elections and an experiment with multi-party democracy in order to develop a form of government and policies suitable to their peoples' (Kontler, *Millennium in Central Europe*, p. 388).

<sup>12</sup> The question whether the Allied Powers really wanted to support the democratization of Central Europe in the post-World War II period is hotly debated among Hungarian historians. For example, Mária Schmidt argues that the fate of Central Europe was already decided at Yalta. Others, for example, János Rainer M., submit that Soviet intentions for the region were not as obvious in 1945 or 1946 as they may seem to be retrospectively, and argue that the fall of the postwar transitory democratic regime occurred mainly because of the lack of political independence. Cf. M. Schmidt, "“Most majd mindent úgy csinálnak, mint az oroszoknál”" and János Rainer M., 'Demokrácia volt-e Magyarországon 1945 után? A "koalíciós korszak" és a Rákosi-korszak átmenetének kérdése', in L. Lőrincz (ed.), *Egyezünk ki a múlttal! Műhelybeszélgetések történelmi mítoszainkról, tévhiteinkről* (Budapest, 2010), pp. 85–90.

<sup>13</sup> For details, see Vida, 'Sovietization and the nation's response', pp. 283–92.

<sup>14</sup> In the words of a contemporary observer: 'On February 1, Zoltan Tildy took the oath as President of the Republic [...]. It seemed natural to my mind to associate [with] such an occasion [...] the hope that the vicissitudes of the Hungarian people were ending and that destiny was bringing them at last to the haven of law, civil rights and representative government.' H.F. Arthur Schoenfeld, 'Soviet imperialism in Hungary', *Foreign Affairs* xxvi/3 (1948), p. 560.

<sup>15</sup> In contrast, Law XX of 1949 (the Communist constitution) consisted of 3,403 words.

<sup>16</sup> For the details see Föglein, *Államforma és államfői jogkör Magyarországon (1944–1949)*, pp. 67–86; Ruszoly, 'A "Magyarország államformájáról" szóló 1946: 1. tc.', pp. 24–8.

<sup>17</sup> For the details of this codification process and the historical context see Gábor Schweitzer, 'The proclamation of the Hungarian Republic in 1946', *Przegląd Prawa Konstytucyjnego* xl/6 (2017), pp. 115–25.

<sup>18</sup> For an overview see Zoltán Péteri, 'Tradíciók és emberi jogok Magyarországon. Összehasonlító szempontok az emberi jogok eszméjének magyarországi térhódításában', in Z. Péteri (ed.), *Jogösszehasonlítás. Történeti, rendszertani és módszertani problémák* (Budapest, 2010), pp. 205–19, and Andor Csizmadia, 'Törekvések az emberi jogok biztosítására és büntetőjogi védelmükre a reformkori Magyarországon', *Jogtudományi Közlöny* xxx/12 (1975), pp. 681–9. Also see András Cieger's Chapter 6 in this volume.

<sup>19</sup> For an overview of this problem see Liav Orgad, 'The preamble in constitutional interpretation', *International Journal of Constitutional Law* viii/4 (2010), pp. 714–38.

<sup>20</sup> Law I of 1946, Art. 2 (1).

<sup>21</sup> *Ibid.*, Art. 4 (2).

<sup>22</sup> *Ibid.*, Art. 9.

<sup>23</sup> *Ibid.*, Art. 10 (1).

<sup>24</sup> *Ibid.*, Art. 10 (2).

<sup>25</sup> *Ibid.*, Art. 11.

<sup>26</sup> *Ibid.*, Art. 11 (2).

<sup>27</sup> *Ibid.*, Art. 12.

<sup>28</sup> *Ibid.*, Art. 13 (2).

<sup>29</sup> *Ibid.*, Art. 14.

<sup>30</sup> Cf. József Ruszoly, 'A Magyar Köztársaság alapvetése. A "Magyarország államformájáról" szóló 1946: I tc. keletkezéstörténetéről', *Hitel* xix/8 (2006), p. 54. (Ruszoly argues that the functions of the president of the republic were not limited to representation, but he only had a secondary power position with respect to the parliament.)

<sup>31</sup> *Ibid.*, Art. 13 (1).

<sup>32</sup> *Ibid.*, Art. 19.

<sup>33</sup> István Kukorelli, 'Az 1946. évi I. törvény közzegtörténeti jelentősége és az alkotmányos jogfolytonosság', *Acta Humana* v/1 (2017), p. 24.

<sup>34</sup> See Law X of 1946 on the more actual protection of basic human rights. It must also be added that the provisions of this Act were never applied even though it was in force until 1987.

<sup>35</sup> László Péter, 'Ország és királya a hatvanhetes kiegyezésben', in L. Péter (ed.), *Az Elbától keletre* (Budapest, 1998), p. 225. For a substantially different account of Hungarian historical constitutionalism see Zoltán Sente, 'A historizáló alkotmányozás problémái – a történeti alkotmány és a Szent Korona az új Alaptörvényben', *Közjogi Szemle* iv/3 (2011), pp. 1–13.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*, p. 227.

<sup>38</sup> *Ibid.*, pp. 222–3.

<sup>39</sup> Explanatory notes by the Prime Minister attached to Law I of 1946. The text of these notes is available electronically at <http://www.rev.hu/sulinet45/szerviz/dokument/torvenycikk1.htm> (accessed 3 March 2018).

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

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<sup>42</sup> For the analysis of this discourse see Gábor Schweitzer, ‘A “magyar királyi köztársaságtól” a magyar köztársaságig. Az 1946. évi I. törvény cikk visszhangja a korabeli közjogi irodalomban’, *Acta Humana* v/1 (2017), pp. 27–38. (Schweitzer points out that most of the contemporary experts on constitutional law wanted to integrate this Act into the frame of the historical constitution even though they all accepted that the monarchical component of the tradition was set aside by the Act.)

<sup>43</sup> Explanatory notes by the Prime Minister attached to Law I of 1946.

<sup>44</sup> See the letters of Cardinal Mindszenty to the Prime Minister (31 December 1945 and 1 February 1946). Available electronically at <http://regnumportal.hu/regnum2/node/177> (accessed 3 March 2018).

<sup>45</sup> On the emergence of the ‘Russian shadow’ over Central Europe see Piotr S. Wandycz, *The Price of Freedom. A History of East Central Europe from the Middle Ages to the Present* (London and New York, 2001), pp. 213–26.

<sup>46</sup> Law VII of 1946 on the Criminal Law Protection of Democratic Political Order and the Republic.

<sup>47</sup> Law XXX of 1947 on the Nationalization of the Hungarian-Owned Shares of the Hungarian National Bank and Banks Functioning as Public Companies Belonging to Kúria I of the Bank Centre.

<sup>48</sup> Law XXV of 1948 on the Nationalization of Factories with more than 100 Employees.

<sup>49</sup> For a detailed description of this process, see Schoenfeld, ‘Soviet imperialism’, pp. 557–66.

<sup>50</sup> For details, see Vida, ‘Sovietization and the nation’s response’, pp. 305–8.

<sup>51</sup> *Ibid.*, pp. 313–15.

<sup>52</sup> János Beér (ed.), *Magyar alkotmányjog* (Budapest, 1951), p. 111.

<sup>53</sup> *Ibid.*, p. 112.

<sup>54</sup> Mezey (ed.), *Magyar alkotmánytörténet*, p. 388.

<sup>55</sup> Law XX of 1949 Art. 70.

<sup>56</sup> For example: Law XX of 1949 Art 3.

<sup>57</sup> For example: Law XX of 1949 Preamble.

<sup>58</sup> János Beér and Szabó Imre (eds), *A Magyar Népköztársaság Alkotmánya. Az 1949: XX. törvény és magyarázata* (Budapest, 1949).

<sup>59</sup> János Beér (ed.), *Magyar alkotmányjog*.

<sup>60</sup> See Law XX of 1949 Art. 49 (2)–(3).

<sup>61</sup> *Ibid.*, Art. 120.

<sup>62</sup> For a critical discussion of Socialist legal concepts and scholarship see Attila Horváth, ‘A szocialista állam- és jogtudomány’, in A. Jakab and A. Menyhárd (eds), *A jog tudománya* (Budapest, 2015), pp. 543–76.

<sup>63</sup> *Ibid.*, Arts. 2–3.

<sup>64</sup> Cf. *ibid.*, Art. 2 (2).

<sup>65</sup> Cf. *ibid.*, Art. 70.

<sup>66</sup> *Ibid.*, Art. 14 (1).

<sup>67</sup> *Ibid.*, Art. 20.

<sup>68</sup> *Ibid.*, Art. 19 (1).

<sup>69</sup> *Ibid.*, Art. 25 (1).

<sup>70</sup> *Ibid.*, Art. 25 (2).

<sup>71</sup> *Ibid.*, Arts. 31–3.

<sup>72</sup> *Ibid.*, Art. 30.

<sup>73</sup> *Ibid.*, from Art. 45 to 56.

<sup>74</sup> *Ibid.*, Preamble.

<sup>75</sup> *Ibid.*, Arts. 60–1.

<sup>76</sup> *Ibid.*, Art. 61 (1).

<sup>77</sup> This was explicitly pointed out by Rákosi when presenting the draft during the plenary session of the parliament on 17 August 1949. ‘The Hungarian people have had no constitution thus far. What was generally called as this, was a compilation of various customs and legislative acts.’ *Országgyűlési napló* (1949), vol. I, p. 168.

<sup>78</sup> Cf. Zoltán Péteri’s conclusion on the impact of Law XX of 1949 with respect to traditional constitutionalism: ‘Consequently, Hungary’s constitution of 1949 made a radical break with the past in both substantive and formal aspects: on the one hand, it destroyed the earlier organization of the state burdened with feudal elements and, on the other, it dismissed finally the idea of “historical constitutionalism”.’ Péteri, ‘Constitution-making in Hungary’, p. 155.

<sup>79</sup> For a comparative survey of the emergence of Stalinist constitutions in Central and Eastern Europe see Marek Debicki, ‘Eastern European constitutionalism. Theory and practice’, *Manitoba Law Journal* iv/1 (1970), pp. 113–34.

<sup>80</sup> For an in-depth study of Soviet legal assistance during the early years of Socialism in Central Europe see Iván Halász, ‘The institutional framework and the methods of implementation of Soviet legal ideas in Czechoslovakia and Hungary during Stalinism’, *Journal on European History of Law* vi/2 (2015), pp. 29–37.

<sup>81</sup> See Law XX of 1949 Preamble.

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<sup>82</sup> János Beér and Imre Szabó (eds), *A Magyar Népköztársaság Alkotmánya*, p. 18.

<sup>83</sup> Articles 118–28 of the 1936 Constitution of the USSR always used the term ‘Citizens of the USSR’ when defining the subject of the various basic rights. For example: Article 118. ‘Citizens of the USSR have the right to work, that is, are guaranteed the right to employment and payment for their work in accordance with its quantity and quality.’ Source: *1936 Constitution of the USSR*. Available at <https://www.departments.bucknell.edu/russian/const/1936toc.html> (accessed 3 March 2018).

<sup>84</sup> On Socialist Normativism see Péter Szilágyi, ‘Szabó Imre szocialista normativizmusa. Ideológiakritikai adalékok’, *Világosság* xlv/4 (2004), pp. 23–33.

<sup>85</sup> For a detailed discussion see Giovanni Sartori, ‘Constitutionalism: A preliminary discussion’, *The American Political Science Review* lvi/4 (1962), pp. 861–2.

<sup>86</sup> For more data see Tibor Zinner, ‘Minden bírósági ügy az osztályharc egyik epizódja’, *Jogtörténeti Szemle* viii/3 (2006), p. 13.

<sup>87</sup> The two main instruments of this repression were Decree Law XXIV of 1950 on the criminal law protection of social ownership (even making capital punishment possible to use for these crimes) and Decree Law IV of 1950 on the criminal law protection of economic planning.

<sup>88</sup> Tibor Zinner, ‘A legjelentősebb “bünper”-ek 1956 ősze előtt’, *Jogtörténeti Szemle* viii/3 (2006), pp. 67–9.

<sup>89</sup> See Law I of 1972 on the modification of Law XX of 1949 and the text in force of the Constitution of the Hungarian People’s Republic. For an analysis and discussion see István Kovács, ‘A quarter of a century on the path of popular democratic constitutional development (1949–1974)’, *Acta Iuridica Academia Scientiarum Hungaricae* xvii/1–2 (1975), pp. 1–46.

<sup>90</sup> For instance, Art. 9 of Law I of 1972 set forth that ‘state enterprises and economic organizations, when serving the general interests of the society, make their economic activities autonomously based on the methods and responsibility defined by other acts’.

<sup>91</sup> For instance, chapter VII on the basic rights and duties of the citizens started with a general declaration on the importance of human rights. (Art. 54 (1) of Law I of 1972 declared that ‘the Hungarian People’s Republic respects human rights’.)

<sup>92</sup> See Arts. 54–68 of Law I of 1972.

<sup>93</sup> For a general summary on the peculiarities of Socialist law, see András Sajó and Mónika Ganczer, ‘Socialist law’, in J.D. Wright (ed.), *International Encyclopedia of the Social and Behavioral Sciences* (Oxford, 2015), pp. 844–8.

<sup>94</sup> I am very grateful to my colleagues and friends Zoltán Szente and Gábor Schweitzer, experts on modern Hungarian constitutional history, who spared the time to discuss my thesis and provided me with insightful comments and criticism. Furthermore, I learnt a lot from the editorial comments of Thomas Lorman and Ferenc Hörcher. Without their contribution I could not have developed my arguments in this way.