

The New Direction of Public Law – The Echo of German National Socialist Constitutional Law in Hungary’s Legal Discourses

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- I. From a Parliamentary State to a Totalitarian State
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In the decades between 1917 and 1937, authoritarian regimes and totalitarian dictatorships were established for a variety of political, social, and economic reasons in the following European states: Russia, Hungary, Turkey, Italy, Spain, Bulgaria, Lithuania, Poland, Portugal, Yugoslavia, Germany, Austria, Estonia, Latvia, Greece, and Romania.¹ Although there were barely two identical political and constitutional systems among them, the common element was that they all shifted away from parliamentary democracy and rejected parliamentary solutions.²

The representatives of the discipline of constitutional law in Hungary at that time displayed intense interest in the constitutional solutions of authoritarian and dictatorial states, which were then referred to as the *new direction of public law*. In the period under study, the works of István Egyed (1886–1966),³ Professor of Public Law at the University of Technology and Economics, Budapest, István Csekey (1889–1963),⁴ Professor of Public Law in Szeged and later in Kolozsvár [Cluj], as well as Béla Török (1914–2012), Registrar to the Royal Court, were principally concerned with the characteristic institutions of public law in the new state systems. The focus of their interest was on the presentation of the German National Socialist constitutional system after 1933. In some respects, their objectives extended beyond the introduction of changes in public law since they also sought to answer questions on the relationship between the historically based Hungarian constitution and the public law solutions of totalitarian and authoritarian regimes. The closer Hungary politically moved to National Socialist Germany, the more pressing these questions became. Was there an overlap between Hungary's historical constitution and the new conceptual direction in public law? If there was, why was it there? And if there was not, was it necessary to take control of certain institutions? Did Hungary's historic constitution need to reform at all? If not, why not? And if it did, should the legislator move towards the solutions of the *new direction* in public law?

¹ Mária Ormos, Diktatúrák keletkezése Európában [The Rise of Dictatorships in Europe], in: Mária Ormos (ed.), A történelem vonatán. Európa és Magyarország a 20. Században [On the History Train. Europe and Hungary in the 20th Century], Budapest, Múlt és Jövő [Budapest, Past and Present], 2005, 169 f.

² Ibid., 170 f.

³ Gyula Koi, Egyed István élete és munkái [The Life and Works of István Egyed], Államtudományi Műhelytanulmányok 2016, No. 12, 1–12.

⁴ János Jusztinger, Csekey István (1889–1963) [István Csekey (1889–1963)], in: István Kajtár (ed.), Pécsi jogászprofesszorok emlékezete (1923–2008) [Remembering Law Professors of Pécs (1923–2008, Pécs, Pécsi Tudományegyetem Állam- és Jogtudományi Kar 2008, 23–36.

The interest in the radical modifications of German public law after 1933 is of course not without precedent, since Hungarian constitutional law scholars also observed the provisions of the Weimar Constitution of 1919. However, few of them had attempted a comprehensive presentation, analysis and evaluation of that constitution. Scholarly interest was confined to theoretical considerations and legal solutions rather than to practical aspects. The Weimar Constitution, which was conceived in a liberal-democratic spirit and introduced the republican form of government, hardly served as model for the Hungarian constitutional law of the time, which adhered to the idea of a historical – i.e. uncoded – constitution and the monarchical form of government, and represented a national conservative trend in its rhetoric.⁵

I. From a Parliamentary State to a Totalitarian State

István Egyed was one of the first to present the emerging legal and constitutional system of National Socialist Germany to a Hungarian legal audience. In the autumn of 1933, he was invited by the *German National Socialist Jurists' Association* to participate in the German Jurists' Forum (*Deutscher Juristentag*) in Leipzig and was able to obtain information at first hand. Firstly, he wrote an article in which he tried to dispel fears that the National Socialist Party's rise to power would represent a total rejection of the rule of law.⁶ Referring to declarations at the Nazi jurists' meeting, he claimed that National Socialism was not an enemy of law since it wanted to establish a legal state (*Rechtsstaat*) with its requirements⁷, and that Nazism did not seek arbitrariness but rather the rule of law. In support of this, he referred to the *Law for the Restoration of the Professional Civil Service* (*Gesetz zur Wiederherstellung des Berufsbeamtentums*, 7 April 1933), which did not give the government the power to select civil servants for dismissal, but explicitly named the categories of civil servants to be retired or dismissed. The author of the article, Egyed, presented the emerging new legal system as a friend of judicial independence, as the then Justice Minister, Hans Frank, told the assembled jurists that Nazi Germany respected judicial independence as "National Socialism is strong enough to tolerate independent judges".

⁵ For more details Gábor Schweitzer, Adalékok a weimari alkotmány két világháború közötti magyarországi visszhangjához [The Echo of the Weimar Constitution of 1919 Between the Two World Wars in Hungary], *Közjogi Szemle*, 2020/1, 60–64.

⁶ István Egyed, A német nemzeti szocializmus jogszemlélete [The German National Socialist Perspective on Law], *Magyar Szemle* 1933 (September – December), 353.

⁷ *Ibid.*, 353.

According to the report, at the heart of the emerging “new legal worldview” lay a racist anti-Semitic approach that sought to maintain the “racial purity” of the German people and to protect and develop the German “race”.⁸ Furthermore, it outlined that public interest played a leading role in the National Socialist legal system since, in contrast to the individualistic and liberal conception of the world, the starting point of the National Socialist concept was the people, with duties and the focus on public interest as its guiding principles.⁹ One of the main aspirations of National Socialism was to establish “national law”, for which they sought a return to the institutions of “ancient-Germanic law”.¹⁰ At the same time, the emerging new legal concept was no friend of parliamentarism, and proclaimed the idea of democracy to be alien to the people “because it confuses the people with the masses”.¹¹ Parliamentarism had not (yet) been abolished, but the mandate given to the “national government” was so broad that it “rendered the imperial assembly [Reichstag] largely superfluous.”¹² What was allegedly needed, therefore, was an authority that “rises above the waves of the spirit of the age” and which enjoys the confidence of all citizens because it ostensibly exists solely for the good of the people. Accordingly, the indefinite and leaderless era of democracy had to be replaced by decisive political leadership, which the National Socialist Party and its leader could provide.¹³ István Egyed also pointed out that all political parties in Germany, with the exception of the Nazi Party, had been abolished, while the National Socialist Party concentrated all public power. “This party has taken over the power of the state in its entirety and has thus ceased to be a party; it is itself the state.”¹⁴ At the same time, the new system also abolished the separation of the member states of Germany, in effect abolishing the extant federal structure.

István Egyed concluded one of his articles with the thought that he had simply sketched the basic principles of the legal approach of National Socialism, refraining from any criticism.¹⁵ It would have probably been of far greater service to the reading public had he not refrained from critical remarks, since the ominous prospects

⁸ Ibid. 355.

⁹ Ibid., 355.

¹⁰ Ibid., 355.

¹¹ Ibid., 355.

¹² István Egyed, A harmadik német birodalom alkotmánya [The Constitution of the “Third Reich”], *Magyar Közigazgatás*, 10, December 1933, 2.

¹³ Egyed, *Magyar Szemle* 1933 (September – December), 356.

¹⁴ Egyed, *Magyar Közigazgatás*, 10 December 1933, 2.

¹⁵ Egyed, *Magyar Szemle* 1933 (September – December), 356.

of the National Socialist view of law and the exercise of power, however sketchily presented, were beyond any doubt.

Later, István Egyed concerned himself with the public law solutions of totalitarian dictatorships and authoritarian regimes, which, according to the contemporary narrative, emerged due to a crisis in parliamentarism and because of disillusionment with the institutions of liberal democracy, which he then compared with the Hungarian constitutional system. In the studies published in the mid-1930s, he used the comparative method to refer not only to the public institutions of Italian fascism and German National Socialism, which were regarded as prototypical totalitarian regimes, but also to the public institutions of those states that had undertaken authoritarian transformations of their constitutions. As characteristic features of the new approach to public law, István Egyed highlighted the following: the concentration of power in the head of state, the suppression of the parliamentary and party system, the rise of the idea of corporatist representation instead of the system of popular representation, the restriction of immunity of MPs, the centralisation of public administration, the independence of the government from representative bodies, and the endowment of the government with extensive legislative powers.¹⁶ He went on to point out that the ideas and institutions rejected by the *new direction of public law* had been countered by vague and immature principles such as the authoritarian government, the one-party system, and the cult of race – and thereby surprisingly criticized certain aspects. He also recalled that an authoritarian government replacing parliamentarism requires not only a universally recognised leader, but also a “submissive mass”.¹⁷ Egyed believed that the “critical apparatus” of the Hungarian soul was alien to an authoritarian government that destroys independent thought and suppresses political criticism.¹⁸ After the end of the bourgeois democratic and then communist revolutions of 1918/1919, Hungary did – as Egyed believed – not need “foreign principles”, but acted according to the country’s specific circumstances. “This is politics: a Hungarianism that is the equivalent of fascism or Hitlerism, but is completely original and Hungarian. Only this can be our guide in the future.” István Egyed found any public law reform initiative, which broke with the traditional continuity of Hungarian public law and lead towards the develop-

¹⁶ István Egyed, *Az új államrendszerek és a magyar alkotmány* [The New Systems of Government and the Hungarian Constitution], *Magyar Jogászegyleti Értekezések és Egyéb Tanulmányok*, October 1935, No. 12, 550.

¹⁷ *Ibid.*, 550.

¹⁸ *Ibid.*, 563 f.

ment of a dictatorship, inappropriate.¹⁹ In another study, he explicitly referred to the fact that Hungary was probably the first to see the outlines of the *new direction of public law* at the time when Hungary was reorganised in the spirit of Christian nationalism after the end of the revolutions following the First World War. Nationalism and Christianity were the two pillars of this new programme based on old foundations.²⁰ In one of his studies, he also raised the question of the need to reform the Hungarian constitution, especially with regard to the new order and the principle of authority that characterised the *new direction of public law*. He believed that the crisis of parliamentarism in Hungary was shallower than in those countries that had turned to dictatorial solutions as a counteraction to the “degeneration” of parliamentarism. In István Egyed’s view, the Hungarians needed to be careful not to idealise the solutions of the *new direction* in public law, lest the public lose faith in constitutionalism and the rule of law.²¹

Although István Egyed was circumspect in the way he worded the justifications for the dictatorial change of direction, he identified *Hungarianism*, the constitutional policy line he thought was being followed in Hungary, with fascism and Hitlerism in one of his studies even in 1939.²² Hereby, the use of the term ‘Hungarianism’ is problematic because contemporaneously in Hungary several National Socialist political movements, especially the Arrow Cross Party led by Ferenc Szálasi, used the terms ‘Hungarianism’ (*hungarizmus*) or ‘Hungarianist’ (*hungarista*) to describe their ideology.²³

István Egyed’s vocabulary and opinions only came to change in the years of the Second World War, at the height of the fascist and Nazi terror. In his book “Our Constitution”, published in 1943 as a summary of his earlier works on constitutional law, he clearly emphasised the differences between the fascist and National Socialist systems on the one hand and the Hungarian constitutional system on the other. Regardless of the fact that Hungary had a close “community of interests and

¹⁹ Ibid., 566.

²⁰ István Egyed, Új irány a modern alkotmányokban [A New Direction in Modern Constitutions], Budapest, A Magyar Közigazgatás Könyvtára No. 1, 1935, 61.

²¹ István Egyed, Reformra szorul-e a magyar alkotmány? [Does the Hungarian Constitution need Reform?], Katholikus Szemle 1935/2, 73.

²² István Egyed, Totális közjog és magyar alkotmány [Total Public Law and the Hungarian Constitution], Magyar Szemle, June 1939, 208.

²³ See: Rudolf Paksa, Szálasi Ferenc és a hungarizmus [Ferenc Szálasi and Hungarianism], Budapest, Jaffa Kiadó, 2013.

friendship” with Nazi Germany and fascist Italy, that relationship could – according to Egyed – not influence the internal order of the Hungarian state.

“The Hungarian nation has always been a nation of constitutionalism [...] In the history of other nations, absolutism has usually played a more or less important role and has often been the framework of inglorious periods; our whole national past obliges us to fight against absolutism. Dictatorship has always been alien to Hungarian thought [...]”²⁴

On the whole, István Egyed’s writings on the *new direction of public law* suggested that the military, economic, and political alliance of interests with the Axis powers did not necessarily have to include the transformation of the Hungarian constitutional system, although he did acknowledge certain overlaps between the Hungarian constitutional system and the public law solutions of the new state systems.

István Egyed presented the constitutional situation in Hungary at that time in a more favourable light than it actually was. Act II on National Defence of 1939 gave the government exceptional powers in the event of war or the threat of war to the extent that it severely limited the legislative powers of parliament. Additionally, the anti-Jewish laws passed from 1938 onwards restricted the basic civil and political rights of hundreds of thousands of Hungarian citizens on religious and racial grounds. István Egyed did not take a strong stance against these degrading laws. He described the provisions as being intended to maintain the Christian character of the Hungarian state, to “preserve the purity of the race” and to “ensure the leading role of the majority”.²⁵

István Egyed’s literary legacy preserves his unpublished essay “The Historical Constitution of Hungary”, written in the autumn of 1943, in which he presented the principles and fundamental institutions of the Hungarian constitution of the time. The author’s intention was to support the leading role of the Hungarian nation and the Hungarian state in the Carpathian Basin with arguments based on constitutional law. Intricately linked to this leadership was the issue of territorial revision. Hungarian foreign policy in the period between the two world wars was aimed at revising the Treaty of Versailles, or rather the Treaty of Trianon. The principal goal was to regain the territories Hungary had to cede following the First World War. To this

²⁴ István Egyed, *A mi alkotmányunk* [Our Constitution], Budapest, Magyar Szemle Társaság 1943, 361.

²⁵ *Ibid.*, 159.

end, Hungary was able to count on the support of the fascist and National Socialist Axis powers from 1938 onwards, when the so-called First Vienna Decision was adopted. This is probably why István Egyed thought it was important to emphasise that official Hungary had not succumbed to extremist tendencies, regardless of the temporary successes achieved with the support of the Axis powers.

“From 1938 onwards, the Hungarian state owed the return of parts of its ceded territory to Italian and German support, but it did not sell its independence and intellectual autonomy. As it resisted all the pressures of the Little Entente, so it endeavoured to ward off German influences as far as possible and to reduce them to a minimum; the leading strata of Hungarian society remained calm spectators in the middle ground in a struggle between hostile world views, and only the lowest classes and racially alien groups temporarily succumbed to extremist tendencies.”²⁶

Once again, Egyed’s assessment of the situation seems to be cast in a more favourable light than the reality.

Like István Egyed, István Csekey repeatedly reviewed the public law of authoritarian states and National Socialist Germany. István Csekey also saw one of the main characteristics of the authoritarian states in the fact that they emphasised the idea of community over individual rights, in which the individual was only seen as a member of the nation. That is to say, the authoritarian state had replaced individualism with collectivism, whose goal is community and where the individual is merely a means to an end.²⁷ The authoritarian state, on the other hand, had a leadership that uses “the elite of the nation” to spearhead the “national work”, with the result that the executive is strengthened at the expense of the legislature.²⁸

István Csekey also pointed out that, prior to the establishment of the modern authoritarian states, Hungary had established the corporatist representation characteristic of these states within the framework of Act No. XXII. of 1926 on the Upper House of Parliament. Under the provisions of law, certain professional chambers and representative bodies were granted membership in the upper chamber. In other words, there was no obstacle to Hungary adopting what appeared to be a lasting value in the new world order, alongside the flexible – that is, easily amendable –

²⁶ The Hungarian Academy of Sciences Library, Manuscript Archives, Ms 10. 734/1.

²⁷ István Csekey, *A tekintélyállam és a magyar alkotmány* [The Authoritarian State and the Hungarian Constitution], *Jog* 1936 (June), 77.

²⁸ *Ibid.*, 77 f.

historical constitution. Nevertheless, he believed that the Hungarian constitution, which had “stood the test of a thousand years”, should not be sacrificed for the sake of foreign ideas because the attractiveness of the Hungarian public law system should not be diminished by restricting constitutionalism and self-government.²⁹

István Csekey gave a comprehensive account of the changes in constitutional law in Germany after 1933 in his 1936 study “The German *Führer* State”.³⁰ He pointed out that after the rise to power of National Socialism, the so-called Weimar Constitution of the German Reich that had been adopted in 1919 was not formally repealed, although it was profoundly changed by major constitutional laws.³¹ These included, but were not limited to, the Enabling Act, the Referendum Act, the Act to Ensure the Unity of Party and State, the Reich Building Act, the Act Concerning the Head of State of the German Reich, the Reich Governor’s Act, the Act on the Conscription of Troops, the Municipal Act, and the Nuremberg Laws, which also enforced racial ideology. In the context of the Nuremberg Laws, he pointed out that not only the professional civil service and the defence forces, but also the legal and medical professions, which were considered state professions in the National Socialist conception, were cleansed of “elements alien to the German race”.³² The National Socialist Revolution thus swept away democracy, parliamentarism, multi-party system federalism, and liberalism, which were the founding principles of the Weimar Constitution. They were replaced by new political principles: the idea of the people (*Volk*), the principle of authority, the leader principle (*Führerprinzip*), and the principle of the totalitarianism of the state. The Weimar constitution was thus replaced by the constitution of the New Reich.³³

István Csekey emphasised the following as the decisive features of the changes in public law in Germany after 1933:

²⁹ Ibid., 84–86. For more details István Csekey, A Harmadik Birodalom alkotmánya [The Constitution of the ‘Third Reich’], Magyar Szemle, 1936 (June), 116–127.

³⁰ István Csekey, A német vezéri állam [The German *Führer* State], in: Jogi előadások a nemzetiszocializmusról [Legal Lectures on National Socialism] Szeged, Szeged Városi Nyomda és Könyvkiadó Rt. 1936, 153–178.

³¹ Ibid., 157.

³² Ibid., 162.

³³ Ibid., 164.

The constitution of the German *Führer* State placed the emphasis on leadership (*Führung*). Since leadership was not based on majority but on authority, the German state was classified as an authoritarian state.³⁴

The classical separation of powers lost its meaning in the German *Führer* State, as the legislative and executive powers were not politically distinct. State power became indivisible and unified. From 1934, the embodiment of this power was the *Führer*, who combined the offices of head of state and chancellor.³⁵

The German *Führer* State was a totalitarian state in the sense that no area of person's moral and intellectual life could be independent of the state. The totalitarian state sought to overcome the antagonism between state and society, restored the unity of state power, and made a single political organisation, the National Socialist Party, the sole expression of political will.³⁶

István Csekey's study gave an unvarnished account of the transformation of National Socialist public law in Germany and thereby introduced the new public law to a Hungarian legal audience. He had no illusions about the consequences if the Hungarian public law system were to adopt similar solutions.

In his book "The Constitution of Hungary", published in 1943, István Csekey explicitly argued that Hungary's historical constitution should develop its own ancient constitutional institutions and that there was no need to import "foreign experiments". In his opinion, both fascism and Nazism developed new forms of state and social life out of the institutions of the Italian and German national past.³⁷ The author was therefore careful to distinguish between the historically based Hungarian constitution and the fascist and National Socialist public law solutions.

It is also important to mention that István Csekey was firmly opposed to racism. He did not see the nation as a community based on 'race', but as an intellectual and cultural community formed historically. In his opinion, dividing Hungary into racial elements would be a denial of Hungarianness.³⁸ At the same time, he seems to have

³⁴ Ibid., 165.

³⁵ Ibid., 168 f.

³⁶ Ibid., 169 f.

³⁷ István Csekey, *Magyarország alkotmánya* [The Constitution of Hungary], Budapest, Renaissance Könyvkiadó 1943, 20 f.

³⁸ István Csekey, *Faj és nemzet* [Race and Nation], Szeged, A M. Kir. Ferenc József Tudományegyetem kiadása [The M. Kir. Ferenc József University], 1939, 14.

been reluctant to comment sympathetically on racial laws that were in stark contrast to the principle of equal rights. The Hungarian anti-Jewish Laws passed in 1938 substantially restricted the principle of equal citizenship and the civil and political rights of citizens who qualified as Jews from a religious and racial point of view. One of the discriminatory laws was Act XV of 1941, which prohibited the marriage of Christians and Jews, which, in the words of István Csekey, was intended “to protect the Hungarian race from further intermarriage with the Jews.”³⁹ While István Csekey acknowledged that the provisions on Jews were contrary to the principle of equal rights, he accepted the possible objective of the provisions to diminish rights. The legal regulation was guided by the concern that Jews should not be allowed to dominate social and economic life to a greater extent than their numbers and should not be allowed to occupy leading positions. It was István Csekey’s view that by suspending the formal requirement of equal rights the state ultimately aimed to remove some glaring obstacles to the realisation of equality.⁴⁰

Professor Zoltán Magyary at the University of Sciences in Budapest was an internationally respected expert of public administration. The professor, who had visited Germany on several occasions since the period of the Weimar Republic, had very good academic and public contacts there. Zoltán Magyary, returning from a study trip to Germany in 1935, presented the internal transformation of the “Third Reich” in a series of six lectures in Budapest. Although the lectures focused on public administration, Professor Magyary could not ignore the overview of the changes in constitutional law in Germany from 1933 onwards. One of the lectures accordingly introduced the way in which the Weimar Constitution was transformed into the state of Adolf Hitler, who was described by the lecturer as a charismatic and impeccable leader. In addition to the abolition of parliamentarism, the abolition of the federal character of the Reich, and the rise of the racial approach in the public sphere, Zoltán Magyary also pointed out that, as a result of the establishment of the *Führerstaat*, Adolf Hitler fulfilled several functions in the “Third Reich”: He was the *Führer* of the people and the party, on the one hand, he held the offices of Reich Chancellor and Reich President, on the other hand, and finally, he was the Reich’s supreme warlord. Paradoxically, this accumulation of functions did not result in princely absolutism, according to Professor Magyary, because “the relationship

³⁹ István Csekey, Magyarország alkotmánya [The Constitution of Hungary], Budapest, Renaissance Könyvkiadó, 1943, 225.

⁴⁰ Ibid., 226.

between Hitler and the Reich is not that of ruler and subject, but of leader and followers.”⁴¹

II. Public Interest versus Equal Rights?

A constitutional justification of racial laws compatible with the *new direction* in public law had been attempted by the contemporary studies of Vilmos Szontagh, a professor of public law at the Evangelical Academy of Law in Miskolc, and Albert Kaas, a professor of public law at the University of Technology and Economics, Budapest.

The questions related to the constitutionality of Act IV of 1939, known as the Second Jewish Law, were first examined by Vilmos Szontagh in a newspaper article and later in a study. In his view, the question of unconstitutionality can arise against any law if the provisions of the law in question are not in line with the constitutional approach at the time of its adoption. In this approach, he did not consider Act IV of 1939 unconstitutional since its provisions were in line with the constitutional approach of the day. When Act XVII of 1867 on Jewish Emancipation was adopted, the “liberal constitutional approach” was still dominant, whereas at the time when Act IV of 1939 was adopted the “nationalist constitutional approach” was already predominant, a view that did not tolerate the self-serving assertion of classes, orders, or races at the expense of the “ideal of nationalism” and “national statehood”.⁴² In his opinion, therefore, it is not Act IV of 1939 that can be considered unconstitutional, but the liberal legal situation that Act IV of 1939 was indeed intended to abolish. He expounded the same views in somewhat more detail in his 1939 paper “The Jewish Law from a Jurisprudence Perspective”, in which he distinguished between formal and substantive unconstitutionality. In his opinion, a law can be considered unconstitutional in a substantive sense if the provisions of a formally sound law are substantively contrary to “a previous written or unwritten constitutional provision”. But since the “spirit of the constitution” changes from era to era, no objection of unconstitutionality can be raised against Act IV of 1939. However, he acknowledged that the Jewish population was disadvantaged by the provisions abolishing equal rights compared to the previous legal situation, and that the harm to

⁴¹ Zoltán Magyary, *Hogyan lett a weimari alkotmányból Führerstaat?* [How did the Weimar Constitution become the *Führerstaat*?], *Újság*, 15 March 1935, 4.

⁴² Vilmos Szontagh, *A zsidótörvény és a magyar alkotmány* [The Jewish Law and the Hungarian Constitution], *Magyar Élet*, 28 May 1939, 7.

their interests was “beyond dispute”.⁴³ In his study, Vilmos Szontagh regarded the Jews as a “racially segregated ethnic group” in whom he saw a danger to state and social life through the self-serving activities of its members, resulting from their particular racial ideology.⁴⁴

Albert Kaas’ 1938 study determined the limitation of the principle of equal rights in the necessity of a struggle for existence. In contrast to the principle of human rights and equal rights, the struggle for existence was seen as crucial. Equality of rights and human rights, he argued, were respected by states only to the extent that these principles did not threaten the universal interests of the community. And when the real public interest, *salus rei publicae*, demanded it, the principle of equality of rights was narrowed down. According to Kaas, the ‘Jewish question’ would also come to a standstill when Judaism relinquishes the positional advantage it had enjoyed for decades.⁴⁵

Among those representing constitutional law, Kálmán Molnár, professor of public law at the University of Pécs, was the most outspoken in his rejection of the new public law trend. In a paper published in the summer of 1938, entitled “Is there still a Hungarian genius?”, he argued on the basis of constitutional history that there were irreconcilable differences between the Hungarian state, which was viewed as a public law state, and the German idea of a state, which was seen as one of private law.⁴⁶ He also considered the attempt of Hungary to imitate totalitarian state systems as a dangerous one because submission to totalitarian ideas would undermine the foundations of survival as an independent state. To put it in other words: What need would there be for independent Hungarian statehood if there was no separate Hungarian “state-organising genius”?⁴⁷ Thus, Kálmán Molnár saw the guarantee of national independence in the preservation of Hungarian public institutions that expressed the spirit and character of the nation. It is no coincidence that Kálmán

⁴³ Vilmos Szontagh, *A zsidótörvény jogtudományos szemléletben* [The Jewish Law from a Jurisprudence Perspective], Miskolc, Ludvig István Könyvnyomdája 1939, 3–5.

⁴⁴ *Ibid.*, 16.

⁴⁵ Albert Kaas, *A zsidókérdés* [The Jewish Question], Budapest, Stádium Sajtóvállalat Rt. 1938, 14.

⁴⁶ Kálmán Molnár, *Van-e még magyar génusz?* [Is There Still a Hungarian Genius?], Budapest, 1938, 3.

⁴⁷ *Ibid.*, 5.

Molnár, who was a deeply devout Catholic, was the most outspoken in the press against racial laws.⁴⁸

Few scholars of constitutional law in Hungary have raised the issue of adopting the institutions of the new public law trend. Comparing the Hungarian constitution and the constitutions of authoritarian states, Béla Török concluded that there were several similarities between the two types of constitutional approach. But what did Béla Török see as the characteristic features of authoritarian constitutions? Authoritarian constitutions had replaced those based on the separation of powers and the principle of fundamental individual rights. While parliamentary constitutions focus on the individual, authoritarian constitutions focus on the outcome for the community. The liberal rule of law had been replaced by a totalitarian state. In the author's opinion, both the Hungarian constitutional approach and the authoritarian constitutional approach were characterised by a public political orientation and the assertion of the "popular element".⁴⁹ He also pointed out that the historically based Hungarian constitution and the constitutions of authoritarian states were both flexible, that is, easily amendable. Béla Török also considered it desirable, from the point of view of the development of the Hungarian Constitution, to adopt certain unspecified principles of the authoritarian constitution with the constraint that the interests of "the Hungarian spirit and the spirit of the Hungarian state" should be taken into account.⁵⁰ His justification as to why the adoption was necessary was that he did not consider it expedient to fight against the spirit of the age.

III. Constitutional Reform, Constitutional Development, or Constitutional Improvement?

On the eve of the Second World War, there had been discussions in both political science and public law about the extent to which a reform of the historically based

⁴⁸ See Gábor Schweitzer, "A tisztességes jogtanár" Molnár Kálmán pályaképe ["The Fair Law Teacher." Career Profile of Kálmán Molnár], Budapest, MTA TK JTI, 2019, 169–182.

⁴⁹ Béla Török, *A magyar és az autoritárius alkotmány* [The Hungarian and the Authoritarian Constitution], Miskolc 1940, 14. See also: Béla Török, *A tekintélyuralmi rendszerek kérdéséhez*. [On the Question of Authoritarian Regimes] (Miskolc, Ludvig István Könyvnyomdája, 1940, 1–13.), Béla Török, *Az új német alkotmány egyes alapelveiről* [On Certain Principles of the New German Constitution], *Miskolci Jogászelet* 1941/5. 70–82), further, Béla Török, *Abriss der Ungarischen Verfassung* [Outline of the Hungarian Constitution], Budapest, Leipzig, Milano, Verlagsanstalt Danubia, 1941, 1–87.

⁵⁰ Béla Török, *A magyar és az autoritárius alkotmány* [The Hungarian and the Authoritarian Constitution]. Miskolc, Ludvig István Könyvnyomdája, 1940, 15.

Hungarian constitution was necessary and what the terms constitutional reform, constitutional development, and constitutional improvement meant. The need for constitutional reform was raised by Prime Minister Pál Teleki in 1940, when he proposed a reform of the lower house of the legislature, including a corporatist reform. In this memorandum the Prime Minister also argued that Hungary should not follow foreign – German or Italian – examples in the process of constitutional reform, as each nation should develop its way of life according to its own character.⁵¹ The Prime Minister also emphasised that he considered the introduction of a “totalitarian one-party system” in Hungary to be out of question because such a system “is incompatible with the Hungarian people’s extremely strong sense of freedom.”⁵² While Teleki’s ideas have slipped from the agenda, public law scholars have attempted to interpret the terminological issues raised by a constitutional reform. József Bölöny, lawyer and independent lecturer at the University of Pécs, pointed out that from the outset, there was an agreement on the idea of constitutional reform, that the planned amendments could only reflect the process of the development of the constitution and, accordingly, could not lead to its subversion. A constitution, he argued, always develops through a natural process, as opposed to developing a constitution as the result of an artificial process. Moreover, constitutional development was seen as separated from constitutional subversion only by differences in degree. József Bölöny posited that there was almost as much difference between constitutional development and constitutional evolution as there was between the historical constitution and the written constitution. In the case of a historical constitution which had evolved across centuries, any constitutional reform that does not reflect the evolution of the constitution necessarily subverts it.⁵³ István Csekey, in his review of the historical constitution and constitutional development, argued that Hungary’s flexible historical constitution is not an obstacle to the adoption of “modern innovations”, if these innovations were appropriate to the domestic conditions, and if they have stood the test of time. The influence of the great epochs and currents in world affairs can also be seen in the Hungarian Constitution, but the Hungarian Constitution has never sacrificed its ancient institutions under the influence of foreign ideas. The popular, social, and economic goals demanded by the times – in other words, the characteristics of the *new direction of public law* –

⁵¹ A korporatív alkotmányreform terve [A Plan for Corporatist Constitutional Reform], in: Pál Teleki/Balázs Ablonczy (eds.), *Válogatott politikai írások és beszédek* [Selected Political Writings and Speeches], Budapest 2000, 446.

⁵² *Ibid.*, 446.

⁵³ József Bölöny, *Alkotmányfejlődés* [Constitutional Development], *Magyar Nemzet*, 26 January 1941, 6.

could be achieved without changing the centuries-old institutions of the Hungarian constitution, due to the flexibility of the historical constitution.⁵⁴

To summarise, there was no unified view on the *new direction* of the public law trend among the leading representatives of Hungarian constitutional jurisprudence between the two world wars. As time went by, the ominous impact of the new public law trend on constitutional ideas and institutions was perceived with increasing accuracy. István Egyed highlighted the following among the principles of the new state system: concentration of power in the head of state, the suppression of parliamentarism and the party system, the replacement of a system of representation of the people with a system of (corporatist) representation of an order, an increase in constraint on the interests of representatives, independence of the government from the representative bodies, the endowment of the government with extensive legislative powers, limitations on the immunity of representatives, and the centralisation of public administration.⁵⁵

While István Csekey's and István Egyed's writings on the *new direction of public law* laid weight on the autochthonous development of the Hungarian Constitution, they drew somewhat contradictory conclusions. The proclamation of autochthonous constitutional development did not merely express a cautious distance from the public law approach of authoritarian or totalitarian states like the 'Third Reich', but seemingly verified the fact that Hungary was ahead of its allies in introducing public law reforms that were essentially compatible with the new public law trend.

Few, however, openly confronted the ideas and institutions of the *new direction* in public law, although Hungary's leading representatives of constitutional law should have unanimously, firmly, and consistently indicated its unacceptability and its incompatibility with Hungarian public law traditions.

⁵⁴ István Csekey, *Alkotmány és alkotmányfejlésztés* [Constitution and Constitutional Development], Hítel, May 1943, 260–262.

⁵⁵ István Egyed, *Az új alkotmányok tanulságai* [Lessons from the New Constitutions], Magyar Közigazgatás, 27 January 1935, 1.