THE EVOLUTION OF THE EUROPEAN STATES

PARADIGMS OF STATE ORGANISATION

Edited by
Norbert Kis – Gábor Máthé

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Preface

We see countless examples of politicians who lack moral vision mechanically copying each other's practices. They repeat the mistakes of their predecessors and contemporaries because they lack the capacity to think ahead. But history also provides us with abundant evidence of the opposite: wise statesmen who understand the great challenges of their times and are able to deliver the necessary solutions – often averting disaster. History only repeats itself if we allow it to. That is why this collection of essays is so relevant today. The authors carefully examine the ways in which states have organised themselves throughout history, providing the reader with a wealth of fascinating reflections. They also demonstrate the truth of the old adage that there is nothing new under the sun: even in ancient Rome, arguments raged about the wisdom of reforms imposed from above and conceived by legal scholars alone.

Today, the sovereign state defines many of the essential parameters of our lives. Yet it is also true that in our modern age, the time-honoured concept of the nation as we know it is under attack. On the one hand, many of the world's largest corporations now wield far more economic power and political influence than most countries. On the other, there are continuing attempts to make the Westphalian model a relic of the past by entrusting an ever-widening range of public affairs to international organisations. Fortifying statehood, however, requires a clear understanding of where it comes from, how nations are built through the work of generations upon generations.

King Stephen's political foresight ensured that Hungary became a model of Christian nation-building, and thus the central theme of the essays on Hungarian history is generally celebratory. Our country has kept its statehood intact for more than a millennium. The National Avowal of the Fundamental Law upholds this tradition: "[W]e do not recognise the suspension of our historic constitution due to foreign invasions." The constitution of a thousand-year-old nation could not more accurately express the integrity and noble spirit that characterise the thinking of Hungarians in the 21st century. The facts of history preclude us from surrendering our independence, and reinforce our devotion to it.

Europe is organically structured, in terms of geography, language and ethnicity, and this diversity is our greatest asset. Yet, time and again, the forces that fail to appreciate this wonderful richness rear

their ugly heads. In fact, they see diversity as a distraction and try to turn it into an unnatural monotony. In the past, a failed attempt was made to unite the peoples, but this experiment in juristocratic reform proved to be a dead end. Habsburg absolutism, which ignored national diversity, and the revolutionary fervour of Napoleon Bonaparte, which temporarily subjugated all of Europe, also failed. The brutal empires of Hitler's and Stalin's socialism wreaked terrible havoc and were consigned to the dustbin of history.

We are once again facing an enormous challenge. Behind the decisions of the bureaucracy in Brussels, which fancies itself a political actor, a European superstate is emerging, with the United States of America as its model. However, the U.S. constitutional tradition itself is diverse. The Eurocratic elite has opted for the more progressive version of the American ideal, which radically disregards tradition. Thus, virulent individualism and relativism became the guiding principle of the European federalist agenda. Central Europeans recognise the ends and the means: first, they indoctrinate our children to weaken the family. For when the family is weak, the nation – and state – are also weak. Our natural communities have always been the main barrier facing the internationalist forces in realising their ambitions. Second, they intend to eradicate institutions of the sovereign state because they impede the movement of global capital. Third, they seek to erase the differences between religions and, if possible, to abolish them altogether. The world's great religions teach self-control and self-discipline, which is a further obstacle to unbridled consumption.

These hegemonic aspirations, however, are doomed to failure because they run counter to the uniqueness of our human nature. Attempts to homogenise empires from ancient times to the present have all failed. All over the world, national consciousness is making a comeback. Europe will not be excluded from this trend for long. Hungary is the first swallow in the new spring of nations, and is seen as an inspiration by people of common sense from the United States to Europe. From the dawn of our history, Hungary's purpose has been to participate in European affairs as a strong, self-reliant and independent state. This was the case for a long time after the establishment of the Christian Hungarian state. More difficult periods followed later, but we never gave up on Hungarian sovereignty and the relentless pursuit of it, even in the face of the conquering ambitions of foreign empires. Every year

on March 15th and October 23rd we remember how this nation rose up when its freedom was taken away.

Building and preserving a state that can assert its sovereignty and national interests is more important than ever for Hungarians of today, because, to recall the timeless words of Count István Széchenyi: "He whom God created Hungarian and does not champion the cause of his nation is not a noble man." This collection of essays provides potent intellectual ammunition for this no small challenge. Today, Hungary not only protects its own constitutional identity, but also emerges as the conscience of Europe. Armed with the insights gained from these articles, we can now confidently state what we have always suspected: Hungarians may not be right now, but they will be. We have every reason to continue to fight courageously, relentlessly, and with our heads held high for the preservation of our national independence and a free Hungary.

I congratulate the authors on their excellent work and wish you a pleasant reading.

Gergely Gulyás
Minister of the Prime Minister's Office

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Norbert Kis

Introductory Study – Scientia Intuitiva

"While science deals with reality, it, suddenly and unnoticed, escapes from its grasp, giving way to the realisation that it is no longer centred around reality but some dumb theory."
(Béla Hamvas: Carnival)

The title of our volume compels the introductory study to formulate questions and hypotheses for the studies that follow. Connecting various historical eras and cultural spaces, the papers in this volume seek for the *patterns of state development*. Our hypotheses are drawn from the *evolutionist interpretation of state development*. The paradigm of evolution is apt to give common points of interpretation to the studies of this volume, theses that appear as research questions related to the pivotal points of state development. The authors of the studies do not necessarily confirm or refute those theories but provide overviews of legal and political history that can serve as bases for readers to further consider the possible patterns of state development. In recent decades, the *evolutionist theories of the birth and development of the state* have become points of reference in the discipline of state theory.[1] The task of that discipline is to explore and typologise the general patterns of state development.[2] The evolutionist paradigm *transposes the development concept of evolution into the interpretation of state development.* That is presented and evaluated in the studies of this volume, along with the further consideration of the evolutionist state theories.

In his work titled *Ethics,* Spinoza argues that the knowledge obtained by intuition is the most basic form of knowledge, as it is the observation of things *sub specie aeternitatis* (under the aspect of eternity). Accordingly, *scientia intuitiva* seeks for the laws and eternal aspects of phenomena. The hypothesis of the volume is that *state development is driven by political*

[1] Szilágyi 1998: 70. Szilágyi made a reference to Service 1975.
[2] Szilágyi 1998: 70; see also, as an in-depth analysis of the task of the discipline of state theory, Cs. Kiss 2022.

interests and actions. This "realpolitik" or "political realism" strives to explore the true *political interests* behind the history and existential changes of the states. This *realist approach* is objective and descriptive, less following the normative, often ideologising or utopian perception typically applied by the theory of the state, since the former is centred neither around the values of the state or the nation, nor the concept of the "ideal state", which often occurs in the classical works of state theory, such as the *Republic* by Plato, the works of Thomas More, Francis Bacon, Campanella, or in the *Anti-Machiavel* of Frederick the Great.

The springboard of our analysis is the concept that in order to define the state, we must first define politics. There are certain persistent questions in the research of state history: What political interests can be identified behind the specific existential changes affecting the state(s)? Had there been any political interest group(s) behind the dominant state interest(s)? If there had, what kind of political interest prevailed in the activities of the interest group? Why and how did the given political interest and interest group become a public power that shaped the state?

According to our hypothesis assuming the existence of patterns, one or several *political interest groups, whose successful advocacy had directly or indirectly become a public power or state-shaping force, can be identified behind the existential changes of state development in every instant*. This concept is not contrary to the theory that seeks the political drive of state development in the so-called *state interest*. The idea of state interest is an abstraction, or, in a certain sense, a fiction, behind which we can find a group of people active in the physical reality, along with their collective interests. The world of political wills that define the reality of public power indicates the presence of even more diverse interest groups. Thus, the approach centred around *the competing plurality of political interests can be considered a realist approach,* while the concept that seeks for a *state interest – that is, a sovereign and legitimate government influence representing the national interest* – behind every change affecting the state system is more idealistic in nature. The theory arguing that the political drive of state development is the rivalry and enforcement of state interests is connected today mostly to the "offensive realism" formulated by John J. Mearsheimer.[3] This "realism" is centred around the concept of the "sovereign self-interest of the state", which, Mearsheimer argues, is the most reliable compass in the world's chaotic system of interests.

[3] Mearsheimer 2019.

Another tenet of realism connects state development to the advocacy of great powers, the USA in particular. Not disputing the fact that, both in the 20th century and today, world politics has been dominated and defined by the hegemonic aspirations of the United States, Mearsheimer applies a critical approach against the USA's foreign policy. The conflicts between the great powers spark wars that reshape the system of states (world wars). Out of economic interests, great powers colonised territories, abolished old states or created new ones. Further elements in this field are Pax Americana and the – sometimes violent – policy of the USA labelled democracy export.

However, the paradigm of state evolution followed by the studies of this volume takes the subject matter of the examination to the *level of political interest groups* from that of great power interests, state interests, or economic or ideological interests, and to the *level of physical reality and people from that of abstractions*. This is a more "realist" concept than political realism or realpolitik, as it presumes that *behind every interest or notion related to a social phenomenon, there is a group of people active in the physical reality and the collective interests of that group.* The economic, ideological or value content of the interests must also be considered real, but a political group can be identified as the primary stakeholder and advocate.

Of course, however, according to the value-based approach, the *ideal political formula of state development is the prevalence of state interest,* that is, sovereign national interests, preferably based on mutual benefits and in an amicable manner. Accordingly, our hypothesis can be refined by clarifying that the *power of state evolution does not appear exclusively at the level of state interests, but at the level of political interest groups functioning with efforts for public power.* The theory of state should strive to seek for political interest groups behind the various forms of state development, which, at a higher level of abstraction, can be considered national, economic or ideological interests. The first study of this volume seeks for the above patterns in the juristocratic reforms of the Roman Empire. The Middle Ages shall be examined through the system of benefices that shaped the development of the Hungarian state. The modern age shall be presented by analysing the alliance systems and conflict patterns of monarchies. The spheres of interest of the 20th century will be examined from the aspect of the sovereignty of Hungary, while the analysis of the first quarter of the 21st century is yet to be penned. The last study offers a frame of interpretation – that is, a possible paradigm – for that analysis

and all the historical periods, state configurations, and value systems missing from this volume: *the law of state evolution*. As the concluding remark of this introduction, we turn to the great Hungarian poet, Endre Ady, who would accept our wise thoughts with a stoic smile: "Holding a giant sieve / Time stands, for ever sifting, / Picking out and sifting whole worlds […]. Whoever falls through the mesh deserves it. / Time has no pity for chaff. / The miasmal desires of senile nations, / Worlds that have lost their fire, broken lives […]."[4] *(In Time's Sieve)*

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[4] Ady's poem translated by Michael Hamburger.

Gergely Deli

A Juristocratic Reform in the Roman Empire – The Anamnesis of an Evolutionary Cul-de-Sac

Introduction

This study strives to analyse the state reform attempt carried out by the elite of Roman jurists in the early 2nd century BC.[1] The attempt intended to revitalise the Roman state by applying basically two methods: the deepening of the integration of the centre (Rome) and the provinces, and the creation of a new, normative, law-related "religion" (which was rather a lifestyle or, with the then used expression, a philosophy). The process had been invented and managed by the jurists working at the top levels of bureaucracy, particularly Ulpian. The most striking act of the process of integration was the expansion of Roman citizenship, essentially to all free citizens of the Empire. The new religion, on the other hand, would have been a civil religion based on the primacy of law, where, instead of being just an instrument of power, the law would have been perceived as the norm for individual lifestyle. This attempt failed, partly because, gaining strength, Christianity was much more dynamic in proliferating its own guiding principles concerning people's lives. The relevance of the analysis of this failed juristocratic attempt is given by a current reverse process in Europe: an attempt to replace declining Christianity with new civil life principles and identity, by applying the instrument of law.

First, I attempt to outline the social and economic environment where the idea of the juristocratic reform arose, to show why the elite of the Roman Empire believed in the need for major changes. Second, I shall introduce Ulpian, the jurist who initiated the reform. Strikingly, until now, the reform attempt carried out by one of the most influential jurists of all times has not been considered a reform. One of the main

[1] To raise attention and place the issue at hand into a current context, I use Béla Pokol's apt expression, "juristocracy" for the elite of jurists. For juristocracy see Pokol 2021.

novelties of the study is the re-evaluation of Ulpian's activities in this interpretational framework. In the third part of this paper, I present the main content elements and the ideological direction of the reform through nine individual cases. The fourth, closing part addresses the question of why this juristocratic lifestyle reform attempt failed and what made the Christian model of community-building more successful.

From the aspect of the state evolution analysis covered by this volume, it is instructive to present a state reform that did not strive to achieve a state-level articulation of the specific interests of the interest group that served as the driving force of the process (and consisted of the leading jurists of the Empire, particularly Ulpian). Instead, the actors tried the reinforce the state and the Empire by an influence on the ideas and the lifestyle of individuals, striving to implement a philosophy in the Hellenistic sense and spread it as a political program.[2]

The economic context of the reform attempt

While life had obviously been completely different, there is one thing that connects the turn of the 2nd and 3rd centuries BC to our era: that was also a time of crisis, even though everything seemed normal at the surface. After the conquests of Traian, "the best" emperor, the Roman Empire had reached its greatest territorial extent.[3] The power of the Roman legions had been well-known from the Persian Gulf to the Atlantic Ocean, from Scotland to Nubia, from Portugal to Mesopotamia. And so were the great Roman roads, allowing not only the soldiers, wearing short swords – *gladii* – to move speedily to their destination, but also allowed for the fast proliferation of goods and, more importantly, ideas throughout the Empire. The Roman network of roads, winding all across the Empire, was approximately 75 thousand kilometres long, almost twice the length of the equator. Rome also had a philosopher as emperor, namely Marcus Aurelius.[4] As a state ruled by a philosopher had been considered the most perfect form of state since Plato,[5] this was

[2] For the connections between politics and philosophy in the period concerned see Millar 2002.

[3] Speidel 2002: 29.

[4] There are several sources to support that, see, for example Philostr. *VS* 2.9.

[5] Pl. *Resp.* 2.56–58.375a–d; 6.180–181.484a–d.

the realisation of an ideal.[6] The philosopher emperor ruled the whole world known at the time, every fourth person on the face of earth was his subject.

Nonetheless, sharp-eyed contemporaries had already observed tiny harbingers of crisis. In the frontiers, along the Danube, the forces of the Empire were kept busy by the troops of the Germanic Marcomanni. And although the legions triumphed against them and were successful also on the eastern front against the Parthians, the victorious troops brought back the deadly disease: the plague. According to the legend it was a Roman soldier who accidently cut a golden box in half somewhere across the Tiber in Seleucia, and that is how the gas contaminated with the plague escaped.[7] The outbreak of the epidemic was merciless, estimates say that there may have been 5–10 million fatalities, which stood for 10 percent of the population of the Empire.[8] And the calamity came in several waves, as it hit again nine years later. The mortality rate was tremendously high, every fourth contaminated person died. At the peak of the disease, Rome saw two thousand deaths per day.[9] Galen, the most outstanding of the physicians of all time described the symptoms as follows:[10] it began with high fever, diarrhoea and a sore throat, and on the nineth day pustules appeared on the skin throughout the body, including the face.[11]

The wars, the epidemic and the arising economic difficulties were joined by political uncertainty. Marcus Aurelius was followed by his son, Commodus on the emperor's throne, less capable of showing the way out of the various threatening crises. Commodus had been raised to be an emperor from the age of five, and that most likely did not direct the development of his personality in the right direction. He fancied himself playing the role of the demigod Hercules, who was famous of his strength and courage. He had gone great lengths to buy himself popularity in the old-fashioned way, giving the people bread and circuses, not sparing the struggling treasury. He taxed the senators mercilessly and widely expanded the power of the praetorian prefect, the head of

[6] For the evaluation of this see Desmond 2011: 109–111.
[7] SHA *Verus* 8.1–2.
[8] For the influence the disease had on the number of the population see Gilliam 1961: 248–250.
[9] Cass. Dio 72.14.3–4.
[10] Galenos's accounts on the epidemic was collected by Hecker 1835.
[11] For the diagnosis see Littman–Littman 1973: 246.

the emperor's guard. Both were measures frowned upon by the members of the elite. Of course, publicly the same senators were the loudest to join the crowds venerating the emperor as the Sun god. Commodus inclined to join the gladiator fights, although not in front of the public. Not that he shied away from public appearance. In the last year of his rule, Commodus named each month of the year and each legion after himself, and even renamed Rome the "joyful city of Commodus". No wonder that, along with Caligula and Nero, he was considered one of the rulers who acted as unrestrained tyrants. He certainly had one merit, however. Despite his personal shortcomings and vices, his greatness as a statesman is shown by the fact that he understood the signs of the times. He was the first to recognise that the senate was no longer able to fulfil its historic task as the governing force of the Roman Empire. After Commodus's death, the Empire found itself at a crossroads: it seemed that the state was about to be stretched apart by the internal and external "entropic" forces.

The question arises: which interests were behind the activities of Ulpian and the juristocratic elite that surrounded him? In my opinion, the assumption that, in addition to a narrow political self-interest, they were driven also by a desire to salvage the state cannot be considered an idealistic exaggeration. First, these bureaucrats, who in part originated from the provinces and reached the highest positions of the Empire, were presumably driven by an intense pressure to align and comply,[12] due precisely to such origins.[13] Second, all of them remembered the period of relative peace and prosperity brought about by the *Pax Romana*.[14] The Roman state ideology inherited an important characteristic from Emperor Augustus, namely that the major, even military interferences within the state must be wrapped in the narrative of peacebuilding and peacekeeping.[15] The new elite arriving from the provinces saw no alternative to the Roman Empire. Consequently, to them the stability of the state did not only mean a political and intellectual challenge but also a crucial individual interest.

[12] For a similar evaluation see Ledlie 1903: 17.
[13] For the origins of Ulpian see Kunkel 2001: 252.
[14] See also Bringmann 2009.
[15] See also Rich 2009; Lavan 2017.

Another factor to consider is the fact that the juristocratic elite had a great political adversary: the military. It is no coincidence that Ulpian died in a minor military revolt in the 220s BC,[16] in the presence of the child emperor, Severus Alexander and his mother.[17] Ulpian's attempt to restore order may have been the reason underlying his conflict with the military, namely the praetorian guard.[18] Street fights, lasting for several days between the guard and the people were not uncommon in Rome at that time.[19] As praetorian prefect, the commander of the guard,[20] Ulpian presumably strove to reduce the guard's growing influence and destructive actions.[21] The situation escalated to the point where Ulpian even had his fellow prefects, Iulius Flavianus and Geminius Chrestus executed.[22] The ruler himself was also at the mercy of his own guard. No wonder that Ulpian considered it one of the most significant hindrances to the stability of the state.

In addition to all that, a further drive that urged Ulpian to codify the existing material of Roman law may be sought in the appalling reality he experienced during the reign of Emperor Caracalla. At a time when the known world was ruled by a "monstrous" figure whose life appeared to be a mockery of human nature,[23] Ulpian strove to restore the order and beauty of human nature by the tool best-known to him: the law. During the period when he was not burdened by the odium of political activity, Ulpian dedicated his time to legal and jurisprudential work. By consolidating the body of law, Ulpian intended to create a work serving both as a codex and a holy book: he worked with the tool of law, in the role of religion, for the sake of the state. It is worth acquainting ourselves with him a little more closely.

[16] For the dating see Bertrand-Dagenbach 1990: 16.
[17] Cass. Dio 80.2.4.
[18] Howe 1942: 75; Pflaum 1960–1961: II, 762ff; Kunkel 1967: 245–254; Syme 1979: 800f; Syme 1991: 216f. On Ulpian and his work see also Zwalve 1998.
[19] See Sünskes Thompson 1990: 41, 81–83.
[20] See Crook 1975: 79.
[21] Bremer 1868: 71ff.
[22] Blois 2003: 135–139.
[23] Also, the sources, such as Cass. Dio 78.22.3; Hdn. 4.9.

Ulpian, the reformer

Great times find their great person. In our case, he arrived from Phoenicia, the distant city of Tyros.[24] Although he was one of the greatest jurists of all times, we do not even know his full name. Possibly, his full name appears solely on a lead pipe among the ruins of a villa northeast of Rome. In any case, he is known as Ulpian from the sources[25] where he left an undeniable mark: approximately one third of the *Codex Iustinianus* originates from him, even though it is the work of an Eastern Roman Emperor who reigned about 300 years after Ulpian's death.[26] This transposition is the main reason underlying his enormous influence on the development of the law of later ages. Posterity has always found what it was looking for in the mass of text originating from Ulpian. In the Middle Ages, he was praised for the view that the emperor is absolved of laws. At the peak of his career, Ulpian was the second in rank in the Empire,[27] an astonishing career even at that time in Rome. Some saw him as a pioneer of human rights, but for us his specific significance lies in his intent to use the law as a compass for well-lived life.

There were two main pillars of Ulpian's masterplan to consolidate the Empire. The first was an enormously significant but occasional state act to extend Roman citizenship. Based on Ulpian's preparatory work,[28] Emperor Caracalla gave the precious Roman citizenship to almost all subjects of the Empire. Odd as it may seem from today's perspective, only a small fraction of the mighty state's population had been Roman citizen before the issuance of the emperor's edict in 212 BC. As Roman citizenship came with several advantages and benefits, many strove to obtain it. And all of a sudden – at one blow, so to speak – this grace fell into everyone's lap in the wake of the legislation. Rumour had it[29] that the real reason for the extension of citizenship was to increase the number of taxpayers. It was taxes levied at inheritances that held the promise of a particularly significant income for the Roman state. Nonetheless, taxes had hardly been the only reason for issuing the edict, no matter how

[24] That is supported also by a primary source: Ulp. 1 *de cens.* D. 50.15.1pr.
[25] For the life of Ulpian see Honoré 1982: 1–36.
[26] For the work of Ulpian see Zwalve 1998.
[27] Bremer 1868: 71–75.
[28] For Ulpian's account on the emperor's edict see Ulp. 22 *ad ed.* D. 1.5.17.
[29] See, for example, Cass. Dio 78.9; 79.9.5.

tough the situation of the treasury was. Most of the new citizens were not considerably wealthy and giving citizenship to so many people diminished the interest in military service. Before the *Constitutio Antoniana,* veterans received Roman citizenship when demobilised after their years in the legions, which had probably been a considerable factor in deciding whether to enlist in the military. Unconditionally received citizenship most likely reduced the thirst for combat among the population of the provinces. Due to all that, we are right to believe that Ulpian's plan was not primarily driven by financial or military causes. Rather, his motives resulted from the wise recognition of the unstoppable change that the Roman Empire no longer belonged to the Romans only. The Gauls, Spaniards, Lusitanians, Numidians, Thracians, Syrians, Egyptians and all peoples of the mighty state embraced their belonging to the Roman Empire at least as much as the founding Romans themselves. The once marshy, small town became the ruler of the world, a global empire. And as such, to live up to the challenges of the era, it not only needed subjects but also citizens.

Of course, however, legislation is not enough to create a people overnight by extending citizenship. What the Empire needed was a spiritual community. Ulpian was well aware of that, and it also explains the other – much more important – part of his plan to salvage the Empire. He believed that he could turn the multitude of new citizens, the diversity of ethnicities, languages, religions and colours into the unity of a people, a community of soul and spirit with the help of the law. To achieve that, during the time when he was forced to put his political activities on hold, over the course of about six years, Ulpian sifted through and consolidated practically the whole body of Roman law. This basically meant juxtaposing the works of earlier jurists, weeding out the outdated solutions, solving certain controversial issues and improving the body of the law. This enormous work of consolidation was the forerunner of the codifications which reached their apogee in the grandiose codex of Emperor Justinian, and which later became the roots of the legal systems of the European continent. All in all, the global empire needed global citizens. And global citizens are created by universal laws that apply uniformly to all.[30]

[30] The extension of the citizenship and the consolidation of the earlier body of law also brought about the increase of the role of the emperor's legislation. This centralisation presumably met Ulpian's intents as well. See also Humfress 2013: 87.

However strong the community-creating power of the law was, Ulpian had no reason to expect that technical rules in themselves would unify the citizens. But he might have had a reason to recall the myth of one of the re-foundations of Rome. Back in the archaic period, the plebeians left the city[31] and marched to the Aventine.[32] Things settled only when the patricians pledged to enshrine the fundamental rights and obligations in a legal act. That was the renown Law of the Twelve Tables, the source of all rights, which Roman youths had to memorise by heart even by the time when Cicero went to school. Thus, in a way, Romans identified law with a unitary state and the concordance between social classes, embodied primarily by the temple dedicated to goddess Concordia, erected in the western end of the *Forum Romanum*. Ulpian intended to achieve this desired concordance with the help of the law. His in-depth understanding of human nature told him that the law striving to create unity among the diversity of peoples populating the Roman Empire cannot simply be a tool serving political and economic interests. It must also fulfil the role of the supreme religion of the state.

Therefore, the law had to take the place of religion. Long-forgotten ancient powers – such as Flora, the goddess of flowers, Silvanus, the god of forests and Faunus who whispered the future into people's ears in their sleep – had to be replaced. By then, indifference had silenced also the deities shared with the Greeks: Jupiter's thundering words, Juno, the goddess of love, Mars, the god of war. This period saw the trend of mystery religions, but only few chosen worshippers were admitted to their secret shrines. Isis who ruled the sun, the moon and the stars, and Serapis who ensured that there was no shortage of grain in the cities, were not suitable to become deities for the masses. Christianity – which was about to triumph in less than two hundred years, eliminating every other cult with murderous determination – was not yet strong enough. As the fanatic sect of a small, rebellious people, the followers of Christ drew no considerable attention. The time when Emperor Justinian would promulgate his great codex "in the name of our Lord Jesus Christ" in 533 BC was still far off. The religion created by Ulpian intended to be everyone's religion, regardless of ethnicity, sex, or language. It strove to be a real state religion, to tie together the countless inhabitants of the

[31] This was the second of the so-called secessions, see Liv. 3.50–54; Dion. Hal. 11.43–44; Flor. 1.17; [Aur. Vict.] *De vir. ill.* 21.

[32] Liv. 2.32.

Roman Empire with a strong spiritual bond, establishing the rule of civil courage, reason, justice and equity among such diverse subjects.

With the law being the religion, jurists were the priests of it. Ulpian took his role very seriously. In his textbook, he proudly declares that jurists are rightly considered priests, as they serve the god of justice, know goodness and equity, can tell wrong from right, and define just and unjust. But jurist-priests would not stop there. By threat or reward, they would arouse the desire for goodness in the citizens entrusted to their care. What the priests of the law would offer is no fake but indeed the true way of life. Ulpian's religion was perhaps the first rational, atheist attempt to define the foundations of human coexistence, and it appeared in the greatest and most powerful state of the time, the Roman Empire. It is uncanny to even entertain the thought of what could have happened had his experiment succeeded. If reason, the rational balance of social interests, and a religion of law based on transparent and verifiable arguments had been reinforced and proliferated in the Empire. If, as a result of all that, Christianity and the "dark" Middle Ages had been non-existent, and Enlightenment had been cancelled due to lack of interest.

As for the conflicts between interest groups, which drove state evolution, it had never occurred to Ulpian that he should worry about a small Jewish sect or women when it came to his ambitious plans. A much bigger concern was the military, ever more unbridled, particularly its elite squad, the Praetorian Guard. In the previous decades, the guard of the emperor participated in every palace coup, on one occasion even the new emperor, namely Macrinus, was selected from their number. Even though the guard used to embody true Romanness, it no longer seemed Roman enough for the Phoenician Ulpian. When he became the commander of the Praetorian Guard, Ulpian's main goal was to restrict the power and influence of this military body.[33] The guard, however, was well aware of these intentions, so Ulpian was stabbed to death in front of the thirteen-year-old[34] emperor, Severus Alexander and his mother.

[33] Jörs 1905: column 1438; Krüger 1888: 215; Wenger 1953: 519.

[34] This would mean that the assassination took place in 223 BC. See *The Oxyrhynchus Papyri* 1966: 102–104, Papyrus No. 2565. That theory is revisited by Modrzejewski–Zawadzki 1967; see also Honoré 1982: 8, 40–41. Others argue that the event took place only in 228 BC. See Jörs 1905: column 1438; Krüger 1888: 215; Wenger 1953: 519; Honoré 1962: 166, 207.

Fate had dealt Ulpian a spectacular career, but also difficult, nearly unsolvable tasks. Even though he did not succeed in achieving his primary goals related to the consolidation of the Empire, and his troublesome attempt to consolidate Roman law and to shape it into a civil state religion of a sort failed, his work still made him immortal. If we were to enumerate those who had the most significant influence on human history, then, in addition to Muhammad, Jesus, Alexander the Great, Napoleon and Hitler, we should also consider Ulpian. If not for him and his legal work, the law we know today would certainly be completely different.[35] As is often the case, the forced caesura in his political and professional career allowed for the jurist and the author to come to the fore instead of the practising lawyer and state official. Ulpian created his great works providing commentaries for the edicts of the praetors, which shaped modern continental law, during the years between 213 and 217 BC when his political career came to a halt. He changed the world in the course of no more than five years! That is the dream of many authors but so far only few have succeeded. During these watershed years, Ulpian wrote 220 books. That was an enormous work. Even if we consider that books at that time were much shorter than those published today, it took feverish dedication and determination. Ulpian believed that as *corrector rei publicae* – reformer of the state – he was destined to salvage the Empire. Translating all that to work results, Ulpian penned a book every week,[36] each approximately 12 thousand words, which would run to thirty typed pages according to today's publishing practices.

Thus, jurists owe a great debt to Ulpian. But this study shows that not only jurists can find his works instructive. A lot can be learned from Ulpian, in terms of how a good citizen is pictured by a humane, rationalist state reformer. He offered a lifestyle that is not only meaningful and comfortable for people but can also revive their state. Of course, unlike today's bestsellers promising prosperity, Ulpian did not give his life advice directly. That can be uncovered from his legal opinions and comments.

To avoid confusion, it is time we clarify the nature of Ulpian's advice. He most likely drew heavily on one of the leading philosophical trends of the time. Yet, expect no self-control techniques or today's trending five-minute wisdom from him. Although Ulpian's message would mostly be incomprehensible without the concepts of stoicism,

[35] Frier 1984: 856.
[36] Honoré 1982: 160.

he cannot be considered a spokesmodel of Stoic doctrines. We find nothing in his works about daily soul-searching, the memorable principle of *memento mori* ("Remember you must die"),[37] or the concept *amor fati,* the acceptance of one's fate.[38] Neither does he tell us to practice *premeditatio malorum*,[39] the constant thought about all the bad things that can happen in life. The self-deceiving *ego* is no enemy for him,[40] and he does not believe that the obstacle is the way.[41] Deep down all that may be hidden behind his legal opinions, but the true value of his wisdom does not lie in a borrowed advice. A closer look reveals that such Stoic guidance, found in today's bestselling books and stoical blogs, offer nothing more than external, purely formal help. They do not tell us what to do but how to do it. That emptiness is precisely what makes these doctrines universal, making them seem useful lifehacks regardless of the time and place. Law, on the other hand, is good for many things but that. We can turn to law to decide which is the right path to take. We do not expect law to provide conflict management techniques but clear, specific answers. What to do and what to refrain from. Any judge who, spreading their arms in a Gallic shrug, said that "I have no idea whether the defendant is guilty or innocent" or "I do not know who is right, the plaintiff or the defendant", would surely be held up to public ridicule. Law must make decisions on the merits. And that is also the reason why Ulpian's work is useful: it gives substantive answers. Ulpian offers something we really need today when many are inclined to blur the lines or avoid clear choices: he tells us which path to choose and which to avoid. That is his true, unfaked philosophy.

Of course, one can preach falsely even from the books of truth. Ulpian's surviving oeuvre is rich enough for everyone to interpret it as they please. My reading is utterly individual and somewhat haphazard, but to make my point clear, I shall briefly summarise Ulpian's axioms on life advice related to the state reform in the following nine "commandments":

- Live honestly, injure no one, give each his own![42]
- Trust fate but do what you can![43]

[37] Sen. *Ep.* 101.7–8.
[38] Epict. *Ench.* 8.
[39] Sen. *Tranq.* 13.3.
[40] Diog. Laert. 7.23.
[41] M. Aur. *Med.* 5.20.
[42] Ulp. 1 *reg.* D. 1.1.10.1.
[43] Ulp. 10 *ad ed.* D. 3.5.9.1.

– Let there be things that you allow others but not yourself![44]
– Maintain your masculine dignity when it comes to women, but do not run afoul of them![45]
– If you have no time to think things through, listen to your heart![46]
– Do not let yourself be bribed with gifts![47]
– What you let go in your soul, never want back![48]
– You may use tricks in business but never be a fraud![49]
– Fear no ghosts![50]

Live honestly, injure no one, give each his own!

According to Ulpian, the fundamental precepts of law[51] can be summarised in the following triple command: *Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere.*[52] Live honestly, injure no one, give each his own.

Indeed, that includes everything that law can contribute to living our lives right. Of course, no further advice would be necessary if the principles[53] were easy to interpret in each case, in all specific situations brought about by life. Nonetheless, Ulpian most likely firmly believed that this triple command must pervade the entire body of the law. Thus, again and again, he reinterpreted the meaning of these impressive but abstract admonitions in a wide variety of situations. The manner of this and the extent of the success of the attempt will be detailed below. It may be obvious, even at first sight, that, being universal commands, the latter two elements of the triad can be easily linked to the world of law and state regulation striving to achieve justice.[54] The principles of "injure

[44] Ulp. 29 *ad ed.* D. 15.1.9.7; Ulp. 13 *ad ed.* D. 4.8.21.11.
[45] Ulp. 36 *ad sab.* D. 24.3.14.1; Scaev. 7 *dig.* D. 18.3.8; Paul. 1 *decr.* D. 4.4.38pr.
[46] Alf. 5 *dig. a paulo epit.* D. 19.2.31.
[47] Ulp. 1 *de off. procons.* D. 1.16.6.3.
[48] Ulp. 38 *ad ed.* D. 13.1.10pr–12.1.
[49] Ulp. 11 *ad ed.* D. 4.4.16.4; Ulp. 48 *ad sab.* D. 45.1.36; Ulp. 11 *ad ed.* D. 4.3.1.2; Ulp. 31 *ad ed.* D. 17.1.6.7.
[50] Ulp. 11 *ad ed.* D. 4.2.9pr.
[51] They are referred to as a maxim by Sandars 1934: Inst 1 1 3.
[52] Ulp. 1 *reg.* D. 1.1.10.1.
[53] The expression *praecepta* is translated as principles by Watson 1985: D.1.1.10.1.
[54] See Diesselhorst 1985: 185.

no one" and "give each his own" appear in human history on several occasions, regardless of the age and place.[55] The latter has occurred in several works, such as those of Luther, the title of a cantata by Bach, and – most horrifyingly – on one of the iron gates of the Buchenwald concentration camp. It was placed there so that the prisoners lining up for daily inspections could easily read it from the inside: "Jedem das Seine", meaning "To Each His Own". Anyone who has the stomach for it, can make out this phrase also on the wobbly fat back of the German politician Marcel Zech, in gothic letters.[56] In any case, refraining from causing damage and the payment of debts can easily be linked to the world of law. But not the imperative of "be honourable". What law has got to do with the way we live our lives if otherwise we abide by the rules? Why should we live honestly instead of happily? And, for that matter, what is the definition of honesty?

Clearly, honesty meant something completely different in ancient Rome than it does today. Mostly because while ancient Rome was a so-called shame culture, today's European culture, due to Christian influence, can still be considered a guilt culture. The difference is obvious. Shame is something external, which is born outside the individual, since it is the community that stigmatises its members who violate certain norms of the given community. Guilt culture, on the other hand, is based on the inner struggles of the individual. In the latter case, the authority prescribing the norms is transformed into an internal factor by the individual, while in the former case, wrongful conduct is sanctioned by an external forum. Accordingly, "living honestly" was not a mere life advise in ancient Rome but a crucial obligation. Those who failed to act honestly, and thus became stigmatised – *infamis,* for instance – were removed from the network of the community that used to hold them, as a protective alliance of interests. Such person was no longer considered a fellow citizen, no one negotiated or did business with them, as if they had become invisible. So, for a Roman citizen, the stakes were high when it came to abiding by Ulpian's life advice wrapped in legal opinions. Obviously, unlike today's trending life advice books based on stoical philosophy, his advice held no specific techniques or "spiritual

[55] Manthe 1997: 25–26.

[56] The politician was handed a six-month suspended sentence for the public display of his tattoo, see *German politician guilty over Auschwitz tattoo* (2015). Online: www.bbc.com/news/world-europe-35162393.

exercises". Even though from time to time, Ulpian's comments reveal certain elements of teaching of the Stoics,[57] his perspective was more external. He mostly sought answer to the question of how to guide people, by reward and punishment, in the direction where they live their life right. In any case, these standards are easy to apply to today's situations and choices, without the need to learn all sorts of spiritual techniques. Thus, Ulpian gives us answers but not methods. On the other hand, for Ulpian, living a good life was essentially just a tool to achieve a much greater goal: the creation of a good state. He believed that a state can only be good if its citizens live their life right. And as we have seen, hit by external and internal crises, the Roman Empire was in great need of a chance to become a good state again.

Let us move on and see the great state reformer's specific life advice.

Trust fate but do what you can!

Ulpian's ideal man is not a passive subject of fate but strives to shape his environment whenever possible. He is aware of and respects the limits of his human abilities and efforts. However, within those limits, he is responsible for doing all that is up to him in a given situation. Let us look at a case where such proactivity and individual responsibility are rather emphatic.

"Is autem qui negotiorum gestorum agit non solum si effectum habuit negotium quod gessit, actione ista utetur, sed sufficit, si utiliter gessit, etsi effectum non habuit negotium. Et ideo si insulam fulsit vel servum aegrum curavit, etiamsi insula exusta est vel servus obit, aget negotiorum gestorum: idque et Labeo probat.

Sed ut Celsus refert, Proculus apud eum notat non semper debere dari. Quid enim si eam insulam fulsit, quam dominus quasi inpar sumptui deliquerit vel quam sibi necessariam non putavit? Oneravit, inquit, dominum secundum Labeonis sententiam, cum unicuique liceat et damni infecti nomine rem derelinquere.

Sed istam sententiam Celsus eleganter deridet: is enim negotiorum gestorum, inquit, habet actionem, qui utiliter negotia gessit: non autem utiliter negotia gerit, qui rem non necessariam vel quae oneratura est patrem familias adgreditur.

[57] Winkel 1988: 669–672; Wollschläger 1985: 49–50.

Iuxta hoc est et, quod Iulianus scribit, eum qui insulam fulsit vel servum aegrotum curavit, habere negotiorum gestorum actionem, si utiliter hoc faceret, licet eventus non sit secutus.

Ego quaero: quid si putavit se utiliter facere, sed patri familias non expediebat? Dico hunc non habiturum negotiorum gestorum actionem: ut enim eventum non spectamus, debet utiliter esse coeptum."[58]

"A person who brings an action of unauthorised administration of affairs will not just use this action if he successfully accomplished the matter he administered; it is enough if he acted usefully, even if he did not accomplish the matter. And so if he propped up an apartment building or took care of a sick slave, he will be given the action of unauthorised administration of affairs (even) if the building burned down or the slave died; and Labeo also approves this.

But, as Celsus reports, Proculus commented on Labeo's view that the action ought not always to be given. For what if he propped up an apartment building that the owner abandoned to avoid the expense, or that he thought he did not need? In Labeo's view, says Proculus, the gestor could burden the owner, though anyone is allowed to abandon property, even in order to avoid giving collateral due to a threatening damage.

But Celsus elegantly mocks this view; for, he says, a person who administered affairs usefully has an action on unauthorised administration of affairs. But someone who undertakes something unnecessary, or that will burden a paterfamilias, does not administer affairs usefully.

Related to this is what Julian writes, that a person who propped up an apartment house or cared for a sick slave has an action on unauthorised administration of affairs if he does this usefully, even if the outcome was unsuccessful.

I ask: What if he thought he acted usefully, but it was not benefitting the paterfamilias? I hold that this man will not have the action on unauthorised administration of affairs; for when we do not look to the outcome, it ought at least to be started usefully."

D. 3.5.9.1 does not clearly reveal Celsus's view on Labeo's arguments, that is, whether Celsus considered that the *actio* is to be given also if the gestor administered the affairs usefully and sufficiently, but the outcome was unsuccessful due to an external cause. It is likely that for Celsus, the decisive factor was whether the gestor's action would have been carried out by a *bonus et diligens* paterfamilias and the outcome also occurred.

[58] D. 3.59.1.

Or at least we can draw this conclusion based on Ulpian's *iuxta hoc est* remark. According to such use of word, Julian's view[59] was related to Celsus's opinion.[60] That is, Julian probably accepted Celsus's objective measure of evaluating usefulness.[61] He, however, added that the *actio* should be given also if the outcome was unsuccessful. *A contrario* it follows that Celsus only recognised successful and objectively useful administration of affairs. By contrast, Julian also considered legitimate the claim of a gestor who acted objectively usefully and appropriately, but not sufficiently, that is, not successfully.[62] On the one hand, his position differs from Labeo's in that he used the term *utiliter* in the sense of "objectively useful", while Labeo limited its meaning to "successfully". Therefore, Julian accepted Labeo's position that the existence of the desired outcome is not decisive from the aspect of granting the claim. However, while Labeo expected the gestor's action to be successful – even though due to another, independent reason, the outcome was later unsuccessful – it was enough for Julian if the action could have been useful based on the objective judgment of the *dominus negotii,* but the realisation of the benefit did not occur due to the unsuccessfulness of the action. This difference of opinion is clearly indicated by the difference between the expressions used when presenting the opinions of the two legal scholars: *effectus* and *eventus.* Julian's view differs from that of Proculus in that, like Celsus, he judged usefulness not from a subjective but from an objective point of view.[63] In other words, he preferred the actual and objectively graspable to subjective value judgments.[64]

It seems that Ulpian basically agreed with Julian's understanding, he only improved it in one aspect.[65] What happens, Ulpian asks, if the

[59] On Julian's position see Benke 1988: 614.

[60] According to Ussani 1987: 145, Ulpian knew the works of both Celsus and Julian well.

[61] Iulian shares Celsus's opinion also in D. 45.1.91.3.

[62] Actuality, that is, the actual occurrence of the result was considered very important by Julian, based, inter alia on Sen. *Ep.* 124.6, and he dedicated more references to it than other jurisprudents. See Mayer-Maly 1974: 227.

[63] The objective perspective serves the public interest more. Julian contrasted the *utilitas publica* also elsewhere with the rationality of the decision, that is, the *ratio disputendi.* See, for example, Iul. 86 *dig.* D. 9.2.51. Cf. Cic. *De or.* 32.113; Cic. *Part. or.* 23.78. In *ratio disputendi* see Stein 1966: 95; Ankum 1995: 23. In certain cases, to allow himself to consider the social and economic reality, Julian consciously intends to depart from the dialectic logic of the argument. Cf. Navarra 2002: 21.

[64] Ussani 1987: 105.

[65] According to Beseler 1930: 173, the term *ego quero* is likely an interpretation, since in Beseler's opinion, citing Labeo's view, Ulpian already provided an answer to the question of law at the

gestor subjectively believed that he was acting usefully,[66] but his action was objectively not useful? This means that for Ulpian, the question of the subjective and objective assessment of the usefulness of the administration of the given matter is not raised from the objective point of view of the *dominus negotii,* but from the point of view of the gestor.[67] At assessing the usefulness of the administration of affairs, instead of considering the *ex post,* objective point of view of the *dominus negotii,* Ulpian considers the gestor's *ex ante*[68] point of view.[69] According to him, it is not necessary to examine whether the administration was objectively useful to the *dominus negotii*,[70] but it should be assessed whether the gestor could, based on objective criteria, believe that his intervention was in line with the interests of the *dominus negotii*.[71] Ulpian argues that the administration of affairs does not have to be successful,[72] but for the *actio* to be given it has to seem objectively useful, appropriate

beginning of the fragment. Finazzi argues that this solution matches the Roman argumentation techniques. See Finazzi 2003: 534. Yet, as we have seen above there is no framework structure: Ulpian draws up a development arch.

[66] According to Babusiaux 2006: 257–258, late classical jurists developed a special method, based on the variety of argument techniques, to find out the will of each party.

[67] The significance of the differentiation between *ex ante* and *ex post* points of view is stressed by Finazzi 2003: 527.

[68] Ulpian argues in favour of the *ex ante* point of view also here: Ulp. 10 *ad ed.* D. 3.5.11.2.

[69] According to Harke, the time of the assessment of *utilitas* is a significant dogmatic issue, as, for instance, the unauthorised nature of the administration of affairs can be easily concluded from the outcome or the lack of it. See Harke 2007: 13. According to Finazzi 2003: 532, the *ex ante* point of view was introduced by Celsus. See also Voci 1990: 98.

[70] Getting away from the subjective point of view of the *dominus negotii* may have been helped by the fact that over time the requirement that the *gestor* should know well the person on whose behalf he intervened faded away. The requirement of this close acquaintance had appeared still in Ulp. 10 *ad ed.* D. 3.5.5.8; Pap. 2 *resp.* D. 3.5.30.2; Paul. 4 *quaest.* D. 3.5.35. See also Seiler 1968: 38–46. Bergmann also assumes that the usefulness of the administration of affairs had been a precondition, see Bergmann 2010: 319; from older literature see Lauterbach 1707: 3, 5, 21; Voet 1704: ad D. 3.5.10.

[71] The importance of the *ex ante* point of view is increased by the fact that once started, the administration of affairs is to be finished according to several authors, see Kortmann 2005: 46; De Colquhoun 1854: 110; Dawson 1961: 819–820; Stoljar 1984: 156. In addition, this "obligation" extended not only to a specific, individual case but also to the administration of all affairs that seemed necessary. See Voet 1704: ad D. 3.5.6; Pothier 1819: 165–175.

[72] According to Finazzi 2003: 535, during the reign of the Severan dynasty, the *negotiorum gestio* and the *actio in rem verso* converged in relation to the regulation of *gestio sine effectu*. This assumption confirms the authenticity of Ulp. 10 *ad ed.* D. 3.5.9.1. See in that regard MacCormack 1982: 355; Chiusi 1999: 124.

and sufficient *ex ante,*[73] at the beginning of the action.[74] Thus, Ulpian shapes the legal incentive, that is, the *actio,* in such a way that it would be given only to those who acted as effectively and usefully as possible in the given situation.

Let there be things that you allow others but not yourself!

Ulpian's ideal citizen is strict with himself but permissive with others. His personal interests cannot jeopardise or corrupt the interests of the social stratum he belongs to. All that is clear from the following case.

"Sed si in aliquem locum inhonestum adesse iusserit, puta in popinam vel in lupanarium, ut Vivianus ait, sine dubio impune ei non parebitur: quam sententiam et Celsus libro secundo digestorum probat. Unde eleganter tractat, si is sit locus, in quem alter ex litigatoribus honeste venire non possit, alter possit, et is non venerit, qui sine sua turpitudine eo venire possit, is venerit, qui inhoneste venerat, an committatur poena compromissi an quasi opera non praebita. Et recte putat non committi: absurdum enim esse iussum in alterius persona ratum esse, in alterius non."[75]

"But if he [the arbiter] ordered them to appear in some disreputable place, for example a pub or a brothel, as Vivianus says, there is no doubt that he may be disobeyed without impunity. Celsus, too, in Book 2 of his Digesta approves this view. He goes on to raise a rather elegant question: if the place is one to which one of the parties could not honourably come, but the other could, and the one who could come there without dishonour fails to do so, and the one for whom it was a dishonour has done so, is the penalty on *compromissum* incurred on the ground that the act promised has not been performed? And Celsus rightly holds that [the penalty] is not incurred, for it is absurd, he says, that the order be valid for one party to the suit but not for the other."

[73] Based on Mod. 2 *resp.* D. 3.5.26, Kortmann 2005: 101 draws a similar conclusion. He argues that in order to assert the claim, it was enough if it seemed *ex ante* that the *dominus negotii* would be enriched by the intervention.

[74] According to Beseler 1930: 173 the *utiliter coeptum* is not original. It is considered to be of Byzantian origin also by Nicosia 1969: 641.

[75] Ulp. 13 *ad ed.* D. 4.8.21.11.

The relevant source says that if an arbiter, in order to conduct the suit, convenes the parties to a disreputable place, for example to a pub[76] or a brothel, the notice can be disobeyed with impunity. That, in itself, is not problematic. But what if the venue designated by the arbiter is one to which one of the parties could come without any difficulty, but the other could not, as it would be dishonourable for him?[77] In such case, the following question may arise: is the party who fails to come to the designated venue, even though he could have done so without dishonour, obliged to pay the penalty for ignoring the subpoena, if the other party, for whom it was a dishonour, has attended to the location?

Ulpian, in agreement with Celsus, answers this question of law in the negative. He justifies his view by arguing that it would be absurd if the command of law be valid for one party to the suit but not the other. He believes that the effect of the norm can only be the same for both parties. And this is so even though the parties presumably belonged to social classes of different ranks.[78] One of them was probably of senatorial rank, while the other may have belonged to the equestrian order or the plebeians. This is indicated by the fact that one of them could visit the disreputable venue without dishonour while the other could not. As a result of the social difference, the parties' financial situation may have also differed. Thus, if the lower-ranking person had to pay the amount imposed for his absence, it would have been more "painful" for him on the one hand, and on the other hand, in terms of its consequences, it would have been accompanied by a kind of moral redistribution in the opposite direction to the material one. Since as a result of the threat of sanctions, both parties would attend to the designated disreputable place in the future, the moral assessment of the party from the senatorial order would be eroded, and the habits of the other, lower-ranking person would gain legal confirmation.

If the Roman jurists had made a decision to the contrary, the sanction would also have to be paid by the person of senatorial rank, had he not attended to the venue below his rank. After all, the sanction either

[76] The Latin expression *popina* is used in the source, which indicated infamous transaction venues from the 2nd century BC. See Monteix 2015: 222.

[77] For such disreputable places *(locus inhonestus)* see Guzzo–Ussani 2006.

[78] Such as McGinn 1989: 329. McGinn may be mistaken when identifying a place undefined in the source as a brothel. That part of the text seems to refer to places different from the indicated examples (pub and brothel).

applies to both of the parties in the same way, or cannot be applied to either of them, in accordance with the tenor of the decision. However, for the senatorial-rank party, this would have meant not only a financial loss, but also a stain on his integrity, while that is not true to the other party. Therefore, if we look beyond the narrowly considered economic effects, the *poena* (punishment) of the same magnitude would not have affected the two parties to the same extent.

The paradoxical nature of the decision lies in the fact that the normative effect attributed to the legal norm, which was equal to both parties, essentially strengthened the social differences between them. Even though the subpoena was applied to the parties in the same way, its effect actually served to consolidate class differences. The jurists' decision to overturn the judge's order ultimately had the effect of excluding locations that can only be visited by lower-ranking persons from the possible venues of litigation.

It is also interesting that the problem of class difference and moral status was related to the financial sanction expressed in the punishment. The examined source emphasises the importance of the moral, or, more precisely, the social aspect over the material one. It does not allow the financial sanction to apply if it involves moral impairment. In this approach, law is not only a tool for balancing material interests, but also a moral compass, and in this function, it contributes to the maintenance of the social *status quo*.

Maintain your masculine dignity when it comes to women, but do not run afoul of them!

The social and legal rules of the relationship between men and women is one of the most telling features of every political regime. Although for Romans discrimination on grounds of sex was part of everyday life, they nonetheless reflected on it. As Papinian put it: "In many parts of our law the condition of women is worse than that of men."[79] The reason for that remark might have been women's levity of disposition *(animi levitas),* or at least that was Gaius's justification as he tried to explain the fact that full aged women were still under legal guardianship.[80] Other sources

[79] Pap. 31 *quaest.* D. 1.5.9. See Péter 2008: 77.
[80] Gai. *Inst.* 1.144.

make references on the weakness of the female sex (*infirmitas, fragilitas* or *imbecillitas sexus, animi levitas*). Such assessment is also a question of power. In a certain sense, women may be more light-hearted due to their nature, but that value judgement was formulated on grounds set up from the perspective of men. If a characteristic is considered negative based on social aspects, that not only tells a lot of the subject of the evaluation, but also of the conditions of those who formulated it. It would be possible to have a social context where women's light-heartedness could be a positive trait. However, Roman law was consistent in that the weakness of the female sex not only served as a justification for legal restrictions but also as a reason for more protection.[81] For example, an error of law could not lead to the infringement of a woman's interests if a *delictum* was committed as a result it.[82] Thus, Roman sources show that discrimination can be realised basically on two levels. Systemic discrimination is where a certain trait that generally characterises a group of people (e.g. women) is assessed as harmful. In this case, discrimination lies in the basis and the specific value base of the assessment. On the other hand, system-immanent discrimination can occur if only disadvantages are linked to the trait perceived as negative, without rights to protection. In this case, the conclusions of the systemic assessment are drawn in an adverse and one-sided manner.

A thousands-of-years old subtype of the discrimination on grounds of sex is where the relationship of the husband and the wife is hierarchical. That issue is analysed by Ulpian in a passage we have already touched upon above.[83]

"Eleganter quaerit Pomponius libro quinto decimo ex Sabino, si paciscatur maritus, ne in id quod facere possit condemnetur, sed in solidum, an hoc pactum servandum sit? Et negat servari oportere, quod quidem et mihi videtur verum: namque contra bonos mores id pactum esse melius est dicere, quippe cum contra receptam reverentiam, quae maritis exhibenda est, id esse apparet."[84]

"Pomponius very properly asks, in the Sixteenth Book on Sabinus, whether an agreement, concluded between a husband and his wife on

[81] Iul. 90 *dig.* D. 16.2.2.

[82] Paul. 1.S. *de iur. et fact. ign.* D. 22.6.9pr. Interestingly, in this text, Paulus does not make reference to women's errors in law related to the conclusion of contracts. Neither does Kaser 1971: 242 nor any of the standard textbooks provide more details in that regard.

[83] Ulp. 36 *ad sab.* D. 24.3.14.1.

[84] Ulp. 36 *ad sab.* D. 24.3.14.1.

that judgment should not be rendered against him to the extent of his resources but for the entire amount, should be observed. He denies that it should be observed. This opinion seems to me to be correct, for it is better to hold that such an agreement was made contrary to good morals, as it appears to have been contrary to the traditional respect that should be shown to husbands."

According to the text, an agreement is contrary to good morals and, therefore, invalid, if in the agreement a husband waived the amount to ensure his subsistence, which he otherwise could have retained after the divorce from the dowry to be given back to his wife.[85]

Ulpian could have chosen several "law-related" arguments instead of this striking moralisation. From today's perspective, for example, it could be held that the agreement was excessively unequal. Or he could also have referred to the fact that the parties essentially circumvented the judicial practice that provided the husband with the benefit of a minimum subsistence. Finally, he could have based his decision on the fact that such a pact is also harmful from the aspect of society, as it leaves divorced husbands without any financial support.

Yet, however obvious they may seem for today's lawyers, those were not the solutions chosen by Ulpian. Instead, he based his judgment on a desirable moral attitude: the respect for husbands. He did this even though he himself was not completely convinced of its truth. In the text no less than three expressions indicate uncertainty: *videtur verum* (seems to be correct), *melius est dicere* (it is better to hold), and *esse apparet* (it appears). However, this is not a matter of certainty. Instead, it is about a relative value judgment, a possible legal opinion of a jurist. Ulpian considered it important not to base legal enforceability on dogmatic reasoning but on a venerable ancient virtue.

The wording has yet another important feature for us. Reading the text thoroughly, we can see that the virtue of respect is not to be demonstrated by the wife, but by the *pactum*. However, the *pactum* is made by two parties, the husband and the wife.[86] If the agreement is disrespectful, then not only the given wife, but also the given husband had failed to grow up to their tasks. The husband deserves no praise for his self-sacrificing efforts to repay the wife's full dowry. On the contrary.

[85] Guarino 1941: 5ff.

[86] According to some, *reverentia* had to be shown by both spouses to one another in a marriage. See Frier–McGinn 2004: 99.

This weak, sentimental man failed to raise to the dignity that befits Roman husbands. The plural form of husbands *(maritis)* makes it clear that this is a general standard. This general standard, the idealised standard of "husbands", is not an intangible ideal. It is both subjective and objective, but it also has an aspect that is not exhausted by the duality of subjective and objective, or facticity and normativity. On the one hand, it is somehow obviously made up by concrete subjects, that is, flesh-and-blood husbands. On the other hand, it goes beyond them, as it is not simply centred around an imaginary average husband. Respect for husbands *(reverentia)*[87] is to be factually shown, but it also must be complied with in an idealistic way.

If you have no time to think things through, listen to your heart!

Situations in which quick decision-making is necessary are often in the focal point of legal regulations. These are situations where typically more harm is generated than usual due to the unexpected, the fact that the participants are unprepared, and the necessity to act. And this is something law must take into account. Modern psychological literature also distinguishes between fast thinking (hereinafter: *System 1*) and slow thinking (hereinafter: *System 2*).[88] Let us look at a specific example, when *System 1* and *System 2* thinking can be sharply separated in connection with a Roman legal case.

"In navem Saufeii cum complures frumentum confuderant, Saufeius uni ex his frumentum reddiderat de communi et navis perierat: quaesitum est, an ceteri pro sua parte frumenti cum nauta agere possunt oneris aversi actione. Respondit rerum locatarum duo genera esse, ut aut idem redderetur (sicuti cum vestimenta fulloni curanda locarentur) aut eiusdem generis redderetur (veluti cum argentum pusulatum fabro daretur, ut vasa fierent, aut aurum, ut anuli): ex superiore causa rem domini manere, ex posteriore in creditum iri. Idem iuris esse in deposito: nam si quis pecuniam numeratam ita deposuisset, ut neque clusam neque obsignatam traderet, sed adnumeraret, nihil alius eum debere apud quem deposita esset, nisi tantundem pecuniae solveret. Secundum quae videri triticum factum Saufeii et recte datum. Quod si separatim tabulis aut Heronibus aut in alia cupa clusum uniuscuiusque triticum fuisset, ita ut

[87] Buckland 1931: 58; for the afterlife of *reverentia* see Duncker 2003: 385.
[88] Kahneman 2013: 20–24. On this theory see also Chaiken–Trope 1999.

internosci posset quid cuiusque esset, non potuisse nos permutationem facere, sed tum posse eum cuius fuisset triticum quod nauta solvisset vindicare. Et ideo se improbare actiones oneris aversi: quia sive eius generis essent merces, quae nautae traderentur, ut continuo eius fierent et mercator in creditum iret, non videretur onus esse aversum, quippe quod nautae fuisset: sive eadem res, quae tradita esset, reddi deberet, furti esse actionem locatori et ideo supervacuum esse iudicium oneris aversi. Sed si ita datum esset, ut in simili re solvi possit, conductorem culpam dumtaxat debere (nam in re, quae utriusque causa contraheretur, culpam deberi) neque omnimodo culpam esse, quod uni reddidisset ex frumento, quoniam alicui primum reddere eum necesse fuisset, tametsi meliorem eius condicionem faceret quam ceterorum."[89]

"After several people piled grain into Saufeius's ship, Saufeius gave one of them his share out of the common heap, and the ship sank: the question arose whether the others could bring action against the master of the ship for their share of the grain on grounds that he diverted the cargo *(actio oneris aversi).* The legal answer is that there are two kinds of the lease of things, either the same thing must be returned (for example, when we give a garment to the fuller for cleaning), or when something of the same kind must be given back (for example, when a mass of silver is given to the goldsmith to make a vase, or gold is given to make a ring): in the first instance, the property still belongs to the owner, in the latter case, it will belong to the transferee with an obligation. The legal situation is the same in the case of a deposit: for where a party has deposited a sum of money without having enclosed it to anything or sealed it up, but simply after counting it, the party with whom it was deposited is not bound to do anything but repay the same amount of money. In accordance with this, the grain seems to have become the property of Saufeius, and he lawfully gave up a portion of it. If, however, the grain of each of the parties had been separated by wooden boards, or in sacks, or in separate, closed barrels, so that what belonged to each could be distinguished, it could not be changed, and then the owner of the grain which the master of the ship had delivered, could bring an action for its recovery. And hence the action on the ground of the diversion of the cargo is inapplicable: as the goods which was delivered to the master of the ship was either all of the same kind and at once became his, and the merchant becomes the creditor, [and therefore] it does not appear that there was a diversion of the cargo, since it became the property of

[89] Alf. 5 *dig. a paulo epit.* D. 19.2.31.

the master of the ship: or the identical article which was delivered must be restored, [and in this instance] the creditor could bring an action for theft, and hence an action on the ground of the diversion of the cargo would be superfluous. Where, however [the merchandise] was delivered with the understanding that the same kind should be returned, the party receiving it would only be liable for negligence *(culpa)* (as liability for negligence exists where the contract is made for the benefit of both parties), and no negligence can exist where the master returned to one of the owners a portion of the grain, since it was necessary for him to deliver his share to one of them before the others, even though he would be in a better condition than the others by his doing so."

The first part of the passage, comprising of a single sentence, is the summary of the facts of the case: several people piled grain into Saufeius's ship.[90] The master of the ship gave one of them his share, then the ship sank.

In part two, Paulus describes the question of law, that is, whether the rest of the merchants can bring an action called *actio oneris aversi* against the master of the ship.

In part three, to answer the question of law, the jurist outlines two analogical arguments that complement each other. The first example of *locatio conductio* is outlined to demonstrate that formally the master of the ship became the owner of the cargo made up of fungible things.[91] Nonetheless, this ownership[92] does not bring about absolute control but entails a burden arising from the law of obligations[93] *(in creditum iri).*[94]

[90] On the legal consequences of piling see De Santis 1946: 111. He argues that the *iusta causa traditionis* was missing as a requirement for the transfer of ownership. In my opinion this argument was based on the contract concluded by the parties and obviously well known by the jurist who formulated an opinion on the matter.

[91] In contrast, Longo argued that the cargo remained in the shared ownership of the merchants. See Longo 1906: 141. As a counterargument, for example Albanese recognises the transfer of ownership, see Albanese 1982: 95–96.

[92] According to Pernice, ownership as a legal construct was necessary due to the underdeveloped nature of the other types of control over things. See Pernice 1963: 97.

[93] Bürge argued that the liability arising from the law of obligations was unaffected by the legal arrangement of the ownership. See Bürge 1994: 400.

[94] Based on the expression "in creditum ire", Longo believes that a twofold legal relationship is established: a loan and a contract for services. See Longo 1906: 148. Arangio-Ruiz firmly rejects the possibility of loan, see Arangio-Ruiz 1978: 312.

This position of control[95] gave the master of the ship the right, inter alia, to distribute the grain[96] among the merchants in accordance with their shares in the port of destination.[97] The second analogy refers to deposit[98] and illustrates that the service provided by the master of the ship was lawful, even though he did not give back the same thing but the same quantity of the same type of thing as performance.

The jurist answers the question of law posed in part four indirectly in the negative: *triticum factum Saufeii et recte datum,* which means that Saufeius became the owner of the grain, and he lawfully gave up a portion of it. Even though it is not explicitly stated, it is clear that the merchants are not entitled to bring the *actio oneris aversi* against the master of the ship in this case.

In part five, the jurist's decision is supported by subtle legal distinctions applied to partly hypothetical cases. First, Paulus declares that if the fungible thing delivered to someone else would have been marked or clearly and physically separated (such as with boards or sacks), then the merchants could have vindicated it, as they clearly would be the owners. Second, he explains that the diversion of cargo does not occur if the master of the ship becomes the owner of the goods at the moment when the cargo is loaded onto the ship and the merchants, in a certain sense, "credit" the goods to the master of the ship.[99] As a result of this legal construct, the carrier obtained an ownership limited by the law of obligations, which is dogmatically not an independent category in modern law. This ownership included the power to distribute piled merchandise,[100] and on its basis the master of the ship was entitled to transfer the ownership of the grain to certain persons validly, without the restriction arising from the principle of *nemo plus iuris.* The merchants could not bring an *actio oneris aversi* against the master of the ship, as

[95] In Földi's explanation, the loading of the cargo onto the ship originally did not result in actual transfer of ownership because Romans were attached to their things. See Földi 1997: 66. A critical opinion was formulated against that argument by Bessenyő 2010: 46.

[96] Such as Benke 1987: 228; Talamanca 1989: 76.

[97] According to Pflüger, the port of destination was not the same for all merchants. See Pflüger 1947: 197. His view does not affect the merits of our conclusions.

[98] Some say that the example of *depositum* is not a mere legal argument, but the legal relationship between the parties was *depositum irregulare.* See Litewski 1974: 215; Bello Rodríguez 2002: 54.

[99] Geiger also argues that "in creditum iri" refers to the transfer of ownership. See Geiger 1962: 28.

[100] Individual solutions applied by the contracting parties could greatly amend the specifics set out in the contracts. See in that regard Watson 1965: 109.

he became the owner of the grain. From the moment of loading the cargo onto the ship, he had the right to decide with which grain *species* he would perform to each merchant, as long as he delivered the right quantity to the right persons. Third, Paulus observes that if the master of the ship fails to deliver the individual thing *(eadem res)* entrusted to him or fails to deliver it to the right person, then the clients can bring an *actio furti* against him. Overall, each example served the purpose of making it clear that Saufeius obtained the ownership of the grain, or, more precisely, the right of purpose-bound disposal.

In part six, Paulus examined more closely the second element of the decision, namely whether the master of the ship preformed lawfully when he delivered one of the merchants his share. He concludes that Saufeius's performance was legally valid *(recte datum),* as he delivered the merchandise, which had not been physically separated, to the right person in the right quantity and with the proper diligence. Delivering one of the clients his share, even if the client was in a better condition than the others by Saufeius's doing so, was certainly not a negligent act *(culpa),* as there had to be a first person to whom Saufeius delivered his share of grain in the course of the performance.

In summary, according to the facts of the case, several merchants piled grain into Saufeius's ship. The master of the ship delivered one of them his share in the port of destination, then the ship sank. The question of law was whether the rest of the injured merchants could bring *actio oneris aversi* against the master of the ship, which was the action for the "diversion" of goods, that is, for delivering the goods to the wrong person. The purpose of this action was to prevent the master of the ship from selling the cargo to third persons, as grain safely delivered to the port of destination was worth much more than grain at the location of loading. In the absence of this action, taking advantage of the significant difference between the two price levels, the master of the ship could have sold the grain to others, and he would have had plenty of remaining profit even after compensating the original merchants. This option had been eliminated by the *actio oneris aversi,* as it allowed the original merchants to bring an action not only for the loading value *(restitutionary damages)* but also for the expected profit *(expectation damages).*

The difficulty for the original merchants was caused by the fact that the master of the ship did not perform to a third party, but to one of them. Therefore, to bring the action against him notwithstanding, they resorted to a sophisticated argument. They claimed that the

master of the ship put one of them in a more advantageous position and thereby discriminated against the others. The justification for the decision refutes this complaint by explaining that in the specific situation someone had to be first, so the conduct would be discriminatory against the others in any case. Thus, the choice made by the master of the ship – in the storm, when he was forced to make an instant decision on the basis of *System 1* thinking – as regards to whom to hand over his share of grain first, enjoyed the protection of the law, regardless of the ethical consideration behind his choice: sympathy for the lucky trader or antipathy towards the others, or just blind chance.[101] Due to the objective external circumstances, in the present case, the act based on *System 1* thinking enjoyed the protection of the law, even though it had essentially the same effect as the malicious diversion of cargo. The latter is clearly the result of a *System 2* type of attitude, and the *actio* was aimed at the latter. It is possible that the master of the ship decided in bad faith against the merchants he disliked and left them for later intentionally. In that case his action was indeed discriminatory, yet it is to be deemed legal. However, if the master of the ship was driven neither by ill will nor by a guilty desire to favour one of the merchants, but by a mere sense of duty, his decision was not discriminatory, despite the fact that his action resulted in discrimination against the majority of merchants.

Do not let yourself be bribed with gifts!

Various gifts were always particularly significant in the relationship between Rome and the provinces.[102] Unlike today, these were not merely gifts of protocol but had a quasi-public-law nature,[103] contributing to the stability of the Empire.[104] In the following, we will examine the guidance given to the governors of the provinces by the centre of the Empire in relation to the acceptance of presents.

"Non vero in totum xeniis abstinere debebit proconsul, sed modum adicere, ut neque morose in totum abstineat neque avare modum xeniorum excedat.

[101] This dilemma is a typical Leibnizian *concursus,* see Leibniz 1666: sec. XIX.
[102] Cf. Coffee 2017: 48.
[103] Veyne 1990: 5–6.
[104] See Mauss 1993: 38.

Quam rem divus Severus et imperator Antoninus elegantissime epistula sunt moderati, cuius epistulae verba haec sunt: »quantum ad xenia pertinet, audi quid sentimus: vetus proverbium est: οὔτε πάντα οὔτε πάντοτε οὔτε παρὰ πάντων. Nam valde inhumanum est a nemine accipere, sed passim vilissimum est et omnia avarissimum.«"[105]

"The Proconsul should not absolutely refuse to receive presents, but he should act with moderation, so as not rudely to reject them altogether, nor avariciously transcend the bounds of reason in their acceptance. Which matter the Divine Severus and the Emperor Antoninus have very properly regulated in an Epistle, the words of which are as follows: »with reference to presents, our declaration is as follows. As the old proverb says: Not all things should be received, nor at all times, nor from all persons. For, indeed, it is inhumane to accept gifts from no one. Yet it is most despicable, and most avaricious to accept without distinction everything that is given«."

This text addresses the issue of how many gifts a *proconsul* who governs a province can accept from provincial residents.[106] According to Ulpian, the *proconsul* should show moderation.[107] He should not refuse every gift, but he should not greedily hoard them either. Regarding the degree of the acceptance of gifts, the emperors Septimius Severus and Caracalla recalled an old Greek saying in an epistle: "Not all things should be received, nor at all times, nor from all persons." For it would be inhumane[108] for the *proconsul* to reject everyone's gifts. However, accepting all gifts would be despicable. And, finally, it would seem most avaricious[109] to accept without distinction everything that is given – says the justification, in Latin again, following the Greek proverb.

These imperial guidelines do not provide a clear answer. That is because the structure of the Greek proverb and the "Latin" explanation (for the sake of simplicity, I shall refer to the Roman imperial explanation as such hereinafter) differ from each other, and the normative massages they convey also differ slightly. The Greek proverb comprises a system of conjunctive conditions consisting of three elements: not all things should be received, nor at all times, nor from all persons.

[105] Ulp. 1 *de off. procons.* D. 1.16.6.3.
[106] On the text see Procchi 2012: 140.
[107] On the proconsul's obligations see Talamanca 1976: 138.
[108] Palma 1992: 172–173; Kreuzsaler–Urbanik 2008: 151.
[109] A similar moral approach is shown in Sen. *Ep.* 94. On greed as excess see Arnese 2003: 41.

The Latin explanation, on the other hand, defines two extreme points of reference: first, rejecting everything is inhumane, and second, accepting everything from everyone is despicable and greedy. It is not entirely clear whether the two guidelines suggest accepting the same quantity of gifts.

Neither do the contents of certain expressions overlap completely. For example, the Greek proverb includes an adverb of time *(οὔτε πάντοτε* – not always), while the Latin explanation includes an adverb of place (*passim* – everywhere). In classical legal terminology, the expression *passim* usually means "without selection" or "without compelling reason". In this text, it may specifically indicate that the *proconsul* should rather not accept gifts from persons of low social status.[110]

However, as regards the dissimilarity between the Greek and Latin texts, the striking difference in style is more important than the difference in content. The Greek sentence is an ordinary proverb, while the Latin is an elevated, moralising text.

By referring to the three sins (inhumanity, despicability, greed) the Latin justification transformed the Greek folk wisdom into a sophisticated moral teaching. The latter is very similar to the Stoic doctrine of moral responsibility inspired by Aristotle. As we know from the work on ethics penned by the late-Stoic Hierocles,[111] who lived in the first half of the 2nd century BC, this doctrine defined the moral obligations of the individual towards himself and others in ever-expanding circles: spirit, body, parents, brothers, wife, further relatives and the genus, fellow citizens and the entire human race. The simplified version of these concentric circles can also be found in the examined fragment. First, as an individual, everyone is responsible for themselves. Second, as a member of society, all individuals are also responsible for their fellow citizens. Finally, as a member of the human race, everyone is linked by a moral bond to the whole of humanity.[112]

In my opinion, the three sins mentioned in the Latin explanation (inhumanity, despicability, greed) refer to the three levels of Stoic cosmopolitanism (individual, state, humanity). On the level of humanity,

[110] The governor of the province was separated from the locals, see Potter 2010: 26.

[111] This is not the Neoplatonic Hierocles from the 5th century BC. The two of them are often confused, see Schibli 2002: 13.

[112] On Hierocles's relevant tenets see Ramelli 2009: lxxix.

it is inhumane *(inhumanum est)* to accept gifts from no one.[113] A *proconsul,* who rejects everyone, cuts himself off from the community of people. As regards the middle, state level, as we have seen, the governor must pay attention to the local social hierarchy. He can only accept gifts from high-ranking people, otherwise he would degrade himself *(vilissimum est).* Finally, at the individual level, the proconsul must overcome his own individual greedy passion *(avarissimum est).*

This beautiful fragment is not only a textbook example of how Ulpian translated an ordinary Greek saying into a practical tool of Roman colonialism. It also excellently illustrates how the most trivial administrative legal problem can be solved on the basis of a comprehensive moral system that regulates the passions.

What you let go in your soul, never want back!

The tenacity of the spirit and the clarity of intentions are crucial characteristics of Ulpian's ideal citizen, who, thus, can also act as a predictable and reliable member of the state. Earnest determination of will was also expected by the law. A fragment from Ulpian's *edictum* commentary provides an apt example for that:

"Tamdiu autem condictioni locus erit, donec domini facto dominium eius rei ab eo recedat: et ideo si eam rem alienaverit, condicere non poterit.

Unde Celsus libro duodecimo digestorum scribit, si rem furtivam dominus pure legaverit furi, heredem ei condicere non posse: sed et si non ipsi furi, sed alii, idem dicendum est cessare condictionem, quia dominium facto testatoris, id est domini, discessit. […]

Et ideo eleganter Marcellus definit libro septimo: ait enim: si res mihi subrepta tua remaneat, condices. Sed et si dominium non tuo facto amiseris, aeque condices.

In communi igitur re eleganter ait interesse, utrum tu provocasti communi dividundo iudicio an provocatus es, ut, si provocasti communi dividundo iudicio, amiseris condictionem, si provocatus es, retineas."[114]

[113] Aulus Gellius understands *humanitas* as being well-mannered, but he also recognises its universal role related to humanity, see Gell. *NA* 13.17.
[114] Ulp. D. 13.1.10pr. – 13.1.12.1.

"There is ground for a *condictio* so long as the ownership of the property has not been lost to the owner by [his own] act: and therefore, if he transfers it to another,[115] he cannot bring suit for its recovery.

Wherefore Celsus states in the Twelfth Book of the Digest, that if the owner bequeaths the stolen property to the thief absolutely [providing a right *in rem*], the heir cannot bring an action against the thief to recover it: and where [the bequest] was not made to the thief himself but to another, the same rule is applicable, and a *condictio* will not lie, as the ownership is lost by the act of the testator; that is to say of the owner.

Consequently, Marcellus very properly states in the Seventh Book of his commentary on the *edictum:* If your property stolen from me still remains yours, you can bring a *condictio.* But if you lose the ownership in some other way than by your own act, you can likewise bring a *condictio.*

Therefore he very aptly says that where the property is held in common, it makes a difference whether you instituted proceedings against your co-owner by an action for partition, or he brought suit against you; if you instituted the proceedings, you will lose the right to bring a *condictio,* but if he did so, you will still retain that right to bring *condictio.*"

The source is a fine example of that in Roman law, the protected position of the owner was made contingent upon the will of the owner, that is, upon the subject, the owner himself. That was so even if the property was stolen from him. Thus, in some cases, not even the deep hatred for thieves felt by the Romans *(odium furum)* allowed for a *condictio* to be brought in addition to the *actio furti,* the obvious action against thieves. As it should be noted that "[t]hrough hatred of thieves, and for the purpose of making them liable to a greater number of actions, the rule has been adopted that, in addition to the penalty of double and quadruple the value of the property obtained, thieves are also liable to the form: *'si paret eos dare oportere',* even though the action by which we seek to recover what belongs to us *('rem suam esse')* may also be brought against him".[116] Because of this, some thieves may have been better off than others simply because of an act of ownership beyond their control. In other words, the will of the owner overrode even the serious penal and preventive action against theft, as well as the dogmatic basic rule, namely the possibility of accumulating claims.

[115] In the terminology of Roman law, the verb *alienare* was not used for a transaction of alienation regulated by the law of obligations *(Verpflichtungsgeschäft),* but rather a transfer of ownership *(Verfügungsgeschäft),* see Heumann–Seckel 1907: 27.
[116] Gai. *Inst.* 4.4.

You may use tricks in business but never be a fraud!

How does the pure moral of a citizen fit the cunning rules of business? Interestingly, Romans found it acceptable for contracting parties to mutually "mislead" one another in terms of their own price preferences. But of course, as we will see, only for the sake of the state.

"Idem Pomponius ait in pretio emptionis et venditionis naturaliter licere contrahentibus se circumvenire."[117]

"Pomponius also says with reference to the price in a case of purchase and sale, that the contracting parties are permitted to naturally outsmart one another."[118]

In this way, the negotiated purchase price was made suitable to ensure the distribution of the surplus value inherent in the goods relatively proportionately between the parties. For example, if the goods that cost the seller 80 are valued by the buyer at 100, a purchase price of 90 ensures the fair sharing of the surplus value inherent in the goods between the parties, and thus the difference between them, as well as the wealth differences within the community remain unchanged. A deal aimed at outwitting each other was automatically – or, as Ulpian put it: naturally[119] – a solution that was not only effective but also served the common good. Trickery could not rise to the level of fraud – an unlawful act – but it was obviously immoral, as it was aimed at "circumventing" the other. However, despite the mutual immorality, moderated bargaining was still deemed ethical. It was considered the duty of a wise person – a person living his life well – not to act excessively altruistically and not to pay more for the goods than what the seller asked for, but also to keep the stability of his country in mind:

"[S]apientis ionem rei fami nihil contra mores, leges, instituta facientem habere rationem rei familiaris. Neque enim solum nobis divites esse volumus, sed liberis, propinquis, amicis maximeque rei publicae. Singulorum enim facultates et copiae divitiae sunt civitatis."[120]

"[I]t is a wise man's duty to take care of his private interests, at the same time doing nothing contrary to the morals, laws and institutions. For we do not aim to be rich for ourselves alone but for our children,

[117] Ulp. 11 *ad ed.* D. 4.4.16.4.
[118] For further source texts with similar content see, for example, Jusztinger 2016: 105f.
[119] Ulp. 11 *ad ed.* D. 4.4.16.4.
[120] Cf. Cic. *Off.* 3.62–63.

relatives, friends, and, above all, for our country. For the private fortunes of individuals are the wealth of the state."

This means that in certain cases, even good motives, namely honesty and magnanimity should be kept at bay in order to serve the interest of the state.

Fear no ghosts!

A Roman citizen was obliged to remain persistent even in the face of a physical threat – at least to a certain extent. Nonetheless, that certain extent required by law is to be examined more closely. It is for certain that the magnitude of the threat was taken into account even by the Romans,[121] but one of Ulpian's fragments[122] reveals that not only such magnitude was considered at the legal assessment of the situation. It appears that the actual fulfilment of the threat may also have been relevant.

To address that issue, let us touch on the field of *delicti* and analyse the following source text:

"Metum autem praesentem accipere debemus, non suspicionem inferendi eius: et ita Pomponius libro vicensimo octavo scribit. Ait enim metum illatum accipiendum, id est si illatus est timor ab aliquo. Denique tractat, si fundum meum dereliquero audito, quod quis cum armis veniret, an huic edicto locus sit? Et refert Labeonem existimare edicto locum non esse et unde vi interdictum cessare, quoniam non videor vi deiectus, qui deici non expectavi sed profugi. Aliter atque si, posteaquam armati ingressi sunt, tunc discessi: huic enim edicto locum facere. Idem ait, et si forte adhibita manu in meo solo per vim aedifices, et interdictum quod vi aut clam et hoc edictum locum habere, scilicet quoniam metu patior id te facere. Sed et si per vim tibi possessionem tradidero, dicit Pomponius hoc edicto locum esse."[123]

"We must understand the threat to be a present one, and not the mere suspicion that it may be exercised: and that is what Pomponius states in the Twenty-eighth Book. For he says that the threat must be understood to have been occasioned, and that is so if fear has been

[121] A fragment from Ulpian clearly states that not just any fear should be deemed relevant, but only that of a greater evil *(timor maioris malitatis).* See Ulp. 11 *ad ed.* D. 4.2.5.
[122] Ulp. 11 *ad ed.* D. 4.2.9pr.
[123] Ulp. 11 *ad ed.* D. 4.2.9pr.

excited by someone. Thereupon, he raises [the question], namely: would the Edict apply if I have abandoned my land, after having heard that someone was coming armed to forcibly eject me? And he states that it is the opinion of Labeo that the Edict would not be applicable in this instance, nor would the *interdictum unde vi* be available, for I do not appear to have been ejected by force, as I did not wait for this to be done but took to flight. It would be otherwise if I had departed after armed men had entered upon the land, for, in this case the Edict could be employed. He also states that if you forcibly erect a building upon my premises by means of an armed band, then the *interdictum quod vi aut clam,* as well as this Edict would apply, because in fact I suffer you to do this through intimidation. If, however, I deliver possession to you because of the employment of force, Pomponius says that there will be ground for this Edict."

In the source text, Ulpian raises the question of whether a person who flees his property upon hearing that he is approached by someone armed would receive legal remedy based on the relevant *edictum*. According to Labeo, neither the *actio quod metus causa* for threat, nor the *interdictum* was available, due to the fact that the owner fled, not waiting to be forcibly removed from his property. The law comes to his aid only if someone enters his territory armed. In this case, he can be sure that the threat must be taken seriously. Such conduct of those posing the threat clearly show that they are ready to fulfil the threat and commit actual violence. Accordingly, the passage clearly focuses on the person who posed the threat instead of the point of view of the one who was threatened.

The criterion of the seriousness of the threat underlies the requirement of the presence of the threat *(metus praesens).* Any threat that is present must obviously be taken seriously. However, the criterion of presence does not mean that the violence must actually be carried out. Illegal entry to property does not necessarily involve open violence: it involves present – that is, serious – but not necessarily actual violence.

According to the other, presumably hypothetical situation, someone demonstrates significant force, and forcibly erects a building on the owner's land. Here, the opinions of legal scholars seem to be divided regarding the available claims. According to Labeo both the *actio* at issue and the *interdictum quod vi aut clam* are available cumulatively, as the owner only tolerated the construction out of fear. Pomponius, however, argues that the owner could bring an action based on the *edictum* if

he surrendered the property as a result of force. The difference can be explained by the fact that while the owner was paralysed by fear caused by aggressive behaviour in the first case, actual violence was committed in the second case. In relation to the cases of erecting a building on someone's land with the demonstration of power *(forte manu adhibita),* the word *vis* most likely did not refer to actual physical violence, but only to the obvious unlawfulness of the act (ruthless disregard of the owner's will), while in the second case the same term may refer to taking possession by an act of violence. How can the difference be explained, that while in the first case, when there was no violence, two legal remedies were available, and in the second, where violence actually took place, they could only sue on the basis of an edict?

It is conceivable that the two legal solutions refer to two independent situations. In the first case, the act of building on the land with the display of force is continuous (which also obviously assumes taking possession), while the other only refers to a one-time, spot-on, violent takeover of possession. However, this explanation is less likely due to the conjunction "but" *(sed).* Had it been two independent situations, this conjunction would not make much sense. On the other hand, it is also suspicious that in the first case the "mere" demonstration of force is emphasised by the text, while in the second that is contrasted with actual violence. It seems that we will not solve this problem so easily.

Perhaps, the answer lies in the fact that, in the first case, fear paralyzed the expression of will that was in line with the owner's interests. In the second case, the rightful owner was able to express his will, but due to violence, his will was not realised. Based on this, it seems that Roman law considered the frustration of the expression of will more dangerous than the violent suppression of the expressed will. This approach is seemingly contrary to the principle observed in modern law where, in the regulation of threat, the decisive factor is not simply the fact or the magnitude of the threat, but whether the implementation of the threat leads to economically or socially harmful consequences.[124] However, the Romans might have had a similar point in mind. If so, the character of steadfastness described by Ulpian also fundamentally serves the interests of the state.

[124] Posner 2003: 115; Cserne 2009: 8.

Summary

What do the above "nine commandments" tell us? Perhaps the most striking common feature of all those pieces of life advice wrapped in legal norms is that each serves the purpose of improving the personality of the addressees. At creating the image of the man behind his legal system, Ulpian pictured a citizen and able warrior of the Roman Empire with solid morals, an idealised *bonus vir* of a kind. This *bonus vir* was nor the reasonable wise man of the Stoics, neither the desire-driven ideal of the Epicureans. Brouwer assumes that there is a difference in level between a Stoic wise man and the Roman ideal. He argues that Roman law does not expect the perfect behaviour envisaged by the Stoics, but a more realistic, more down-to-earth conduct, which may not be flawless but is reasonably justified. In my opinion, however, the difference between the Stoic Greek wise man and the Roman *bonus vir* is not simply a matter of level but of quality. The latter does not intend to create harmony between the actual human action and the occurrences of the world, and between natural law and positive law by choosing perfect rationality or – in another approach – free individual preferences as the standard of human action. The Roman ideal of action is not subjective but objective in nature. Accordingly, it does not primarily expect individual freedom from law, but social stability. This is the only ideological basis on which the Romans could create their approach to law, which we have been preserving to this day.

But why did the Romans succeed in resisting the seductive force of subjectivity, while the Greeks did not? I believe that the reason underlying their success is to be sought in a specifically Roman legal institution, namely the *patria potestas.* Gaius bears witness of the fact that this was indeed a specific legal institution unique to Romans:

"[f]ere enim nulli alii sunt homines, qui talem in filios suos habent potestatem, qualem nos habemus."[125]

"[f]or there are hardly any other men who have such authority over their children as we have."

Paternal power made the Roman ethics of actions past-oriented, in which therefore the great deeds and morals *(mores maiorum)* served as the standard. The greatness of the idealised conduct of the predecessors (the Catonian *nostri maiores*) was justified by the prosperity of the

[125] Gai. *Inst.* 1.55.

Roman state. The Romans were well aware of this connection – or at least Polybius was, whose work reports their success. I do not refer to the renowned concept of the so-called "mixed" constitution *(μικτή πολιτεία),*[126] but to his explanation concerning the masks of the ancestors, borrowed by the Romans from the Etruscan burial rituals. The Roman youths were inspired by the lifelike portrayal of their ancestors to do great deeds just like them, thus contributing to the Roman state becoming a global empire.

Consequently, for Romans, the rightness of individual action was not ensured directly by harmony with the world-ruling reason, but rather by the fact that the given act contributed to the good of the state *(salus rei publicae),* and thus indirectly to the preordained cosmic order. In addition to the systematic Greek thinking, the past-orientation of the *patria potestas* and the intersubjectivity of the state *(consensus iuris)* were the elements required for the birth of the modern-sense objective concept of law and concept of state.

After almost all the inhabitants of the Empire[127] received Roman citizenship[128] thanks to Caracalla's edict[129] issued in the wake of Ulpian's effective intervention, Ulpian intended to extend also the old Roman human ideal to the new citizens. The fact that the granting of Roman citizenship was driven by economic motives[130] can be considered an external, formal expansion of the Roman human ideal. Ulpian's reform intended to implement the counterpart of that: an internal expansion of the ideal's content. Ulpian strove to overcome the entropic forces, threatening to tear the state apart, by the powerful expansion of the Roman human ideal, at a time when such ideal was no more than a fragment historical memory even for the "indigenous" Romans. Christianity, on the other hand, gave an intense response to challenges. Ulpian tried to achieve the goal of good state through good citizens. Yet, he saw citizens as atomised individuals. From his point of view – the perspective of one of the highest-ranking public officials of the Roman Empire – this may not be surprising. From the perspective of power, the relationship between the state and its citizen is primary, preceding even the relationship between people.

[126] See in that regard Hamza 2007: 30.
[127] Except for the so-called *dediticii.* See in that regard De Ruggiero 1910: 1553–1554; Wirth 1997: 32–34; Jones 1960: 140.
[128] Affirmatively Gaudemet 1967: 528–534.
[129] See in that regard De Martino 1975: 777–781.
[130] See Clemente 1977: 270; similarly earlier Rostovtzeff 2003 [1926]: 639–640.

Ulpian's approach may also have been influenced by one of the prevailing spiritual currents of the time, namely Stoic philosophy.[131] In Stoic "political theory", the state consists of virtuous persons, and only virtue makes a person a citizen and free. Instead of focusing on interpersonal relationships, this tenet was centred around the individual as the tiny mirror of the cosmos. When seeking an answer to the question of why did the juristocratic attempt led by Ulpian to salvage the Empire failed to achieve enduring success (or, at least, success that was expected from it, as otherwise the reform attempt had an enormous influence on the development of law in later periods), this aspect may be crucial. It may not only explain the failure of the reform, but – among other reasons – even the fall of the Empire itself; therefore, this aspect may also enrich the views formulated on that matter in the literature. There is a saying based on a Heinian thought:[132] the *Digesta* is the Bible of selfishness. If this is true, then a human ideal based on rational self-interest and ancient Roman virtues were not able to save the Empire. The new world was built on the promise of solidarity and a different book: the *Bible*. As we have seen, Ulpian's effort was to equalise people upwards, picturing a world where almost every subject of the Empire is a Roman citizen, and the behaviour of each of them is adjusted to the ideal Roman patrician of the age of the Republic. Christianity, on the other hand, made a downward gesture to equalise human beings, slaves and free citizens, expecting them "only" to embrace the commandment of love. As Paul says in his Epistle to Philemon:

"διὰ τὴν ἀγάπην"[133]

"yet for love's sake I prefer to appeal to you"[134]

Ulpian failed to recognise that people desired something much more tangible than the intangible law. With its solutions polished to perfection, Roman law was able to handle minor frictions that occurred during the period of economic and military prosperity of the global empire but failed to give answers to the masses concerning their everyday life. Moreover, Roman law was not the main pillar of the building of the Empire. It only assisted the network of the political, military and economic interests that ensured the sufficient level of unity of the

[131] Manthe 1997: 12.
[132] Heine 1970: 149.
[133] Philemon 1:9.
[134] ESV.

diverse provinces. As this sustaining force weakened due to internal crises and external calamities, sophisticated law fell into the sands of oblivion without a safety net. At the same time, Christians organised a state within the state. They established a new identity and lasting moral – and later economic – bonds, initially parallel with the existing power structures. Romans had no clue how to handle Christianity, as for them it was neither a religion nor a philosophy. Perhaps that is why the followers of Jesus could, in a certain sense, subdue the largest empire on earth at that time. And the Christians received unexpected help too. Marginalised politically, legally and economically in Roman patriarchal society,[135] women and slaves were the ones to struck one of the most staggering blows to Ulpian's legal religion intended for salvation. It is less well-known that Heine not only considered Roman law the Bible of selfishness, but also the "Bible of the devil".[136] Considering that, it is only right to ask: Is rationality the greatest enemy of love? Or: Can an empire be stabilised solely on the ground of rationality and individuality? Ulpian, at least, did not succeed in that attempt.

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[135] On the role of women see Stark 1996: 95–128.
[136] Heine 1970: 75.

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Gábor Béli

Hungarian State Organisation – The System of Donations and the Resulting Consequences until the 16th Century

Introduction

The birth of the Hungarian state resulted from the construction and organisation of a hegemonic power over the territory and population that had been occupied (in part from the defeated and subdued prominent members of the kindred and other Hungarian *liberi*), and thus controlled by Grand Prince Géza and his son, the first king of Hungary. By 972, only Géza and his close relative, Koppány (and perchance someone from Koppány's ascending line, if any of them was still alive) remained from the Árpáds' princely kindred in the territory subjected to the Árpáds. Established and expanded by force, the power of Géza was secured by organising a new type of dominance. In 972, the Grand Prince asked the Holy Roman emperor to send priests to convert the Hungarians. Then, to establish a peaceful relationship, Géza sent twelve of his prominent men *(XII primates Ungarorum)* to the *Hoftag* held by Otto I in Quedlinburg on the Easter (23 March) of 973, and, through his envoys, relinquished his claims for the occupied Bavarian and Moravian territories. Gyula Kristó assumed that the reason underlying this search for alliance was Géza's attempt to find means to avert the danger arising from the alliance between the Holy Roman and the Byzantian empires, sealed by the marriage of co-emperor Otto II and the Byzantine princess Teophano.[1] However, there is no trace of Byzantium's efforts against Hungary, their plans did not exceed the defeat of the Bulgarians. The occupation of the Carpathian Basin never occurred to the emperors in the 9th–10th centuries, even the "ancient Sirmium lost its strategic significance and charm in this period" for the Byzantian Empire.[2] It became clear to

[1] Kristó 1985: 46.
[2] Bóna 2000: 74.

the numerous attendees of the *Hoftag* held in Quedlinburg that, building a monopoly of power in the Carpathian Basin, the Grand Prince Géza became a power factor to be reckoned with.[3] Such recognition was most likely a considerable factor in the relations and alliances that Géza established to create a safe environment for his power. From the alliances he made through the marriages of his children, the most crucial proved to be the marriage (995–996) of his son, Stephen and Gisela, the daughter of Henry the Quarrelsome and the sister of the new duke of Bavaria, Henry IV. Incidentally, in accordance with the agreement, the Bavarians gained significant territories on the two banks of the Danube as a result of the marriage, establishing the Hungarian–German borders along the Morva and the Leitha for centuries.

Although the factual circumstances of the way Géza built his country are unknown, his son Stephen clearly set up his own dominance with the help of his father's system of princely power, completing it as the first king of the country surrounded by the Carpathians.

Since when have the Hungarian state existed?

The building of Géza and Stephen's power, the process that resulted in the organisation of the new type of Christian royal power linked to King Stephen I, is commonly described as the foundation of the state. According to Pál Engel, however, defining this process in such a way is "somewhat" anachronistic, "as the political system established in that period had been far from earning the name 'state' for centuries to go".[4] Albeit Engel criticised the premature nature of the term "state" from the expression "foundation of the state", in a legal sense, it is the "foundation" part that may raise concerns. That is because the foundation of a state or, indeed, the establishment of any system meant to serve

[3] The ceremony in Quedlinburg was held with the attendance of the two emperors (Otto I and his son and co-ruler Otto II) and their wives, with "external participants" such as the vassals of the Empire: King Harald Bluetooth of Denmark and Prince Pandulf Ironhead of Benevento; Duke Boleslav II of Bohemia, Bolesław (the later Bolesław II the Bold), the son of Duke Mieszko of Poland, sent as a hostage by his father; the envoys of the pope, the envoys of Emperor John Tzimiskes of the Byzantian Empire *(legati Grecorum),* 12 *primates* of Hungary, two dignitaries from Bulgaria, the envoys of Prince Yaropolk of Kiev, and the representative of the Spanish Umayyads. Bóna 2000: 73; Gulya 2002: 27; Katus 2000: 279.

[4] Engel 2001: 26.

a specific purpose presupposes an individual legal act (linked to a specific occasion, that is, place and time) aimed at creating and ensuring the required organisational and operational preconditions and – besides that or together with that – at determining, adopting and recording the organisational and operational rules. Accordingly, the key question is whether the political structure and power organisation established by St Stephen in the footsteps of his father, on the basis of Christian principles, can be considered a state based on its features. Therefore Engel – just like many before him at the beginning of this century, such as Márta Font or Endre Sashalmi – following Otto Brunner and Joseph R. Strayer's definition of the state, rejected the existence of St Stephen's state, Sashalmi even argues that the use of the concept of the state for "medieval political arrangements" is outright misleading.[5] True, if we consider the modern criteria of the state, the power structure and political organisation established under St Stephen bear no more than a few features of statehood. Nonetheless, if the "modern" state exists, then its natural precursor is a "non-modern" or, if you like, "archaic" state, given that the state – which, according to many, can (only) be equated with the modern state – is not established by compliance with joint criteria that can be or are determined in advance, but it comes into being by functioning in institutions created by the power and political factors, by suitably shaping the existing power and political interests, and by systemising novel institutional solutions with measures and legal norms that enable the assertion of the current power and political goals and aspirations. Taking also the historical antecedents into account, the state has no characteristics independent of the given historical period that would allow for a definition uniformly applicable for every state, fully defining statehood and providing an exhaustive list of state quality. On the other hand, there are typical features that characterise the functioning of a state, organisational and institutional solutions and manifestations that indicate or show statehood and the existence of a state.

After unifying the provinces of the princely kindred of the Árpáds by defeating Koppány in 998, St Stephen had himself crowned king at the Christmas of 1000 (25 December 1000 or I January 1001) with authorisation from the pope, thus gaining Christian royal legitimacy or, with a modern term, international personality in Europe. According to the nearly contemporary account penned by Bishop Thietmar of

[5] Font 2009: 92–93; Sashalmi 2006: 9–10; Makk 2010: 17–18, 20–21.

Merseburg, Stephen received a "crown and blessing" from the pope through the "favour and encouragement of the emperor" *(imperatoris gratia et hortatu)*.[6] József Deér argued that "at the turn of the 10th and 11th centuries, the bestowal of a crown upon a Christian ruler did not depend on the sovereign decision of the pope but was only possible with the consent of the emperor, that is, the ruler who actually controlled the Christian world".[7] Otto III undoubtedly played a role in Stephen's coronation – or in the pope's sending of the crown according to tradition[8] – although, since it is not evidenced by any surviving data, the emperor's approval was not a formal requisite for the validity of the papal authorisation of the anointment.[9] Visiting Rome by the end of the year 1000, the emperor aspired to resurrect the Roman Empire with Pope Sylvester, who was his former tutor, Gerbert d'Aurillac. Due to that, whether as the initiator of Stephen's coronation or as the supporter of the pope's decision, Otto was interested in Hungary's integration into the "Christian empire without this being an actual dependent relationship for Stephen".[10] A sovereign ruler, St Stephen continued his father's policy seeking peace with the country's potent neighbour, Byzantium, and with his brother-in-law, Henry II. He only got involved in a conflict with Conrad II in 1030, after the extinction of the Saxon (Salian) dynasty and chased the emperor's troops attacking Hungary to Vienna and then crushed them. Stephen "lived in peace" with the son of Prince Svyatoslav of Kiev, Vladimir, the only proof of which is the lack of armed conflict between them.[11] In 1018 the German–Polish peace treaty resulted in the settlement of the relationship between Stephen and the Poles, which had been uneasy due to the almost continuous conflicts between the emperor and the Polish

[6] Kristó 1999: 110.

[7] Deér 1938: 96.

[8] Endre Tóth's reasonably correct arguments are against the strongly embedded tradition of the sending of the crown: "The significance of the anointment in the coronation cannot be questioned by the data that report on the bestowal of regalia […]. Of course, theoretically neither the pope's nor the emperor's sending of the crown can be ruled out: however, this was not necessary and in Stephen I's case there is no trace of it in the 11th-century sources. […] in the 11th century, the quality of the coronation was not given primarily and prominently by the crown but by the anointment *(unctio)*. The role of the Hungarian coronation crown as a sole and true coronation regalia, emerging from the mid-12th century, cannot be projected onto the 11th century." Tóth 2000: 58.

[9] Holub 1944: 38.

[10] Engel 2001: 29.

[11] Font 2022: 96–97.

prince, aggravated also by Boleslav the Brave's invasion of Hungary in the years before 1018.[12]

A sovereign ruler, St Stephen issued his own currency. The inscription on the obverse of the obulus (half a denarius), modelled on German coins, reads *Stephanus Rex,* while the reverse reads *Regia Civitas.* Stephen's first money, however, was the silver denarius minted before 1006, at the time of or shortly after the coronation. The obverse depicted a hand holding a winged lance, with the inscription *Lancea Regis,* while the revers reads *Regia Civitas.*[13]

Kristó obviously considered "legislation" a feature of a sovereign ruler, recalling St Stephen's two "Books of Laws".[14] It is accepted and uncontested that the mandatory rules of conduct made by the first king of Hungary should be defined as laws. Even those, such as Engel, who doubt the existence of St Stephen's state, agree that laws and books of laws did exist as early as in the 11th century. Engel stressed that "two Books of Laws originate from Stephen himself", continuing his related explanation with outlining the history of St Ladislaus's "Books of Laws".[15] But if after the reign of the first king, the Hungarian state was indeed, "far" from being established "for centuries to go", then defining St Stephen's rules as laws or books of laws would be just as anachronistic as defining his political organisation as a state. Because in terms of the strictly regulated order of legislation, the modern concept of law – existing within the modern frameworks of the state – cannot be equated with the so-called "legislation" that resulted from the unconditional power characterising the era of state organisation, which, thus, is to be considered "royal law-making". However, by prescribing mandatory rules of conduct, the king – the first king of Hungary in our case – did in fact become a legislator just as much as today's legislature functioning on the basis of principles and rules enshrined in the constitution or fundamental law. Kristó argued that St Stephen's "First Book of Laws was essentially the first criminal code". Yet, even though it defined several delicts and prescribed the related punishments, deeming the first *decretum* – drawn up and edited by the Saxon Thankmar between

[12] Kristó 1999: 73.
[13] Bóna 2000: 84.
[14] Kristó 1999: 59–60.
[15] Engel 2001: 37.

1024 and 1025[16] – a "criminal code" would indeed be anachronistic, as the legal dogmatic features of criminal codes crystallised only in the 19th century.

In line with Kristó's opinion, the issuance of charters should also be considered an indicator of the functioning of the state. Even though no original, authentic charters survived from the time of St Stephen's reign, the earliest interpolation – dated 1002 but actually drawn up in the 12th century – summarising the rights of the Pannonhalma Abbey was based on a charter issued under the first king of Hungary. The Greek-language deed of foundation of the Veszprémvölgy Convent also dates back to St Stephen's reign (issued before 1002), but in this case only the text is original, as the surviving transcriptions were made in 1109, under King Coloman.[17]

As for the organisational features of the state functions of royal power, St Stephen administered the territories subjected to his power by establishing castle *ispanates (comitatus castri)* and castle counties. It should be noted, however, that the administration through castle *ispanates* and castle counties cannot be considered public administration[18] either under St Stephen or during the era of his successors from the Árpád dynasty or under the kings of diverse dynasties. In Engel's approach, counties cannot be considered a type of "administrative units", so he, too, used the word "public administration" in quotation marks, obviously as a comparison. These institutions subordinated to the *ispáns,* as well as the *ispáns* themselves at the head of the castles and the counties, were bodies of the royal government, whose operation and functioning necessarily included administrative tasks and activities enforcing the royal will. The king assembled his royal council from ecclesiastical and secular dignitaries (both foreigners and Hungarians) directly (i.e. personally) beholden to him, and the secular members of the council, with regard to their tasks, were primarily the king's *ispáns.* "Linked to the person of the ruler", this council had no jurisdiction but only duties set forth by the king.[19] The king adjudicated at his discretion in his court or through delegated judges.

[16] Csóka 1974: 154–159, 172–173.
[17] Szentpétery 1930: 36; Fejérpataky 1892: 21–22, 31–32, 38–39.
[18] Makk 2010: 24; Engel 2001: 65.
[19] Bónis s. a.: 95–96.

Opposing those who rejected to classify St Stephen's power structure and political organisation as a state, Ferenc Makk correctly explained that "as a *state,* under the leadership of the king and through its own laws and existing institutions, St Stephen's political structure organised and administered the whole life of the people under its authority in a sovereign way, while it also expressed and enforced the interests and aspirations of the ruling (ecclesiastical and secular) elite". We agree with his opinion that "these *standards of statehood, criteria of the state* […] have been included in several definitions of the state, obviously to various extents and emphases".[20]

No less noteworthy is Makk's remark that "in medieval times, there was no fully equivalent term in Latin or other language to indicate today's modern concept of *state* and express its modern meaning".[21] Consequently, it is indeed "conceptually" impossible to expect a definition adequate for the modern state from medieval literates, but the organisational and operational empirics of the state can be identified.

Makk also noted that terms related to the state, indicating the organisation and functioning of the state, did exist in the Middle Ages: first, *monarchia,* as the determining factor of the exercise of political power, the power structure and political organisation operated by the king, and, second, *regnum*.[22] The latter appeared in early Hungarian sources, used in the meaning of royal power (specifically and in general), and of those subjected to the king's power: the territory under the king's power, as well as the people subjected and subdued to it. Later, the term *regimen* also appeared in addition to *regnum*.

To clarify the meaning of *regimen,* we ought to turn to the peace document between King Béla IV and his elder son Stephen, drawn up on 23 March 1266 on *Insula Leporum* (today Margaret Island), where *regnum* is consistently paired with *regimen* and in each case in terms of *rex iunior* Stephen, in the context of the lawsuits arising in the territory under Stephen's "governance" or of the king's barons and *servientes* living under his son's "governance". Both *regnum* and *regimen* are used as a specific determinant of place in each case, that is, indicating the lawsuits arising in the territory under the *rex iunior* or the king's barons and *servientes* living in the territory under the *rex iunior,* as well as

[20] Makk 2010: 28.
[21] Makk 2010: 27.
[22] Makk 2010: 27.

the evildoers who flee from the king and his country to his son or his son's territory, or, on the contrary, from *rex iunior* Stephen and his territory. Jenő Szűcs argues that the treaty concluded at Pozsony (Bratislava) before 5 December 1262 and the confirmations thereof, including the peace concluded on *Insula Leporum,* created the two rulers' separate "spheres of power" within the frameworks of a single, unified *regnum,* but "neither half of it was a country in the real sense, where the delimited territory and the scope of subjects would have overlapped", despite the fact that the king and his "jurists" strove to maintain "something from the conceptual unit of supreme power and the country", which they expressed by distinguishing the king's country and power from the governance of the *rex iunior:* while the king had a country, the *rex iunior* had governance.[23] Based on the peace concluded on *Insula Leporum* and other charter sources, the term *regimen* not only meant the territory under royal power but also the king's power itself, by whose virtues he adopted rules, granted donations and imposed taxes. Just like *regnum, regimen* was used as a collective term, indicating a set of actually exercised prerogatives, and – also like *regnum* – it bore the meaning of the royal power in general, actually or possibly abstracted from the person of the ruler. Having said that, it is important to stress also that the treaties concluded between King Béla IV and *rex iunior* Stephen aimed at the actual distribution of power within the frameworks of the state. Stephen had no intention to create another country (state) with "independent territory", he only strove to exercise, as long as he waited to ascend the throne, full royal power over those subjected to him, as his father did over his own subjects. That, however, required a territory under the *rex iunior's* power. This territory subjected under the *regimen* provided the frameworks or, rather, the reality of the "personal" exercise of power over those beholden to the *rex iunior,* his own subjects, both within and outside the territory. It should be noted, however, that within the territory, to maintain reciprocity, the *rex iunior* had to exercise this power over those beholden to the king in a way that guaranteed the agreed concessions. This, in turn, in addition to the mutual recognition of the full jurisdiction over the territory of each, required the necessary cooperation of the king and the *rex iunior.* Therefore, a special "joint" tribunal was also set up by the king and the *rex iunior,* which acted with their power and authority.[24]

[23] Szűcs 2002: 164.
[24] Béli 2013: 4.

The particularities of ownership and their role in the obligation-based personal relations with the king and in the state apparatus until the 13th century

Royal power rested on the king's vast estate, which enabled him to properly sustain and grant benefices to the ecclesiastical and secular persons who served him – who were personally beholden to the king and were received in the court, the royal "household" *(domus regia, aula regia, curia regia)* – and to exercise fully independent power over all other groups of the population who provided services to the king. As József Deér explained, the system was based on the royal court, and the king "governed the country with his household *(familia regia)* as if it was his private property".[25] The king's power not only covered his *familia* (in a broad sense: all who owed personal service, and all beholden to the king, serving on various royal estates, carrying out activities outside agricultural production or forced to carry out agricultural production activities, with livelihood ensured from the cultivation of royal estates),[26] but also those not included in his *familia,* that is, who were neither beholden personally to the ruler nor in an *in rem* dependent relationship with him but only owed to perform certain "public obligations": to provide military service in the event of attack of an external enemy and to pay the related taxes (the latter demonstrably from the early 12th century), and to comply with the religious and ecclesiastical requirements imposed by the king on everyone. The king's such despotic rule had no limits other than the customs and morals considered or followed for the sake of the maintenance and protection of his power, and of the interests of the members of his *familia:* essentially the rules of customary law and canon law. Consequently, until the 12th century, the king not only had jurisdiction and so-called royal prerogatives but held an unrestricted power over everyone and everything as a result of the system of the personal relations based on obligations, since the exercise of any authority by anyone depended on the king's discretion.

From the outset, ownership was a key factor in the establishment and operation of the system of exercising royal power. At examining the types of "private ownership", Engel made a specific observation concerning the castle estates, distinguished from the king's "private property",

[25] Deér 1938: 102.
[26] Bónis s. a.: 79–90, 91–92.

that is, from the estates assigned to the system of royal courts, manor houses and forest *ispanate* [Hung.: *erdőispánság*] manors: "Royal castles, along with the castle estates and population that belonged to them, is generally considered a type of the king's estates. Most experts believe that castle estates were the king's lands separated for military purposes, and the castle population consisted of the king's servants, whose special obligation was military service. However widespread, this view […] we must ignore, as royal castles had nothing to do with the institution of landlords. It appears that the castle estates were the opposite of – the king's or anyone else's – private property, and the castle population consisted of categories of people who kept their freedom and were not submitted to a landlord's power."[27] In one of his earlier works, at discussing the legal status of the castle population *(populi castri),* Engel argued that the land they possessed was their own. As he put it, "the land was theirs, in the sense that no one could drive them from it", adding that the land possessed by the castle population was also called "the land of the castle" or "castle land" *(terra castri),* "and, in a certain sense, it was considered to be owned by the castle", noting that the "castle population was subjected to the rule of the castle, and, thus, to the castle *ispáns,* who, in turn, governed it on behalf of the king".[28] This assumption is flawed because the castle had no personality, that is, it was not a legal entity, therefore it had no property. We must also add that instead of representing the castle, the *ispán* represented the king as the owner, since the castle had, and could not have, an owner other than the king. The castle population undoubtedly had some sort of right of disposal, but their civil law relations were determined by their legal status, essentially by the fact that they had no right to abandon the service of the castle with a unilateral statement or by implication (by leaving without permission). The rights of the *populi castri* were restricted to the possession arising from the fulfilment of their service obligations, and to the collection of the proceeds of their agricultural production. Therefore, their right of disposal was also limited to such proceeds. Assigned to fighting and hold offices in the castle without paying taxes, the castle warriors' *(iobagiones castri)* status was similar in terms of possession, noting that – most likely from the outset – their status and estates were *de facto* inherited by their heirs, and this *de facto* inheritance

[27] Engel 2001: 70–71.
[28] Engel 2001: 63.

became established customary law over time. As a result of their status, the situation of castle warriors differed from that of the *populi castri*. The reason, as observed by Attila Zsoldos, was that "the stability of the status and possession of the castle population […] was fully dependent on the king's good grace, without expressed protection provided by the applied legal principles".[29] This showed especially in the 13th century, when the king granted a large number of *populi castri* along with their lands (as quasi accessories). Castle warriors, on the other hand, could not be alienated with their land. On the contrary: as Zsoldos observed, "in the 13th century, the kings of Hungary recognised that the status of castle warriors […] entitled them to the possession of land. Nonetheless, this recognition did not mean that the kings would relinquish, even to the slightest extent, their royal ownership (jus regium) of the *iobagiones castri* and their lands".[30] Although castle warriors possessed the lands assigned to the provision of the service resulting from their status as their own, and the same right was recognised by the king in terms of their legal heirs, the castle warriors – precisely due to the particularities of their status – were not the owners of the lands assigned to them from the castle estate, that is, the right of ownership was not divided between the king and the *iobagiones castri*. Therefore, as only the king's ownership is construable in terms of the land given to the castle warriors, there is no reason to talk about the "royal ownership" of the king. At the same time, the castle warriors' ability to acquire land property at their own expense was not limited, thus, they could obtain the ownership of other lands (outside the castle estate).

Chapter 6 of Book I of St Stephen's laws declared the ownership of private persons: "[…] anyone shall be free to divide his property, to assign it to his wife, his sons and daughters, his relatives, or to the church; and no one should dare to change this after his death."[31] The preposition *sua* (own) indicates both movable and immovable property, including the estates and lands kept under the power of the private individual, that is, possessed by him as his own. That was reiterated by Title 2 of Book II of St Stephen's laws with a particularly significant addition: "everyone during his lifetime shall have mastery over his own property and over donations of the king, except for that

[29] Zsoldos 1999: 84.
[30] Zsoldos 1999: 85–86.
[31] Bak et al. 1999: 3.

which belongs to a bishopric or a county, and upon his death his sons shall succeed to a similar mastery."[32] Chapter II of Book II definitely indicates those who belong to the king's immediate environment (the *aula*), as it includes not only one's own property *(propria)* but also royal donations *(dona regis),* and (until the end of the 12th century) such donations were granted to no one but the king's prominent men directly beholden to him and accepted into his *familia*. The highlighted provisions of the two decrees suggest that the king gave formal recognition of ownership rights for his loyal followers beholden to him and belonging into his *familia*. Clearly, from among the attributes of ownership, the right of disposal was recognised as right of disposal in the event of death. The reasonable explanation is that at the time of the adoption of the decree, the latter may have been the more frequent and spectacular case of the exercise of the right of disposal, especially because, pursuant to the relevant provision, those who acquired property as a result of the owner's disposition not only included the owner's wife and daughter, but also an entity that did not belong to his family, namely the church. The fact that property donations were rendered hereditary reveals an important characteristic of St Stephen's state construct: that "it completely lacked the application of the principle of vassalage".[33] Consequently, "no fiefs existed in Hungary, neither at that time nor later. The owners always acquired full ownership of the land as *allodium* or, as it was called in Hungary, *praedium*".[34]

A further rule of inheritance, prescribed in the third statement of Chapter 26 of Book I of St Stephen's laws, was added to the above two concerning the ownership of private individuals: if someone (a man) died without a male heir (noting that *haeres* always meant male heirs in the order of legal succession), then his goods were inherited by his kins, if he had any, and if not, the king was his heir. Thus, the king confirmed the customary, existing order of inheritance that followed the principle of kindred, by considering and indicating himself the necessary heir of ownerless property. That said, the rule of kindred applied also in the inheritance of royal donations, as the reinforcement of the right of the sons – the male descendants – of the decedent (enforceable in equal

[32] Bak et al. 1999: 9.
[33] Deér 1938: 103.
[34] Engel 2001: 71.

proportions) to the land donation meant following the order of descent in inheritance.[35]

Charters of the 12th century concerning the disposition in the event of death prove that the rules prescribed in the above decrees did indeed prevail among those who belonged to the *aula*. Testators disposed of their inherited, granted, or otherwise acquired (not as a royal donation, that is, purchased) lands with the permission or confirmation of the king, which permission meant that the ruler waived his right *in rem* retained regarding the donation – including, by definition, the right to inheritance – joined by the consent of the testator's kin with inheritance rights, if he had any.[36] The royal donations granted to the king's prominent men are known from these dispositions in the event of death, as no donation deeds were drawn up for laymen until the late 12th century. While churches, in order to protect their property rights, managed to obtain deeds of proof of royal donations from the outset, the king's oral measure had been sufficient for private individuals for the time being, which most likely included ordering the handover of the assets. The implementation of the handover was most likely proven by a deposition made before the king and his *aula* by the person assigned for the task.

The deeds of donation convince us of that the prominent men who belonged to the king's immediate environment exercised their right of disposal concerning their property with the active contribution of the dignitaries of the king's *aula*. Interwoven with kinship ties, in this community of those directly beholden to the king, an owner's advocacy mainly depended on his relationship with the king and on the office he held. Chapter 20 of King Coloman's First Decree, adopted around 1100 on the basis of St Stephen's principles, prescribed that the right of disposition was universally limited by the king's retained right *in rem* (jus regium) in the case of royal donations, but still acknowledged the limited ownership of the grantee's descendants and *germani,* that is, (paternal) brothers. This restriction could only be lifted by individual exemption, the king's waiver of the jus regium. In addition, the provision set forth a special benefit to those whose land had been donated by the first king, including particularly the descendants of the prominent grantees from abroad, as the possession of their lands became embedded, as an equivalent of the settlement areas of "Hungarian" (born) noblemen.

[35] Eckhart 1932: 288.
[36] Béli 2017: 101–102.

The recognition of the right of *germani* was a benefit of the first grantee, whose *germanus* or *germani* otherwise inherited, as legal heirs, the assets not acquired as royal donations.[37]

Extension of the rules concerning ownership

In the early 13th century, the king's *familia* began to disintegrate and personal obligation-based bonds with the king started to loosen, while the weight of the church and the royal council grew in the exercise of power. Due to the changes occurring in the universal church, King Coloman was the first to make a concession to the Hungarian church, extended by his successors' further confirmations. In decrees made with the involvement of his council in 1222, 1231 and 1233, King Andrew II set forth rules regulating the jurisdiction and financial benefits of the church, promoting the functioning of the Hungarian prelature and church for their own interests, as well as their actual influence on the royal exercise of power. Regulating the jurisdiction of the church, the decree issued for clergymen in 1222 referred the lawsuits involving church property to the jurisdiction of the Holy See: "If a layman dares to bring any one of these before a lay judge, either due to possession, theft, or lands, or any other claim, he shall suffer the actual loss of his case."[38] This wide-flung freedom of the church was maintained by the king also in the so-called Oath of Bereg made in 1233, with the exception of lawsuits for real property: "[…] we want and agree that the clerics and churchmen answer before a judge of the church, and settle all lawsuits, except for those concerning lands", as "[…] the lawsuits for church lands and lands of churchmen are tried and concluded by the king of Hungary at all times […]" (Article 8).[39]

By the late 12th century, the dignitaries of the king and the officeholders of his court emerged from the noblemen identified as *nobiles* in the decree attributed to St Ladislaus. These distinguished men, differentiated from the *nobiles* with the name *iobagio* which

[37] Béli 2017: 104–105.
[38] Fejér 1829–1844: III/1. 379.
[39] Fejér 1829–1844: III/2. 319.

appeared in 1172,[40] were mentioned as *barones* more and more often from 1218 onwards. By the early 13th century, there was a large number of free landholders, royal servitors *(servientes regis),* and *nobiles* suitable to take up arms, whom the *iobagiones,* the *barones* and their close relatives were able to commit for military service as *familiares* on account of holding offices, and related benefices such as those arising from being county *ispáns,* and the significant royal donations, which improved their military potential and increased their influence in the royal council. After the Mongol invasion, the royal council, which was increasingly influenced by the *barones* due to the land donations, became a *de jure* power factor in the fields of governance, legislation and the judiciary. During the reign of Ladislaus IV, the country was basically governed by groups of barons and oligarchs.

From the early 13th century onwards, a group of freeholders are mentioned as *servientes regis* (royal servants) in the charters, who, merging with the remnants of the archaic nobility by the end of the century, came to play a role in the shaping of power relations, although only on the countryside – that is, outside the royal court – for the time being. This was also facilitated by the fact that the ownership of freeholders received legal recognition and protection. The status of these freeholders, subjected to the jurisdiction of royal judges and obliged to fight under the flag of the *ispán,* was first labelled as *servientes regis* in 1212.[41] The first case of elevation to the status of royal servant is known from 1217,[42] and their legal status were regulated in several sections of the Golden Bull issued in 1222. From the aspect of the legal status of the royal servants, the key measures were the provision protecting their personal freedom, the renowned Article 4, and the provision concerning the jurisdiction of the county *ispáns,* pursuant to which "the *ispáns* of counties shall not render judicial sentences concerning the estates of the *servientes* except in

[40] In 1172, Konrad was indicated in his will as "regis ioubagio regionis Ungarie". Fejér 1829–1844: II. 185.

[41] The latter were called royal servitors ("liberi et servientes regis") in the lawsuit of Abbot Hysis of Pécsvárad against Sela's son Wolfgang and Kozma's son Jacob. See Wenzel 1860–1874: VI. 355.

[42] Orosz, who served at the Barancs Castle with "the military equipment of a nobleman", and his brothers were exempted by Andrew II from the jurisdiction of the Zala Castle (removing them from the *iobagiones* of the saint king) along with their estates, granting them the golden and eternal freedom of being royal servitors ("[…] cum prediis, Camar scilicet, Wirmile et Mura, terris pariter eorundem ad eos hereditario jure pertinentibus, aurea et perpetua perfrui libertate, et inter servientes regis annumerari perpetuo"). See Wenzel 1860–1874: XI. 141.

cases pertaining to coinage and tithes" (Article 5).[43] Article 7 regulating the order of going to war narrowed the jurisdiction of county *ispáns* by guaranteeing the royal servants' right to go to war under the king's flag in the event of an attack of an army of an enemy against the country.[44]

From among the above provisions, Article 4 deserves special attention: "If a *serviens regis* should die without a son, his daughter shall receive a quarter of his possession but he shall dispose of the rest as he wishes. And if, prevented by death, he shall not have been able to make disposition, those relatives closer to him shall obtain [the possessions]. If he shall have no relatives at all, the king shall obtain them."[45] Clinging to the wording of the article, this would indeed be a rule of inheritance, and accordingly, those striving to explain it tend to start from this fact and return to it. However, the essence of the context reveals something more: just like Chapter 6 of Book I of St Stephen's laws, Article 4 of the Golden Bull seeks to record the owners' right to free disposal, adding the recognition of the filial quarter *(quarta puellaris)* as a reserved share benefitting the daughter of the owner – the *serviens regis* in this case – which had already been an established custom among those bearing the legal status of *nobiles*.[46]

Thus, Article 4 of the Golden Bull of 1222 enshrined that the royal servants were given the ownership right enjoyed by the *nobiles*. That made them freeholders equivalent to nobles also in a formal sense, that is, they rose to the rank of *nobiles* as owners.

The guarantees of civil law rights that determined the noble status were also emphatic in the petition submitted by the royal servants and nobles who held a meeting near Esztergom in 1267. Later accepted by the king and his sons, the petition included issues such as disposition in the event of death, clarification of the order of inheritance after nobles, and the protection of the rights of heirs. Article 6 of the *decretum* regulated the process applicable for the estate of noblemen who died without an heir: "if any of the nobles should die without heirs, his goods and property shall not for the moment be distrained or given to anyone, or granted to anyone by hereditary right until his relative and clansmen have been summoned to our presence, and a decision has been given in

[43] Bak et al. 1999: 32–33.
[44] Váczy 1927: 274; Zsoldos 2022: 20–21.
[45] Bak et al. 1999: 32.
[46] Béli 2018: 1010–1011.

their presence and that of our barons, just as the rule of law prescribes. In the meantime, however, the relatives and kinsmen of the deceased shall preserve his possession and goods."[47] Article 9 prescribed the order of inheritance: "if any noble should die in campaign without an heir, his property, no matter how acquired, shall not revert to the hand of the king, but shall be granted to a relative or kinsman of the man who died on campaign, specifically in the following manner: property which he had by hereditary right should remain with his kindred, but what was bought or acquired shall be left to whomever he wished to give during his lifetime."[48]

Antal Murarik argues that the sections of the decree of 1267 concerning inheritance is the result of a kind of compromise, which showed in the restriction of the assertion of the *fiscus*'s – more correctly, the king's – right and the free disposal of nobles.[49] However, that was in fact not the essence of Article 9, but the effort to have the king declare the inheritance of the "possesiones hereditariae", the inherited or ancestral land in accordance with the principle of kindred, along with lands "quoquomodo acquisitae", that is, lands acquired in any manner, provided that the deceased who died in a campaign made no disposal in the event of death. The text clearly reveals that the term "quoquomodo acquisitae" referred to the acquisition of immovable property in a way other than by donation, as the acquired lands were labelled "emptiae vel acquisitae", the term formally used for non-donated property. The nobles who submitted the petition to the king and his sons were ultimately seeking to achieve the enforcement of the disposition in the event of death made – perchance orally – by those who started out for a campaign.

From among those who discussed the above decree, Jenő Szűcs carried out one of the most thorough analyses. Based on Article 10 of the Golden Bull prescribing that if a *serviens* dies in a campaign, his son shall receive whatever appears appropriate to the king, Szűcs argued that Article 9 of the decree of 1267 was "a brand new rule of inheritance law that sprouted from an old seed", and – just like Murarik – he perceived it as the restriction of the inheritance of the treasury.[50] However, these findings declaring the restriction of the jus regium are incorrect due to

[47] Bak et al. 1999: 40.
[48] Bak et al. 1999: 41.
[49] Murarik 1938: 109.
[50] Szűcs 1984: 346.

the misinterpretation of the term "emptiae vel acquisitae": there is no new element in the described order of inheritance, as neither its merit nor its essence differs from the principle of inheritance that can be traced back to the age of St Stephen and prevailed in customary law.

Contrary to Article 9, Article 6 records a completely different set of facts. The provision pertains to those who died without a descendant heir: "si aliquem de nobilibus sine heredibus mori contingeret", and to their assets. Thus, interpreted correctly, the term "possessiones et bona ipsius" refers to the heritage as a whole, that is, all of the decedent's assets, including those acquired by donation. This explains the claim that until the relatives were heard, the goods and property should not be distrained or given to anyone, or granted to anyone by hereditary right. The nobles' request thus aimed at clarifying in the presence of the king and the barons, within the framework of a legal procedure, the origin of the assets that made up the legacy, that is, the legal title of each asset owned by the decedent, complemented with the legitimate expectation that the entire estate will be left in the possession of the relatives until the completion of this investigation. It is plain to see that the reason underlying the claim is not the restriction of the jus regium, but rather the grievances suffered by the relatives of those who died without a descendant heir due to the occupation of the decedent's estate by others. Article 6 is therefore logically linked to Article 5, because ultimately the prohibition prescribed therein was also aimed at preventing the unlawful occupation of property.

The "introduction" of the decree of 1351 formulated a specific interpretation of Article 4 of the Golden Bull concerning free disposal: "We accept, approve, and confirm the […] letter of […] king Andrew II, our […] predecessor, validated with his golden bull, untouched by any doubt and, transcribed word for word, inserted in this charter with all the liberties contained in it, with the sole exception of […] one paragraph to be excluded from this privilege, namely, that contrary to the clause according to which 'noble men, dying without heirs should be able and allowed in life and death to give, grant, sell, or alienate their estates to churches or to others whom they wish', they should in fact have no right at all to do so, but the property of these same nobles should descend to brothers, collateral relatives, and clansmen by right and according to law, pure and simple, without anyone's objection."[51]

[51] Döry et al. 1976: 129–130.

Declaring the right of free disposal, the *narratio* of Article 4 of 1222 is identical to that of Chapter 6 of Book I of St Stephen's laws. However, based on the legal terminology of the 14th century, the more than one century old text of St Stephen's provision was reasonably construed as a rule specifically prescribing the order of inheritance, and therefore, Article 4 was amended in accordance with the customary law that prevailed from the outset. Yet, no less importantly, this did not mean the universal abolition of the owners' free disposition,[52] but that – just like before – the free disposition in the event of death (provided that it did not follow the order of legal inheritance) required the consent of those intitled to inherit if there were any, or otherwise the king's permission. The Angevin rulers, as well as Sigismund, consistently asserted their jus regium in terms of the ownerless assets of those who died without an heir, expressly forbidding or mostly rejecting the disposition of the *sine haerede* decedents, acknowledging the right to inheritance of the collateral relatives up to the third degree at most.[53] This practice changed from the 15th century onwards. From that time, due to the strengthening political influence of the nobility, the rule of *aviticitas* of Article 4 of the decree of 1222, prescribed in the decree of 1351, prevailed in terms of all collateral relatives.

King Louis I's decree of 1351 proved to be crucial from the aspect of the fate of the emerging Hungarian "estate" of nobility, the royal servants and the *nobiles* who were formally considered to have the same legal status already in the decree of 1267. By transcribing Andrew II's decree of 1222, King Louis's decree summed up the benefits guaranteed to the *servientes regis* and the *nobiles* as noble rights. The Golden Bull, which had fallen into oblivion, became the bearer of noble rights from 1351 onwards due to the transmission of further decrees, and later served as the basis of the four fundamental noble rights enshrined in the *Tripartitum,* namely that noblemen can only be tried in ordinary court proceedings, they are only subjected to the power of the lawfully crowned ruler, they are free to enjoy their estates free of tax, and, in return, they are obliged to defend the country in the case of war, and, with fellow nobles, they can exercise the *ius resistendi* if the king violates the freedoms of the nobles.

[52] Csukovits 2022: 192.
[53] Engel 2001: 153.

Particularities and social effects of the donation system

The royal donation *(donatio regia)* was a reward granted by the king to those who showed loyalty and performed a faithful service, basically a transfer of real estate in return for the services and in order to maintain loyalty and encourage further service. The donations were granted from the royal estates at first, while later, from the late 13th century, more and more from the assets inherited by the king. The donation could be made "de manibus regiis", that is, with the king giving both the right and the property, or "de manibus alienis", where the ruler only bestowed the right upon the grantee, given that someone else was in possession of the property, from whom the grantee could acquire possession through a lawsuit by proving that the possessor had no legal title, which basically made him a wrongful possessor. The latter may have taken place if the grantee, to whom the king had promised a donation, designated the subject of the donation himself, and in his request *(impetratio)* referred to the fact that it was an inherited, thus, grantable asset, unlawfully possessed by one or more persons. The typical case of a litigious donation *(donatio litigiosa)* was, however, when the possession of a third party was discovered in the course of the registration, as the possessor objected to the donation and the registration.

Recording the fact of the donation, its legal basis, and the rights derived from it, the royal deed of donation became an essential part of the *donatio regia* from the early 13th century (from 1205). Another type of royal donation, namely a benefit made "de manibus regiis", included the manumission of people who belonged to the population of the castle, mostly *iobagiones castri,* less often castle servants *(conditionarii),* and their elevation to the legal status of *servientes regis* or *nobiles.* This not only entailed the termination of the jurisdiction of the castle *ispán* over the manumitted, but the ownership of the lands they possessed was also transferred to them. The issuance of a royal charter was a necessary and indispensable part of such *manumissio* as well, in order to prove and justify the new (free) status and – just like the royal donation deeds – the legal title of the transfer of the ownership and possession.

From the 13th century, the legal title, too, was indicated in the deed of donation, if the subject of the donation was an asset inherited by the king. Since no other types of estates were donated from the 15th century onwards, the indication of the legal title became an indispensable requirement. The legal titles were basically grounds for inheritance, based

on which the inherited asset became grantable as a royal donation in line with the law. Such grounds were the default of heirs *(defectus seminis)* and infidelity *(infidelitas, nota infidelitatis). Defectus seminis* occurred with the death of an owner who had no heirs left, or rather, had no relatives entitled to inherit the real estate he owned. In case of a donated asset, "vacancy" *(caducitas)* led to the revival of the king's latent right *in rem,* if the *sine heredae* decedent possessed a donated asset burdened with jus regium. Due to infidelity, all the property of the condemned person was acquired by the king, based on the judgment rendered by the judge, retroactively to the date when the infidelity was committed.

An invention of the Angevin kings of Hungary, "prefection" (Lat.: *praefectio,* Hung.: *fiúsítás*) was a special element of the donation system. As a result of the procedure, by the king's grace, a noble woman could gain full legal capacity, that is, the rights of a noble man (thus, she became the quasi-male legal heir of the legal predecessor). This special grace was first exercised in 1332, when Margaret, the daughter of Ladislaus *de genere* Nádasd, the wife of Castellan Paul Magyar of Gimes, was vested with a male's right of inheritance by King Charles I as regards the assets of her father and paternal uncle, who both died without a male heir: "[…] without hindrance of the long-standing customary law of our country, Hungary, that allows only the male heir to acquire his paternal inheritance […], by our special royal grace and the fullness of the royal power […] we declared her the true heir."[54]

The "promotion of a daughter to a son" *(praefectio filiae in filium),* in short, prefection *(praefectio)* was basically a royal donation granted at the request of a noble father or paternal male relative without a male legal heir *(deficiens),* or an intermediary, most often the woman's husband, by which the king declared the woman to be the male heir of the *deficiens*'s property inherited or to be inherited by the king in line with the law, and frequently granted it also as a new donation *(nova donatio).* The opportunity inherent in prefection to bind close followers more closely was recognised, exploited and institutionalised by King Louis I, as he often made the *praefecta*'s husband – or future husband by advocating the marriage – a rightsholder as well. If the person submitting the request *(impetrator)* was the *deficiens* himself, the act came into effect provided that he had no legitimate sons later.

[54] Fejér 1829–1844: VIII/3. 592.

The royal consent *(consensus regius)* and the new donation *(nova donatio)* should be considered to be special donation titles. Based on royal consent, the donation was acquired by a person donated by the king at the request of the *deficiens,* or a person to whom the *deficiens* alienated his assets with the consent of the king. In the latter case, the *consensus regius* became immediately effective. On the other hand, in the cases of *adoptio filialis,* prefection, *legitimatio,* or *adoptio fraternalis,* the entry into force of the royal consent was made conditional on a future fact, since if the *deficiens* had a legitimate son later, the consent did not come into effect. The abovementioned *adoptio fraternalis* was an inheritance contract between two nobles in the event of the *deficiens*'s death, in favour of the survivor.

Nova donatio evolved from the renewal of the deed of donation. If someone lost their royal donation deed or it was damaged to the extent that it became unfit to verify the recorded facts, they requested the issuance of a new deed. In such cases, to prove his entitlement, the applicant also referred to the fact that he himself was or he and his legal predecessors were in long, peaceful possession of the donation. The king accordingly issued a new deed. By the end of the 13th century, the reference to a long, peaceful possession was in itself sufficient to issue a new letter. By that time, not only the deed was called new deed of donation *(novae litterae donationis),* but the donation was also named *nova donatio.* The new donation confirmed or provided the grantee's legal title. If someone subsequently evicted the grantee of a new donation from his estate, he could claim and sue for the donation by referring to his legal title. The new donation acquired a specific interpretation – linked to the *nova investitura* known from fiefdom[55] – during the reigns of the Angevin kings and Sigismund, namely the transfer of the possession of a benefice *(beneficium)* or fief to a new rightsholder. In case of inherited assets, the donation was transferred by the Angevin kings and Sigismund as a new donation, with the indication of the fact and legal title of the inheritance. This solution was used as a kind of reinforcing legal title for the donation of inherited assets, emphasising the grantee's lawful acquisition. That type of grant also gave the opportunity for nobles closely connected to the royal court to increase their estates through a new donation, and thus, by proving their possession, they could omit,

[55] Béli 1995: 60–61.

even exclude their otherwise entitled, less powerful non-possessing relatives from those who had the right to claim the asset.[56]

The king maintained the jus regium in terms of the donation by defining the order of inheritance and the scope of those entitled to inherit. On many occasions until the early 14th century, the king ensured the inheritance not only to the donor's brother (brothers) but also their descendants. The ruler could designate also the donor's daughters as heirs, if he wanted to give them inheritance rights as a special grace: "haeredes et posteritates utriusque sexus", that is, he vested a woman with the inheritance rights of men as regards the donation. On a few occasions – not very often – in the 13th century, the king did not retain a right *in rem* as regards the donation, but gave free disposal to the grantee, formulated accordingly, by listing the acts of disposal *(eandem possessionem sibi iure perpetuo donavimus, contulimus, ut tam donandi, quam venendi, seu dimittendi in ultimo testamento cuicumque volverit liberam absolutam habeat facultatem).* The donation granted with that type of free disposal was indeed just like property acquired outside of the system of donation. However, only the grantee himself was entitled to enjoy this freedom, since in the lack of his disposal, the king granted the right of inheritance mostly to male descendants, as was otherwise the custom.

The royal donation played a decisive role in the development of the nobility. The true distinguishing feature of nobles was the free ownership and possession of their land, unburdened by any personal taxes, levies in crop or cash, and land rent. Therefore, a freeholder *(homo possessionatus),* that is, a person who actually had a freehold of immovable property[57] or acquired a freehold (outside the jurisdiction of a free village or city), and due to his property was also able to fulfil his military service by sending one or more suitable armed men, enjoyed the rights of nobles. The fact that (free) possession, or more precisely free ownership of real property became the primary factor in terms of nobility was aptly grasped by Erik Fügedi: "A significant part of the Hungarian nobility acquired their status by the grace of the king along with their property. During the

[56] Csukovits 2022: 19; Engel 2001: 154; Béli 1995: 64.

[57] As Andrew III – compared to his predecessors – issued very few deeds of acceptance among the royal servants, Elemér Mályusz concluded that in the last decades of the 13th century, the royal servants and *iobagiones castri* came so close to each other, "they became one to an extent where a formal crossing of that boundary was no longer necessary, and as the castle warriors could enjoy the benefits of the social situation of their new fellows even without authorisation, they no longer requested royal privileges". Mályusz 1942: 427–428.

reigns of Stephen V and Ladislaus the Cuman, the almost exclusive way to gain such status was through the recognition of outstanding military service […]. But a new definition appeared already under Andrew III: the main distinguishing feature of a nobleman was property held as *homo possessionatus*. As the social development advanced, the emphasis on the freeholder status of nobles was reinforced to such an extent that by the 1330s it completely supplanted military service. During the reign of Charles I, property relations also changed to a great extent, and the perception slowly developed that the only source of property ownership was the royal donation […]."[58] The proof of rightful possession and lawful acquisition of rights became of decisive importance as early as in 13th century. In addition to the royal deed of donation, in case of all other types of real estate acquisition, the same purpose was served by the letter of record *(littera fassionales)* issued by the places of authentication *(loca credibilia)* for the *homo possessionatus,* based on the oral deposition of the parties. That type of charter was intended not only to certify ownership or rightful possession, but also to guarantee the lack of legal obstacles to acquiring the ownership or taking temporary possession of the property under a legal title (that the jus regium, the rights of relatives to an inherited property, or the existing rights of a third party are not violated). That guarantee was ensured by a warranty given by the transferor of the possession or ownership of the property, usually formulated as the transferor's obligation to protect the rightsholder "suis laboribus et expensis", that is, with his own efforts and expenses. This kind of stipulation can also be found in division letters, requested by members of an undivided community of property concerning the division *(divisio)* of their property based on an amicable settlement or a judgement.

From the latter half of the 14th century, there was an increase in the number of those who acquired lands and property not burdened with peasants' services, through their income resulting from agricultural production or services provided as non-noble *familares* beholden to the king. Due to this process, nobles' prerogatives were based more and more on wealth. In addition, as the number of freeholders grew, these prerogatives were somewhat devalued, prompting those who had nobility by birthright and formal acts to take action against those who rose to *de facto* nobility through their talent. The fact that many burghers

[58] Fügedi 1984: 127.

and peasants also gained nobility conflicted with the king's interests too, since the *homines possessionati* with nobles' prerogatives were not obliged to pay taxes. By the latter half of the 15th century, this led to the adoption of statutory provisions restricting the rise of those of "low" origin. The provisions recognised no other nobility but "[…] true nobility or privilege of nobility bestowed by the kings" (Act I of 1467).[59]

Nobility could therefore be obtained with a royal deed of elevation to the community of royal servants or nobles *(in coetum servientium regalium seu nobilium regni)*. In that way, the king granted the noble rank along with the release of the land owned on the basis of a previous legal situation (which thus became a freehold). The terminological duality distinguishing the elevated *servientes regales* or *regales* from *nobiles* remained even at the end of the 14th century. The rank of *nobiles* became the only equivalent of the noble status from the 15th century onwards. By the end of the century, only de jure nobles could acquire a freehold (in the sense of the customary law of Hungary), that is, the ownership of nobles. At the same time, those who were granted a royal donation also became formal nobles, provided that they had not previously belonged to the ranks of "true" nobles by birthright or a formal act. Full legal capacity was thus identified with the legal status of a nobleman, and the political rights exercised in the autonomous bodies of the county and in the diet were also attached to this.

The obvious way to acquire a freehold property (not burdened with peasants' services) was royal donation. Such grant was given to the nobles who served the king, who – from the early Angevin period – had distinguished themselves in consolidating the power of Charles I, those who were elevated by the king, that is, members of the new aristocracy. Among the nobles, the possibility of acquiring wealth was mostly available for the servants (squires, youths and *miles* of the royal court) who belonged to to the organisation of the king's *aula* or palace, his "private court"[60] formed in the third decade of the 14th century. Among them, the *miles* at the top of the hierarchy received *honor* estates, too, for the duration of their service, and through their service, they and their descendants could rise to the ranks of barons. Serving the barons and lords, noble *familiares (familiares notabiles)* were remunerated according to the lord's discretion, on the basis of the agreement concluded with

[59] Döry et al. 1989: 165.
[60] Engel 2001: 126.

their overlord, in which mostly only the pledge of protection, support and sustenance were prescribed as consideration for the service. The barons and *ispáns* held their office in return for the corresponding royal income, the *honor.* The castles, castle demesne and provinces assigned to a separate government were administered and operated by their lords with the multitude of their *familiares,* by relinquishing a part of the income received. The barons' *familiares* serving in the royal court were in an exceptional position, similar to the nobles serving in the king's *aula,* who not only benefited from their lord's *honor,* but also received a royal donation several times through their service, with the intercession of the lord. In addition to the transfer of income, the overlords sometimes fulfilled their obligation for sustenance by providing free use of a part of their land, or by sub-mortgaging a mortgaged property possessed under a mortgage loan agreement. Overlords also donated property at the expense of their own real estate assets. With this private donation, the donor acquired (free) property, on which the overlord had no reserved right *in rem,* although such a right could not have been asserted anyway.[61]

The acquisition of wealth and the provided services sometimes opened up the path of ascension to the ranks of lords for wealthier noble *familiares* who performed significant services, as well as for their descendants.

The political advancement of freeholder nobility and its impact on the functioning of the state

From the 13th century, the kings of the Árpád dynasty exercised their power by relying on a council made up of barons and prelates. No factors other than the council members had a formal role in the king's acts of power. After Charles I consolidated his power, the Angevin kings governed with the new baronial elite, by entrusting the royal castles to their barons and *ispáns,* who held their office as *honor,* which means that they had the right to dispose with all the royal income assigned to their office by the king from the demesne of royal castles. The natural lord of his country, the king, after hearing his council, acted and ruled in matters of war, adopted binding rules, operated the royal courts and delegated judges, while preserving and using, but, in accordance with his power needs, also modifying the organisational solutions that were

[61] Bónis s. a.: 261–265.

useful and expedient for the already established judicial forums. Not having the right of succession, Sigismund became a ruler from the choice of the barons by accepting the conditions of the league that raised him to the throne. In essence, this meant that Sigismund was obliged to exercise his royal power together with the league by observing the customary law of the country and keeping his barons and councillors for the rest of his life, and not to grant positions or royal donations to foreigners. In the wake of his coronation, forced to fulfil the expectations of the members of the league, Sigismund gave a significant portion of the royal estates to his electors by royal donation. As the king managed to free himself from the yoke of the league, he consolidated the royal power after 1403 by distributing the wealth confiscated from his opponents, providing large donations to his followers and smaller grants to their *familiares*. Relying on his loyal barons and servants of the aula, Sigismund ruled with full power modelled on the Angevin kings. In this power structure, the nobility had yet to wait for a significant role.

A demand concerning the exercise of royal power was formulated for the first time by the nobles and royal servants meeting near Esztergom in 1267. According to Section 8 of the requests later confirmed in a decree, an assembly was to be summoned in Fehérvár,[62] where the king would remedy the complaints with the involvement of two or three noblemen (as co-judges) from each county. Eventually, no such assembly had been summoned, but in 1268, on the basis of Article 5 of the decree, Béla IV delegated judges and courts to investigate violations. These tribunals composed of the county *ispáns* and noblemen of the county (five co-judges worked with the county *ispán* and palatine in Somogy County, while in Zala County the tribunals operated with six or four noble co-judges in addition to the county *ispán*).[63] By the 1270s, in line with this custom, the county courts operated with four noble associate judges, which was enshrined in Andrew III's decree of 1290/91, prohibiting the county *ispáns* from adjudicating without noble co-judges. These noble judges of county courts *(judices nobilium, quatuor judices nobilium)* – who (verifiably from the early 15th century) were identified in Hungarian with the name *szolgabíró* – initially came from the ranks of the wealthier, more affluent nobles. Due to exemptions from its jurisdiction from the second decade of the 14th century, and then to Louis I's measure referring property cases

[62] Váczy 1938: 60; Holub 1944: 116; S. Kiss 1971: 7.
[63] Béli 2022: 49–50.

to the royal courts, the authority of the tribunal was largely eroded by the middle of the century. The county courts thus acted only in minor civil lawsuits and in the criminal cases of non-nobles. Recruited from the modestly wealthy noblemen of the county in the second half of the 14th century, the members of the tribunal had a role as co-judges in the congregation held for adjudication by the county *ispán* – in his own right at first, then by royal order after the consolidation of the power of Charles I – and in the palatine's general congregations, as well as in the performance of judicial assistant duties upon request in the trials before the royal courts. As a result of a provision of the decree adopted in Temesvár (Timişoara) in [October] 1397, the weight of the county's authority increased again, with the authorisation to handle cases of acts of might and the abolition of the previous exemptions. Moreover, the county authority was tasked with the censuses necessary for the establishment of the *militia portalis,* a new recruitment system based on the number of peasant holdings. By virtue of Sigismund's decree of 31 August 1405, the cases where justice was not administrated before the landlords' courts *(sedes dominalis)* of prelates, barons, nobles and "people of other statuses", were brought under the jurisdiction of the county courts: "[…] and if the lords of these villagers or peasants should refuse to administer justice or are lax in doing so, then that lord for having failed to do justice should be legally summoned to the court of the *ispán* or his *alispán* or the noble magistrates [*judices nobilium*] of that county where justice was refused" (Article 10).[64] Due to this, the authority of the county covered all the landlords' estates and manors in the county, which means that the jurisdiction of the county and the county court was established on a territorial basis, and the landlords who owned property in the county were brought under the jurisdiction of the county in terms of the cases concerning their peasants. Article 2 of Sigismund's order of 8 March 1435 also intended to increase the authority of the county by prescribing that wealthy freeholder noblemen *(nobiles bene possessionati)* were to be selected as officeholders: "Noble magistrates [*judices nobilium*] of every county must be elected and appointed from the richer and wealthier noblemen whom all the nobles of that county by common consent regard and consider suitable for that office."[65]

[64] Döry et al. 1976: 222.
[65] Döry et al. 1976: 262.

The first Hungarian textbook of law, attributed to the *canonicus lector* of Eger, John Uzsai, was completed in 1351 titled *Ars Notaria*.[66] Among the series of letter samples of county authorities, this formulary also presented versions of summons to assemblies sent by the county *ispán* and the *judices nobilium*. Obliging noblemen to attend the assembly on pain of a fine (3 marks), these letters report on county assemblies, where not only adjudicating activities were carried out, but the attendees also deliberated on public matters and, inter alia, the collection of royal taxes.[67] According to the formulary, such assemblies – not, or not only summoned for adjudication – had already been common by that time. This is indicated by a letter from the authorities of Borsod County dated 15 December 1312, in which the noble co-judges, who penned the letter, were identified as having been selected by nobles: "quatuor iudices per nobiles pro tempore constituti".[68] Noble co-judges selected alongside the county *ispán* already appeared in the charters issued by a palatine who adjudicated in his county in 1268. It was emphasised in each of the six letters that the king's delegates were chosen from among fellow nobles of the county: "King Béla […] sent five nobles from this county, chosen by all the nobles of this county […] to accompany us." Nonetheless, this election presupposes an *ad hoc* assembly for the time being, as reported to the king by the five noblemen themselves, delegated to their county with a royal mandate, to be the co-judges of the palatine and *ispán* of Somogy County. Jenő Szűcs labelled these noblemen of Somogy county "bodies of *iudices nobilium*" or "local elected bodies", refining it later as "elected men". Yet, Szűcs still emphasised the fact that one of them was a *iudex nobilium*,[69] which strongly suggests the assumption that the noblemen of the county had an assembly, with an established organisation, to elect such officeholders, that is, noble co-judges, albeit the tribunal of the palatine or county *ispán* was delegated by the king, which, thus, gained and exercised its jurisdiction as a delegated royal tribunal.[70] In fact, however, based on the cited letter from Borsod County, it cannot be assumed that county assemblies where county officeholders were also elected were held earlier than the second decade of the 14th century.

[66] Bónis 1972: 30–33.
[67] Kovachich 1799: 6–7.
[68] Fejér 1829–1844: VIII/1. 480.
[69] Szűcs 1984: 383; Szűcs 2002: 191.
[70] Béli 2022: 49–50.

Electees from the county nobles' own ranks appeared frequently also in the palatine's general congregations by the 14th century. They were jurors elected in the usual number (12), acting alongside the *iudices nobilium,* mentioned from the third decade of the 14th century by the letters issued on the occasion of the palatine's public tribunal. Dated 23 May 1324, one of the first such letters was issued of the general congregation held by the palatine for Szabolcs County: "duodecim jurati et quatuor judices nobilium".[71] The jurors were elected by the noblemen who attended the assembly, that is, theoretically by all county nobles. Having regard to that fact too, such election for the performance of this kind of task, and for filling the office of the county *iudices nobilium,* had presumably been an established practice. The frequency and the reasons of public interest – other than the election of county officials – of the noblemen's assemblies cannot be clarified until the late 14th century. Later – known from the reign of Queen Mary of Hungary – one of the primary tasks assigned to the county assembly was the election of the representatives sent to the diet. In connection with the confirmation of the decree of 1351, the representatives of the nobles of the country were mentioned also by the decree of 22 June 1384: "eorum (viz.: nobilium regni) nuntii."[72] Sigismund's orders issued in Temesvár in [October] 1397 speak of "four noblemen of tried qualities acting with the full authority of their peers" *(quatuor probi nobiles viri plena potestate ceterorum consociorum ipsorum fungentes)* sent from each county of the country.[73] These men of tried qualities – that is, trustworthy men – came from among the wealthy nobles of the county. In the first half of the 15th century, becoming more and more suitable for asserting the interests of the freeholder nobility, the county organisation functioned mainly under the influence of the *bene possessionatus* nobility, who shaped and determined the management of county-related matters in the county assembly. The vice-*ispáns* came from among the wealthy nobles who performed the duties of castellans and stewards as the obligation-bound *familiares* of the lords, while the representatives sent to the diet were elected from the ranks of the *bene possessionatus* nobles. It is clear from Article 60 of King Mathias I's *decretum maius* of 1486 that the county was dominated by these prominent countryside nobles by the end of

[71] Nagy et al. 1909: 196.
[72] Döry et al. 1976: 144.
[73] Döry et al. 1976: 160.

the 15th century. This article prescribed that county *ispáns* are to be selected from *barones* or *bene possessionati:* "appoint in every county, with the counsel and will of the lord prelates and barons, a baron or other respected and wealthy propertied man who seems to be able and suitable to the post of county *ispán,* […] also select a respected man from that county but not from elsewhere as *alispán* or *alispáns*", that is, the county *ispán* was to appoint vice-*ispán* or vice-*ispáns* from among the *bene possessionati* of the county.[74] Freeholder noblemen had undoubtable influence in the construction of the autonomous county organisation. The most crucial right for the functioning of that organisation – with a modern term: the budget right – was provided by Article 64 of the decree of 25 January 1486 by introducing the household tax: "all and each individual possessor […] to pay and be obliged to pay, to the treasury of the community, the costs ordered by their community from their possessions and goods in proportion and according to their share, […] as when the affairs of the county are at stake, everyone should pay taxes."[75]

The Esztergom assembly of nobles and royal servants in 1267 was indeed an important moment in the emergence of the nascent nobility on the political stage, but this did not mean that they were powerful actors in the shaping of political relations and royal legislation. During Ladislaus IV's reign, the nobles who participated in the royal congregations could indeed influence the formulation and establishment of the rules, but those rules were adopted and sanctified by the king and the barons and prelates, or the secular element of his council, according to the circumstances of the assembly shaped by the power relations. Although the congregations convened as early as in 1267, the assembly of Pest in 1277, and also those held under Andrew III have been regarded by some as diets, these late Árpád era royal congregations were in fact only prototypes of future regular diets operating under the substantial political influence of the nobility.[76] These congregations lacked both an established organisation and a fixed operating order, and the nobles attended them based on their personal freedoms and individual rights. Albeit three *congregationes* followed one another from 1298, these were

[74] Döry et al. 1989: 299.
[75] Döry et al. 1989: 301.
[76] Eckhart 2000: 94; Holub 1944: 118–119; Degré 2010: 87; Csizmadia et al. 1995: 99, 130; Engel 2001: 94; Kristó 2003: 265; Mezey 2003: 109.

occasional in terms of the number of nobles present. At the same time, while such attendees – whose number is not indicated in the surviving sources – were indeed *nobiles regni,* that is, nobles of the realm, they did not represent the nobility of the country, and, therefore, they could and did express nothing but the requests agreed upon by them during the congregation, which was not equivalent to the requests of the nobility as a whole. Although the actors of the future diet (assembly of estates) came into play in the last years of the 13th century, it would not be correct to perceive this as the existence of estates, or, more precisely, nobility constituting an estate. As György Bónis pointed out referring to the clause of the decree of 1298: "Here we have the assembly of estates, which acts in the name of the country of estates – before the Hungarian estates were even formed".[77] However, this paradox is only apparent, since the *congregatio generalis* of 1298 showed similarities with the diet only in its constituent elements.

During the reigns of the Angevin kings and Sigismund, the prelates and barons were still "almost indispensable factors in the creation of generally applicable rules due to their financial power and political weight", while "the masses of nobles or their representatives were by no means such a necessary factor in legislation until the 1430s".[78] Among the nobles, those distinguished by the name "proceres" and identifiable with the *bene possessionatus* nobles occasionally participated in legislation. Their attendance and invitation depended on the discretion of the king, who decided, by virtue of his power, whether he wished to rely only on the advice of his barons, or he would also expect the cooperation of nobles in the adoption of binding rules. In the latter case, alongside the prelates and barons, the nobles present contributed to the adoption of royal regulations as the full-power representatives of nobility as a whole, that is, of all absent nobles. According to the introduction of the decree of 8 March 1435: "De […] necnon nobilium regni nostri totum corpus eiusdem regni cum plena facultate absentium representantium unanimi consilio."[79]

With the death of Sigismund, a profound change occurred in the political and administrative relations. The aspirations of the emerging

[77] Bónis s. a.: 169.
[78] Bónis 1976: 50–51.
[79] Döry et al. 1976: 261.

nobility to participate in the formation of national politics came to the surface. The articles of the decree of 29 May 1439 already record the attributes of the state of estates governance. Article 1 ordered the restoration of the country's laws and old customs with the involvement of prelates, barons and nobles ("prelatorum et baronum ac regni nobilium consilio et auxilio"). Article 2 concerned the election of the palatine: "the palatine is to be selected by the royal majesty with the unanimous will of the prelates, barons and nobles of the country, since, as the old customary law of this country requires, this palatine is to be able and obliged to administer law and justice on behalf of the people of the country for the royal majesty and on behalf of the royal majesty for the people of the country."[80] Those gathered at the diet made it the duty of the king to protect the country with his own mercenaries, in such a way that the king could not order a national *insurrectio* unless he could no longer fulfil the duty of protection through his own efforts. A further requirement was that the country's nobles were not to be led beyond the borders of the country "as demanded by their old liberty" (Article 3). It was also ordered that the king could not change the quality of the minted coins "without the advice of the barons, prelates and nobles of the country" (Article 10). Furthermore, it was forbidden for anyone to hold secular and ecclesiastical offices at the same time, as well as the granting of secular and ecclesiastical offices to foreigners, the donation of estates to foreigners or for money, and the king's demand for accommodation at the estate of an ecclesiastical or secular property holder.

In the spring of 1439, the uproar of the nobility after the king's return led not only to the fact that King Albert fulfilled the demands made in the diet, but under the pressure exerted on him, he began an almost endless series of donations entailing further serious consequences. According to Engel, the king donated "almost half" of the still existing approximately sixty castle estates, which effectively liquidated the royal land wealth: "From then on, the king was only one of the mightiest property holders."[81]

[80] Döry et al. 1976: 287.
[81] Engel 2001: 234.

How can we identify the Hungarian state by the end of Sigismund's reign?

To describe the "medieval state", the political structure and governmental organisation connected to the Árpád and Angevin dynasties, Ferenc Makk coined the term dynastic state, having also regard to the fact that "both dynasties formed the internal cohesion and important unifying factor of the Kingdom of Hungary and the Hungarian state". Makk argued that "except for the last decades of the Árpád era and the period of the provincial lords at the beginning of the Angevin regime, the predominance of the power of the king prevailed in the management of the country against all other social forces". Considering it "the most suitable" term, Makk defined dynastic state as "the political, institutional and territorial state organisation of the Kingdom of Hungary in the Carpathian Basin, commencing with the reign of St Stephen". He added that this dynastic state was replaced by "a new version of the medieval Western European state after the reign of Sigismund", namely the so-called "state of estates, which stretched far beyond the Middle Ages until the fall of the estate system in 1848, and can be defined as a completely new, more proportional and more democratic form of the distribution and exercise of power between the king embodying the dynasty and various social forces, that is, the estates".[82]

Highlighting the king's preponderance in the exercise of power and state government, Makk indeed pointed out the essence of the period. The rule of the kings of the Árpád and Angevin dynasties, as well as that of Sigismund after 1403, is undoubtedly characterised by the royal power surpassing all social forces. Nonetheless, the Sigismund era state – since the "dynasty" of his era was represented solely by Sigismund himself – makes the applicability of the above definition unstable in the first place. Sensing this, Makk argued that the time limit of the dynastic state characterised by the Árpáds and Angevins was marked by the end of Sigismund's reign decades later. In the context of Makk's justification, the use of the epithet "dynastic" is acceptable, at least for the state of the Árpád and Angevin rulers. However, that epithet alone carries no qualifying content that would point only to the state of the Árpáds, the Angevins and Sigismund, since from the 16th century, in several successive periods of the modern Hungarian state, the

[82] Makk 2010: 29.

development of Hungarian state history was in fact defined by another dynasty: the Habsburgs.

The concept of the state of estates [Hung.: *rendi állam*] is long-established and used. Defining the concept of "estate" [Hung.: *rend*], Engel grasped the essential criterion as the interference in the governance of the country, arising from the legal situation. "The 'estates' essentially consisted of those who were considered landlords, that is, landholders of some type. All who lived under the power of a landlord […] were outside the framework of the 'estates'." In other words, the estates encompassed freeholders (who were not subject to a landlord's authority and owed no peasants' service) or "a group of landowners with the same legal status".[83] The operational principle of the state of estates was to ensure the estates' participation in political decision-making, their systemic participation in the functioning and operation of the decision-making bodies, and thus in the shaping of the state administration. According to Engel, the two characteristic features of the state of estates were the diet (assembly of estates) and, related to this, the principle of representation of the estates.[84] These were joined by – as a third element, if you like – the organisational and operational rules established by the decision-makers, that is, the provision of the legal framework.

The concept of the state of estates includes and can be defined by the distribution of decision-making power between the ruler and the estates, and by the actual exercise of the royal rights by the king. Considering the exercise of royal power to be evident in the states of estates, there is no reference to the king as the exerciser of power in the name used to identify this type of state, and it is unnecessary, too. Since it is the estates that appear in the name, as the other effective factor in addition to the king in the exercise of power – that is, the word "estates" carries the specificity that is suitable and sufficient for distinguishing the state indicated by it – highlighting an equally effective factor other than the king seems useful and reasonable to distinguish the state functioning as the precursor of the state of estates. Before the establishment of the state of estates, the sole political decision-maker was the king, who, from the outset, necessarily relied on his dignitaries in exercising and maintaining his royal power. These prominent men were the prelates and the secular members of the king's narrower circle: his *ispáns,* the *nobiles,* then his

[83] Engel et al. 2003: 193.
[84] Engel et al. 2003: 194.

iobagiones, the barons and members of the royal council. Serving as a council, they could be the influencers and even the initiators of the king's orders and measures, also reinforcing the royal decisions with their unanimous consent. In this way, they were determining factors in the exercise of royal power and the functioning of the state. Taking all that into account, in naming this type of state, a reference to such prominent men and their body around the king, the royal council, would be most justifiable. For lack of a better choice, an appropriate epithet – as reference to the members of the royal council – would be "aristocratic". In my opinion, if it is necessary to distinguish it with a single epithet, the power structure and political organisation that can be described from St Stephen's reign to 1439 can be called an aristocratic state, more precisely the aristocratic Hungarian state.

The power structure and political organisation established by the first king of Hungary, the state of St Stephen, proved to be viable. Surviving the disturbances following the death of the first king, the Árpád descendants built and maintained their power on the inherited structure. The integrity of the state of St Stephen was not broken even when royal power was actually divided in the latter half of the 13th century between Béla IV and his older son, nor in the late 13th century, when oligarchs became provincial lords. True, however, that not a single lord was able to achieve at least tacit support for his quest for independence from the church, which "perhaps nowhere was as much a supporter of the central power as in Hungary".[85] The power of the Angevin kings and Sigismund was also based on the institutions of the Árpád era. In order to achieve their political goals and to ensure their monopoly exercised with the support of the royal council and their dignitaries, the royal donation, the solution used since the reign of the first king to oblige the faithful, was left untouched, and only minor but effective modifications were made to the donation system from the aspect of the exercise of power. The wealthy element of the freeholders, the *bene possessionatus* nobility, was formed as a result of the royal donation practice and *familiaritas*. Emerging from their former powerless role in political decision-making, the *bene possessionati* became an influential factor in the diet from 1439, then, after losing some of their power-influencing weight under Mathias Corvinus, they returned as a renewed and unavoidable force after 1490. By the early 16th century, the diet actually functioned as a body dominated by the

[85] Fügedi 1986: 180.

freeholder nobility. By the late 15th century, the *bene possessionatus* elite formed the right to represent itself in the royal courts and in the royal council. At the same time, the *bene possessionatus* nobility occupied the bodies of the county as well. It was enshrined in law that all landowners, including the holders of the largest properties, were under the authority of the county, and that the county *ispán* could only appoint vice-*ispáns* with the consent of the nobility of the county. And in the convention dated 13 October 1505, it was laid down that in the event of Vladislaus II's death without a male heir, a foreign ruler would not be chosen.

With the rise of the nobility, a system of ideas took shape as the political credo of the Hungarian nobility and a decisive influence on their outlook, penned by István Werbőczy. In Title 3 of Part I of the *Tripartitum,* deriving from the first Hungarian king, Werbőczy defined the reciprocal (public law) relationship between the king and the nobility, which formed the basis of the exercise of power and was manifested in the country's holy crown: "But after the Hungarians […] elected him their king and crowned him of their own free will, and then was transferred by the community, out of its own authority, to the jurisdiction of the Holy Crown of this realm and consequently to our prince and king, the right and full power of ennoblement, and therefore of donating estates which adorn nobles and distinguish them from ignobles together with the supreme power and government. Hence all nobility now originates from him, and these two, by virtue of some reciprocal transfer and mutual bond between them, depend upon each other so closely that neither can be separated and removed from the other and neither can exist without the other."[86]

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Gábor Máthé

Kingdom of Hungary – Habsburg Monarchy – Central Europe

The Europe of Composite Monarchies in the 16th–20th Centuries

Introduction

Ferdinand of the House of Habsburg, Archduke of Austria was crowned king of Hungary in 1527. Encompassing the countries of the Hungarian crown and the *Erblande* ("hereditary lands") of the House of Habsburg, Central Europe came into being. Albeit the fate of the Holy Roman Empire and the Kingdom of Hungary were intertwined for a long time after 1556–1558, the latter never formed a part of the empire. Neither was it a part of the *Erblande*. Its Habsburg rulers never governed Hungary as Holy Roman emperors but as kings of Hungary.

According to the prominent German publicist Günter Ogger, a specifically great era of the European history, the period between 1480 and 1560, might set an example even for today's world. Ogger authored an authentic book, penned with expertise on economic theory and history, on the Fugger dynasty, the renowned bankers who, through the Thurzó family, played a significant role also in the 15th–16th-century Hungarian history, and who were involved in every imperial and papal election, declaration of war and peace accord. As Ogger explains it in his book entitled *Die Fugger. Bankiers für Kaiser und Könige* the establishment of the world's first multinational concern and the closely related, still not outdated organisational forms were also attributed to the Fuggers.[1]

In his DSc dissertation, the distinguished Hungarian historian and researcher Professor Géza Pálffy discussed the 16th-century functioning of the Kingdom of Hungary, and its place and relationships within

[1] Ogger 1978: 203–204.

the Central European Habsburg state conglomerate.[2] His findings are primarily significant from the aspect of the evolution of states, since "the state development of the Habsburg Monarchy can rather be considered an evolution, that is, a long development process than a fast absolutistic revolution".[3] According to Pálffy, Thomas Winkelbauer was absolutely right in labelling the state of the Habsburgs that came into being during the decades after 1526 in Central Europe "eine monarchische Union monarchischer Unionen von Ständestaaten und ein aus zusammengesetzten Staaten zusammengesetzter Staat" (a monarchic union composed of the monarchic union of states of estates and a composite state composed of composite states).[4]

"In about four decades, Ferdinand I's political and modernisation program laid down the *essential foundations* of the Royal Household and central state administration of the Habsburg Monarchy, the administration of the prioritised Hungarian affairs, and the key financial and military affairs. These were the foundations on which his reformer successors of the 17th and 18th centuries could build for centuries to come."[5]

"Despite strong integration tendencies and successful measures aimed at centralisation, the Kingdom of Hungary maintained significant independence and – *in the sense of the era* – considerable state sovereignty within the monarchy."[6]

"As John H. Elliott aptly put it, the old continent of the 16th century was the 'Europe of composite monarchies'".[7]

"*In the modern sense,* the various members (kingdom duchies, margravates, counties) of the 16th-century dynastic composite states could primarily have 'internal sovereignty'. Evaluated *in the sense of the era,* their sovereignty therefore could not amount to a full independence of state (that is, to both 'external' and 'internal' sovereignty) but only to 'internal sovereignty'. The extent of the latter, however, varied from one country and land to another […]. In addition to factors of state organisation, geopolitics and geography, it depended primarily on the manner of

[2] Pálffy 2008 (for the monograph version of the work see Pálffy 2010).
[3] Pálffy 2008: 71.
[4] Pálffy 2008: 69–70.
[5] Pálffy 2008: 78.
[6] Pálffy 2008: 218.
[7] Pálffy 2008: 219.

ascension to the throne, the power of estates and the particularities […] of domestic politics, legislation, administration of justice and law, and local governance."[8]

"Ultimately, despite the dynastic aspirations, St Stephen's country not only became an elective monarchy *(Wahlmonarchie),* but also a strong state of estates, moreover, a smaller monarchy of estates *(Ständemonarchie).* It came to be the entity with the most powerful and populous estates within the mighty Habsburg Monarchy. Contrary to the general understanding in Hungarian and foreign historiography, successful centralisation and strong estate system were thus not mutually exclusive. Namely because the Hungarian political elite was interested – for different reasons – in both the successful centralisation and the maintenance of a strong estates system. Therefore, although in different capacities and with different identities, it assumed a decisive role in both processes."[9]

"In the midst of […] interdependence and despite the mutual renunciations, a rather solid system of compromises formed between the Habsburg court and the Hungarian elite in the 16th century […]. Therefore, the fundamental changes that took place in the decades after 1526 defined the co-existence of the Kingdom of Hungary and the Habsburg Monarchy for a very long time."[10]

Legal development – The continuity of our historical public law values

"Zeitgeschichte manifesto"

The director of the Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, Armin von Bogdandy authored a "Zeitgeschichte manifesto" entitled *National Legal Scholarship in the European Legal Area.* In his manifesto,[11] Bogdandy observes that today the advancing European integration poses fundamental questions for national traditions of legal scholarship. To these challenges, he seeks answers that adequately help the Europeanisation and pluralisation of the identity of jurisprudence.

[8] Pálffy 2008: 219.
[9] Pálffy 2008: 280.
[10] Pálffy 2008: 364.
[11] Bogdandy 2012.

Even though not formulated in relation to the Hungarian circumstances, the recommendations of the German Council of Science and Humanities may provide valuable lessons for us, too. We wish to highlight only one element of this German project here: the phase of Europeanisation of the national legal systems has led to a new situation, which is most illustratively described by the term European legal area *(europäischer Rechtsraum).* Although this process took place in a "pointillist" and *ad hoc* manner, according to some experts, the unification resulting from this new European law is more significant than the effect state laws have on each other in the United States. The manifesto argues that this created a new quality, the area and its law, which transcends the variety of laws of the Member States.

The crown of "state personality"

In his commentaries penned to the relevant sections of the *Digesta* in the early 13th century,[12] Accursius remarked that the task of public law is *ad statum conservandi ne preat;* that is, to protect the state from destruction and collapse.[13]

As an advantage of the modern use of the language, the term "state" can be applied to states of various formations. For instance, it is no coincidence that the term "kingdom" has disappeared from the expression "state of the kingdom", as over the centuries, the state has become more important an aspect than the monarchy. Albeit originally the country belonged to the king, according to Raoul Charles van Caenegem, a Professor from the University of Ghent, by the 18th century, the king belonged to the state. Frederick the Great of Prussia, for example, regarded himself the "First Servant of the State".[14] It should be noted that a key thesis of our Holy Crown doctrine is materialisation, that is, the process of growing independent from the king's person. The wording of the renowned treaty concluded with the Republic of Venice (1381) reveals the struggle with the concept of the state, to define that the cession of the territories at issue is expressed not only towards the king but also the state of Hungary. This situation is aptly formulated

[12] *Corpus juris civilis. Institutiones. Comm. Franciscus Accursius* 1491–1492.
[13] Cf. Bónis 2011a.
[14] Caenegem 1995.

in Ferenc Eckhart's Holy Crown doctrine: "The lack of the personality of the state is compensated by the succession of kings exercising power and the all-time regalia of their power: the crown."[15]

Having represented the legal continuity of the Hungarian state for centuries, the symbol of the royal power of Hungary, the crown is inseparable from St Stephen's foundation of the state. The public law attributes have been particularly evident throughout the history of the crown, such as:

- analogous to the English concept of the crown, a *corporatio sola* separated from the king's person
- the legal subject of state personality from the 15th century, the material symbol of the parallel royal power until 1848, unified by constitutional legislation in 1848
- separated by the decision of the nation forced into a war of independence (dethroning – 1849)
- completed after two decades of detours (1867 – Austro–Hungarian Compromise)

Therefore, the Holy Crown is Hungary's particularly significant value of public law, regalia of the state and the embodiment of sovereignty.[16]

Territorial sovereign rights

We should consider a fact that the states – not only nation states but also independent sovereign states – that existed in the period from the 12th century to present day were the basic units of European politics. In general, these states recognised no supranational law or institution as binding on them. Therefore, these *superiores* were sovereigns, standing above all authority since they determined their own foreign policy and decided on affairs of war and peace. There was also a certain internal dynamic to that, namely that the population of the country, the citizens were not subjected to any foreign authority.

The concept of sovereignty was developed in the 12th century, when jurists formulated the axiom *rex est imperator in regno suo,* declaring that each royal government is sovereign within the national borders, and

[15] Eckhart 1941: 65.
[16] Máthé 2021.

thus no authority overrides the authority of the *imperator* concerned. We should note that sovereign power was most likely useful in the Middle Ages, since the – bitterly hard – struggle of medieval monarchies for the development of their legal order, power and privileges was more and more successful. In this way, a certain type of legally regulated system of relations developed between the states of medieval Europe. These entities were the early modern states. Incidentally, not defined precisely in international law, the concept of the state gained its adequate definition no sooner than in the age of absolutism.

These relations primarily reflected the principle of personality. The law of fief donation can be mentioned as an example, which determined the property relations of the era. The uncertainty of that led to territorial royal privileges, which encompassed the meaning of sovereignty in today's sense and became the foundation of the modern theory of sovereignty. Having played a significant role in developing the new structures of legal areas, the Catholic Church is also to be mentioned, since, beyond the efforts related to evangelisation, it took over literacy early on through the keeping of registers. The church judiciary was similarly based on territorial division. In summary: as the states' concept of law was changing, the principal of personality was replaced by the principle of territory in legal thought. More and more, the states developed their sovereignty-based internal legal order and the judiciary operating it.[17]

In his monograph authored in 1908 under the title *Soziologie*,[18] Georg Simmel, as opposed to modern age attempts to negate its significance, provided an illustrative evaluation of the effectiveness of this new organising principle: "Space, as the basis of organisation, has the impartiality and equality of conduct, which renders it suitable to prescribe rules of conduct for a predetermined set of subjects in their correlation with state power."[19]

According to legal history research, the Treaty of Westphalia of 1648 was a watershed that marked the beginning of the development of modern territorially organised state structure, and the legal systems bound to spatial structure came into being.

[17] Máthé 2021.
[18] Simmel 1908: 460.
[19] Simmel 1908: 692.

As mentioned above, in Europe, states in the modern sense developed in the age of absolute monarchies. That is because absolute monarchies had the attributes that characterise a modern state.

In the theory of international political systems, the period that followed the Treaty of Westphalia was defined as a system based on the principles of territoriality, sovereignty and legality, where the latter meant the rule of international law.

Even in the 18th century, absolutism meant that sovereign monarchs were above the law. This period lasted until the French Revolution. The fact that the concept of sovereignty tailored originally to rulers independent from the pope and the emperor naturally transitioned to the concept of popular sovereignty, has been a unique phenomenon in world history.

The Treaty of Westphalia thus marked the birth of classical international law, the beginning of a period that lasted for 270 years, until 1918. That rested on two pillars of classical international law: the theory of unrestricted sovereignty, and on the law of war and peace as two equivalent areas of law regulating the relations between the new legal entities.[20]

Ius commune – Ius proprium – Tripartitum – Quadripartitum

Law of Justinian v. domestic law

By the age of humanism, the elements of legistics *(legistica)* were no longer authoritative laws but historical sources, and, thus, their relationship with domestic law – jurisprudential law – became a core issue. Therefore, not only the research of the law of Justinian but also that of domestic law came to the fore. Incidentally, that was also the age of the research of interpolations. By the 16th century – aptly called the century of law – this process became of primary importance for the lands that belonged to the Holy Roman and the Habsburg empires. The reform announced at the Diet of Worms to renew the imperial constitution, and the protestant reform that begin with the publication of Martin Luther's theses in 1517, led to qualitative change in the legal system, as *ius commune* came

[20] Máthé 2021: 17.

into being, expressing general legal principles. According to Professor Brauneder's rightly put arguments:[21]

- a significant legislative activity began at the imperial level, mostly in the cities of various lands and provinces
- the quantity of scholarly literature began to increase strikingly, promoted by the advent of printing
- the establishment of an institutional-territorial state accelerated; the number of those who served the ruler with an understanding of *ius commune* increased as a result of peregrination[22]

Nonetheless, there had been a premise on which this "double reformation" was built on: the systematised codification of substantive law from the 13th century onwards. This process was not aimed at the creation of a new law but at the recording of the existing legal order. In his work entitled *Középkori jogunk elemei* [The Elements of Medieval Hungarian Law], György Bónis pointed out the fact that in Hungary, from the 1320s protonotaries and notaries, who gained experience by hands-on learning, took over the positions in the royal judiciary and the chancellery. Throughout Europe, jurists joined clergymen as experts in the administration of justice and administrative duties.[23]

Tripartitum – Translatio imperii

Werbőczy's *Tripartitum* was the last to burst into the legal history of Western and Central Europe, a world that turned itself to the Reformation. Although it summarised the material created in the period until 1500, with an approach already opened to *ius commune*, the *Tripartitum* still appeared as the law of a territorial state threatened with falling apart. Nonetheless, "undoubtedly directing the work of the Curia under King Mathias, Hungarian legal practitioners could have been, under more fortunate circumstances, a solid support of Hungarian absolutism created by Gábor Bethlen".[24] Bónis's argument

[21] Brauneder 1995: 19–20.

[22] Brauneder 1995: 43.

[23] "Lasting for centuries, the edifice of Hungarian judicial customary law *(consuetudo iudiciaria)* was built by disciples who worked in legal practice and were engaged in teaching […]." Bónis 1972: 161.

[24] Bónis 1972: 280.

is well-founded, just like the observation that the *Tripartitum* immortalised a vast reservoir of the knowledge of men learned in law and legal practitioners, and this *book of authority* became an authentic summarising synthesis, giving and bequeathing – as aptly coined by Béni Grosschmid – an institutional individuality for the nation and jurist community that fell apart after 1541.[25]

After all, communities of jurists flourish only in the centres of power, and that status was no longer granted to the Kingdom of Hungary after the mid-16th century. Central judiciary functioned with long halts, and as regards power and judicial activities, the harmony between Vienna and the territories considered the "hereditary lands" of the House of Habsburg was specifically ensured by the Habsburg-centred bodies. Perhaps this contradictory situation was the reason why men learned in law and Werbőczy's opus became more appreciated.

The Tripartitum introduced the Roman axiom of the transfer of power. Telling as regards the public law situation of the 15th century, a charter issued on occasion of the coronation of King Wladyslaw declared that the king was crowned of the will of the estates, and the full power of St. Stephen's crown was transferred to the new crown. This concept was passed on by Werbőczy. According to him, Hungarians transferred the royal rights to the Holy Crown and, thus, to the king who wore it. This mutual dependence is declared in Chapter 3 of Part I of the *Tripartitum:* "and then was transferred by the community, out of its own authority, to the jurisdiction of the Holy Crown of this realm and consequently to our prince and king, the right and full power of ennoblement, and therefore of donating estates which adorn nobles and distinguish them from ignobles together with the supreme power and government. Hence all nobility now originates from him, and these two, by virtue of some reciprocal transfer and mutual bond between them, depend upon each other so closely that neither can be separated and removed from the other and neither can exist without the other." To simplify this axiom: nobility was the fountainhead of power, transferring *potestas* by the act of the coronation, while the monarch, due to reciprocity, granted nobility in return. Such nobles were members of the Holy Crown, not subjected to the power of anyone but the lawfully crowned monarch.[26]

[25] Grosschmid 1905: 713.
[26] Márkus 1897: 55, 59.

As a striking proof of the fact that nobility constituted an estate, the *una eademque libertas* axiom in a political sense – prescribed by a clause of the last renewal law of the Golden Bull – was also enshrined, just as, consequently, the noble liberties were enshrined in the *Primae nonus* (Chapter 9 of the *Tripartitum*). On the other hand, with the objectification of the crown and the appearance of the doctrine of legal person in the charter sources, the separation of the *corona regia, corona regni* comes to the fore: the crown becomes the legal subject of international treaties, it has a territorial *imperium,* and all who live on the concerned territory are subjects of the crown – in various qualities, however, as the *Primae nonus* applies only to nobility designated as the source of power.

The foundations of the historical constitution of Hungary were laid down by the theory of the transfer of power enshrined in the *Tripartitum,* consolidating the estate system and guaranteeing the legal continuity of the independent king of Hungary within the Habsburg Monarchy.

Quadripartitum

First, we should highlight Professor Alajos Degré's imperishable monograph on civil law,[27] with the author's written evaluation of the two 16th-century Hungarian codices of legal history, and a collection of the "new items of great importance" laid down in the *Quadripartitum,* which also reveals the legal activities of the Hungarian politicians of the period. Not to mention the results of the research workshop of Degré's youth, the Illés Seminar. An undoubtable merit of the Legal History Seminar in Budapest headed by Professor József Illés was the unique preservation of the legal history of the first half of the 16th century.[28] That was a period when – amidst the danger posed by the Ottomans threatening to even destroy the country, and later, in the wake of the destruction of the Ottoman troops invited by the nobles and aristocrats due to their conflicts of interest – the decline of the previously flourishing Kingdom of Hungary became a turning point in Hungarian history. And that was also the period when the *Quadripartitum* was compiled.

As is well known, the principles of compilation of the two legal sourcebooks were in part different. Werbőczy compiled the customary

[27] Degré 1936.
[28] Degré 1934.

law of the country. Royal will also expected the completion of the *Collectio Decretum,* which would have encompassed the statutes in force, but no data are available on that work or its results.

On the other hand, the *Quadripartitum* strove to collect the full body of law (statutes and customary law) with text corrections, mainly removing items of Roman law that conflicted with the old customs. For example, the prohibition of the inheritance of the female branch, or the incorporation of the retention of *inhibitio* and *repulsio* among the appeals.

As specifically highlighted by Degré, the *Quadripartitum* included statutes and legal provisions that should be evaluated as novel acts, but these were integrated into the framework of old customary law: they were "changed with regard to the requirements of divine and natural law, yet without violating the rights and liberties of nobility".[29]

Finally, it should be noted that the *Quadripartitum* contained much fewer principles and citations of Roman law than the *Tripartitum*. As Degré explained, Werbőczy's work was intended to be also a legal textbook, thus he strove to help disciples by precisely defining various categories. The author definitely succeeded in doing so, as, according to professional opinion, the *Tripartitum* constituted the backbone of civil law studies until the work of Gusztáv Wenzel.

In closure, it is absolutely necessary to mention that József Illés, the most prominent researcher of the subject, distinguished two types of manuscripts as regards the content of the *Quadripartitum*. One encompasses the copies of the original texts of the *Quadripartitum,* which survived unfalsified until the late 18th century, in the version that was prepared in 1553 by the panel of experts delegated by King Ferdinand I, the "founder of the empire". The other variant contains the falsified interpolations of public law nature.

Yet in relation to public law, despite the falsified interpolations, the close, organic unit of the *Tripartitum* and the *Quadripartitum* has been verified. Contrary to the corrective counter-drafting intention, the compilers of the *Quadripartitum* did a thorough job. The prominent jurists recognised Werbőczy's work, "as he was the first inventive author, whose unique diligence and endeavour, many sleepless nights, discipline, education and non-common practical experience resulted in a well-considered and

[29] As practitioners, the committee included the *locumtenens* Ferenc Újlaki, the *personalis* Mihály Mérey, the vice-judge royal Tamás Kamarai, the director of royal legal affairs János Pókateleki Zömör and Martinus Bodenarius, a teacher of law from Vienna. Degré 1934: 18.

correct redaction of the statutes, decisions, provisions and customary law of Hungary, summarised and shed into a new light".[30]

As a continuation of this work, the compilers reinforced the doctrine of the Holy Crown, that is, the Hungarian position of constitutional law, by articles on succession to the throne, the judiciary of the palatine and the Golden Bull. As aptly put by Illés, "the full recognition of the significance of the Holy Crown in Hungarian constitutional law is *one of the most important public law doctrines of the Quadripartitum*".[31]

It should not be overlooked that King Ferdinand I, the first ruler of modern era Hungary strove to reshape the institutional system of the legally sovereign Royal Hungary in the aftermath of the Mohács collapse, just like his successor, the Lutheran King Maximilian.

In case of the empire founding Habsburg rulers, the coronation with the Holy Crown embodied legitimacy on the one hand, and the transfer of power between the crowned ruler and the *corona regni* on the other hand, where the latter means that the election of the king ensured the substantial and reciprocal exercise of power by the sovereign of Hungary. This public law assessment was confirmed by Ferenc Deák's imperishable work entitled *Adalék a magyar közjoghoz* [Addendum to the Public Law of Hungary], where the author emphasised the coronation of Ferdinand, the empire builder, as the first stage, as well as the special significance of the statutes of 1687 and 1723.[32]

From the monarchic union of states of estates to the absolute state based on differentiated federalism (1749–1848)

Dualism of the estates and the ruler in Hungary

The dualism of the estates and the ruler in Hungary, that is, the relationship between the monarch and the estates in the 16th–17th centuries were motivated, inter alia, by interest preferences of Ferdinand I and his successors. The ascension of the Habsburgs to the throne of Hungary fundamentally affected the central government bodies. Through the new

[30] Illés 1931.
[31] Illés 1931: 25.
[32] Deák 1865.

king, the country came into close contact with the so-called *Erblande* (the "hereditary lands" of the House of Habsburg). Nonetheless, this public law connection did not result in waiving the independence of the Hungarian public administration. Although as regards Hungarian affairs, the monarch heard his advisors in the central administrative bodies in Vienna, the king's own position prevailed in his decisions.

As is well known, the central authorities of the Habsburg Empire played a significant role later, since the ruler could not neglect this model at developing modern Hungarian bureaucracy. We shall just briefly outline the Habsburg central bodies and their Hungarian counterparts modelled on them. This subject was thoroughly examined in a monograph penned on the history of public administration by Győző Ember, who based his decisive result on the abundant archival sources.[33]

Parallels of the central bodies of public administration

To illustrate the parallels of the central administrative bodies, two bodies deserve attention based on their functions. Assisting the king in the administration of justice and fulfilling assignments related to foreign and internal affairs, the Court Council *(Hofrat)* was the longest-standing body in the Habsburg Empire. This reorganised monarchic council was characterised by three basic features: permanence, centralisation and collegiate structure. Modelled after that, the *Consilium Hungaricum* (the Hungarian Council) was established, whose members were "commonly still designated by their old titles *(praelati et barones caeterique consiliarii)*". The members of the emerging House of Magnates were indeed called *praelati et barones,* resulting from the relationship of the royal council and the upper nobility. This means that there was no difference between the old and the new situation in that regard. Nonetheless, the Hungarian Council did lose its former significance, even if not its constitutional law basis. All in all, the royal council operating under the name Hungarian Council remained the central body of the Hungarian state governance in the 16th, 17th and 18th centuries.

The other body of primary importance was the Hungarian Chamber *(Camera Hungarica).* It managed the royal and the closely related state economy uninterrupted from 1528 and 1531. Its jurisdiction obviously

[33] Ember 1946.

covered also financial administration and public administration in a strict sense. Its seat was in the capital of the country, Buda. The tasks of the Hungarian Chamber were threefold: central administration, treasury management of the revenues received and control (audit of accounting). There was a special relationship between the Court Chamber *(Hofkammer)* and the Hungarian Chamber. As aptly put by Theodor Mayer,[34] the assessment of the two chambers was most closely related to the fluctuation of the dualism: "the supreme authority of the Court Chamber was never recognised over the Hungarian Chamber, the latter was legally independent."[35] In that regard, the position of the director of royal legal affairs *(causarum regalium director)* should also be mentioned, whose key duty was protecting the royal property and representing the royal interests in court.

Finally, established in 1723, the Royal Hungarian Locotenential Council *(Ungarische Statthalterei)* played a prominent role among the central government bodies. It operated as a quasi-government in the 18th–19th centuries, and the ruler exercised his executive power through the Locotenential Council.

Nonetheless, independent from the government bodies in Vienna, this separated governmental body could only contact the king through the Chancellery. Transmitting royal decrees to the lower authorities, the Locotenential Council basically coordinated the branch authorities established in the century of Enlightenment, providing also central supervision over legal authorities. From 1769, its tasks also extended to holding the local governments liable. It was temporarily abolished along with the establishment of the independent responsible ministry but was "revived" in 1861. After the Austro–Hungarian Compromise, it did nothing but enriched the history of Hungarian public law bodies.

Differentiated federalism

Under Maria Theresa and Joseph II, the relations of the lands organised as monarchic unions were purposefully transformed into states in the sense of enlightened absolutism with substantial reforms.

[34] Mayer 1915.
[35] Ember 1946: 145.

In the sense of an absolutistic monarchic state, a material constitutional basis was consciously created by adopting fundamental laws and provisions concerning fundamental rights, and finally, in 1804 the unified states of the "Austrian Empire" – applied to the ruling dynasty – corresponded to this development.

"The commune of lands that become a state surpasses the lands, defining their structure and position in a way that makes it advisable to discuss lands only after the federal state."[36] As a result of that, the lands were "stripped" from their former state quality, and, thus, the bodies of the lands became provincial territories of the estates of the lands, while at the same time they remain as individual entities of political history. Moreover, in the spirit of monarchic state law, they define federalism, as the second basic structure of absolutism. However, this varies from land to land due to their different historical roots, not to mention the status of Hungary and Transylvania, inherently accentuated by the act of coronation.[37]

German Confederation – Austrian Empire

The "dissolution" of the Holy Roman Empire was brought about in 1806, as a result of the pressure exerted by Napoleon's foreign policy. It was replaced in 1815 by the German Confederation, which took into account individual state sovereignty, and to which the Austrian Empire and its former imperial territories clearly belonged.

According to contemporary approach, the Austrian Empire was a state that encompassed several lands. Although they differed from one another individually, unified under one sceptre, these lands formed an enormous state body.[38] This difference applied to Hungary and Transylvania. The essence is expressed by the following axiom: "[t]he unity of the state results from the unified governmental power of the monarch ruling the complex of lands."[39] Thus, there was no gap between the two parts of this state (the Hungarian part and the rest). "Dualism of that nature is not hindered by the federative order with

[36] Brauneder 1994: 90.
[37] Brauneder 1994: 90.
[38] Brauneder 1994: 91.
[39] Brauneder 1994: 91.

its multitude of lands […]. As opposed to the majority of other lands, modifications may escalate into a striking separation, just like in the case of Hungary and Transylvania."[40] Since the empire is indivisible, the sovereignty of lands covers all the population and property in the lands of Austria.[41]

The speciality that "Hungary and Transylvania had central authorities of their own and that in principle, the force of the general statutes[42] were limited to the rest of the lands, is an issue related to […] the distribution of power within the state […]. Therefore, the territorial scope of authoritative powers and statutes cannot be considered criteria as regards the extent and borders of the state not encompassing Hungary and Transylvania."[43]

Thus until 1848, the Austrian Empire that unified the lands can be considered an absolute state based on a monarchic and, in principle, not unified but differentiated federalism.[44]

Popular sovereignty – Monarchic legitimacy

In the previous chapter, the Austrian development of the dogmatics of public law was examined based on the outstanding monograph authored by Wilhelm Brauneder under the title *Österreichische Verfassungsgeschichte* [History of the Austrian Constitution], and we conveyed the conceptual systems, the complex theory of network pattern, and the interrelations using the analysis of the Austrian professor.

Furthermore, the effect that the theoretical concept of the enlightened absolutism had on the reforms, in other words, the state of comprehensively developed, organised statutes, which led to a break with the former constitutional and governmental form, is of primary importance. Professor Brauneder pointed out that the estates of the lands were eliminated as the original exercisers of power in the lands and cities.

[40] Brauneder 1994: 91.

[41] Brauneder 1994: 91.

[42] The so-called "general statutes" are not simply special forms of law. They were means of the absolute monarch's reforms to define the rights of the subjects. The sovereign's highest-level declarations of will as regards the majority of the state united from the lands. See Brauneder 1994: 97.

[43] Brauneder 1994: 92.

[44] Brauneder 1994: 92.

He also highlighted that the general statutes pushing aside the law of the lands were decisive, and that the multitude of spheres of life were transformed into a state.[45] It follows that the state was primarily oriented towards its bodies and only secondarily towards norms. The fundamental significance of the implementation of the state will is represented also by the officialdom created by the decrees of Joseph II. "The characteristic features of officialdom are professional aptitude, objectivity, punctuality, continuity and confidentiality. This develops a self-interpretation applied to the state, becomes a pillar of the state, and supports its continuity in times of crisis."[46]

It is widely known that, with guidance developed by Montesquieu, the doctrine of the separation of powers stands for a kind of intermediate position in between popular sovereignty and monarchic legitimacy. To guarantee the freedom of man, state power is to be divided between the legislature *(legislativa),* the ruler "executing" the law *(executiva)* and the judiciary *(judicativa)* subject only to law at adjudicating. Albeit the division of state power contradicts the possession of undivided power in the sense of popular sovereignty and monarchic legitimacy, as pointed out by Brauneder, "the distribution of roles between the people's representatives and the ruler enables the existence of a connection between the two theories, both in theory and political practice, as 'early constitutionalism' at first, and later, in a full-fledged form, as 'constitutionalism'."[47]

Interactions in elementary decrees of public law

Interactions – Premises

As emphasised in the previous chapter, Maria Theresa and Joseph II carried out substantial reforms in order to transform their lands from the form of monarchic union into states in the sense of enlightened absolutism.

Member of the Hungarian Academy of Sciences and outstanding personality of Hungarian historiography, Domokos Kosáry emphasised

[45] Brauneder 1994: 97.
[46] Brauneder 1994: 99.
[47] Brauneder 1994: 102–103.

the following in his collection of studies entitled *Nemzeti fejlődés, művelődés – európai politika* [National Development and Culture – European Politics]: the latest research show the historical structure of Europe as zones of various levels, that is, a combination of more developed heartlands and rimlands, where the mobility of this model results from the interaction and mutual challenges posed by these levels. This mechanism, created by the combination and interaction of the more developed heartlands and the rimlands not only characterises Europe as a whole, but also functions as a scheme of European civilisation that can be found also in a smaller scale. For example, not only Paris existed in France but also Auvergne where literacy had lagged behind Paris for a long time. The Habsburg Monarchy itself was also a scheme of that kind, as well as Hungary in its historical form is, where the development of the rimlands were not so much determined by the intentions of Hungarian politics but rather by the way this scheme worked.

The mighty rimland that encompassed, inter alia, Hungary joined the European civilisation at the turn of the 10th and the 11th centuries. Our historical literature has clearly shown the lag this rimland faced at its inception and the extent to which it managed to catch up. At times, development accelerated, such as in the 14th century, a period of various economic crises in Western Europe.

The 16th and 17th centuries brought our zone to a standstill and changed the nature of the interaction. This was the period of the late feudalism. The 18th and 19th centuries, on the other hand, stood for a period of aspirations for catching up in the rimland, including Hungary, in the spirit of Enlightenment, then liberalism and national reform.[48]

The crown of Hungary is a symbol of the joint exercise of power. The deed of the pledge of allegiance *(diploma inaugurale)* and the coronation oath is the public law form of a contract for the transfer of power between the nation and the king. As, according to the principle of *populus maior principe,* the *populus* has the power of legislation alongside and above the monarch. This state is the representative monarchy of estates or the dualism of the estates and the ruler, which means that the monarch is bound by the law adopted jointly: the ruler anointed and crowned with the crown of Hungary is unconditionally bound by the principle of *legibus solutus.* Whenever a different legal norm applied in an area under the jurisdiction of the crown – for example, as well known,

[48] Kosáry 1989: 20.

in the area of the Habsburg hereditary lands – then the emerging crisis could only be resolved by compromise.

At the 1687 diet of the Kingdom of Hungary released from 150 years of Ottoman rule, on the "proposal of the ruler", the Hungarian estates ratified the succession of the German–Spanish male line of the House of Habsburg based on the principle of primogeniture. And at the instigation of Leopold I, with the retention of the freedoms and privileges of the nobility, the estates agreed to eliminate the right of resistance enshrined in Article 31 of the Golden Bull.

Pragmatica Sanctio – The decrees of 1790

A fundamental treaty representing a *modus vivendi* between the Habsburg Empire and the independent Kingdom of Hungary, the *Pragmatica Sanctio* stands for the second compromise of historical significance. It originally was the dynasty's paramount internal regulation and the order of succession of the House of Habsburg. During the reign of King Charles III of Hungary, the most important task was to maintain and protect this mosaic-system empire.[49] That was achieved by referring to the right of succession, which – albeit had extended so far only to the male line of dynasty – in the lack of a male successor, was to be expanded to the female line of the House of Habsburg, namely to the daughter of Charles III, Maria Theresa. The change of the order of succession was accompanied by complex diplomatic manoeuvres, so the discussions to achieve an affirmative vote in the diet of Hungary began in 1712. The resolutions issued during these discussions were essential also for the legislation of the late 18th century, as well as for the legal preparation of the Austro–Hungarian Compromise in the 1860s. Therefore, they became relevant to Hungarian public law:

– the enthroned female member of the dynasty inherited all the hereditary lands as a single body, indivisibly and inseparably

[49] See relevant data by Niall Ferguson. The Central European empire of the Habsburgs was primarily weakened by ethnic diversity, since at least 18 nationalities were scattered in five separate kingdoms, and two grand duchies, one duchy, six counties and six further territorial units are "represented as samples". As aptly said by the author: "The monarchy was a stable but weak power." Ferguson 2006: 10–32.

– the estates of the hereditary lands of the House of Habsburg declared their alliance with the Kingdom of Hungary
– they bound themselves to contribute an amount to be determined to the maintenance of the troops tasked with guarding the borders

Based on this defence obligation, the Kingdom of Hungary saved the empire from disintegration for a second time. The first "test of strength" was the coronation of our freely elected king, Ferdinand I, which was considered by Ferenc Deák to be "the true birth of the empire". It is a fact that Ferdinand's actions to centralise the "Central European state complex" of the Austrian line of the Habsburgs is recognised as a timeless decision by historiographic literature.

Beyond declaring the unity of the empire, the *Pragmatica Sanctio* bound the recognition of the succession of the female line to the support of a decisive condition: "Hungary as a separate party concludes the treaty with all the other parts, with the demand, that the female successor ascending to the throne shall guarantee by a charter and oath that she would govern Hungary according to Hungary's own constitution and laws, and not in the manner the rest of the hereditary lands are governed."[50]

According to the *communis opinion* formulated in the literature, the Pragmatic Sanction was the guarantee of legal continuity, that is, the only dogmatically well-founded link between the pre-1848 public law safeguards of Hungary's independence and the April Laws of 1848.

The Deák–Lustkandl debate

At the end of the century, the Pragmatic Sanction adopted by the Diet of Hungary in 1723 was joined by cardinal rights with considerable significance as regards constitutional history. The nature of these rights was twofold, as within the framework of the constitutionality of the state of estates, they encompassed all the guarantees intended by the ideas of the 18th century for a diet, that is, a legislature that included also the representatives of the bourgeoisie. For example, Article 10 of the Decree of King Leopold II of 1790 stipulated that Hungary is an independent state existing independently, not to be administrated and

[50] Tóth 1900: 376.

governed as other lands but according to its own laws and customs. Article 11 guaranteed the inviolability of the borders of the country, while Article 12 concerned the exercise of the legislative and executive powers. The requirement of the separation of the branches of state power and the prohibition of governing by letters patent appeared for the first time in this regulation.

In the following, this legislative "qualitative transformation" will be illustrated by the renowned Deák–Lustkandl "historical debate". As a negation of the *argumentum ad personam,* Ferenc Deák summarised the statements of his debate partner thematically grouped, and then refuted them with an evaluative list of legal facts.

The first of the five highlighted topics was the declaration of "Unio cum religius Regnis et Provinciis haerediariis". According to the extreme Austrian public law position, the Hungarian land of the crown had no rights other than the union with the hereditary lands in relation to the Pragmatic Sanction. In contrast, the Hungarian standpoint was: "In Hungary, the monarch should not rule and govern in the manner of other lands but in accordance with the country's own laws. And what indisputably follows is that the country had not waived the inviolability of its freedom and being governed according to its own law, and, thus, had not ceded its constitutional independence to any other country."[51]

Based on the axiom *nulli alteri regno, aut populo obnoxium, sed propriam habens consistentiam et constitutionem,* Lustkandl interpreted the independent constitution of Hungary in a way that common affairs are to be distinguished from purely Hungarian affairs. Deák, however, derived his arguments with undoubtable logic: Hungary is an independent country together with the parts connected to it, and the system of its government is also independent (including all of its administrative bodies [*dicasteria*]), in a sense that it is not subjected to any other country or people *(nulli altero regno, aut populo obnoxium)* but has its own consistency and constitution *(sed propriam habens consistentiam et constitutionem).* That is, it is an entity to be governed and administered by the kings of Hungary, according to its own laws and lawful customs, not on the model of other lands.

Leges ferendi, abrogandi et interpretandi Potestatem legitime coronato Principi et Statibus et Ordinibus Regni ad comitia confluentibus communem esse.

[51] Máthé 2021: 41–42.

Due to the complexity of this issue, it is worth highlighting the following:

a) the issues of legislation and interpretation of laws
b) the evaluation of the legal difference between the deed of the pledge of allegiance *(diploma inaugurale)* and statutes
c) thesis as regards *regalia*

Ad *a)* In contrast to the Austrian partner, Deák interpreted the scope of royal privileges more narrowly. The disputed passage said that the hereditary king has all rights that belong to the "public government" of the country before the coronation. While the general rule includes the term "public government", Lustkandl argues that this covers all branches of royal power, including legislation, even though the provision of privileges does not provide an opportunity for an extensive generalisation.

Ad *b)* Concerning that issue Deák – rightly – makes a clear distinction between the pledge of allegiance and statutes. The former is an attribute of the coronation as a prerequisite thereto, creating a quality that differs from the result of legislation. The content of the *diploma inaugurale* is strict and binds also later rulers (such as: the oath taken to the rights, laws and freedom of the country, and to the annexation to the country of the territories to be recovered, etc.). The right to legislation, on the other hand, is a right of the crowned king, where he either confirms or rejects the laws submitted to him and is not obliged to give his royal assent to them.[52]

Ad *c)* In addition to the debate concerning the execution of power by the estates and the dynasty, we should point out Lustkandl's thesis that the legislation (competence) of Hungary never extended to the *regalia* (royal privileges), military and financial affairs, and foreign relations. The argument related to the *regalia* is refuted by Deák with a list of facts and an impressive quantity of statues. Between 1492 and 1844, the Diet of Hungary adopted nearly fifty statutes on mines, minting, salt, saltpetre and post.[53]

[52] Deák 1865: 112.
[53] Deák 1865: 116–117.

De legislativae et executivae Potestatit Exercitio.

The fourth highlighted targeted debate concerned Article XII of 1790, since this *decretum* also regulated the practice of execution. Deák treated the prohibition of governing by letters patent as a fact. It was considered acceptable only if the issuance of letters patent concerned a subject matter equivalent to that of a statute (with a simplified Latin formula: *publicatio debito cum effectu…*). The difference between the positions of the debate partners arose from the derogating assessment of qualitative and procedural law conditions. The practice in Hungary prohibited any irregular proclamation procedure that derogated from the model, and, therefore, *ab ovo* the general prohibition was dominant. Nonetheless, Lustkandl considered the letters patent issued at extraordinary events (such as when the *dicasteria* and local governments were not operating due to mutinies or pandemics) the norm: "Das aber die oesterreichischen Länder mindestens siet der pragmatischen Sanction eine einhetliche Gesammtmonarchie gebildet haben, wovon Ungarn auch ein specieller Theil war" (Lustkandl).[54]

However, due to the fact that Ferenc Deák was very well prepared, the highly instructive professional debate reached his aforesaid "trump" in its final stage.

Lustkandl, who used his dominant position to replace reason in his offence, plainly formulated that the Austrian lands, since the *Pragmatica Sanctio* anyway, formed a unified *Gesamtmonarchie,* and Hungary was nothing but a special part of that. The logic of the Viennese expert of public law considered a closed "total monarchy", of whom Hungary formed a part as an Austrian land along with the hereditary lands of the House of Habsburgs. Deák's answer, on the other hand, was based on the fact that the hereditary lands were possessed by the same ruler on the basis of legal succession, indivisibly and inseparably. "The concerned countries/lands form a single monarchy due to the fact that they have the same monarch, and thus – but only in this correlation – Hungary is also a part of the empire of the common monarchy. However, it is not an Austrian land but an entity that is legally independent in terms of both its legislation and governance. The Pragmatic Sanction was not

[54] Deák 1865: 139.

concluded by the Hungarian nation with the Austrian lands but with the ruler elected of its own will, that is, the king of Hungary."[55]

The lessons that can be drawn from this unique debate of our public law history also brightly demonstrate Ferenc Deák's arsenal of arguments and persuasive power. So much so that they are clearly reflected in Deák's masterpiece, the Austro–Hungarian Compromise (Articles II and XII of 1867).

Cameralism

The cameralist doctrine in state theory

In the wake of the relocation of the Pázmány Péter University from Nagyszombat to Buda, the Faculty of Law gained a new department on 3 November 1777: the Department of Scientia Politico-cameralis. Thus, the Faculty of Law was completed into the Faculty of Law and Political Science.[56]

By the 18th century, the existence of the state and the justification of its actions required a new theory of the state. According to the old perception, the *Staatslehre–Staatstheorie* had a religious connotation. The theory of the absolute state thus radically broke with the axiom that the state is an entity existing due to God's will and derived the thesis "gottgewollte Gesellschaftsordnung" to a social contract based on people's free will, where this social contract was born of natural law. József Szaniszló, who penned the history of the abovementioned

[55] Deák 1865: 142.

[56] This process was recorded in the highly regarded monographs penned by József Szaniszló, a former Research Fellow of the Hungarian Institute of Public Administration, who thus preserved the image of the absolute state of the era, also called a state with cameralist administration. Cf. Szaniszló 1977. See also Gerloff 1937. Gerloff formulated the legal-philosophical definition of this state as follows: its form was provided by natural law, while its content was given by cameralism, the economic and public administration science of the era. "That succinctly indicates that, in addition to being an economic science, cameralism was also an administrative science: the first systematic summary of the knowledge required for the administration of the state. We can add that in this interpretation it is a *sui generis studium*, because it is indisputably a product of the German princely state. There is no doubt that, like most emerging sciences, it bears the marks of rudimentary nature. Therefore, one can agree with Andor Csizmadia, a Professor of legal history, that the new *studium* can only be considered a modest forerunner of the science of public administration." See Csizmadia 1976: 11–12.

department, illustrated this wittily by analysing Hugo Grotius's opus *On the Law of War and Peace.* Szaniszló pointed out that as opposed to the deity of the theocratic approach, the starting point of Grotius's system was the human being, filled with sense by nature, where natural law is a substantial component of that sense. With a rather apt term coined in the German literature, natural law is called *vorstaatliches Recht,* that is, a law that had existed before the state. A special feature of a person endowed with reason – stemming from his innate natural goodwill – is the desire for social coexistence. However, the fulfilment of the natural law inherent to man – the realisation of human dignity – is only possible if the reasonable needs of human society are met. To guarantee that, people concluded a contract with each other: the so-called social contract, which stands also for the origins of the state. It should be noted that although political theory broke with the theocratic conception of the state, it was far from doing so with religion.

Components of cameralism

Bearing nothing more than a scientific history significance today, cameralism most importantly carries the legacy and testimony of the happiness of people and the creation of the welfare state. According to Heinrich Zincke, an often-quoted prominent figure of this field, cameralism is a learned and practiced science for a thorough understanding of all kinds of affairs necessary for making a living. Good governance *(gute Polizey)* is to be created based on this understanding, making the public service system of the country more and more flourishing. Thus, it is not only necessary to establish and maintain the wealth of the rulers and their states, but the states must also be governed well with a smart balance of income and expenditure.[57]

According to scholarly opinion, juxtaposing the various standpoints, the content elements of cameralism can be categorised as follows:

- science of economy *(Ökonomiewissenschaft)*
- police science *(Polizeiwissenschaft)*
- financial economics *(Finanzwissenschaft)*

[57] Cf. Gerloff 1937.

It is a fact that the absolute state strove to put into practice the ideas formulated by the cameralists to produce material goods, provide education to raise good citizens and promote the public order. In fact, defined as diverse administrative activities, the term *Polizey* originally meant a public administration whose guiding principle rooted in material wealth. All in all, we can conclude that as a *terminus technicus, Polizey* originally encompassed public administration as a whole. The separation of legislature and the executive power, however, undermined this comprehensive definition of the term. As pointed out in József Szaniszló's summary evaluation, the executive power was also established alongside the legislature, and within the executive, the state's activities aimed at promoting economic conditions and welfare were separated from its activities striving to protect the state and its citizens.[58]

Reorganising the administration of justice – Novus Ordo (1711–1790)

The aforesaid problems that arose from the separation of powers (the legislature and the executive) also had positive effects. The renowned Johann Heinrich Justi stressed the need for a well-functioning administration of justice, as natural law requires, short, comprehensible and transparent laws in that regard. The organisation established for the administration of justice focused on protecting people's rights, namely only their civil rights guaranteed by law. According to the objective of the transformation, all other areas of life were police matters, where only the considerations that promote the goal of the state should be prioritised. In other words, while the law should dominate in the administration of justice, free discretion was to be the decisive factor in all other areas. Thus, in a state governed according to the theory of cameralism, civil law and the related procedural law were recognised as an area covered by the competence of the judiciary, while it recognised no "administrative law" but only free discretion.

As is well known, the 18th century was a decisive period of the commencement of judicial reforms, both as part of Hungarian initiatives and King Joseph II's program to develop a unified monarchy. The ruler strove to radically transform the judiciary with his decree *Novus Ordo*

[58] For cameralistics as taught by new cameralists see Szaniszló 1977: I. 50–60.

Judiciarius issued in 1785. The renewal of the administration of justice in Hungary can be attributed to King Charles III's state organisation program. In 1715, a legal committee was delegated to draw up the reform plan. The proposals of the *Systematica Commissio* were adopted by the diet of 1722/23, including, as the key provisions, the reorganisation of the Royal Curia and the adoption of the act that prescribed the establishment of district courts. From an occasionally convened, medieval octaval court *(iudicium octavale),* the Royal Curia (the Septemvirate Court of Appeal [*Tabula Septemviralis*] and the Royal Court Tribunal [*Tabula Regia Iudiciaria*]) was changed to a supreme court with permanent jurisdiction adjudicating regularly. Moreover, a significant change was brought about by the establishment of the district courts replacing (taking over the competence of) the disreputable itinerant judicial forums of protonotaries. The district courts began their operation in 1724.

Along with the subsequent decrees, the *Novus Ordo* introduced radical changes. The establishment of the royal courts seemed to be a key result, and the separation of the administration of justice from public administration proved to be even more important. That separation is illustrated, inter alia, by the fact that the whole judicial organisation was included in a tight unit under the Septemvirate Court of Appeal.

The new lower courts began their operation in 1787 under the name *judicium subalternum,* and the Royal Court – Royal Tribunal – Septemvirate Court of Appeal stood for the new system of fora. The new order opened up the possibility of appeal even for peasants. However, according to the common ground formulated in the literature, the most significant change was the fact that judgements in criminal trials also became appealable in the new system. The evaluative synthesis of professors György Bónis, Alajos Degré and Endre Varga – the triumvirate of legal historians who analysed the history of Hungarian judiciary and procedural law, and whose work is still an indispensable textbook of legal education – considered the latter decision one of the most progressive measures of Josephinism.

On 1 May 1790, the judicial reforms of the 18th century were "declared terminated", and the administration of justice in Hungary "returned to its old state for half a century with all the anachronisms involved".[59]

[59] Bónis et al. 1961: 51–56.

Issues of power policy – Rule of law – National minorities

Heilige Allianz

The balance of the first half of the last 200 years was founded on the military coalition of the three founders of the Holy Alliance: Tsar Alexander I of Russia, Francis I, Emperor of Austria and King of Hungary, and King Frederick William III of Prussia, and on the principles of territorial settlement and cooperation declared by these three rulers.[60]

In the history of Europe, the initiatives of major powers were accompanied by notable congresses. The Congress of Vienna held in the 19th century stands out even among these significant events: it successfully managed international crises until 1914, that is, it enforced the above principles almost "without exception" for a hundred years.

The joint enforcement of three requirements was the key to the success of the European continent. The first criterion was legitimacy, that is, the hereditary or election-based order of the exercise of power. The second was the alliance of balanced states. Finally, as regards the resolution of conflicts, the responsibility for the future was always dominant. Albeit legitimacy was proclaimed in opposition to the ideals of the French Revolution, mainly monarchical and dynastic solidarity was expressed in the restoration against the French Revolution. This power was also Christian: it was built in the union of the throne and the altar, and in the end, it was able to remain continental. As is well-known, the seemingly idyllic image was not without conflicts: it is enough to refer to the Greek crisis (1821–1829), the revolutions of 1848 throughout Europe, and then the Crimean War.

However, by the 1860s, along with the recognition and understanding of the changed interests, the principles of power politics that were to be reconciled with the new order were gradually accepted by the alliance. This required a fundamentally new approach, and above all emphasised the need to create an institutional system based on the rule of law.

[60] Ferrero 1941: 34–36.

New principles of power politics

The two attributes of the rule of law are freedom and the sanctity of property, while the establishment of institutions to control the exercise of power is an essential requirement as regards the triad of state–society–individual. According to the *Államlexikon* [State Lexicon] published in 1846: "A state of violence becomes a rule of law state only when legislation is in the hands of a freely elected parliament." Gustav Droysen's insightful problem statement formulated in the political literature should also be mentioned: "all endeavours aim at the immovable legal relationship between the monarch and the people, assigning each their own territory"[61].

Thus, in another approach, the early concept of the rule of law is a summary of the ambitions of political liberalism. These aspirations were the following: the subordination of the sovereign to positive law (closing the "centennial dilemma" of *princeps legibus solutus*); tying the activities of the state to the law, and – last but not least – ensuring that the formal possibilities of the legislature and the executive are not used for unlawful interventions in the fundamental rights of citizens.

We – *hic et nunc* – leave aside the analysis of Stahl and Mohl's categories, but we reiterate that in the emerging new state, a compromise was made in favour of the formal state. "The nature of the rule of law state determined only the inviolability of the legal order, not its content. The essence of the state is that it should precisely define and unchangeably guarantee the trajectory of its own operation and its boundaries through law, along with a free room for manoeuvre for its citizens. Directly – as a state – it should not implement moral ideas any further than what belongs to the law."[62] It became clear that secure legal foundations, legal protection, and the maintenance of a free room for manoeuvre for judges are stabilising, even economically beneficial factors. The interest that politics took, therefore, focused on the results to be achieved. Formal legal protection also became a central issue, especially in the field of the affairs of public administration.

As wittily put by the distinguished Professor Werner Ogris: "The idea of the rule of law state moved away from the theory of the state to jump vehemently to administrative law and the science of

[61] Máthé 2015: 34.
[62] Máthé–Ogris 2010.

public administration."[63] The crucial question was to what extent would the guaranteed rights hold in the school of experience. That is how the necessity of controlling the public administration emerged, formulated by the German Otto Mayer in 1895: "The rule of law state is the state of a well-organised administrative law, and this means nothing more than the judicial form of public administration."

Further pivotal points in that regard: division of powers, independence of judges, and today the system of multi-generational fundamental laws.[64]

Stages of the constitutional process

Based on the public law status of the Habsburg emperor, the *Erblande,* and the Kingdom of Hungary, the two decades from the mid-19th century can be divided into the following stages of constitutional process and territorial settlement: 1848, 1849, 1851–1852, 1860–1861, 1865–1867. Since no compromise was reached between the imperial government and the Hungarian estates even in the penultimate phase of this timeline, the issue, as wittily put by Werner Ogris, was "tabled for the time being".[65] By 1865–1867, however, there were several factors that steered the "decade-long passive resistance" in the favourable direction – towards the solution – among the more and more uncertain political circumstances. Such a factor was Ferenc Deák's entrance to the political scene. Assisting the political debates and the negotiations in the diet, the above-referenced epoch-making work entitled *Adalék a magyar közjoghoz* (an outstanding synthesis of the dogmatics of

[63] Máthé–Ogris 2010.

[64] In the process of establishing the basic principles of the rule of law, it is important that the model is far from being a closed system, it needs constant development and attention even today. There is no guarantee that its results will last forever. The main example of this is the European Union in the 21st century. According to Martin Schulz, the former President of the European Parliament: "The member states are struggling in the grip of the duality of their own and the common political institutional system." Schulz's opinion on this sui generis formation is rather vivid: "National sovereignty is based on a model of separation of powers: we have a government that can be voted down by a parliament and an independent judiciary overseeing that rules are respected […]. What we are doing now is that we are taking bits and pieces of this framework and transferring them to the EU level, but without also transferring the separation of powers. The result is what I call a 'Frankenstein Europe'." Lóránt 2013: 9.

[65] Ogris 2010: 20.

Hungarian public law) led to Ferenc Deák's renowned "Easter Article", where he declared his program for the Austro–Hungarian Compromise.

Summarising the events of the constitutional development outlined above, it can be concluded that the Hungarian constitutional laws of 11 April 1848 made the declaration of sovereignty possible by dividing the *Gesamtmonarchie* into a personal union. This was countered in the Habsburg court by declaring that Hungary would only receive a degree of its special position within the *Gesamtmonarchie,* and its federalism was to be further differentiated. In the era of neo-absolutism, this differentiation was reduced to the extent required by the federal state. The monarch's conclusion in this regard was that, contrary to the constitutions of 1848, Hungary was a land subordinate to the federal state. Added to this was the *Verwirkungstheorie,* declaring that the Hungarians forfeited their right to a constitution with their war of independence.

Differentiated federalism, which had just come into being in 1860–1861, led to profound legal changes in the Austrian Empire after the end of the *Sistierung* period (1865–1867).

On the Hungarian part, the results achieved at the negotiations that preceded the Austro–Hungarian Compromise can be attributed to Ferenc Deák, who, recognising the European political realities, accomplished the results by combining the interests of the Austrian Empire *(Gesamtmonarchie)* and the independent Hungarian state with outstanding political and legal dogmatic reasoning.

The merits of the political compromise were essentially realised in the formula of the Austro–Hungarian Dual Monarchy, where the emperor elevated the "powers of the Hungarian land to imperial power" by the compromise, thus creating differentiated federalism. This is how the countries of the Hungarian crown were separated from the lands of Cisleithania.

At this point, we should recall the three and a half century evolution of the Habsburg Empire and the Kingdom of Hungary (1527–1867), as regards which Ferenc Deák defines three interrelated strength tests in his summary of public law. The first was the coronation of Ferdinand I as the freely elected king of Hungary, which represented the actual development of the empire. As a commonly recognised legal basis, the *Pragmatica Sanctio* stood for the second strength test, which "ensured the independence of Hungary and its connected parts as regards public law and internal governance, ensuring the possibility of common defence against all external and internal enemies for the inseparable and

indivisible countries and lands, which were subordinated to a common ruler according to the law and legal order". And finally, the third test of strength between the countries of the House of Habsburg and the Holy Crown of Hungary was the king's speech opening the Diet of 1865 and the proposals for petition in response to it, as well as the negotiations of the 67 Committee.

As a result of these negotiations, the emperor seemed ready to renounce the theory of the forfeiture of power. In 1867, the Hungarian constitution was restored. At the beginning of April, the *Reichstag* adopted the Hungarian law. At the beginning of June, there was an opportunity to crown the emperor the Apostolic Majesty of Hungary.

Alongside the discussion of issues of legal relevance, the key decisions related to the financial situation were also of great significance. As pointed out by Professor Niall Ferguson in his synthesis entitled *The Ascent of Money:* "[…] even today remains astonishing, the Rothschilds went on to dominate international finance in the half century after Waterloo." In the words of Heinrich Heine: "Money is the god of our time, and Rotschild is his prophet."[66] It was a realistic view that no European power could start a war or take out a public loan if it was opposed by the House of Rothschild. As an example, we should mention the Rothschilds' support for the negotiations related to the Austro–Hungarian Compromise – the earliest possible reconciliation of the emperor with the Kingdom of Hungary and the establishment of the Dual Monarchy.

Compromise acts

It can be concluded that, while the Hungarian Compromise Act rested on the *Pragmatica Sanctio* in terms of public law foundations and was created by a contract between the king and the estates of Hungary, the Austrian Compromise Act was tied to the so-called December Constitution of 1867. The polemic with the Austrian lands also ended in a compromise: albeit in a modified form, both the *February Constitution* and the *fundamental law of 1861* remained but were supplemented by six acts. Added to these were the 15 land orders *(Landordnung)* and 15 *Landtag* election regulations for the lands of Cisleithania. The six acts

[66] Ferguson 2008: 86–87. By the middle of the century, the Rothschilds turned from traders to fund managers, diligently managing their huge portfolio of government bonds.

concerned the following subject matters: imperial representation, the general rights of citizens, the establishment of the imperial court, judicial power, and governmental and executive power. And finally, as a special norm: the act on the common affairs of all lands of the Monarchy and the manner of handling them, which, albeit with amendments, repeated the provisions of the Hungarian Compromise Act.

Act XII of 1867 of Hungary – the Hungarian Compromise Act – was, too, completed by four additional laws: embodying Transleithania, Act XXX of 1868 on the ratification of the treaty on the settlement of the public law issues concerning Hungary, Slavonia and Dalmatia; Act XLIII of 1868 on the detailed regulation of the unification of Hungary and Transylvania; Act XLIV of 1868 on national equality; and Act IV of 1869 on the exercise of judicial power, implementing the division of powers and declaring the basic principles regarding the judicial power separate from the executive power.

As regards the division of Cisleithania, Transleithania, and Bosnia and Herzegovina, the *Landordnung* representing the dual monarchy is rather illustrative. In the footnote below, we list the crown lands (Austria), the countries of the Holy Crown (Hungary), and, with a special legal status, Bosnia-Herzegovina, which became a condominium of the dual monarchy under the control of the joint Ministry of Finance as a fourth pragmatic case.[67]

Political nation – The issue of national minorities

The 19th century was the pivotal era of the creation of nation states. This statement is ostensibly in contradiction with the public law formula

[67] Cisleithania – The Kingdoms and Lands Represented in the Imperial Council; the 17 so-called crown lands: Kingdom of Bohemia, Kingdom of Dalmatia, Kingdom of Galicia and Lodomeria with the Grand Duchy of Kraków; Archduchy of Austria above the Enns; Duchy of Salzburg, Duchy of Styria, Duchy of Carinthia, Duchy of Carniola, Duchy of Bukovina, Margraviate of Moravia, Duchy of Upper and Lower Silesia, Princely County of Tirol, Princely County of Vorarlberg, Margraviate of Istria, Princely County of Gorisia and Gradisca, Free City of Trieste and its territories.
Transleithania – Kingdom of Hungary (including the Grand Principality of Transylvania), Kingdom of Croatia–Slavonia, City of Fiume and its District, Bosnia and Herzegovina (condominium of two parts of the Monarchy).

of the Austro–Hungarian Empire, which prioritised the categories of people – political nation, instead of the single category of people's nation.

In essence, the concept of political nation is the priority of the territory of the state, while the peoples living on the territory make up the nation. This is how the peoples living in the territory of the Austro–Hungarian Empire became involved in the political nation. The Austrian concept of public law assumed a *Gesamtmonarchie* from the outset and proclaimed the unity of the hereditary lands of the House of Habsburg. At the same time, the starting point of Hungarian public law was the concept of the independent Kingdom of Hungary. With the act of coronation, as a third legal entity, the Austrian emperor and Hungarian king connected Austria and Hungary. Among the peoples living in the territory of the *Kaiserliche und Königliche Monarchie,* the Croatians – who were able to express their historical individuality – made a joint pact with Hungary, and likewise the Poles act the same way with Austria, in the form of an act. Bismarck's *bon mot* seemed to be justified: *nations do not shape states, but rather states create nations.*

It was thus necessary to reach a compromise with another nationality in both states, to achieve the recognition of the Dual Monarchy as a cooperation on the part of those nations, who also had to be involved in joint governance. These were two peoples for whom – unlike for the Ruthenians or Slovaks and partially for the Serbs and Romanians – the national border did not coincide with the social border. As the Polish legal historian, Konstanty Grzybowski explains in his excellent paper analysing the theory and the functions of the Dual Monarchy, for these peoples, compromise was not only possible, but also desirable from a social point of view.[68] The principle of the historical individuality of the lands was thus a tool for the same goal: the functioning of the Dual Monarchy.

To add further nuances when evaluating the policy concerning national minorities, in addition to the outlined characteristics, the 19th-century legal and political landscape must be supplemented with the percentage of the various ethnicities.[69]

[68] Grzybowski 1968.

[69] The statistical data sets were drawn from two authoritative sources: Von Salis 1955; Hantsch 1953. The distribution of nationalities on the *Gesamtreich* was the following: German 23.9%, Hungarian 20%, Bohemian 12.6%, Polish 10%, Croatian 5.3%, Ruthenian 7.9%, Romanian 6.4%, Serbian 3.8%, Slovenian 2.6%, Italian 2%, and the ratio of Muslims was then 1.2%.

The "terminal" disruption of the balance of power – On the way to the Treaty of Trianon

As noted by his biographer, in the essay-like part on the legitimacy of power of his Memoirs published in 1891,[70] Talleyrand reveals his view about the key to the history of the West from the French revolution until his age. He argues that essentially the manner of actions of the exercise of power have served the protection of nations. Legitimacy takes time, and the actions should be simple, clear and coherent.

Yet, no matter the legitimacy of power, those who exercise power should adapt to their age and citizens. The age requires that the supreme power in leading civilised countries is to be exercised through the mediation of the territories selected from those governed. This requires the following safeguards:

- inviolability of personal freedom
- freedom of the press
- independence of the judiciary
- the right of adjudication should in some cases belong to the public administration
- accountability of the ministers

Even if the ruler is legitimate, he cannot bear the weight of power alone but must surround himself with popular representative institutions and an opposition.

"Everything that had happened since 1789 had been a tremendous adventure ending in the great panic; the time had come to face reality and begin the reconstruction of Europe."[71]

Historiographical assessments have been divided regarding the decisions of the Congress of Vienna. The accolades are not uniform. Nonetheless, it was the last attempt to legitimise and reconstruct the balance of power. Some of the assessments are rather peculiar. According to certain historical points of view the fear of French imperialism was rooted in the strengthening of Russia. Although Talleyrand's genius

The proportions in the Kingdom of Hungary in 1910: Hungarian-speaking population 48.1%, Romanian 14.1%, German 9.8%, Slovakian 9.4%, Croatian 8.8%, Serbian 5.8%, Ruthenian 2.3%, other 2.1%.

[70] Ferrero 1941: 47, 60, 61.

[71] Ferrero 1941: 75.

was able to turn the vanquished into an ally at the Congress of Vienna, he prevailed only because of Tsar Alexander I's charisma and decision, just like after World War II. But let us focus on the 19th century. The German Confederation established in 1815 was replaced by the Second Reich led by the Hohenzollern dynasty. The Austrian Germans were left out, but still controlled the Habsburg Empire as the true heir to the Holy Roman Empire. Finally, it should be noted as a key fact that in 1804 a decision was rendered on the *house* and not on the state of the house. This dynastic empire was founded by administrative acts.

Assessment of the dynastic empire

According to the French historian Catherine Horel, Central Europe is the intellectual construction of the French in the service of their German policy. The author, however, was not bothered by the fact that Austria was a multinational parliamentary monarchy, and, as such, a cultural and historical concept. Its legal structure and multiculturalism are also exemplary for the *Zeitgeschichte,* and it should have remained a canon of European harmony.

Western politics refused to acknowledge that the greatest cohesive force of the Habsburg globalisation was the fact that it united nations with their cultural identity in a single dynastic state.

We must also recall the historical fact that Archduke Ferdinand of the House of Habsburg, who was crowned king of Hungary with the crown of Hungary in 1527, founded Central Europe as a political unit with the Austrian hereditary lands and the countries of the Hungarian Holy Crown.

Referring to the line of arguments of the abovementioned French historian, we note that the status quo created fear and had a connotation that, in this framework, the Monarchy would remain a player in grand politics. It is a fact, however, that during the first decades of the century of hatred, Habsburg absolutism was overcome by the rise of politically unstable nation states.[72] The peace treaty ending the war conflicts had

[72] "On the whole, great multinational empires are an institution of the past, of a time when material force was held high, and the principle of nationality had not yet been recognized, because democracy had not yet been recognized." Tomaš Masaryk 1918, cited by Ferguson 2006: 141.

no balancing effect either, but rather followed "the-winner-takes-all" logic.[73] With the recognition of the successor states of the Monarchy, the Treaty of Trianon left behind Central and Eastern Europe with complicated interrelations of interests.

Following the fall of the Monarchy, the "result of territorial settlement" for Hungary was the following in numbers: two thirds of the country's territory was annexed; the percentage of beneficiaries: Romania 31%, Czechoslovakia 18.9%, in the South: 12.8%, in the West: 1.22%. In the following paragraphs, I shall convey the assessment of a prominent politician and great mind, Professor Henry Kissinger, an outstanding diplomat, and analyst of diplomacy history of the 20th century.

"Lacking a Great Power in the East with which to ally itself, France sought to strengthen the new states to create the illusion of a two-front challenge to Germany. It backed the new European states in their effort to extract more territory from Germany or from what was left of Hungary. Obviously, the new states had an incentive to encourage the French delusion that they might come to serve as a counterweight to Germany." However, these novel states were not able to take over the role that Austria and Russia had played so far. They were too weak, tormented by inner conflicts and mutual rivalries. According to Kissinger's final conclusion: "At the end of this process, which was conducted in the name of self-determination, nearly as many people lived under foreign rule as during the days of the Austro–Hungarian Empire, except that now they were distributed across many more, much weaker, nation-states, which, to undermine stability even further, were in conflict with each other."[74]

Kissinger's political foresight was confirmed. The Paris Peace Conference that concluded World War I did not result in an equilibrium system, and its consequences led to World War II, where the losers strove with great effort to regain what they had lost.

The peace treaties that concluded World War II, again, did not result in equilibrium. It was indeed followed by cooperative elements, but the logic of the unfolding Cold War was openly competitive, which directly led to the development of the arms race and the bipolar world order. "In the wake of World War II, with the Paris Peace Accords, Europe

[73] Bakacsi 2015.

[74] Kissinger 1994: 243, 241.

started on the path of becoming transatlantic, losing its influence in world politics."[75]

By the reintegration of Central and Eastern Europe, the Malta Summit of 2 December 1989 represented a completely different quality, since these areas had to return to the 20th-century political and economic interrelations of the Treaties of Rome in the spirit of the Washington Consensus mediated by the USA.

"In a world made unipolar by the Grand Strategy, the integration of Central and Eastern Europe has moved even further away from the previously accepted principles. The sequence of elements of the Washington Consensus – privatisation, deregulation, trade liberalisation – was realised based on a scenario developed by the international financial world. As those who created these programs failed to conceptually separate the different dimensions of statehood and understand how they were related to economic development. The huge asymmetries created by privatisation should have been corrected by the state. Milton Friedman, the most prominent representative of free market economics, aptly remarked: 'It turns out that legal order is more fundamental than privatisation'."[76]

There would be no European civilisation without a coherent legal order.

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"The last five hundred years did incarnate perhaps the greatest but surely the most widespread progress in the history of mankind […]. If history teaches us anything, it is that continuation is as powerful as is change, because human nature does not change. This means not only the difference between Evolution and History, but the recognition of reality and of the responsibility that every human being has and that he will not – and, more important that he cannot – abandon."[77]

As Goethe warns us about our future: "[…] to think is easy. To act is hard. But to put one's thought into action is the most difficult thing in the world."

[75] Bakacsi 2015: 53.
[76] Gecsényi–Máthé 2009: 18.
[77] Lukacs 1993: 290–291.

Summary

The structure of *our volume* is twofold. Alongside summaries of development history, it contains state theory proposals for our own age. The introductory study of the historiographical part analyses the causes that led to the fall of the Roman Empire. The second study examines the development of the first 500 years of the thousand-year-old state of Hungary, the power, dynastic and cultural system of the state organisation. The third paper was penned on the 400 years of the coexistence of the Kingdom of Hungary and the Habsburg Empire and on the Europe of composite monarchies, with a methodology focusing on the analysis of the functioning of the state organisation and the interrelations of interests between the states. In a somewhat unconventional way, the dogmatic analysis of the arch of constitutional development is also integrated in this latter study under the title *Further Considerations,* touching on issues concerning the EU on the brink of organisational transformation. The fourth paper analyses the public law issues of the decades that followed the Treaty of Trianon, examining the attempts to regain sovereignty.

As is well known, the proclamation of the Reformation had a significant impact on the development of the West, complemented in a specific way by the special interest of the Habsburgs to permanently transform the Central European region. Over the course of four decades, the political and modernisation program of Archduke Ferdinand of the House of Habsburg, who was crowned king of Hungary with the Hungarian crown in 1527, created solid foundations in public administration, finances and military affairs to embrace even the changes of the 17th–18th centuries. According to John H. Elliot, as members of a 16th-century dynastic composite monarchy, the ensemble of the countries of the Holy Crown of Hungary and the crown lands of Austria represented the Europe of composite monarchies due to their inner sovereignty.[78]

As recognised also in the literature, this Europe of composite monarchies was of a lasting nature: Ferdinand's attempt to centralise the "Central European state complex of the Austrian line of the Habsburgs" was successful. The Kingdom of Hungary only formed a part of the Habsburg Empire. All along, Hungary was governed by the Habsburg rulers as kings of Hungary, not as Holy Roman emperors. As pointed

[78] Pálffy 2008: 219.

out by our prominent historian, Géza Pálffy in his DSc dissertation: "Despite strong integration tendencies and successful measures aimed at centralisation, the Kingdom of Hungary maintained significant independence and – *in the sense of the era* – considerable state sovereignty within the monarchy."[79]

The state development of the Habsburg Monarchy can rather be considered an evolution, that is, a long development process than a fast "absolutistic" revolution.

The longest-standing empire of the second millennium was the Holy Roman Empire, which persisted from the coronation of Charlemagne until 1806. The continental empires of the Habsburgs and the Romanovs dominated for over 300 years, and "perished" after World War I in rapid succession.[80]

The key questions on the 20th century posed by Niall Ferguson in his volume entitled *The War of the World. Twentieth-Century Conflict and the Descent of the West* were the following: did nation states indeed play the leading role in that century? Or can we say that, instead of being nation states, these state formations were rather multi-ethnic, and even imperial? Also: can the violence that emerged in that century be attributed to the establishment of nation states? And does the way in which the world is governed even matter?

The most important factor of the 20th century was the decline of the West. In the middle of the century, by the end of World War II, at the apogee of its unspoken imperial power, the USA had less power than the European empires half a century before. The watershed in the decline of the West was World War II. The West has never been able to recover the power it enjoyed around 1900. Had the East westernised itself, we could still have believed in the possibility of Western victory. Yet, to the contrary, most Asian nationalists pressed for the implementation of a specifically independent modernisation, adopting nothing more from the Western model than what was necessary to achieve their goals and striving to maintain the essential elements of their traditional culture.

The true arch of 20th-century development was not the victory of the West but the crisis of the empires. The Asian societies kept modernising themselves or were modernised under European rule. That was the

[79] Pálffy 2008.
[80] Ferguson 2006.

redistribution of the world, the restoration of the balance between the West and the East that was lost in the four decades after 1500.[81]

As John Lukacs, American historian of Hungarian origin and Professor at the Chestnut Hill College stresses in his volume entitled *The End of the Twentieth Century and the End of the Modern Age:* "That we live forward while we can think only backward is a perennial human condition."[82] The axiom – which is the theorem of the legacy of the French Revolution – that social change is the norm, does not apply to our 21st century in a classical sense. Hence, the term "tremendous adventure" to characterise the defining intellectual trend of the last 200 years. In his aptly penned paper entitled "Should We Unthink Nineteenth-Century Social Science?", Immanuel Wallerstein (State University of New York) puts the standpoints of the great schools of thought of the 19th century into question and proposes to rethink some of the fundamental issues.[83] This reconsideration is the spirit of Europe, standing also for the spirit of criticism, capable of making distinctions, juxtapositions and choices. Drawing a parallel and extending the examination to the Asian thought: "The expanded concept of freedom and the Chinese idea of the most complete happiness are easily equated. Therefore, happiness and freedom […] can be considered the highest level of human existence. In other words: this is the fulfilment of our humanity, the realized essence of our existence as human beings." Continuing the line of thought formulated by the orientalist László Sári: "According to the Asian thought, this is how *man* is created, the perfect *opus* who is one with the universe, the infinity. The most that one can become […]. There is no point in dictating what a human being can become. In the essential infinity of our opportunities […] a single boundary exists: the past. Human beings live by their past. In short, man has no nature, only history."[84] Thus, albeit different goals have been set along their path, the declaration of human rights in the age of Enlightenment and the alpha and omega of Asian thought meet at a common point.

Professor Niall Ferguson, one of the most renowned British historians, expert in political sciences and financial history, published John Maynard

[81] Ferguson 2006.
[82] Lukacs 1993: 281.
[83] Wallerstein 1988.
[84] Sári 2020: 307.

Keynes's value assessment of the Austro–Hungarian Monarchy in the chapter entitled *A Glistering World*.

Facta loguuntur:

"The world in 1901 was economically integrated as never before." Keynes was clearly right about economy: "How hard that integration would be to restore once it had been interrupted."

- "Economic interdependence was associated with unprecedented economic growth. In this world of competing empires, *realpolitik is foreign policy based on the consideration of power and national interests*.
- And what of the social problems with significant impact in this world of competing empires: was the country's moral fibre being eaten away by 'secularism', 'indifferentism', and 'irreverence'? They were compelling evidence that, though it glistered, was no golden age.'"[85]

"Who understood this best at the time? […] the 'kindling fever' recalled by Musil – the extraordinary ferment of new ideas which ushered in the new century – […]; the physics of Albert Einstein, the psychoanalysis of Sigmund Freud, the poetry of Hugo von Hofmannsthal, the novels of Franz Kafka, the satire of Karl Kraus, the symphonies of Gustav Mahler, the short stories of Josef Roth, the plays of Arthur Schnitzler, even the philosophy of Ludwig Wittgenstein […] to give free reign to their thoughts, but also aware of the fragility of their own individual and collective predicament. Each in his different way was a beneficiary of the *fin-de-siècle* combination of global integration and the dissolution of traditional confessional barriers. Each flourished in the 'mishmash' that was 'Kakania', an empire based on such a multiplicity of languages, cultures, and people – held together so tenuously by its ageing emperor's gravitational pull – that it seemed like the theory of relativity translated into the realm of politics."[86]

"The time around 1901 was indeed, as Keynes said, 'an extraordinary episode'. Too bad it could not last."[87]

[85] Ferguson 2006: 40–42.
[86] Hahner 2019: 295–299.
[87] Ferguson 2006: 40–42.

Further considerations

Considered one of the wisest philosophers of Central Europe, Leszek Kołakowski published, inter alia, the "modern deconstructivist version of the Great Encyclopaedia of the Philosophy and Political Sciences" in his monograph entitled *My Correct Views on Everything*.[88] As an introduction of this section entitled *Further considerations,* I shall quote four of his expressive, aphoristically concise concepts. First, I shall mention liberalism: "for the best, each should mind what concerns them, not others." His thoughts on conservativism can be linked to the closing thoughts of this study: "later nothing was as good as it had been under Franz Joseph." The other two definitions are two telling references to the current public law situation. The Wittgenstein formula: "We can chat away about anything, but first invent rules for ourselves." And, finally, the fourth thought concerning Rousseau: "It is all getting worse, oh, what shall become of us."[89]

The process of European unification

With reference to the stages of the European unification process, it should be pointed out as a major characteristic that the history of humanity is the history of civilisations and can be described with the concepts of civilisations. Both civilisation and culture refer to a given people's lifestyle as a whole. The author of the most significant synthesis of the subject so far, Professor Samuel Huntington stresses that both concepts involve "the values, norms, institutions, and way of thinking to which successive generations in a given society have attached primary importance".[90] Referring to the essential components, the definition formulated by Wallerstein is expressive too: "Civilization is a specific interrelated system of world views and structures, which forms a historical whole of a kind and lives side by side."[91]

[88] Kołakowski 2011.
[89] Kołakowski 2011. The translator's own translation.
[90] Huntington 1996: 45.
[91] Wallerstein 1988.

It follows that the community of people is a universal human society. Moral principles thus originate from common human characteristics, "universal, human nature", and can be found in all human cultures.

We must accept Huntington's reality-based conclusion that "instead of promoting the supposedly universal features of one civilization, the requisites for cultural coexistence demand a search for what is common to most civilizations. In a multicivilizational world, the constructive course is to renounce universalism, accept diversity, and seek commonalities".[92]

But our 21st century "has generally enhanced the material level of Civilization", which also had an impact on its moral and cultural dimension. "Much evidence exists in the 1990s for the relevance of the 'sheer chaos' paradigm of world affairs: a global breakdown of law and order, failed states and increasing anarchy in many parts of the world, a global crime wave, transnational mafias and drug cartels, increasing drug addiction in many societies, a general weakening of the family, a decline in trust and social solidarity in many countries, ethnic, religious, and civilizational violence and rule by the gun prevalent in much of the world."[93]

Huntington formulates an alarming prophecy: "On a worldwide basis Civilization seems in many respects to be yielding to barbarism, generating the image of an unprecedented phenomenon, a global Dark Ages, possibly descending on humanity."[94]

This threat has reared its head already in the wake of World War II: as Lester Pearson, a Professor at Princeton University put it, the world was threatened by "tension, clash, and catastrophe".[95] Unfortunately, the prophecy partially came true as evidenced by the quote from Huntington. Therefore, the future of civilisation depends on cooperation and understanding of the political, religious and spiritual leaders of great civilisations. In the upcoming period "clashes between civilizations are the greatest threat to world peace but also how an international order based on civilizations is the best safeguard against war".[96]

[92] Huntington 1996: 318.
[93] Huntington 1996: 321.
[94] Huntington 1996: 321.
[95] Pearson 1955: 83–84.
[96] Huntington 1996: 322.

The European Union

The role of the European Union is of outstanding importance from the point of view of our investigation concerning the aforesaid international order. The relationship between the Western European core states and the Central European member states is relevant, too. Not to mention the issue of the accountability of the decision-makers and the administration in Brussels. In addition to the lessons and results of the past decades, it is also justified to recall the EU's creed and tasks:

"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."[97]

The Union "shall promote economic, social and territorial cohesion, and solidarity among Member States. It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced".[98]

"The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security."[99]

From Yalta to Malta

The revision of "Yalta One" and its "result", the European Union was determined by the main trends of the past decades. The Malta Summit in 1989 symbolised the Grand Strategy previously developed by the United States (in 1985), representing a great shift: that the world was

[97] Section 1A of Act CLXVIII of 2007 on the promulgation of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community.
[98] Section 2 of Act CLXVIII of 2007.
[99] Section 3A of Act CLXVIII of 2007.

about to exit one era to enter the next. The fundamental question of this other world was how Central and Eastern Europe should integrate with Western Europe. The road that led from the version of Soviet–American condominium, through the ideal of the welfare state embodying the Rhine model to the finalised Washington Consensus, logically determined the current conditions. In this process, the transformation known as the regime change in Hungary and the adoption of the constitution reflecting the democratic core values and traditions conveying the Euro-Atlantic system of ideas were accompanied by unconceptualised privatisation facilitated by the parallelly occurring deregulation, as well as a strong reduction of the role of the state, in the spirit of neoliberal economic policy as a shock therapy implementation of the Washington Consensus. Today, after the adoption of the new Fundamental Law, it is completely clear that Lord Dahrendorf's regularly quoted metaphor was more than wrong. Namely, things have to get worse before they get better, and the peoples of the region have to go through the Vale of tears to enter the Canaan of capitalism.[100]

This long march has in fact continued to this day, in which the crisis resulting from an irrational transformation was joined by a financial (derivative) crisis. It is therefore no coincidence that the combination of an overwhelming private economy, created by the unbridled demolition of state property and of multinational companies, weakened and neutralised the role of the state in several areas. The biggest problem of these democratisation processes that started in the late 20th century has been the failure to conceptually separate the different dimensions of statehood from each other and to understand how they are connected to the economy. As aptly remarked by the foremost representative of free market economics, Milton Friedman (and as pointed out above): "It turned out that the legal order is probably more fundamental than privatization."[101]

As is well known, we are currently in the third stage of unification in European history. The first successful European entity was the Carolingian Empire. It can be considered the only model of an already united Europe, as the current one surpasses the empire of Charlemagne

[100] For an excellent analysis of the process of privatisation see Berend T. 2008: 45–55, published as a monograph in 2008 under the auspices of the Cambridge University Press.
[101] Gecsényi–Máthé 2009: 18.

even in terms of size. The real dilemma of the new Third Europe is the choice between the welfare state and the caring state. The choice related to the transformation of the *Rechtsstaat–Verfassungsstaat* is the great state theory project of the present time. At creating the new European institutional system, efforts must be made to ensure that the European Union, as a *sui generis* institution, functions as a more humane society that truly realises human rights and extends them equally. It is clear that the role of constitutional law and the constitution itself is becoming even more focal than it was before.

On the issues concerning EU law

The theory of EU law is undeveloped. Therefore, the law of this entity integrating the member states, which has become from *sui generis* a legal entity, is defined in comparison to the national laws. Any reference to a rule of law state can only concern member states.

The EU is a system linked to the allied member states organised along the lines of international law, in which the expressly listed competences consist of certain elements of the sovereignty of the member states relinquished to the EU. Thus, characterised by the *Kompetenz ohne Kompetenz* formula, the European Union has no competences of his own. This system created by the member states fits into the legal systems of the member states, acting as if it were a federal state, where the democratic deficit is supplemented by a constitutional deficit. Moreover, as is well known, in addition to its competence to interpret the law, the Court of Justice of the European Union has legislative powers, too. And the assertion of fundamental rights is guaranteed by a legal triad: the national laws, EU law and the concept of human rights.

These briefly outlined facts prove to every lawyer (not to politicians, albeit there are politicians with legal degree) that the European Union need a new legal dogmatic system. Alongside the new constitutional concepts, inter alia, the complementary, parallel competences should be defined in a new spirit.

With regard to all that, a full agreement developed in terms of an initiation aiming at a new task, namely the manifesto entitled *National Legal Scholarship in the European Legal Area* (hereinafter: Manifesto) authored by the director of the Max-Planck-Institut für

ausländisches öffentliches Recht und Völkerrecht.[102] Bogdandy's goal was to promote the success of the EU as a political project, placing this work on a completely new basis by creating the European Research Area. Ensuring the resources, this framework can be capable of creating an opportunity to develop a whole new dogmatic system, which can meet the needs of our globalised world and reconcile with national legal scholarships. Therefore, with regard to the identity of the national legal scholarships, Europeanisation appears as a quasi-imperative of our age. Incidentally, the Europeanisation of national legal orders has reached an extent which is best expressed by the term European legal area *(Europäischer Rechtsraum).*

The legal scholarship of legal dogmatics thus faces new challenges. With the classical method of comparative legal analysis, every generation must write its own history, but must also make their stand about the various ways of national development in the *Zeitgeschichte,* that is, the future common legal area.[103] And the model of the European legal area is to be developed by well-prepared legal academics and outstanding legal practitioners, while politicians without legal degree remain responsible for the EU's political project, as those ways should be parted at this point.

The "new" ius commune

Thinking Professor Bogdandy's prophecy over as a legal historian, I think that the European legal area – *mutatis mutandis* – had already existed from the centuries after the disintegration of the First Europe until the codifications of the 18th century. That was *ius commune,* consisting of the *sui generis* legal order developed by the glossators, the jurisprudence and legal culture based on the Roman law completed with commentaries, and elements of canon law and the law of vassalage, which existed in close symbiosis with the *ius proprium,* the local laws.

As its largest part was a jurisprudential law created by legal scholars instead of a legal system created by a legislative act, the *ius commune* was not a statutory but a jurisprudential law. Thus, in that era, Europe did

[102] The project was published in the April issue of volume 2012 of *Magyar Jog* by the editorial board. Bogdandy 2012.

[103] The synthesis of the history of Hungarian law was completed by the joint efforts of 18 legal historians: Máthé 2017.

not follow the path of legislative unification but chose jurisprudential legal unification. The *ius commune* was a law "without a state", that is, without a central power to issue it. Moreover, it lacked central judicial authority, too, to solve the problem of interpretation, therefore, the task of interpretation had also fallen to legal scholars, that is, the *communis opinio doctorum*.

The *ius commune* was of subsidiary nature, which meant that primarily the local law, the *ius proprium* applied, and the *ius commune* was appropriate to be applied only if the application of the *ius proprium* was not possible for some reason. The *ius commune* therefore did not compete with the primary law, and, more than that, did not assume the role of primary law, just like today's EU law, dominating not as a dogmatic legality but as an authoritative factor. In conclusion, the *ius commune* was most certainly not characterised by its actual scholarly effect on the *ius proprium*.[104]

We are convinced that the interaction of the European legal area and the jurisprudence, the interaction of the EU law and the national laws can only be effective if it follows the historical patterns of the *ius commune* and the *ius proprium*.

The body of the delegates of the national constitutional courts

The common European legal area and the modern *ius commune* seem to offer an excellent solution in overcoming the legal power system and the forced concepts of the 19th and 20th centuries. However, not even the goodwill of all members of the European Parliament is enough in that regard. Namely because there are certain legal dogmatic problems that cannot be solved simply by the "well-preparedness" of bureaucrats.

Therefore, the proposal adopted by the participants of the closing plenary session of the Fifth European Lawyers Forum held in Budapest in the fall of 2009 should be recalled. As is well known, this professional forum, meeting biannually, was initially created by German jurists, modelled on the Deutsche Juristentag. So far, the meetings of the forum were held in Nuremberg, Athens, Geneva, Vienna and Budapest. In 2011, the event was hosted by Luxembourg. In Budapest, issues of modern sovereignty were discussed in addition to topics concerning

[104] Bónis 2011b: 168–176.

the European prosecution, cross-border crime, consumer protection and commercial law.[105] Omitting the details, we recall that the plenary session adopted, inter alia, the following proposal: the constitutional court of each member state of the EU should delegate one person to the Constitutional Court College to be organised annually (spring and autumn sessions), to discuss the issues related to the jurisprudential problems that arise between the member states and the central bodies of the EU, and the developed legal solutions should be published in a resolution. (For example, a topic of such a weight is the criteria for the primacy and applicability of Community law.) This professional forum could very effectively assist the development of a common European legal area; however, no significant interest has yet been shown on the part of the EU's relevant bodies and representatives.

European Union – Nation state – Constitution

The national legal systems of the EU member states are to be considered a given factor. Due to the particularities arising from the EU's system of treaties, several problems have remained unsolved despite even the results of the efforts towards unification.

For the successful development of the European legal area, the elegance and wisdom of the Heidelberg Declaration in terms of the methodological Europeanisation cannot be stressed enough. As a reminder:

"The law of another member state, although part of the shared European legal area, is a different part thereof and the result of a dissimilar path taken. Due to divergent developments, even the same words or their equivalents may carry rather different meanings. The diversity within the European legal area, in general, requires accepting foreign law as foreign and counteracting the tendency to interpret these other legal systems purely through the prism of one's own system. This diversity is, to some extent, even protected by Article 4(2) TEU which recognises the expressive role of the constitutions of the member states. It is necessary to study the basic structure of other European legal systems, but also to respect their decisive historical experiences, stages of development, and their legal as well as their scholarly styles in the

[105] The conference material has been published in the conference volume. See Máthé et al. 2009.

perspective of the forming European legal area, and to then develop one's specific tradition in that light."[106]

This methodology is adequate with regard to the multiculturality of Europe as an entity. It is a commonplace that the flourishing coexistence of the cultural identities is the key to the flourishing existence of Europe. If the economy fails to ensure this, then the culture and the civilisation will be destined to fail. That is one of the reasons why we should pay particular attention to the final conclusion formulated by Francis Fukuyama in his outstandingly thoughtful monograph on the state-building of the 21st century:

"What only states and states alone are able to do is aggregate and purposefully deploy legitimate power […]. Those who argue for a 'twilight of sovereignty' – whether they are proponents of free markets on the right or committed multilateralists on the left – have to explain what will replace the power of the sovereign nation-states in the contemporary world. What has de facto filled that gap is a motley collection of multinational corporations, international organizations, crime syndicates, terrorist groups, and so forth that may have some degree of power or some degree of legitimacy but seldom both at the same time. [We can also add to the list the international credit rating agencies capable of hibernating the economy at the outbreak of the financial crisis and in the subsequent time!]

[…] In the absence of a clear answer, we have no choice but to turn back to the sovereign nation-state and try to understand once again how to make it strong and effective.

[…] Whether Europeans know significantly more than Americans about how to square this circle remains to be seen. In any event, the art of state-building will be a key component of national power, as important as the ability to deploy traditional military force to the maintenance of world order."[107]

As a closing thought, we refer to the most outstanding work of Raoul Charles van Caenegem, a Professor from Ghent and Cambridge, penned under the title *An Historical Introduction to Western Constitutional Law*. The epilogue of the work may be food for thought for all of us. "Whatever the outcome of events in Eastern Europe may be, the world seems less

[106] Bogdandy 2012. (The last paragraph of the section entitled *Jogösszehasonlítás* [Comparative Legal Analysis].)
[107] Fukuyama 2004: 163–164.

and less interested in political regimes built on religion, philosophy or dogmatic utopianism, whereas rational pragmatism, securing the greatest prosperity for the greatest number, is the order of the day […]. It is indeed conceivable that the Occident has discovered – or stumbled upon – certain constitutional formulas which are valuable and permanent acquisitions for mankind, but this does not mean the end of the debate, either outside the western tradition.

[…] The controversies about the power-shift from parliament to cabinet, the necessity of a written Constitution and a Bill of Rights and the desirability of constitutional courts will, no doubt, go on. And so will the debate on human rights: do they belong to the heritage of mankind or are they a western invention that only spread world-wide in the wake of intellectual imperialism?

[…] Some twenty-three centuries ago Aristotle posed the speculative question as to which was, under varying circumstances, the best Constitution (politeia): the discussion is still open."[108]

Due to all that, approaching the organisational reform of the European Union, the – hopefully intellectual – legal and interest-based settlement may begin, manifesting itself in the formula of *nation states,* the founders of the *alliance of European states,* and – at mid-level – geographical and historical *regions.*

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[108] Caenegem 1995: 306.

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Attila Horváth

The Sovereignty of Hungary in the So-called Short 20th Century (1918–1990)

The First People's Republic of Hungary

Popular sovereignty

In the wake of the Austro–Hungarian Monarchy's defeat in World War I, the multi-ethnic empire fell apart. After István Tisza admitted the defeat in the Parliament, the Hungarian opposition (similarly to the Czechs and the southern Slavs) formed the National Council from the Party of Independence and '48 headed by Count Mihály Károlyi, the Radical Bourgeois Party, and the Social Democratic Party of Hungary on 24 October 1918. King Charles IV was called upon to commission the National Council to govern the country. On 26 October 1918, the ruler appointed Archduke Joseph August as *homo regius* (verbatim: "the king's man"), that is, a regent with full power as head of the country. But since the new leader of the country still ignored the National Council, and even commissioned Count János Hadik on 29 October to form a new national government, the soldiers and civilians of Budapest and other big cities, malcontent due to the protracted world war and financial difficulties, began to hold street protests between 28 and 31 October 1918. As a result of the crises affecting both domestic and foreign policy, Archduke Joseph August appointed Count Mihály Károlyi as Prime Minister, who was the leader of the opposition by then. At first, Károlyi took his oath of allegiance to Charles IV, but, as it was demanded by the Entente and particularly the American Government, he revoked it. In his phone message on 1 November, Charles IV absolved the government from allegiance to him. On the same evening, in the presence of János

Hock, the elected leader of the National Council, Mihály Károlyi took the oath again, this time to "Hungary and the Hungarian people".[1]

Eventually, the solution to the problem of the form of state was modelled on Austria. In Vienna, the republic was proclaimed by the Austrian National Assembly on 12 November, and Charles IV signed a declaration renouncing the exercise of his sovereign rights. Two days later Charles IV made the same declaration as the King of Hungary. According to the Eckartsau Proclamation: "I do not want my person to hinder the development in Hungary, for whom I am filled with unchanged love. Therefore, I renounce all participation in state affairs, and hereby acknowledge, in advance, the decision to be rendered by Hungary on its future form of state."[2] However, first, the proclamation was not addressed to anyone, and, therefore, it may even be considered a private letter. Second, the king only renounced the exercise of his sovereign rights and did not mention abdication. And third, neither was the proclamation countersigned by the minister nor did the National Assembly adopt a resolution on it. Nonetheless, according to the legal opinion given by five professors at the University of Budapest to Mihály Károlyi, the Pragmatica Sanctio became invalid prior to the king's renunciation, and, therefore, the Hungarian nation regained its full sovereignty.[3] As there was no intention to convene the national assembly elected in 1910, and it was not possible to hold elections, the National Council was supplemented by the representatives of political parties, advocacy organisations, churches and rural national councils, and declared the thus formed Great National Council, expanded to 500, and later 1,000–1,200 members, a national assembly substituting the Parliament. On 16 November, the Great National Assembly promulgated its People's Resolution: I. Hungary is a people's republic independent from all other countries. II. The constitution of the People's Republic of Hungary shall be adopted by the Constituent National Assembly, which is to be convened immediately based on the new electoral law. III. Until the Constituent National Assembly decides otherwise, the supreme power of the state shall be exercised

[1] Borsányi 1988; Böhm 1923; Breit 1929; Gratz 1935; Hajdu 1968; 2005; 1978; 2012; Hatos 2018; Juhász Nagy 1945; Mérei 1969; Salamon 2001; Schönwald 1969; Siklós 1978.

[2] For the original copy of the Eckartsau Proclamation see http://vmek.oszk.hu/02100/02185/html/img/1_015a.jpg 2023.

[3] Schweitzer 2019: 75.

by the people's government headed by Count Mihály Károlyi, with the support of the management committee of the Hungarian National Council. IV. The people's government shall immediately adopt laws on: 1. direct universal suffrage including women and secret ballot as regards the National Assembly, and local governments of towns and villages; 2. freedom of the press; 3. adjudication by jury system; 4. freedom of association and assembly; 5. land allocation to the agrarian community. The National Council retained only vague controlling powers for itself.[4]

The true meaning of the expression "people's republic" was republic, while the "people" part of the term was meant to express the revolutionary circumstances. In the lack of parliamentary elections, since the exercise of state power was taken over by bodies that were not authorised to do so by the constitution, the Károlyi Government intended to legitimise the people's republic by the so-called "Aster Revolution". Armed groups confiscated flowers, mostly chrysanthemums (not asters, as they bloom earlier) prepared for All Souls' Day, and, marching over the streets of Budapest, forced every soldier to replace the rosettes on their hat with chrysanthemum. The petty officers' stars and sword nots were torn off and the officers' decorations were also taken away. Those who disobeyed were beaten, and some were even shot dead.[5]

The events of late October and the first half of November was labelled a democratic revolution by Marxist historiography, which evaluated Mihály Károlyi as a Hungarian Kerensky of a sort.[6] However, by definition, a revolution can be started against an oppressive, retrograde regime, but the Austro–Hungarian Monarchy functioned as a rule of law state. And the laws adopted by the Károlyi Government, including the new form of state, appear to be reforms rather than a change of regime. The people who took the streets had confidence in Mihály Károlyi because he was an anti-war political figure of the opposition, and there was hope that, as much as possible, he may advocate favourable terms at the peace talks with the victorious great powers due to his Western connections. In addition, he was expected to solve the social problems further increased by the war. The most radical group of society comprised of dissident soldiers, whose number reached 40,000–50,000 according to

[4] *Az 1910–1915. évi országgyűlés képviselőházának naplója* [Minutes of the House of Representatives of the 1910–1915 Parliament]. Vol. XLI, 24 July – 16 November 1918, 457–458.

[5] *Népszava,* 1 November 1918, 3; *Friss Újság,* 1 November 1918, 5; Kassák 1928–1932: II. 432.

[6] Lenin 1962a: 82; Lenin 1962b: 212; Nemes 1979.

some sources. For them, a change of government was a matter of life and death. Approximately 30,000 civilians also gained access to firearms.[7]

Occupation of certain territories of Hungary

The Padua Armistice ending World War I was concluded between the Austro–Hungarian Monarchy and the Entente powers represented by Italy on 3 November 1918. The armistice required Austria–Hungary's forces to evacuate all occupied territories. Thus, this treaty theoretically left Hungary's territorial integrity intact. However, the so-called Armistice of Belgrade signed by Mihály Károlyi on 13 November 1918, defined demarcation lines, leaving large parts of the country outside Hungarian control. Károlyi intended to represent the then independent state of Hungary but failed to reach any tangible results. Serbian, Romanian and Czech troops occupied larger and larger pieces of the country and, in violation of Article 17 of the agreement, they immediately replaced Hungarian administration.[8] In addition, the Entente still recognised neither the Károlyi Government nor the agreement concluded in Belgrade.[9]

Meanwhile, the governance and the army leadership were characterised by incompetence and flurry. The first Minister of War of the Károlyi Government was an alcoholic colonel of artillery, Béla Lindner,[10] who, as it turned out, used to be a supporter of Franz Ferdinand. In fact, no one really knew why he had been selected.[11] His infamous phrase: "No more armies. I don't want to see soldiers ever again",[12] was as if the minister of finances announced that he never wanted to see money again. That is how Hungary carried out the world's fastest disarmament. The demarcation lines were not guarded. The situation escalated to the point where the Ministry of War could not assign two dozen soldiers to protect the special train that took the delegation headed by Mihály Károlyi to Belgrade on 6 November.[13] Tellingly of the anarchic circumstances, István Friedrich

[7] Gellért 1919: 192. Cf.: Breit 1925: 28; Gratz 1935: 65.
[8] Pálvölgyi 2020: 111.
[9] Romsics 2005a: 79.
[10] Hornyák 2005: 28.
[11] Garami 1922: 75.
[12] *Pesti Hírlap,* 3 November 1918.
[13] Jászi 1989: 61.

appointed himself State Secretary of the Ministry of War, and put the text of his arbitrary decrees on billboards all over Budapest. Lindner believed that the state secretary had been sent by Mihály Károlyi, while the prime minister presumed that he had been appointed by the minister of war. It is telling that even though the swindle was revealed at the government meeting held on 5 November, Friedrich remained state secretary for two more months.[14] Mihály Károlyi made Linder the scapegoat for the defencelessness of the country and the Belgrade failure, and removed him from his position on 9 November, but Lindner could nonetheless stay in the government as minister without portfolio (9 November 1918 – 12 December 1918).[15] Linder was replaced by Albert Bartha,[16] who, as opposed to his predecessor, strove to establish military discipline, but that was quite a challenging endeavour. For example, pursuant to order No. 32.334/eln. 2-a of 30 November 1918, officers of the military were allowed to join political parties. The commanders' disciplinary powers were bestowed on juries, elected "men of confidence" (Hung.: *bizalmi férfiak*) were delegated, saluting was restricted, and so forth. These orders outright disrupted discipline. Moreover, the soldier's council headed by József Pogány kept hindering the operation of the ministry; waving red flags, Pogány and his soldiers even protested in front of the Ministry of War on 12 December. All that led to the resignation of Albert Bartha.[17] Bartha was replaced for a short while by Károlyi himself, who then appointed his brother-in-law, Count Sándor Festetics as Minister of War.[18]

The government even disbanded the existing disciplined, well-equipped and well-managed troops, who gained valuable experience during the five years of the war. As a result, it was no longer possible to establish any new, effective military force, the remaining troops were not even sufficient to fulfil duties related to policing. The general staff and chief officers were dismissed, the officers were allowed to participate in politics. In this way, the finest military experts were gone, and no one who remained had the ability to grasp all the military problems that the new leaders of the newly independent state of Hungary were about to

[14] Gratz 1935: 67; Siklós 1978: 234; Böhm 1923: 80–81.
[15] Bölöny–Hubai 2004: 89.
[16] Haas 2002.
[17] Salamon 2014: 35; Gratz 1935: 70.
[18] Bölöny–Hubai 2004: 89.

face. These faulty choices led to a situation where the demarcation lines were unprotected against the unlawful attacks of Serbian, Romanian and Czech troops who violated the Armistice of Belgrade. Consequently, Hungary was defeated once more, this time by the Little Entente, and the Czech, Romanian and Serbian authorities were operating on Hungarian soil, which significantly improved their negotiating position at the peace talks.

However, at local and regional levels military resistance was far from unfeasible. This is evidenced by the success of the counterattacks in Upper Hungary in November 1918 (Rózsahegy-Zsolna, Nagyszombat), and the blocking operations of the Szekler Division led by Károly Kratochvil, which broke the Romanian advance for quite a while. Ultimately, the military action taken in Balassagyarmat also shows that military resistance was in fact possible.[19]

Mostly under pressure exerted by France, the Entente refused to recognise the Károlyi Government,[20] and, thus, completely exposed the country to land theft committed by foreign military units. Due to the anarchic circumstances that prevailed in Hungary, Serbian troops occupied larger and larger territories. They consciously strove to improve their negotiating position at peace talks as much as possible.[21]

The fall of the people's republic can be partially traced back to over-reliance on the Entente powers. The Vix Note was found unacceptable even by Mihály Károlyi, as it became obvious that the ethnical boundaries were also severely violated.[22]

The first Soviet-type dictatorship: The Republic of Councils in Hungary (21 March 1919 – 1 August 1919)

Mihály Károlyi strove to escape the critical situation by appointing a social democratic government. While Károlyi was torn, on 20 March 1919, the social democrat Jenő Landler made a pact on behalf of his party with the communist leaders held on remand in the Budapest Strict

[19] Révész 2019; Barthó–Tyekvicska 2000.
[20] Ádám–Ormos 1999: 23.
[21] *Magyarország katonai helyzete 1918. november – 1919. április* s. a.
[22] Ormos 1983: 179; Breit 1929: II. 5.

and Medium Regime Prison to jointly take over, and, after the merger of their parties, proclaim the republic of councils and introduce the "dictatorship of proletariat". On the following day, on 21 March 1919, the coup took place. In the streets of Budapest, flyers spread the fake news that Károlyi resigned, and the communists and social democrats jointly established the Socialist Party of Hungary and took over. Their armed groups occupied the strategically important facilities in the capital city, and the Hungarian Republic of Councils was proclaimed by the social democrat Sándor Garbai and the communist leader Béla Kun. The official name of the new political regime was the Socialist Federative Republic of Councils of Hungary. It was the Hungarianized version of the name "Soviet republic", where the term "Federative" indicated the willingness to be integrated into the Soviet Union in accordance with the principle of internationalism.[23]

Headed by Béla Kun,[24] the Party of Communists in Hungary had originally been established on 24 March 1918. Its members were tasked with training agitators and starting the plotting of the communist takeover in Hungary. When the news of the Aster Revolution was reported, the communists reckoned that the same process started in Hungary that had begun in Russia with the 1917 revolution. Béla Kun and his comrades came back to Hungary with the so called "rolling roubles"[25] and direct orders from the Soviet leaders. They were tasked with the establishment of a Soviet-type dictatorship in Hungary, which, eventually, would join the great Soviet Union. Accordingly, the Republic of Councils was modelled on the dictatorship executed in the Soviet state of Russia headed by Lenin. The most striking difference in comparison with Stalin's later regime was that the state party system had not yet been established. It was made clear at the constitutive meeting of the Revolutionary Governing Council that Béla Kun and his comrades claimed the leadership of the party, too, for themselves until the party congress proclaiming the merger. Consequently, the Bolsheviks sent from Moscow to Budapest banned all civil parties and associations, cultural and religious organisations. Human rights were restricted significantly. Almost all somewhat valuable or useful assets

[23] For the federative thought see Kővágó 1979: 57–60.

[24] For his biography see Borsányi 1979.

[25] The term "rolling roubles" indicates the relatively significant financial support provided by the Soviet Union to communist parties striving to achieve takeover in other countries.

were confiscated. Only the newspapers that supported the Republic of Councils with proper propaganda were allowed to proceed their operations, all others were banned.

A literal translation of the constitution of the Soviet Union, the provisional constitution was promulgated on 2 April. It regulated the relationship of the various councils and their management committees and the conditions of their establishment, determined the new suffrage criteria and defined the election procedure. The workers' councils were elected by the voters of the villages and towns, while the higher authorities were selected from the ranks of the lower-level councils. The provisional constitution actually applied the internal regulations of the Bolshevik Party to the council elections. It also regulated the right of national self-determination, and pointed out that the proletarian state would be organised along federalist principles (which would have been realised by accession to the Soviet Union).

The "final" constitution of the Republic of Councils was introduced on 23 June 1919 under the name the Constitution of the Socialist Federative Republic of Councils of Hungary. It stood for a total break with the traditions of Hungary's historical constitution, and, contrary to the national traditions, was modelled on the constitution of the Soviet Union adopted on 10 July 1918. Although the full text was not a literal translation of the Soviet constitution, the Hungarian text derogated from its model at some points only to overbid it in terms of "revolutionary approach".

The starting point was the unity of state power. With reference to workers, soldiers and agricultural workers, the new leaders took undivided possession of the legislative, executive and judicial powers. It was also declared that no position or office would be given to the so-called exploiters of the proletariat.

This power was sustainable only through continuous terror. Criminal courts were abolished and replaced by revolutionary tribunals, mostly composed of proletarians judging on a political basis, who handed down their verdicts without any formality, completely arbitrarily, with immediate effect, ignoring all kinds of legal guarantees, based on nothing but the "revolutionary sense of justice". György Lukács published a statement on terror as a "source of law".[26] The sentences were sometimes excessively

[26] Lukács 1987: 132.

lenient and at other times shockingly cruel. For example, while one accused was acquitted for pickpocketing, another was sentenced to death. In the case of a death sentence, the convict was executed immediately. A total of 570 persons were executed after being sentenced to death by the Revolutionary Tribunal. The "crime" committed by the victims was mostly "counter-revolutionary conduct".[27]

The new regime disbanded the gendarmerie and the police and established the Red Guard as an internal force unit. Modelled on the Cheka, the Revolutionary Council for the Territories Behind the Front was established on 29 April 1919, which terrorised the population with "terror squads" (the latter was the official name of the units). The most powerful irregular force of the government terror was dubbed the "Lenin boys" by the people of Budapest, since Lenin referred to them as his sons during Tibor Szamuely's visit to Moscow and sent them badges in recognition of their "work". They rode on their infamous armoured train throughout the country and struck whenever they suspected any action threatening the regime. They strove to intimidate people even with their attire: leather pants, leather jacket, army cap. They also took possession of almost every weapon they could lay a hand on.[28]

The communist leaders – who, in theory, governed together with the social democrats[29] – turned almost everyone against themselves with a series of hasty measures that ignored even the most basic interests of the population. It was no secret that the ultimate goal of the Republic of Councils of Hungary was to accede to the Soviet Union, as indicated by the term "Federative" in the constitution and the name "the Socialist Federative Republic of Councils of Hungary". As another evidence of this goal, a "Slovak Council Republic" was established upon the reoccupation of the Hungarian territories in Upper Hungary. As aptly put by Pál Pritz: "It was self-evident for the leaders of the Republic of Councils that they were first and foremost communists, and just coincidentally Hungarians"[30] (and, incidentally, they were not supported by the leaders of the Soviet Union for purely altruistic purposes either.)

[27] Váry 1922.

[28] B. Müller 2016; Bíró 2019; Sarlós 1961.

[29] The new name given to the party created by the merger did not contain the expression "communist", but the epithet "democratic" was also omitted.

[30] Pritz 2019: 61.

The Revolutionary Governing Council dissolved all civil parties and associations.[31] All fundamental rights and equality before the law have been abolished. Citizens could not rely on their individual rights. They were completely dependent on the arbitrary actions of the communist leaders. The right to access to a court has been abolished even in the event of mass infringements. The operation of the Public Administrative Court was banned. The "law journal" of the Republic of Councils entitled *Proletárjog* declared: "The revolution does not argue with its opponents. It crushes them."[32]

Regardless of gender, the right to vote and stand in elections could only be exercised by those who reached the age of 18 and made a living of socially useful work (as workers, employees, etc.) or were engaged in household works. The right to vote and stand in elections could not be exercised by: a) those who employed wage workers for profit; b) those who lived on income earned without work; c) merchants; d) pastors and monks;[33] e) the mentally ill and those under guardianship; f) those, whose political rights were suspended for a crime committed with malice aforethought. According to these rules, 50 percent of the population would have had the right to vote. In effect, voting rights were granted mostly to members of the trade unions and the governing party.[34] In the elections, votes could only be cast for a list of candidates selected by the party leadership without an opponent.[35] Even so, the results were subsequently corrected in some constituencies. The thus established local – village and town – councils delegated the district councils, and the county councils were formed from the district and town councils, thereby enhancing the influence of the city workers. Finally, the county and town councils appointed the members of the National Assembly of Federative Councils.[36] The right to vote only applied to local elections.

During its 133-day existence, a plethora of legal acts were adopted by the regime of the Republic of Councils. Among the communist leaders, however, there were hardly any qualified and experienced lawyers. People's Commissioner for Justice Zoltán Rónai received a few acts from Béla

[31] György Lukács even banned the Kisfaludy Society, founded in 1836. See József 1967: 70.
[32] *Proletárjog,* 1919/2, 14.
[33] Despite the fact that the monks were indeed penniless, as they took a vow of poverty and were not allowed to own any private property. This made them poorer than workers.
[34] Gratz 1935: 126.
[35] Böhm 1923: 301; Szabó 1919: 63.
[36] Varga 2019: 190.

Kun and the regulations issued in the Soviet Union in German from the foreign trade office in Vienna. Meanwhile, it was declared that lawyers will no longer be necessary in the new regime and law will soon fade away. Accordingly, a decree issued by György Lukács, the deputy people's commissar, terminated the university training of lawyers.[37] The hierarchy of legal sources was not clarified, not even the legislative authorities were clearly designated. It became customary for daily newspapers to regularly publish the issued decrees, which only furthered the disorder. For example, one newspaper published a decree that cohabitation should be declared marriage. And even though a statement of the Governing Council made it clear that no such regulation had been issued, several marriages were dissolved with reference to this non-existent legislation. Moreover, the provisions that were actually issued, drafted hastily with very limited legal knowledge, not only contradicted each other but in some cases were also completely senseless. For example, they banned the painting of Easter eggs at Easter, abolished the matriculation exam and grading in schools, and aimed at the nationalisation of honey, rags, wastepaper, glass ornaments, household items, cutlery, and so forth. The decrees published in the newspaper *Proletárjog* implemented more and more new ideas: the abolition of priestly celibacy,[38] and, with reference to eugenics ("racial improvement"), the termination of the right to marry of the mentally ill, those suffering from illnesses such as syphilis or tuberculosis, and later even the deaf. Moreover, bans on sexual intercourse and forced sterilisation also came into effect.[39] The Hungarian National Anthem was replaced by the Internationale. All national flags had to be surrendered and red flags were to be put on display everywhere.[40]

On every Saturday, proletarian families had to be given access to the bathrooms of all private apartments.[41] Fashion and all impractical customs were banned.[42] Despite Sándor Garbai's statement that a fifth of the Hungarian peasantry makes a living from viticulture, the prohibition of alcoholic beverages was made permanent.[43] On the other hand, the price and composition of the lemonade sold in the coffee shops

[37] Hatos 2021: 289.
[38] *Proletárjog,* 1919/1, 6.
[39] *Proletárjog,* 1919/13, 19, 21, 32, 40, 61.
[40] *Tanácsköztársaság,* 26 April 1919.
[41] *Budapesti Népbizottság Hivatalos Közlönye,* 28 March 1919.
[42] *Proletárjog,* 1919/31.
[43] *Proletárjog,* 1919/61.

of theatres and cinemas was determined with a precision worthy of a better cause.[44]

More and more decrees were passed on illegal asset confiscations labelled nationalisation by the new regime. It was announced that the only thing required for everyone to have everything they need is a rationalised and fairer distribution. No value creation or development was planned. Financial institutions, industrial, mining and transport plants, department stores, land holdings, schools, theatres, cinemas, libraries, works of art and pharmacies were nationalised without compensation. Even though the nationalisation concerning the industry was supposed to cover only factories with more than 20 employees, in many cases the workshops and tools of craftsmen were also confiscated.[45] As a result, production fell, and trade was paralysed.

Inter alia, residences, jewellery, works of art, gold coins and foreign money, oriental carpets, bank deposits, musical instruments, bicycles, furniture, microscopes, dishes, stamp collections, underwear were also nationalised. In the end, they took almost everything that was not nailed down.[46] No constructions of new apartments were started, but the existing apartments were taken into inventory by the so-called condominium commissaries (Hung.: *házbizalmi*). In principle, each adult could keep one room, and a family a maximum of three rooms, the rest of the apartment property had to be offered to the state. The apartments and parts of the apartments inventoried by the condominium commissaries and the caretakers were distributed among the supporters of the regime.[47] Abruptly disenfranchised from their rights to their property, the owners felt fraudulently deprived of their material and moral assets by the new regime.

The action called nationalisation was actually nothing but ill-conceived looting that caused more harm than good, even for the Republic of Councils itself. Since almost everything was confiscated, taxation ceased, and the regime strove to replace state revenues with the overexploitation of resources. At the majority of nationalised companies, production fell, and work discipline decreased. A part of the seized stock

[44] Dent 2018.
[45] Rákos 1953: 41.
[46] PIL 672. f. 348. ő. e.
[47] *Pesti Napló,* 1 April 1919, 4; *Pesti Napló,* 29 March 1919, 4; *Népszava,* 29 March 1919, 3; *Népszava,* 3 April 1919, 6; Hatos 2021: 185.

of goods simply drained away.[48] The restrictions affected not only traders, but also customers. Furniture, dishes, cutlery, outerwear and underwear, bedding, or other durable consumer goods could only be purchased with the written permission of the condominium commissary. Not a single economic or social problem was solved, rather they were increased.

Estates of over 100 acres were nationalised and divided into production units similar to state farms, mostly under the professional supervision of the old estate stewards. Since the land was nationalised and not distributed, the regime turned almost the entire peasantry against itself, as the news about the land allocations in neighbouring countries reached Hungary. The remaining privately owned small estates were planned to be combined into cooperative farms, but this endeavour failed due to the fall of the Republic of Councils. Confidence in the sanctity of private property, however, wavered. Various self-proclaimed organisations and persons passing themselves off as authorities have successively occupied other people's land holdings. Smallholder peasants rightly feared that their lands would also be nationalised. Due to the uncertainty, most of the peasants arranged themselves to wait instead of doing productive work.[49]

The population was constantly pestered, and several attempts were made to bring people under control and keep them in isolation. The operation of coffee houses was restricted so that there would be no forum for uncontrollable conversations. Phone calls, even emergency calls, were banned. Gathering in groups on the street was severely punished. A curfew came into effect every evening, and the lights had to be turned off. Violating the memory of the deceased, religious burials were abolished. Hungarian literature was no longer taught at schools. The scientists of the Hungarian Academy of Sciences were dismissed and replaced with soldiers of the regime.[50]

From the outset, the leaders of the Soviet Republic considered the churches their enemies. Therefore, in order to abolish religion and the churches, the Revolutionary Governing Council established a separate office at its first meeting, an organisation that excelled mostly in acquiring the property of the churches: the Office for the Liquidation of Religion (or "committee", elsewhere "commission")

[48] *Népszava,* 15 July 1919.
[49] Kerék 1939: 162; Matlekovits 1919: 1.
[50] Hatos 2021: 29.

headed by Oszkár Faber (an alumnus of the Piarist grammar school, who became an eager atheist and social democratic functionary). The estates of the churches were nationalised, including all real estate except temples, schools, hospitals, social homes. Even securities and cash were confiscated. Christian economic, cultural and religious organisations were liquidated, and religious education was banned. Despite the fact that they cared for the sick, pastors and nuns were banned from hospitals. The leaders at the local level communicated that the churches will also be confiscated and – just like in the Soviet Union – replaced by, for example, cinemas. The churches could no longer receive any support, not even for the maintenance of churches in monument buildings. Representatives of the workers' councils listened in to masses and religious services to keep the words of the priests under control. New textbooks were published, religious education was banned, monks and priest teachers were prohibited from teaching and caring for the sick. Priests and monks were told to give up their profession, get married, and take a re-education course. *Vörös Újság*, the official gazette of the Republic of Councils formulated the objectives of the Revolutionary Governing Council: "The priests have been dismissed from the army and the schools, now only the churches remain. Religion is not a private but a public matter, and indeed the primary duty of the proletarian dictatorship is to most relentlessly terminate the functioning of the church under any name." As Oszkár Faber put it: "Let me be clear: I candidly admit that our goal is the complete extermination of the church."[51] As a result of the terror against the churches, eleven priests and one nun were martyred.[52]

The Republic of Councils of Hungary was not recognised by the Entente. This is one of the reasons why Béla Kun accepted the possibility of a negotiated settlement when he received the so-called Clemenceau memorandum by telegram. According to that, if the army of the Republic of Councils retreats behind the defined northern and eastern borders, then the Romanians will return to the Trans-Tisza region and invite the leaders of the Republic of Councils to the peace conference. Thinking that the Entente would at least *de facto* recognise the country's communist regime, the leaders of the regime accepted the diktat. They were also convinced that the designated borders were of no importance, as the army of the Soviet Union would soon march into Hungary in any case.

[51] Adriányi 2005: 178; Fazekas 1997: 63; Vörös Újság 1919; Fazekas 2001: 17.
[52] Horváth 2021: 189.

But the heads of the Republic of Councils were soon to be disappointed in each of their assumptions. The Red Army arrived only a quarter of a century later, and neither the Romanians nor the Czechs complied with the provisions of the Clemenceau memorandum but took advantage of the opportunity to occupy ever larger areas.

Provisional governments

Gyula Peidl's so-called trade union government (1 August 1919 – 6 August 1919)

After the fall of the Republic of Councils, Gyula Peidl established a so-called trade union government. The new regime began to abolish the measures of the Republic of Councils and took the name "People's Republic of Hungary". But the council of the Paris Peace Conference popularly known as the "Council of Five" did not acknowledge the trade union government, and Romanian troops marched into Budapest on 2 August. In effect, with Transdanubia as an exception, the whole country came under the occupation of foreign troops. Even though Gyula Peidl made attempts to negotiate with the occupying forces, no results were achieved.

Governments of István Friedrich (7 August 1919 – 24 November 1919)

Finally, on 6 August, István Friedrich dismissed the Peidl Government with support received from the Romanian army. Appointed by King Charles IV as *homo regius,* Archduke Joseph August took over as a regent and appointed Friedrich to form a provisional government. The new government defined the form of state as the Republic of Hungary and began the investigation of the crimes committed under the Republic of Councils. Due to the anomalous nature of the situation, the government kept adopting various measures but could only enforce them in Budapest. The government's sovereignty was very limited, as the rural public administration, postal service and press were controlled by the Romanian army. Meanwhile the country was almost uninterruptedly looted by the troops. However, the Allied Powers refused to acknowledge Fridrich's government, too, as they feared that the return of Archduke Joseph

August foreshadows a Habsburg restoration. A mission headed by Sir George Russel Clerk – the diplomat who acted as a Private Secretary of the acting Secretary of State of Great Britain and was responsible for Eastern European affairs – arrived in Hungary in late October, and achieved the withdrawal of the Romanian troops from the regions of Northern Transdanubia and the Danube–Tisza Interfluve (they withdraw from the Trans-Tisza region only in April 1920).[53]

Károly Huszár's government (24 November 1919 – 15 March 1920)

In the wake of Clerk's successful negotiations, a new coalition government headed by Károly Huszár formed on 16 November. Immediately after the last units of the Romanian army left the capital city, at the head of his armed men, Miklós Horthy marched into Budapest on 16 November. On 25 November, the Entente notified Károly Huszár that the legitimacy of his government had been acknowledged. Thus, after more than a year, Hungary finally had an internationally recognised government.[54]

A kingdom without a king (1920–1944)

The Trianon peace diktat

The peace treaties ending World War I can be considered diktats, inter alia, because instead of resulting from negotiations, they were imposed on the defeated in violation of the principle of *audiatur et altera pars,* without any consideration of ethnical boundaries. Territories where the Hungarian population lived in a single block were annexed without referendum. The actual reasons underlying the provisions were raw political and economic arguments. That is why among the defeated, Hungary ended up in the most unfavourable situation.

[53] Ránki 1967: 174.

[54] Between November 1918 and June 1920, ten governments were established, with seven prime ministers and roughly the same number of minsters of foreign affairs, but all without considerable advocacy as regards foreign policy.

The Treaty of Trianon (Act XXXIII of 1921 on the enactment of the peace treaty concluded in Trianon on 4 June 1920 with the United States of America, the British Empire, France, Italy and Japan, as well as Belgium, China, Cuba, Greece, Nicaragua, Panama, Poland, Portugal, Romania, the State of Serbs, Croats and Slovens, Siam and Czechoslovakia) was made up of 14 parts and 364 articles. Part two defined the borders of Hungary. From the country's territory of 325,411 square kilometres (282,870 square kilometres without Croatia) more than two thirds (71 percent or 67 percent if Croatia is included) was lost: the territory of the "Truncated Hungary" was only 92,952 square kilometres. More than half of the population was trapped outside the new borders (the data of the 1910 census show that 7,615,117 people remained of the 18,264,533 people).

- Slovakia: 1,067,000 Hungarians, 30 percent of the local population
- Romania: 1,662,000 Hungarians, 32 percent of the local population
- Kingdom of Serbs, Croatian and Slovenians: 541,000 Hungarians, 28 percent of the local population
- Austria: 26,200 Hungarians, 9 percent of the local population

Almost half of the agricultural area and 52 percent of the industrial potential went to the successor states. The iron and steel industry, the textile industry, the glass industry, the mill industry, the wood industry and the paper industry suffered great losses. All the salt mines and iron ore mines, and most of the stone mines were lost.[55]

Ten remained intact of Hungary's 63 counties, and another 25 were more or less mutilated. Pursuant to Act XXXV of 1923 on the reduction of the number of civil servants and other employees in the mutilated counties and certain related measures, the 17 counties concerned were transformed into 7 counties by mergers. This left a total of 25 counties. Eleven of the 27 municipalities remained.

As a result, Hungary became the smallest and the most vulnerable state in Central Europe. Isolated both politically and economically, the country was surrounded by a ring of the Little Entente. The area of the states making up the Little Entente was in total 683,000 square kilometres with a population of 47 million (that is, an area larger than the size of the Austro–Hungarian Monarchy.) With an area reduced to 93,000 square kilometres and a population of 7.6 million, Hungary had to face this enormous hostile block. Almost half a million refugees

[55] Buday 1923: 16.

had to be taken in from the lost territories,[56] while the former economic, market, administrative and transport organisation was destroyed.

Chapter five of the Treaty of Trianon set forth the military restrictions. Hungary was obliged to abolish general conscription. No more than 35,000 men could be enlisted to the Hungarian Defence Forces, exclusively on a voluntary basis (1,750 officers and 1,313 petty officers, the rest privates). The establishment of a general staff and the organisation of army and corps levels were prohibited. The import of weapons was banned, they could only be manufactured in the single state munitions factory that remained in the country, under the Entente's control. The production of airplanes and warships was also prohibited. No more than 40,250 rifles, 525 machine guns, 140 mortars and 105 artillery pieces were authorised. The Hungarian army could no longer have armoured vehicles or aircraft. The Danube flotilla could retain a total of three reconnaissance squadrons. The naval fleet was confiscated and handed over to Italy. Sports and other associations were not allowed to provide military education.

Several types of unequal foreign trade obligations were imposed on Hungary. The countries of the Allied and Associated Powers were to be given the most-favoured-nation treatment by the Hungarian government unilaterally. Otherwise, no special trade policy preference was applicable, with the exception of Austria and Czechoslovakia, with which countries Hungary could enter into a preferential trade agreement for five years.

Hungary could not regain its full sovereignty since, to make reparations, the country's assets were confiscated, and its finances were brought under control. Compliance with the sanctions on the Hungarian Defence Forces had to be verified by the Allied Military Inspection Committee delegated to Hungary. Even the athletes of Hungary were banned from participation in the 1920 Antwerp Olympics.[57]

Temporary constitutional regulation[58]

When Miklós Horthy marched into Budapest, the country had no form or head of state, no government recognised by the Allied Powers,

[56] Petrichevich Horváth 1924: 37.

[57] For a summary of the listed data see Romsics 2020: 181.

[58] The most important literature concerning the period: Bethlen: 2000; Boros 2002; 2006; Dombrády 2012; Egresi 2008; Gergely 2001; Gergely–Pritz 1998; Gosztonyi 1992; Gratz

no parliament, no borders, no public administration, no national bank, no money and no foreign missions. Armed groups of soldiers and aggrieved citizens raided several parts of the country, enforcing arbitrary judgements. The country's only gain was complete independence from the Habsburg Empire.

To stabilise the domestic political situation and legitimise the political system, the principle of legal continuity was invoked. The leaders of the country argued that the legal situation in the fall of 1918 returned, when the National Assembly dissolved itself and the king renounced "all participation in state affairs". The period that followed was not recognised as legitimate, since no democratic elections were held, and the only legitimising force that underpinned the legislation in the meantime was the "revolutionary sense of law".

The new regime first called a National Assembly election. The legal background was provided by the suffrage decree issued by the Friedrich Government in November 1919, guaranteeing the broadest scope of suffrage in the history of Hungary. It set forth a secret ballot, and equal and compulsory suffrage that included women and extended to 40 percent of the population. (For comparison: England: 47 percent, France: 28 percent, Belgium: 30 percent, Austria: 59 percent, Poland: 48 percent, Romania: 21 percent, Yugoslavia: 23 percent.)[59]

On the issue of the form of state, the National Assembly was completely united: a republic unable to maintain borders and internal public order was rejected by all. Despite the unanimous support of the kingdom, however, there was considerable division between the legitimists who supported Charles IV and the "free electors" who opposed them. According to the legitimists, Charles IV's rights were not terminated by his ominous proclamation, since in any case the return to legal continuity invalidates a declaration forced by revolutionary circumstances. The free electors, on the other hand, argued that with the demise of the Austro–Hungarian Monarchy, the *Pragmatica Sanctio* also lost its raison d'être, and thus the country's right to a free election of a king had been restored. Ultimately, the matter was resolved by external circumstances. According to the Allied Powers and neighbouring countries, a Habsburg restoration

2002; Horthy 1990; Montgomery 1947; L. Nagy 1995; Nemeskürty 1996; Ormos 1998; Pölöskei 1977; Pritz 1995; Püski 2006; 2015; Romsics 2005b; 2017; Szinai 1988; Ungváry 2013; Varga 1991.

[59] Gergely 1999: 48.

would have qualified as a *casus belli*. Therefore, after Charles IV's second attempt to return,[60] the National Assembly proclaimed the dethronement of the House of Habsburg (Act XLVII of 1921 on the termination of His Majesty Charles IV's sovereign rights and the House of Habsburg's succession to the throne).[61]

But the question of who to become the king of Hungary was still pending, as the free electors could not come to an agreement on a single candidate. Therefore, it was agreed that a temporary head of state would be elected until the decision on the king was made. Miklós Horthy, a man recognised by the Allied Powers and with access to armed forces suitable to maintain order, seemed a logical choice.[62]

On 1 March 1920, the National Assembly, relying on old historical traditions, elected Miklós Horthy as regent, who then retired from everyday political battles. He appointed Pál Teleki as Prime Minister, who was followed by István Bethlen as the head of government for nearly a decade. During the nearly ten-year period dubbed the Bethlen consolidation,[63] the detachments of soldiers were mostly disbanded (their centres were liquidated by military operation on several occasions). A land reform was introduced (Act XXXVI of 1920 on the provisions governing a better distribution of land holdings). Although the largest estates remained untouched, approximately two million people received land, mostly 1–5 acres. The regime strove to provide accommodation and jobs to the tens of thousands of people who fled to Hungary from the annexed territories. The Communist Party (along with all kinds of extremist movements) was banned by Act III of 1921 on a more effective protection of the state and social order.[64]

Economic and political stabilisation

Established in 1924 to achieve economic stability, the Hungarian National Bank contributed to the economy recovery with a loan of 250 million kronen. In 1927, an independent and stable currency, the pengő was

[60] Ormos 1990: 51.
[61] Vargyai 1964; Kardos 1998: 23.
[62] Gosztonyi 1992: 33.
[63] Romsics 2019: 210.
[64] Drócsa 2021b: 99.

introduced. A mandatory pension system and health insurance were established, the elementary school network and public healthcare system were developed. The reform and development of educational, research and cultural public institutions was overseen by Bethlen's Minister of Culture, Count Kuno Klebelsberg.[65]

The defining political figure of the internal affairs of the 1920s, István Bethlen believed that a country should be managed by the social strata with sufficient financial base, developed national self-awareness and patriotic feelings. Therefore, even though he recognised the need for a limited extension of rights, Bethlen rejected mass democracy and declared himself to be a supporter of conservative democracy and cautious progress. As he pointed out in a speech given in 1922: "We want democracy, but not the rule of the raw masses, because those countries where the rule of the masses overcomes the entire nation, are subject to destruction." The wealthy and educated "have the most resistance […] to all pressures". Accordingly, he narrowed the right to vote, for example, by tightening the conditions of age, education, permanent residence and citizenship, and by restoring open ballot in rural areas. This reduced the number of eligible voters to 29 percent ("Lex Bethlen" – Decree 2200/1922. ME of the Prime Minister).[66] Conservative politics was also strengthened by the organisation of the Upper House[67] in 1927 and the expansion of the regent's powers. The public administration was also reformed in a rather cautious way (Act XXX of 1929 on the regulation of public administration). According to Bethlen, Hungary still lacked the conditions that could guarantee the functioning of a political democracy with a broader social base. He argued that the expansion of political rights is only possible in parallel with the raising of intellectual and living standards.

However, the Trianon syndrome and the trauma caused by the defeat in World War I left the most considerable mark on the Horthy era. Almost all social strata agreed on the legitimacy of the demand for a revision based on the ethnical principle.[68]

The room for manoeuvre of Hungarian politics was influenced, inter alia, by Hungary's geopolitical position in Europe. Since 1917,

[65] Hencz 1999; Huszti 1942; T. Kiss 1999.
[66] Szabó 1999: 87.
[67] Püski 2000: 11.
[68] Zeidler 2001; 2002.

the regime in Russia was based on communist terror. The countries defeated in World War I had to face a series of demonstrations and mass movements in the cities. Mussolini began to establish his fascist dictatorship in Italy from 1922. In Poland, Marshal Piłsudski became de facto dictator in 1926. In the 1930s, the power system developed in a similar way in the newly independent Baltic states. In Portugal, Salazar established an authoritarian dictatorship, and the events took the same course in Spain, where a bloody civil war was fought between 1936 and 1939. In the Balkan monarchies, the rulers themselves ensured the rule of governments based on dictatorial methods. In Austria, Chancellor Dollfuss experimented with a dictatorship similar to Salazar's regime until he was assassinated by the Nazis. The Nazi takeover in Germany (1933) and the Anschluss (1938) also had a shock effect on Hungarian domestic politics. Hungary became a direct neighbour to Nazi Germany and, shortly after, to the Stalinist Soviet Union.

Despite all these unfavourable domestic and foreign policy trends, the prime ministers following István Bethlen did not introduce any type of totalitarian regime but adhered to the historical constitution of Hungary.[69] In his Decree 145 500/1933 BM, Minister of the Interior Ferenc Keresztes-Fischer prohibited the use of the swastika badge in any form. Horthy condemned fascist ideas, inter alia, in a radio speech. Apparently, Act III of 1921, the so-called "order law" was suitable not only to convict communists, but also the leaders of the Arrow Cross Party, including Ferenc Szálasi.[70]

In the interwar period, the Hungarian state continued to function on the basis of the Holy Crown Doctrine and the historical constitution. In compliance with old traditions of the country, Regent Miklós Horthy was a temporary head of state, and the sovereignty of the country was still embodied by the Holy Crown. On this matter, the legitimists and the free electors fully agreed.[71] After the adoption of Act I of 1920 on the restoration of constitutionality and the temporary regulation of the exercise of state supreme power, a decree was issued under the title "Names of state authorities, officials and institutions and the use of the Holy Crown

[69] Horváth 2020: 136.
[70] Drócsa 2021a: 255.
[71] Egresi 2007: 244.

on state coats of arms".[72] The latter decree set forth that the Holy Crown was still to be used as a symbol of Hungarian state power.

Act XXXIV of 1930 on the simplification of jurisdiction was drafted in accordance with this principle. Article 1 of the Act declared the following: "Judicial power is exercised by the state courts in the name of the Holy Crown of Hungary." During the debate of the bill, the Minister of Justice Tibor Zsitvay added the following to the rapporteur's proposal: "When, based on this bill, judgments will be pronounced in the name of the Hungarian Holy Crown, the judge will have all the magical powers that resonates through the veins of each and every Hungarian, rooting in that first decree and St Stephen's crown: there will then be patience, thus thoroughness, conscientiousness and social sense; there will be adjudication, that is, adherence to the law and there will be true judgments."[73]

As regards this provision, the explanatory memorandum specified the following: "According to the public law understanding developed over the centuries, the Hungarian Holy Crown is the embodiment of the thousand-year-old Hungarian statehood, the sovereignty that includes the ruler and the entire Hungarian nation. The supreme power of the head of state includes the judiciary, which, too, is rooted in the Holy Crown. Externally, the judicial power is also embodied most perfectly in the Holy Crown."[74]

The doctrine of the Holy Crown and the historical constitution have always been respected by the Hungarian nation. As opposed to Italian fascism and German National Socialist ideas, the arguments that József Mindszenty, Sándor Pethő, Gyula Szekfű and other right-wing, conservative thinkers formulated were underpinned, inter alia, by the Holy Crown Doctrine.[75] This was one of the reasons why the extremist (communist and fascist) parties and movements, which challenged the country's constitution and historical traditions and threatened the

[72] *Budapesti Közlöny,* 21 March 1920.

[73] The 411th sitting of the House of Representatives of the National Assembly on 20 June 1930, Friday, 427.

[74] The explanatory memorandum of Act XXXIV of 1930 on the simplification of jurisdiction. For the Hungarian text see https://net.jogtar.hu/ezer-ev-torveny?docid=93000034.TVI&searchUrl=/ezer-ev-torvenyei%3Fpagenum%3D49

[75] Nagy 2015: 189; Griger 1936: 40; Pethő 1937: 71–73; Szekfű 1938: 76.

country's sovereignty through their external support, did not win over the sympathy of a significant part of the population.[76]

The Arrow Cross dictatorship (1944–1945)

German occupation of Hungary

Until the beginning of 1944, Hungary was practically an island of peace while Europe was ravaged by World War II. There were no significant shortages in the supply to the population, and the parliament functioned with opposition parties. Freedom of the press was restricted only in relation to war reports. Although the Jewish laws drastically limited their legal capacity, the lives of Hungarian Jews were not in imminent danger.[77]

At 4:00 a.m. on 9 March 1944, following the orders given under "Operation Margarethe I", the Wehrmacht and the SS units invaded Hungary. They took possession of the strategically important points and facilities: airports, bridges, traffic junctions, radio stations, police stations. A German officer was appointed to head the Hungarian army with full power and unlimited control over the entire Hungarian transport network, roads, railways and airports. The control and command of the Hungarian army were taken over by German liaison officers assigned to the units of the Hungarian Defence Forces. Declaring the eastern part of the country, and then also other areas as an operational zone further strengthened the positions of the German military leadership, ensuring almost unlimited power in the affected area. In addition to being present, the German army seized several public buildings and put a heavy burden on the Hungarian economy. Their supplies cost the Hungarian budget 200 million pengő per month. The Germans took a huge amount of food, raw materials and, to a lesser extent, industrial products out of the country without payment.[78]

[76] Supported by Germany, the parties who embraced the spirit of the Arrow Cross gained 19 percent of the votes at the 1939 elections. See Pintér 1999: 202. In the 1945 elections, despite the support of the Soviet Union, the Hungarian Communist Party gained no more than 16.85 percent of the votes. See Balogh 1999: 228.

[77] Vértes 1997.

[78] Vargyai 2001: 322.

"Operation Margarethe I" anticipated the resistance of the Hungarian army, making it clear that "all resistance must be mercilessly crushed". All who resisted was to be shot dead, and those who were disarmed was to be interned in Germany. Even non-resisting units had to be placed under lock in their barracks. According to the orders given by the Hungarian military leadership, the Hungarian Defence Forces were not to show resistance. Nonetheless, major and minor clashes did take place, and the German army was clearly treated as enemy. As a result of these clashes, deaths totalled half a hundred on the German side, while the Hungarian army lost less than ten people. Adolf Hitler appointed Edmund Veesenmayer to Hungary as Ambassador and Imperial Representative "responsible for all developments in Hungarian politics". According to his instructions: "The plenipotentiary representative of the empire shall ensure that the entire public administration of the country – even during the stay of the German troops – is handled by the government under his control, so that the country's resources, primarily its economic potentials, are maximally exploited for the goals of joint warfare."[79] For this reason, all civil organisations in Hungary were subordinated to the imperial commissioners.[80]

Hungary clearly lost its sovereignty, although Regent Miklós Horthy remained in office according to his agreement with Hitler. In exchange for the appointment of a government that met German demands and the free use of the Hungarian army, Hitler promised Horthy that there would be no arrests, the German troops would not occupy the Buda Castle, and the Hungarian Defence Forces would not be disarmed. Obviously, Hitler only partially kept these promises, as the Gestapo, with the effective cooperation of the Hungarian authorities, began a quick and thorough purge, and nearly 10,000 people were detained within a short time.

Many well-known politicians and public figures, as well as high-ranking military officers, were also arrested. In a few days, all political organisations were dissolved, apart from the parties that participated in the government and some far-right parties. Part of the general staff of the Hungarian Defence Forces was replaced, 29 of the 41 lord lieutenants (Hung.: *főispán*), and two-thirds of the mayors of major cities were removed. New directors and managers were appointed to head, inter alia, the Radio, the National Bank, the Opera, the National Theatre.

[79] Zsigmond 1966: 430–431.
[80] Szita 2014: 79.

Listening to foreign radio stations was prohibited. Modelled on the German system, government commissioners were appointed to head the radio, the press and the Hungarian news agency MTI. With the introduction of censorship, many newspapers were banned (for example, *Népszava* and *Magyar Nemzet*), their editors were executed or sent to concentration camps. In the end, almost every important institution was headed by leaders who cooperated with the occupying authorities.[81]

The total economic exploitation of Hungary also began. The German authorities primarily confiscated food, but also all industrial products that seemed necessary for continuing the war.[82]

The regent accepted the resignation of Prime Minister Miklós Kállay, who even refused to assume the customary role of a caretaker prime minister until the appointment of the new government. After lengthy negotiations, on 23 March 1944, Regent Miklós Horthy appointed Döme Sztójay as Prime Minister, who gave the most important portfolios to the representatives of the Party of Hungarian Renewal led by Béla Imrédy and the Hungarian National Socialist Party. Ferenc Szálasi and his Arrow Cross Party had not yet received a ministerial portfolio.[83]

For almost three months, the regent lived in complete seclusion without interfering in the events. His activity resuscitated with the protest against the deportation of the Jews at the end of June. He then tasked Colonel Ferenc Koszorús to prevent a gendarmerie coup and the deportation of the Jews of Budapest.[84] Taking advantage of the situation that resulted from the exit of Romania, the regent dismissed the Sztójay Government and appointed Colonel Géza Lakatos to form a new government. At the same time, Horthy secretly tasked the government with regaining the country's sovereignty and prepare for the exit from the war. They began to replace pro-Nazi leaders and attempted to free those arrested for political reasons. In September, an armistice delegation travelled to Moscow. On 15 October, Horthy announced at the Crown Council (a council of ministers chaired not by the prime minister but the regent) that he was requesting a ceasefire. The Crown Council supported the regent's decision. While a radio proclamation was broadcasted, Horthy also communicated his decision to Veesenmayer. However, due to the

[81] Varga 2012.
[82] Dombrády 2003: 375.
[83] Karsai–Molnár 2004: 157.
[84] Bonhardt 2015: 28.

German preponderance, lack of proper organisation and a series of treacheries, the exit attempt was unsuccessful.[85]

Szálasi's takeover

Blackmailed with the life of his only living son after his failed exit attempt, Horthy dismissed the Lakatos Government and appointed Ferenc Szálasi, the leader of the Arrow Cross Party, as Prime Minister without ministerial countersignature. Apparently under blackmail, Horthy retracted his manifesto of the previous day and resigned as regent. He was then transported to Germany and held under house arrest.

As the only political force left to collaborate unconditionally with Hitler's regime, the Arrow Cross Party leader Ferenc Szálasi was the Germans' last card to play. And Szálasi not only had access to a force trained by professional officers, but also had cadres more or less apt to fill the necessary positions after taking over the country.

Also from a public law aspect, Szálasi's regime was a complete break with Hungarian constitutional development and traditions. His newly created power structure and executive functions were foreign in the Hungarian political culture, with maladjusted terminology.

According to Hungarian constitutional law (Act XIX of 1937 on the extension of the regent's powers and the election of the regent), if the position of the regent fell vacant, the Council of State was to be convened, composed of the prime minister, the chairman of the Upper House and the speaker of the House of Representatives, the primate of Hungary, the heads of the Royal Curia and the Royal Administrative Court, and the chief of general staff of the Royal Defence Forces of Hungary. Szálasi formally convened the Council of State, took the oath of office in its presence, and forced a compromise declaring that the regent's position was to remain vacant for the time being. Disregarding the act referenced above, Szálasi appointed the governing council himself from the ranks of his most loyal followers.

At the sitting of the National Assembly convened for 3 November, only 55 far-right representatives of the 372 members of the House of Representatives attended. New members were appointed to the Upper

[85] Vigh 1984: 257.

House, so that it could meet the requirement of the minimum number of members and continue functioning. Szálasi took the oath of office in the presence of the "truncated parliament". With painstaking care, using even the Holy Crown, he ensured that the ceremony was carried out as solemnly as possible.

Szálasi had the Parliament approve his new position as "leader of the nation" (Hung.: *nemzetvezető*) under the formal control of a so-called government council (composed of two ministers and a member of the House of Representatives pursuant to Decree 3668/1944 ME of the Prime Minster). In this way, similarly to the German Führer model, Szálasi bestowed the power of regent and the chief of general staff of the army upon himself. Nonetheless, he took over as a dictator with a pledge of "responsibility". He intended to act as the head of state and delegated the tasks of the head of government to his deputy prime minister. His orders were published as the "Leader of the Nation's Resolutions".[86]

Structure of the "Hungarist State"

Serving a foreign power, Szálasi's dictatorship had the sole task of mobilising the country's last reserves in accordance with German military goals. Accordingly, as the territory of the country decreased, the Arrow Cross leadership's measures were more and more cruel and hasty.

In Szálasi's government, seven portfolios were given to members of the Arrow Cross Party, three to the far-right members of the Hungarian Life Party, and one each to the National Socialist Party and the Party of Hungarian Renewal. Two of the ministers were army generals without a party membership. Strikingly, most of the ministers had no administrative experience and were notably underqualified compared to previous governments. Full mobilisation (ages 10–70) was introduced by the government and the entire country was declared an operational area (Decree 4800/1944 HM of the Minister of War). The latter, of course, was merely a repetition of the order issued by the Germans on 15 October. The civil administration was subordinated to the military administration. A significant number of the lord lieutenants and officials considered unreliable were deposed and replaced, just like the head of the important institutions. Civil servants had to take an oath

[86] Ormos 1981: 539.

of allegiance to Szálasi. The Arrow Cross Party was granted a special position: the political management and control of state bodies was taken over by the delegates and organisations of the party.[87] In case of conflicts, Szálasi clearly anticipated his decision: "The party is always right."[88]

The role of the "truncated parliament" thus became completely formal. All important issues were regulated by decrees. Szálasi strove to overcome the increasingly anarchic conditions by appointing more and more ministers, government commissioners, and new office chiefs, taking also advantage of the massive influx of the careerists and fortune hunters to his party.

After Miklós Horthy renounced all his rights related to the regent's office on 16 October 1944, Szálasi also took over the administration of the head of state's affairs as prime minister. At the sitting of the House of Representatives convened for 2 November, with the attendance of one sixth of the members, the bill that became Act X of 1944 on the powers of the head of state was approved. On the following day, the Upper House passed the bill without a dissenting vote or amendment. The new act advanced Szálasi to the position of head of state that he invented. Act X of 1944 assigned the powers of the regent to the leader of the nation, as well as the powers of the head of government if no prime minister is appointed by the leader of the nation. This resulted in the concentration of top state power: Szálasi successfully combined the powers of prime minister and head of state.

The Arrow Cross Party determined the state organisation in a double sense. The party's organisational presence in state affairs ensured the realisation of the theorem that "the party exercises control over the state power". According to a measure issued by the "leader of party-building" József Gera, "the Party's task is to support the law enforcement authorities, ensure the continuity of production, and everyday control of the enforcement of the decrees already issued and yet to be issued by the […] leader of the Arrow Cross Party […] and the ministries. Embodying the political will of the Nation, the Party is represented by the organisational leaders to the local bodies of the executive. The party service is disciplinary subordinated to the head of the organisation […] as the party service's controlling and executive body. The party organisation and the state law enforcement agencies operate in a co-ordinate

[87] Kovács 2009.

[88] MNL Bm. Szálasi-per 2. t. V. 172–173. Cf. Karsai–Karsai 1988.

relationship, however, if the head of the organisation, by virtue of his supervisory authority and as a representative of the political will of the Nation, issues an order to the state law enforcement agencies in order to protect the public interest, the latter are obliged to implement it."[89] Thus, dominating and integrated into the bodies of the government and public administration, the Arrow Cross Party exercised continuous political control over the operation of the state (the so-called party commissioners became heads of the presidential departments in the ministries, and the party's local delegate, secretary, or leader were the men in charge of the local public administration). Also, the party simply took over a number of state functions from the public administration. For example, it essentially appropriated the state security activity, which was largely carried out by the bodies of the Arrow Cross Party. The party service of the Arrow Cross Party, the armed national service, the National Accountability Office, the national accountability detachment, the camp security service pushed the traditional state security agencies to the periphery and handled investigations, interrogations, deportations and internments, prosecution and punishment at their own discretion (inter alia, by means of the "right of slaying", "decimation", and the introduction of collective responsibility of families and relatives).[90]

The exclusivity of the Arrow Party was also guaranteed by a decree issued by the Minister of the Interior, which banned even the operation of the allied far-right political parties, thus establishing a state party dictatorship. In the executive, the top governing and coordinating bodies of the Hungarian state were also established within the party: the state chiefs of staff, the national chiefs of staff and the branch chiefs of staff. By then the only loyal members of the legislature were the far-right representatives. Essentially, the legislature, as a traditional state body, served no other purpose but to sanctify Ferenc Szálasi's "constitutional" position. As a synonym for the Upper House, the National Association of Upper House Members was also established. A "shadow government" operated alongside the government, but the executive fully came under the influence of the party. The so-called working staff of the leader of the nation was formed from the party's leadership apparatus, under the management of the deputy of the leader of the nation, the head of work order. Within the framework of the working staff, national policy

[89] MNL Bm. Szálasi-per 4. t.
[90] Kovács T. 2006.

offices were established, which took over a significant part of the powers of the ministries. The country-building committee prepared a plan for the transformation of the country, in which the *dicasterii* would have been instrumental. The country would have been divided into county councils, village and township councils, headed by *dicasterium* chairmen appointed by the leader of the nation.

Copying the action of the occupying German authorities, Szálasi declared the whole country an operational area. This meant that the entire public administration and all the civil authorities were subordinated to the military authorities. And it became a daily routine for the men of the Arrow Cross Party to arrest Hungarian citizens with the help of the German authorities. For example, the lord lieutenant of Fejér county was also detained in such manner.[91]

The period of the Soviet-type dictatorship in Hungary (1945–1990)

Authorities of the occupying Soviet forces

Already in the 19th century, the Russian Empire aspired to conquer East Central Europe.[92] Devoting a disproportionate part of the country's resources to the development of the army, the Soviet Union continued the expansive policy of its predecessor.[93] Even the constitution of the Soviet Union was drafted to facilitate the annexation of more and more "member states". The attempts to spark a "revolution of the proletariat" in the wake of World War I did not succeed in any other country,[94] Stalin gave orders

[91] Kovács T. 2006; Lackó 1966; Paksa 2013; Rozsnyói 1977; 1994; Szita 2002; Teleki 1972; 1981; Vincellér 2003; 1996; Zinner–Róna 1986.

[92] The Russian Empire's intent to conquer was recognised also by Marx and Engels: "Is it possible that the gigantic and bloated empire would stop halfway when it is already on its way to becoming a world empire? Even if it wanted to halt, that would not be allowed by the circumstances […]. Since it does not coincide with the natural boundaries, the wavy, broken line of the empire's western border needs to be adjusted, and it would show that Russia's natural border extends from Danzig, perhaps from Stettin to Trieste […]." See Marx–Engels 1964: 13.

[93] Kenéz 2008: 321.

[94] They strove to conquer Poland in 1920, which would have opened a path to Germany. See Kovács I. 2006: 168.

to prepare for an offensive campaign in the latter half of the 1930s.[95] On 19 August 1939, shortly before the Molotov–Ribbentrop Pact was signed, Stalin said the following in his speech delivered at a meeting of the Politburo and the Comintern: "[…] as shown by the experience of the last twenty years, in a time of peace the European communist movement does not have the strength to lead the Bolshevik party to takeover. Only a great war can give rise to the dictatorship of this party."[96]

In 1939–1940, the leaders of the Soviet Union provoked a territorial dispute with almost every neighbouring country. In a long war, it annexed strategically important Finnish territories, occupied and annexed Lithuania, Latvia and Estonia,[97] attacked Poland from the rear, then divided it among themselves with Germany,[98] and took Bessarabia from Romania. It even strove to assert a territorial claim against Turkey. The Nazi Germany dared to act as an aggressor because it concluded a non-aggression pact with the Soviet Union. In addition, until 22 June 1941, the Soviet Union supplied Germany with strategically important raw materials, oil and food. Without the help of the Soviets, Hitler could not have succeeded in occupying a significant part of the European continent.[99]

As a result of the peace treaties ending World War II, the Soviet Union kept these territories as if they had not been acquired on the basis of military aggression in accordance with the Molotov–Ribbentrop Pact and contrary to international law, but had always belonged to the Soviet Union. Moreover, additional territories (such as East Prussia and Transcarpathia) were also annexed. In total, Stalin's regime gained a territory of 400,000 square kilometres.

During the peace talks, no questions were asked by the Western allies concerning the responsibility of the Soviet Union in the outbreak of World War II and the genocides committed by the Soviet armed forces. The Baltic states were brought under control as Soviet republics, and part of the indigenous population became victims of forced resettlement

[95] Suvorov 2008: 258. After his meeting with the Lithuanian minister of foreign affairs, Molotov said the following in July 1940: "A genius, Lenin was not wrong to assure us that World War II will allow us to take over all of Europe, just as World War I helped us to take over Russia." Quoted by Sakharov 2000: 165.

[96] *Novij mir*, 1994/12, 230.

[97] Bojtár 1989: 35; Rauch et al. 1994: 179.

[98] Kovács I. 2006: 168; Paczkowski 2006: 5.

[99] Heller–Nekrich 2003: 326.

and deportation. As a result of the Russification campaign, the number of Poles in the former Polish territories decreased from 5,274,000 to 1,430,000 in 1962.

Bulgaria, Czechoslovakia, East Germany, Poland, Hungary and Romania were not formally annexed, but their sovereignty was abolished. The leaders of each country were appointed in Moscow, and "Soviet advisers" were sent alongside the heads of the state administration and the armed forces. Soviet soldiers and party leaders could enter and exit the territory of the satellite states as if those were part of the Soviet Union. According to Stalin's infamous statement addressed to Milovan Đilas:[100] "This war is not like the wars of the past. Whoever occupies a territory will force its own social system on the people of that territory. If the army can march in, the conquerors' system will be imposed. There is no other possible way."[101] And that is what happened in Hungary, too.

The Soviet Union did not accede to the 1929 Geneva Convention on Prisoners of War either. Even though a regulation concerning prisoners of war was drawn up as a unilateral declaration in 1931, it primarily contained propagandistic elements rather than legislation. For example, on the grounds of the equality of prisoners of war, officers were denied different treatment.[102] A few days after Nazi Germany invaded the Soviet Union without a declaration of war, the Council of People's Commissars issued a classified decree on prisoners of war. The question arises as to why this legislation was confidential? If the intention was to follow it, then why didn't the regulation include guarantees and allow the International Red Cross and representatives of neutral countries to inspect the prisoner-of-war camps? In fact, a single provision of the decree was implemented in practice, according to which the interned civilians also qualified as prisoners of war – as if the Soviets had already been preparing for mass internment of civilians.[103] With the exception of that provision, not a single part of the decree that gave prisoners of war any rights was observed. On Stalin's orders, the Red Army carried out warfare typical of the Tatars. Surrendering enemy soldiers were shot

[100] Milovan Đilas (1911–1995): communist politician of Yugoslavia. He turned against Tito's political regime from 1954 and was imprisoned in 1957. He was pardoned and released in 1965.
[101] Đilas 1989: 105.
[102] Stark 2017: 34.
[103] Based on a translation by Éva Mária Varga, the text of the decree was published by Bognár 2012: 503–507.

dead and plundered. The commanders treated even their subordinates inhumanely, not sparing the lives of their own soldiers. In addition, the occupied territories were exploited to the greatest possible extent. Stalin announced this practice in advance in his letter to the British Government dated 7 June 1943: "The Soviet Government believes that the not only the Hungarian Government is to be held accountable for the armed assistance provided by Hungary to Germany […], but, to a certain extent, the Hungarian people must also take responsibility for it."[104] On 14 December 1943, in response to Edvard Beneš's anti-Hungarian statement, Molotov confirmed: "The Hungarians must be punished."[105]

Following Stalin's orders, the Soviet army therefore did not come to Hungary as a liberator.[106] This was also evidenced by the Soviet official terminology: the inscription on the reverse of the medal issued for the siege of Budapest includes the word "capture" (as opposed to the term "liberation" used in case of Prague). Hundreds of thousands of the civilian population were taken to "malenki robot". Around 600–700 thousand people, soldiers, civilians, and even women and children, were taken to various camps in the Soviet Union. A third of them died due to the inhumane conditions of detention.[107] A blind eye was turned to the fact that the Soviet soldiers brutally raped hundreds of thousands of women, from little girls to 70-year-olds, not even sparing expectant mothers.[108] After the capture of Budapest, Marshal Malinovský allowed his soldiers three days of free looting, which they "proactively" extended both in time and space, to the entire country.[109] Following the Red Army, special NKVD/SMERSH units entered the country, tasked with stealing art treasures and plundering Hungarian banks.[110] Enemy assets were treated as *res nullius*. In addition to collecting the costs of reparations

[104] Quoted by Juhász 1978: 158.

[105] Quoted by Gosztonyi 1990: 152–153.

[106] As a witness of the events, Sándor Márai formulated the following opinion: "For many who had been persecuted by the Nazis, this young Russia brought about a deliverance of a sort, a way out of the Nazi terror. But as for freedom, it was not something the Russians could bring, as they lacked it themselves. But not everyone realised that just yet." See Márai 2006: 12.

[107] Tóth 2001: 562; Kormos 2001; Varga 2006.

[108] Rape is a message to the defeated: not only your country and homes are defenceless, but so are your wives and daughters. That makes the humiliation of the enemy complete. See Pető 1999; 2000: 203; Földesi 2009: 140.

[109] Kogelfranz 1990: 96.

[110] NKVD = Narodny Komissariat Vnutrennih Del (the interior ministry of the Soviet Union); SMERSH = Smerty Meckim Spionam (Death to Spies).

and occupation, the Soviets pursued a policy that can rightly be called looting. Entire factories were dismantled, railway carriages and means of transport were seized, and all these were transported to the Soviet Union alongside other stolen goods. Even ordinary privates were allowed to send home a ten-kilogram package from time to time. One may wonder how a soldier who did not receive a pay could assemble a ten-kilogram package? The Red Army's supply of food and clothing was constantly interrupted, so the Soviet soldiers could only supply themselves by plundering the civilian population.[111]

There were several ways by which Hungarian citizens could end up in various camps in the Soviet Union. The largest group was made up of the so-called prisoners of war, about a third of whom were in fact civilians. 20,000 to 30,000 people were deported from Transcarpathia based on order No. 0036 of the 4th Ukrainian Front issued on 12 November, which set forth that "ethnic Hungarian and German men of military age live in many villages, who are to be arrested and sent to a prison camps, just like the soldiers of the enemy".[112]

Pursuant to the order of the Committee for State Security of the Soviet Union issued on 16 December 1944 concerning the territory of Romania, Hungary, Yugoslavia, Bulgaria and Czechoslovakia: "All German men between the ages of 17 and 44 must be mobilised and sent to work in the Soviet Union, as well as all German women between the ages of 18 and 30 […]."[113] As a result, approximately 70,000 German nationals and people classified as ethnic Germans were deported.

The special Soviet courts-martial extended their authority even to the civilian population and handed down thousands of convictions, sentencing people to 10, 20, or 25 years of forced labour in camps of the Gulag system. These people suffered a fate even worse than the so-called prisoners of war, as the conditions in the Gulag camps were even more dreadful than in the camps of the Gupvi.[114] With reference to the armistice, this practice was continued even after the issuance of the relevant decree by the Provisional National Government (Decree 1440/1945 ME of the Prime Minister on the amendment and supplement of Decree 81/1945 ME of the Prime Minister on people's courts).

[111] Ungvári 2005: 282.
[112] Dupka–Korszun 1997: 15.
[113] Dupka–Korszun 1997: 33–34.
[114] Bordi 1995: 64.

Controlled by the Hungarian Communist Party, the Political Police Department (PRO), and then the State Security Department (ÁVO) also contributed to this procedure, which was illegal in all respects. The PRO and the ÁVO thereby committed a serious violation of law, since section 17 of Act V of 1878 (the Hungarian Criminal Code on crimes and misdemeanours) expressly forbade the extradition of Hungarian citizens to the authorities of other states.[115] The court-martial proceedings were unlawful in all respects. The rights of the defence were denied, and the entire trial was conducted in an accelerated procedure with the assistance of an interpreter who could hardly speak Hungarian. At the end of the trial, the interpreter used his fingers to show the number of years the defendant was sentenced to. In most cases, the convictions were based on the infamous section 58 of the Soviet Criminal Code.[116]

In trade with the countries of the socialist bloc, prices were always set in favour of the Soviet Union. The Soviet state became the owner of the seized German assets and quite a few companies, from which "joint ventures" were established.

According to estimates, at the then exchange rate, the Soviet Union withdrew approximately 14 billion dollars from the occupied European socialist countries between 1945 and 1955, which amount is exactly the same as the aid provided by the United States[117] to the countries participating in the Marshall Plan.[118]

Periods of the Soviet occupation of Hungary

Combatant troops

From 22 September 1944 to 11 April 1945, Hungary was under a double military occupation. The country became a permanent battlefield, the site of clashes between combatant troops. Following the operations of the Red Army, the former public administration largely disintegrated. The reorganisation of the area behind the front, including the establish-

[115] Szakács–Zinner 1997: 178.
[116] Bognár s. a.
[117] Marer 1974: 14; 1979: 248.
[118] European Recovery Program: the USA's aid in the economic recovery of nations after World War II.

ment of the Provisional National Government, aimed at providing the best possible supply to the fighting troops. The Soviet army subjected all the resources of the country to this goal. The retaliatory actions of the Soviet authorities, as well as the preparatory measures of a total dictatorship had already started in this stage.[119]

Soviet military occupation (2 January 1945 – 15 September 1947)

Hungary was to sign the armistice without any remarks or conditions (as enshrined in law by Act V of 1945 on the promulgation of the armistice agreement, signed in Moscow on 20 January 1945). To monitor the implementation of the armistice, a so-called Allied Control Commission was established in Hungary from the ranks of the Soviet army until the signing of the peace treaty. In practice, the representatives of the United States and the United Kingdom held a mere observer status in this organisation, which operated under the unlimited authority of Marshal Kliment Yefremovich Voroshilov of the Red Army, member of the Politburo. The Soviet occupying authority had the power to appoint the members of the government and the president of the republic, control the operation of parties, the publication of newspapers, the operation of radio stations, post offices, telegraph and telephone, and authorise entries and exits to and from the country. The Allied Control Commission was able to carry out its diverse tasks with the help of hundreds of thousands of occupying soldiers, a central, district, county, city and factory network, and Voroshilov's huge bureau of 700–800 people. They even had an intelligence and management apparatus. Various departments, trade unions and institutions were set up to control specific economic and political areas. The costs of the huge army and apparatus had to be covered by the Hungarian state, which exceeded 30% of the national income in 1945–1946. In addition, the Allied Control Commission actively intervened in the affairs of the country. The scope of the Soviet Criminal Code was extended to Hungarian citizens, and countless innocent people were arrested and sentenced on the basis of section 58 thereof (among others, Pater Szaléz

[119] Révai 1991: 12.

Kiss[120] was sentenced to death and executed, and Béla Kovács, the General Secretary of the Independent Smallholders' Party was arrested and deported to the Soviet Union on 25 February 1947).

"Military units required to maintain traffic lines with the Soviet occupation zone in Austria" (15 September 1947 – 15 May 1955)

The so-called Paris Treaty was signed on 10 February 1947 by Minister of Foreign Affairs János Gyöngyösi. Hungary once again lost most of the territories with a Hungarian majority, which had been recovered during the revision. In fact, according to the provisions adopted at the peace conference, three more villages were annexed to Czechoslovakia: Horvátjárfalu (Jarovce), Oroszvár (Rusovce) and Dunacsún (Čunovo), on the grounds that a "defensible bridgehead" could be established next to Pozsony (Bratislava) to prevent a possible attack against the Slovak capital.[121] In addition, the minority protection conventions of the Trianon Treaty were not recognised, thus leaving the Hungarian residents almost completely exposed to the terror of the communist dictatorships established in the successor states.

Reparations worth 300 million dollars were set forth, exceeding the country's financial means, divided between the Soviet Union (200 million), Yugoslavia (70 million) and Czechoslovakia (30 million). Surprisingly, in contrast to the Treaty of Trianon, the number of the Hungarian army was maximised at 70,000, and the maintenance of heavy weapons and air force was also allowed.[122]

The Allied Control Commission was officially dissolved by the Paris Treaty, and, theoretically, Hungary regained its independence. In fact, the military occupation of the country continued, since according to the first paragraph of Article 22 of the Paris Treaty, until the peace treaty concluded with Austria entered into force, the Soviet Union could station

[120] Pater Szaléz László Kiss (1904–1946): Capistran monk and teacher, a popular preacher, founder of the Christian Democratic Youth Work Community. Martyr of the seal of confession. Sentenced to death and executed by the Military Tribunal of the Army of the Soviet Union.

[121] This change of border later made it possible for Slovakia to build a barrier dam and unilaterally divert the Danube to build the Gabčikovo hydroelectric plant.

[122] Fülöp 2022; Haas 1995: 179.

troops in Hungary to ensure communication with the Soviet occupation zone in Austria.[123] The peace treaty did not regulate the types of weapons, the troops and the routes that were to be provided. Thus, under the authority of international law, the Soviets kept a much larger number of military units in Hungary than they otherwise would have needed to secure the routes. This task could have been adequately performed by a contingent of a few thousand. In fact, however, a much larger Soviet force was stationed in Hungary: four divisions (two rifle divisions, one bomber and one fighter division) according to some sources.[124] Barracks and other areas were seized to accommodate the Soviet army and provide them with airports, shooting and training grounds. The Hungarian authorities received almost no information about the actual number of the Soviet personnel and weapons.

Warsaw Pact

The *State Treaty for the Re-establishment of an Independent and Democratic Austria* was signed in Vienna on 15 May 1955 by the ministers of foreign affairs of the United States of America, the Soviet Union, Great Britain, France and Austria. According to the Austrian State Treaty: "The forces of the Allied and Associated Powers […] shall be withdrawn from Austria, if possible, within 90 days of the entry into force of this treaty."[125] The forces of the four great powers were quickly withdrawn. The parties began the preparations in due time. As pointed out in an open order by Marshal Georgy Konstantinovich Zhukov, the Minister of Defence of the Soviet Union: "All Soviet troops stationed in Austria are to be transferred to the territory of the Soviet Union by 1 October 1955. The total number of armed forces of the Soviet Union must be reduced by the number of troops withdrawn from Austria."[126]

One day before the effective date of the Austrian State Treaty, the Soviet Union – with the participation of Albania, Bulgaria, Czechoslovakia, Poland, Hungary, the German Democratic Republic and Romania – adopted a 20-year treaty of friendship, cooperation and

[123] Halmosy 1985: 84.
[124] Balló 2005: 72.
[125] Halmosy 1985: 300; Roska 1986.
[126] *Szabad Nép,* 1 August 1955, 3.

compulsory mutual assistance in Warsaw. The haste was no coincidence, as the Warsaw Pact was necessary to justify the legitimacy of the Soviet occupation, although it did not specifically provide for this.

A military-political instrument, the Warsaw Pact ensured the subordination of the armies of the socialist countries to the Soviet Union. Inter alia, this was indicated by the fact that Soviet officers occupied all the important leadership positions within the organisation. No position important from an operational aspect was assigned to a senior officer from an eastern European country. In each member state, the commander-in-chief of the armed forces was nominally the minister of defence of the given member state, but his powers only extended to conveying the instructions of the combined staff of the united armed forces to his own ministry.[127] Thus, of all the institutions, the army was integrated to the greatest extent into the Soviet system.[128]

The Soviet propaganda emphasised that the Warsaw Pact was concluded as a response to NATO. However, there was a significant difference between the two military-political alliances: while NATO pursued a defensive military policy, with the creation of the Warsaw Pact, the Soviet Union sought to establish a military block that directly provided it with huge masses of trained manpower reserves for new areas of deployment, and access to military bases and warehouses, which it could eventually use for the political, economic and military suppression of its "allies".[129] Recognising this, Imre Nagy wrote the following in Snagov: "the Warsaw Pact is a tool of the chauvinistic aspirations of the Soviet great power, with the help of which the participating […] countries are subordinated to this policy. The Warsaw Pact is nothing more than the imposition of the Soviet military dictatorship on the participating countries […] and the military instrument of the dependence and subordination of the Stalinist days in the relationship between the socialist countries."[130]

In accordance with the strategic plans of the Soviet Union, the designated forces of the member countries of the Warsaw Pact were

[127] Gati 1990.

[128] Oddly, the original copy of the treaty was published only in Russian, Polish, Czech and German. The Albanians, Bulgarians, Romanians and Hungarians were not even regarded as worthy of an official (authentic) draft in their native language.

[129] Okváth 2003: 64; Király 1995: 235.

[130] Quoted by Horváth 2001: 608.

ready to invade Western Europe and destroy many Western European cities with nuclear weapons. The troops of 170,000 of the German Democratic Republic could have launched an attack at any time within two hours – that is, much faster than NATO leaders could imagine. According to documents discovered in East Germany, they were to reach the Spanish border in 30 days.[131] Subordinated to the Soviet Army Group South, the poorly armed, albeit rather large Hungarian force was supposed to advance in the direction of the Alps. They would have served as bullet shields for the Soviet elite units.[132]

In the first half of the 1960s, the Soviets also installed nuclear weapons on the territory of Hungary. According to a military exercise held in 1965, the arsenal of weapons, several times more powerful than the Hiroshima atomic bomb, would have destroyed Vienna, Munich, Verona and Vincenza (and, of course, made Hungary itself a nuclear target.)[133]

The Hungarian army was reorganised on the Soviet model. Uniforms and weapons were also modelled after their Soviet counterparts.[134] Political officers and the party hierarchy appeared under the control of Soviet advisers.[135] Almost all the highest-level Hungarian military leaders were trained in the Soviet Union. All party-member and non-party soldiers were kept under observation, and reports were written on them to the political officers. The third level of control was provided by the secret police, with undercover agents and informers in every troop compartment, barracks and bureau.

In addition to offensive operations, the Soviet army could also be deployed at any time to regulate socialist countries. Various war action plans were prepared in that regard even before the 1956 Hungarian revolution and war of independence.[136] During the 1956 revolution and war of independence, the Soviet troops acted in Hungary as if facing an enemy at war.[137]

[131] Jackson 1994: 108.
[132] Balló 2005: 122; Okváth 2006: 34.
[133] Mózes 2006: 6; Vándor 2009: II. 9.
Király 1995: 230–231.
[134] Baczoni 2008: 5; Gosztonyi 1991: 103.
[135] Germuska 2008: 1465.
[136] Kirov 1996: 123.
[137] Horváth 1996: 101; Györkei–Horváth 2001: 11.

As a sort of recognition of the Hungarian resistance, Marshal Zhukov was awarded the same "gold star" campaign medal for taking Budapest in 1956 as when he captured Berlin.[138] After the resistance of the Hungarian insurgents was broken and the Hungarian army was disarmed, Soviet military administration was introduced throughout the entire country. Patrols were led by the town kommandaturas, and guard duty was performed. The KGB arrested and interrogated Hungarian citizens. The Soviet Union only gave permission to arm two regiments of the Hungarian army after separately requested so by János Kádár.

Temporary occupation (1957–1991)

In 1957, the Soviet leaders "legalised" the occupation of Hungary by the Red Army. On 27 May 1957, the leaders of the Hungarian state were made to sign a document setting forth that "with the intention to settle the issues related to the temporary stay of the Soviet troops on Hungarian soil", the two governments were to conclude a treaty. The agreement was promulgated by Law Decree 54 of 1957 on the treaty signed by the Government of the People's Republic of Hungary and the Government of the Union of Soviet Socialist Republics on 27 May 1957 concerning the legal status of the Soviet troops temporarily staying in the territory of the People's Republic of Hungary, and Law Decree 22 of 1958 on the promulgation of the treaty signed by the Government of the People's Republic of Hungary and the Government of the Union of Soviet Socialist Republics on 24 April 1958 concerning the mutual legal assistance in matters related to the temporary stay of Soviet troops in the territory of the People's Republic of Hungary.[139]

Comprising of 19 sections, the text is a typical framework legislation, which specified[140] neither the number of troops and the types of weapons,

[138] And János Kádár received the "Hero of the Soviet Union" medal from Khrushchev on 3 April 1964.

[139] Although the said law decrees were published in the *Hungarian Gazette* at the time of their adoption, they were included neither in the *Hatályos Jogszabályok Gyűjteménye* [Collection of the Effective Legislation] nor in the volume entitled *Nemzetközi szerződések 1945–1982* [International Treaties 1945–1982] (Budapest, 1985).

[140] This issue was covered by an intergovernmental agreement concluded in Budapest on 1 April 1958.

nor the military bases. Moreover, it was concluded for an indefinite period of time and could only be terminated or modified by mutual agreement of the two parties.

The number of military bases of Soviet troops were increased. In Budapest alone, the number of military facilities used by the Soviets were increased by six. It is worth comparing the text of the agreement with the agreements concerning the stationing of U.S. military units in Europe.[141] The Soviet troops used the buildings, the 48,000 hectares of land, the electricity, the water, the heating and the sewer network free of any charge and without informing the Hungarian authorities (about the nuclear charges, for instance).

As a rather interesting episode, Khrushchev offered to withdraw the Soviet troops in 1958 (as he did in Romania that same year). There are several versions of the famous meeting, which had been classified until 1989. According to one of them, Kádár wasted no time replying: "It will be better this way, Comrade Khrushchev, let your soldiers stay with us…" Indeed, Kádár had already used the occupation to stabilise his own regime.[142] However, Khrushchev's recollection of the events is slightly different: "Comrade Kádár", I said, "have you ever considered the presence of our troops in Hungary? […] We rely on your judgment and do whatever you suggest." Kádár replied: "Comrade Khrushchev, there is no one more apt to make this decision than you. In our country, the presence of your troops causes no resentment at all. And I say this with all sincerity."[143]

According to Péter Gosztonyi, however, Kádár's comeback was somewhat "wittier": "You know what, Nikita Sergeyevich? Keep Rákosi there with you, and we shall keep making room for your soldiers here."[144]

The liquidation of the democratic institutional system and the establishment of the Soviet-type dictatorship (1944–1949)

After Horthy's failed exit attempt, the country had no government capable of negotiating. Therefore, on the instructions of the Soviet

[141] Pataki 1995; 2000; Csapody 1991: 27.
[142] Sipos 1990: 14; 1994: 200.
[143] Khrushchev 1974: 216.
[144] Gosztonyi 1993: 273.

occupying authorities, the representatives of the so-called Provisional National Assembly were first elected. The representatives mostly came from the ranks of the parties and organisations participating in the anti-fascist Hungarian resistance (Hungarian Communist Party, Social Democratic Party, Independent Smallholders' Party, National Peasants' Party, Civil Democratic Party, trade unions). Since the task of organising the elections was largely carried out by communist activists, the Communist Party won a 39% majority in the hastily conducted "voting".[145] Yet, in comparison, this solution still seemed the most democratic, since, for example, the sovereign power was exercised by the Independence Front in France, the president of the republic in Czechoslovakia, the king in Romania, and the government swiftly put together by the Soviet leadership in Poland. In Hungary, however, as it was not preceded by an ordinary election, the temporary nature of the new parliament was recognised, and, since only the eastern half of the country was represented, it could only adopt resolutions. On the other hand, with the name "National Assembly" and Debrecen as the choice of location, seemingly Hungarian public law traditions were also taken into account. Nonetheless, the fact that the constituent sitting was scheduled for 21 December, Stalin's birthday, clearly indicated that conditions had changed. Beyond electing the government and approving the (repeated) armistice request, the Provisional National Assembly did little to no meaningful work, and after a day and a half of deliberations, it was only reconvened in September 1945 to posteriorly legalise the decrees passed between the two sessions.[146]

The list of the members of the Provisional National Government was drawn up in Moscow, and the Provisional National Assembly accepted it without debate. Four of the 12 members of the government were members of the armistice delegation in Moscow, four ministers were communist politicians, while the rest was delegated by the coalition parties. The Communist Party had already won the Ministry of the Interior, where Gábor Péter took over the Political Police Department in January 1945, which later operated under the name State Security Department (ÁVO). In order to limit the powers of the non-communist prime minister to the greatest possible extent, the Provisional National Government was defined as a collegiate body with independent powers. In any case, real

[145] Palasik 2017: 23; Izsák–Kun 1994: 14.
[146] Gyarmati 1995: 77; Szerencsés 2000: 553. Cf. Hubai–Tombor 1991.

deliberation and decision-making was rare within the government. The most important issues were decided at the so-called inter-party discussions, where the will of the Communist Party prevailed in most cases, underpinned by the blackmail and open threats of the occupying Soviet authorities.[147]

The *de facto* international recognition of the new statehood and government resulted from the conclusion of the armistice. The *de jure* recognition arose from the conclusion of the peace treaty.

The Provisional Government signed an armistice with the Soviet Union on 20 January 1945. According to the agreement, Hungary declared war on Germany and was obliged to pay 300 million dollars in reparations – two-thirds to the Soviet Union and one-third to Yugoslavia – within six years, mainly in crops and goods. On 15 March, in accordance with the instructions of the Soviet leadership, the government issued the land reform decree on the division of estates larger than 100 acres.[148] The propaganda of the time referred to satisfying the centuries-old hunger for land of the Hungarian peasantry. In reality, this action was implemented in an unlawful manner, based on irrational economic considerations.[149]

The mandate of the Provisional National Government was terminated on 15 November 1945, when, after the election of the new National Assembly, a new coalition government was formed, headed by Zoltán Tildy, a politician of the Independent Smallholders' Party.

The National Assembly elections held on 4 November 1945 were won by the Independent Smallholders' Party by an overwhelming majority (57%). The Social Democratic Party won 17.4%, the Hungarian Communist Party 16.9%, and the National Peasant Party 6.8%. Despite this, a coalition government was formed under Soviet pressure, not reflecting the election results.[150] Although the prime minister came from the ranks of the Independent Smallholders' Party, the portfolios were distributed equally. In addition to the Ministry of the Interior, the communists also acquired the Ministry of Transport. In this way,

[147] Korom 1981: 403; Balogh 1988: 25.

[148] Földesi 2009: 206. As Voroshilov, the leader of the Allied Control Commission remarked in a letter written to his wife in the spring of 1945: even the Hungarian communists only began the land reform "due to our merciless pressure". See Kun 1997.

[149] Szakács 1998: 287; Honvári 2013: 98; Gyarmathy 1996: 64.

[150] Balogh 1994: 220–221.

they gained control over the postal service, the artery of politics and economy. The communists acquired the Ministry of Welfare, too, for propaganda purposes. Three portfolios (industry, justice, trade) were given to the social democrats cooperating with the communists. The Smallholders' Party gained the agricultural portfolio, the military affairs – which was not of particular importance under the given circumstances – the foreign affairs, the financial portfolio struggling with the inflationary crisis, the public supply portfolio (which was also responsible for the service and supply of the Soviet army and, therefore, rather unpopular), the reconstruction portfolio struggling with extraordinary difficulties, as well as the hastily created but not too significant communication portfolio. The Peasants' Party had to be content with the ministry of culture. In the National Assembly, an extraordinarily odd situation developed, contrary to all basic principles of democracy. Each party became involved in the government coalition, leaving no opposition. The positions of the government led by the Smallholders' Party were also weakened by the withdrawal of significant powers, which were bestowed upon the newly established General Economic Council. Although the body was chaired by the prime minister, with the ministers of industry and transport as members on a coalition basis, the communist Zoltán Vas exercised actual control as the general secretary. In the difficult economic situation after World War II, the General Economic Council extended its authority to the entire economy, by introducing economic control and gaining the power to adopt decrees independent of the government: it passed government-level laws in the fields of raw material production, energy and food supply, financial management, export–import regulation and decisions concerning reparations.[151]

The communists were initially shocked by their poor performance in the elections, as Mátyás Rákosi's reports to Moscow had envisioned a glorious victory. However, the party soon changed tactics. The so-called "salami-slicing" approach was implemented with increasing cruelty. The communists imprisoned or deported politicians who refused cooperation, one after the other. Many associations and parties were dissolved and banned. Freedoms and rights were completely abolished over the course of two or three years. Larger and larger parts of the

[151] Honvári 2000: 457.

economy were subjected to direct control through the process labelled "nationalisation", which in reality meant unlawful confiscations. People were deprived of their private property and businesses, and became vulnerable state employees. Meanwhile, under the control of the political police, tens of thousands of show trials were conducted, handing down countless death sentences and imprisonment. A great number of police decisions ordering internment were also rendered. Despite its absolute majority, the ministers and members of parliament of the Independent Smallholders' Party were forced to play the role of the opposition in a continuous rearguard struggle.[152]

As the first slice of the "salami", legitimists were pushed out of politics. On 31 January 1946, based on a bill submitted by the Hungarian Communist Party, the National Assembly passed a law on the form of state of Hungary, which henceforth became a republic, headed by the president of the republic with extremely limited powers. The republic was proclaimed on 1 February. Zoltán Tildy was elected as president of the republic and replaced as prime minister by Ferenc Nagy, the leader of the Independent Smallholders' Party.[153]

In the following year, February 1947, under the pretext of "exposing" a rather insignificant political organisation, the so-called Hungarian Community, based on confessions coerced by torture, the ÁVO arrested several members of parliament who belonged to the central force of the Smallholders' Party. On 25 February, the Secretary General of the Smallholders' Party, Béla Kovács was detained and deported by the Soviet military police. On 30 May, Prime Minister Ferenc Nagy, who was staying in Switzerland at that time, was forced to resign – he was threatened to be held accountable for "participation in a conspiracy" if he returned home. The speaker of the National Assembly, Béla Varga, also chose emigration. The Independent Smallholders' Party practically disintegrated. The office of the prime minister was taken by Lajos Dinnyés, who cooperated with the communists.[154]

Addressing the leaders of the Communist Party in the National Assembly of Hungary on 1 July 1947, Member of Parliament Dezső Sulyok summed up what the events as follows: "We are completely and

[152] Palasik 2017.
[153] Horváth 2017a: 7.
[154] Csicsery-Rónay–Cserenyey 1998: 46.

irreconcilably different from each other in that we believe in democracy built on the basis of individual freedom, while you believe in slavery based on a totalitarian economic and state system." Interjections reached such a level by then that Sulyok declared: "After this, I consider freedom of speech in the Hungarian Parliament to have ceased, and I shall refrain from speaking."[155] Sulyok then left the meeting hall and emigrated abroad to avoid arrest.[156]

Disintegrated due to the salami-slicing approach, the National Assembly was dissolved by the president of the republic and new elections were called for 31 August 1947. The Communist Party, through the Ministry of the Interior, falsified the results in several ways. Among them, the most serious fraud was committed, on the one hand, by removing half a million right-wing voters from the electoral roll, making them unable to exercise their right to vote. On the other hand, approximately 300,000 "blue ballots" were distributed to the communist activists, who, going from polling station to polling station, casted votes for the Communist Party by the dozen.

The Hungarian Communist Party won the elections with 22%. The Democratic People's Party finished second with 16%. The Independent Smallholders' Party got 15%, the Social Democratic Party 15%, the Hungarian Independence Party 13%, the National Peasants' Party 8%, and the Independent Hungarian Democratic Party 5%. The Smallholders' Party and its successor parties still won 54.5% in the elections. This means that even in 1947, more people voted on the civic parties. Nonetheless, due to the salami-slicing approach, the will of the left-wing lead by the communists prevailed.[157]

The Communist Party then abolished each party one by one: first the opposition parties, then in 1948 the Social Democratic Party was absorbed, and the Hungarian Workers' Party was established. As a result, only one party, the Communist State Party could remain. In 1949, the elections no longer caused any problems, as a single party list remained to vote for.

[155] *Nemzetgyűlési Napló,* 1 July 1947, 290.
[156] Szerencsés 2009.
[157] Szerencsés 1992: 7; Földesi–Szerencsés 2001: 9; Feitl 2016: 209.

The totalitarian dictatorship (1949–1990)[158]

At defining totalitarian dictatorship, we must first clarify that it is an independent and legally terminal public law order, as opposed to a state of emergency, which is introduced in case of war or other extraordinary event, under conditions defined by the provisions of the constitution, and where the constitutional order is restored as soon as the extraordinary situation terminates.[159] The totalitarian dictatorship, on the other hand, is a new, independent category of public law, which – during its reign of 70 years in the Soviet Union and 40 years in Hungary – revealed no immanent trend of movement that would indicate that the existing regime changed drastically.[160] In any case, the totalitarian dictatorship is a closed, irreformable system, which is proven by the failed attempts in that regard.[161] The consistent rejection of reforms was not a political mistake, but it was inherent in the regime's logic.[162]

A small power elite was able to establish the totalitarian dictatorship by the application of modern, 20th-century administrative techniques. The form of social rule that came to being in this way tolerated no limitation and aspired to take control over every aspect of life.[163]

Key elements of the totalitarian dictatorship

In every sphere of the political regime, the exercise of power manifested in raw, unvarnished and uncontrollable dictatorial governance. This exclusivity necessarily led to the total elimination of the autonomous

[158] This section is primarily based on the research results of Mihály Bihari and Zbigniew Brzezinski. See Bihari 2005: 91; Friedrich–Brzezinski 1956.

[159] Buza 1936: 11–12.

[160] Neither Imre Nagy's 1953 government programme nor the economic reforms of 1968 affected the essence of the system.

[161] Vajda 1989: 15.

[162] That is why Czechoslovakia was invaded in 1968. Brezhnev and his advisors were well aware that the freedom of the press would entail unforeseeable consequences for them.

[163] The list of the duties of the members of the Communist Party included the following: "[…] there is no vacuum in class struggle. Where socialism fails to advance, the powers of capitalism will penetrate. Where the party resolutions are not implemented, a gap is opened for the enemy." See Patkó 1953: 165.

political room for manoeuvre of society, which was achieved by simplifying the technique of the exercise of power. Denying the principle of the division of power, the legislature, the executive and the judiciary was concentrated in one hand, building a hierarchic and extremely centralised state system, controlled and supervised by the one-party state. Thus, the various state and party functions intertwined.

The central power intended to control every single aspect of life, even the areas that used to be distant from politics.[164] Headed by the "general secretary" as a dictator with unrestricted power, a small elite made every decision concerning politics, the economy and culture.[165] At the 17th congress of the Communist Party of the Soviet Union (16 January – 10 February 1934), the general secretary was not even formally elected.[166]

Headed by the general secretary (first secretary),[167] the Bolshevik-type party became a body guaranteeing the concentration of power and totalitarian dictatorship. A body above the laws codified by the state, the party supervised and controlled the whole state structure and every sphere of society.[168]

Applying also terroristic means, the secret police exercised control over society, the state and even the party, liquidating not only actual enemies, but also potential enemies selected arbitrarily. In a totalitarian dictatorship, fear is the factor that upholds and reproduces the concentration of power. Politics were criminalised, and anyone could be held accountable under any pretext (including the highest-level leaders),

[164] The Soviet-type dictatorship aspired to control even outfits, hairdo and fashion.

[165] Lenin was referenced in terms of this issue, too: "The Soviet socialist centralism does not contradict the principle of one-man-rule and dictatorship, since the will of the class is sometimes implemented by a dictator who can do more by himself and who is far more needed." Quoted by Heller–Nekrich 2003: 150.

[166] Tellingly of Stalin's one-man-rule and terror, 98 died violent deaths of the 71 members and 68 alternates elected at the 17th congress of the Communist Party of the Soviet Union. From among the 1,225 delegates with voting right and 711 with advisory right attending the congress, 1,108 became victims of the terror. See Takács 1992: 81.

[167] As a characteristic feature, dictatorships have no predeveloped regulation for selecting the general secretary/first secretary. Moreover, communist leaders always tried to get rid of their rivals. Until Stalin's death, they were simply liquidated. Later they were content with dismissing "claimants to the throne". Kenéz 2008: 259.

[168] See the chapter on the one-party state.

and even sentenced to death with the greatest of ease.[169] Total control over society covered every area. Typewriters were kept under control even in 1988. Writing samples were collected. Copying devices and larger quantities of paper could only be purchased with permission.

Almost every detail of the economy, production and distribution was controlled by the ruling elite. The so-called "nomenklatura" became the privileged class. There had been no other regime in human history that applied a system of financial rewards and sanctions of such a broad scope. The leaders of the Soviet-type dictatorship were actually aware that they control an oppressed country with unlawful methods.[170]

The ruling elite had the monopoly of communication and information. They strictly held mass communication and propaganda in their own hands.

The ideology, mostly called Marxism–Leninism, was imposed on the population as a kind of "state religion".[171] From kindergarten to university, from adult education to the media, official doctrines have been drilled into people's minds: doctrines that have all the answers and solve all problems of humanity. It was claimed that the Communist Party was the "vanguard of the proletariat", and that the communist (socialist) system would build the "perfect society" as envisioned by Marx and Lenin, where everyone would have access to earthly goods according to their "needs". In fact, however, power was never exercised by the proletariat, but by the party elite. Even if we were to believe that the leaders of the party governed on behalf of the proletariat, it could only have happened in a mythological form, as in France where "God reigned through the mediation of Louis XIV".

The totalitarian dictatorship not only terrorised society, but also tried to transform it according to its own interests. The population

[169] In the Soviet Union, three successive leaders of the political police were executed by shooting: G. G. Yagoda, N. Y. Yezhov, L. P. Beria. Stalin had almost the entire party leadership executed, from Bukharin to Zinoviev. In Hungary, the ministers of interior were particularly at risk. László Rajk was executed, János Kádár was sentenced to life imprisonment. Sándor György committed suicide to avoid arrest, Mátyás Rákosi was interned in the Soviet Union.

[170] Nyírő 1990; Huszár 2007; Gyarmati 1991.

[171] According to Leszek Kołakowski, "no modern society can exist without some sort of legitimacy. In a totalitarian society, this legitimation can only be ideological. Total societies and total ideology presuppose each other." Quoted by Schmidt 2008: 12–13.

was militarised[172] and atomised. According to Marx, alienation is characteristic of capitalist societies. However, in the socialist society, people were isolated from each other, since all horizontal relations were abolished. The communists made people feel like insignificant cogs in a machine. All independent initiatives, self-organisation and society's defence reflexes were banned. (In the Criminal Code, even legitimate self-defence was restricted.) Communists intended to destroy society's organic, bottom-up contract, its independent existence and civil society. That is why they tried to eliminate the churches and religiosity. Parties, associations, civil movements and organisations were banned. They tried to weaken the family, traditions, old habits, attachment to the homeland, national feeling. Unconditional obedience was demanded from all citizens. They tried to create a new type of man, the "Homo Sovieticus".

It followed from all of this that during its 70 years, the Soviet-style dictatorship did not manage to create humane social conditions. Individuals were tied up, almost imprisoned, facing barriers at home, at work, at school, even in their personal lives. No one could be free. The authorities and their "volunteer" collaborators monitored and controlled everyone. Applied with varying intensities but constantly, the terror was not only immoral, but also extremely harmful. It also caused an inestimable loss in human lives and the standard of living.[173] To show the effect of the regime on individual initiative, it is enough to refer to

[172] Stalin wore boots and paramilitary clothing. The party leadership imitated their leader in this, too. In any case, Stalin compared the party to the army: "Considering the structure of the leadership, our party consists of approximately 3,000–4,000 leaders at the highest level. They form the general staff of our party, so to speak. In addition, there are 30,000–40,000 leaders at the middle level, they form the corps of party officers. Next, the lower command staff of the party, about 100,000–150,000 people. They are, to a certain extent, our party's non-commissioned officers." See *Pravda,* 27 March 1937. Socialist countries maintained the largest armies, spent the most money on weapons, and applied general conscription. In addition, they operated numerous organisations and movements preparing for paramilitary or military service (e.g. Ready for Work, Ready for Battle [Hung.: Munkára, harcra kész (MHK)], the pioneer movement and its equivalent for younger children (Hung.: kisdobos mozgalom), Young Guard, Workers' Militia). Education was also subordinated to the militarisation of society (national defence education became a separate subject). In the Soviet Union, from the 1940s, workers in several sectors were required to wear uniforms: among others, lawyers, diplomats and clerks at tractor stations. After co-education was abolished, the wearing of uniforms was required even in schools. See Kun 2012: 284.

[173] Rayfield 2005.

the opinion of Zbigniew Brzezinski,[174] an expert of the President of the United States. According to Brzezinski, during its 74 years of existence, the mighty Soviet Union did not produce a single invention (possibly with the exception of certain innovations in military technology), which would have been competitive on the world market.

The socialist constitution (Act XX of 1949)

Until World War II, Hungary had been one of the countries with the most significant public law traditions in Europe.[175] The organic development of the Hungarian historical constitution was blocked and led to a forced path by Act XX of 1949. Considering the so-called Stalinist constitution of 1936 as its model (practically copying it), the said act on the constitution of the People's Republic of Hungary was very similar to the constitutions of other European socialist countries, most notably those of Poland (22 July 1952) and Romania (24 September 1952), and the Basic Law of the German Democratic Republic (6 April 1968).[176]

In Hungary, after the 1949 elections held on 27 May, the government officially established the commission for drafting the constitution (Government Resolution 290/1949), which actually consisted of two members: János Beér and Imre Szabó. According to István Kovács's recollection: "At the committee meetings, but especially during the preparatory personal consultations and reports, the officials were not at all interested in the political or professional justification of the individual chapters. They, however, requested detailed information on all issues where

[174] Zbigniew Brzezinski (1928–): American political scientists of Polish origin, university teacher. See Gati 2013.

[175] Horváth 2014: 23.

[176] As forerunners, we could mention the constitutions of the People's Republic of Yugoslavia (31 January 1946), the People's Republic of Albania (14 March 1946), the People's Republic of Bulgarian (4 December 1947), the People's Republic of Romania (13 April 1948), the Republic of Czechoslovakia (9 May 1948), and the German Democratic Republic (30 May 1949). Countries with completely different legal traditions also received Stalinist constitutions: the constitution of the People's Republic of Mongolia passed in 1940 and the constitution of the Democratic Republic of Vietnam passed on 31 December 1959.

the draft differed from the text of the Soviet constitution."[177] Accordingly, there were no more than a few deviations from the Stalinist constitution. Section 53 was drafted when Ernő Gerő summoned the drafters of the constitution to his office, and then typed the new passage he invented: "The People's Republic of Hungary effectively supports scientific work serving the cause of the working people, as well as art depicting the life and struggles of the people, reality, and proclaiming the victory of the people, and promotes the development of the intelligentsia loyal to the people, with all available means."[178] The other small deviation occurred in relation to the last sentence of Section 12 of the Stalinist constitution. The original text referred to the principle "if a man will not work, he shall not eat". However, in Hungary in 1949, it was well known that this sentence originates from the Second Epistle of Paul to the Thessalonians. Of course, Bukharin and his comrades quoted from another letter that Lenin wrote to the Petrograd workers.[179] Eventually, the Hungarian drafters took the liberty of formulating a completely new paragraph: "Workers serve the cause of socialist construction with their work, their participation in working competitions, the intensification of the discipline of work, and the improvement of work methods"[180] [paragraph (3) of Section 9].[181]

The draft was to be published on 5 August 1949,[182] and then the communists managed to conduct a national debate in only five days,[183]

[177] Kovács 1989: 12.

[178] Gellért Kis 1987: 7.

[179] Lenin 1971: 394. Lenin must have been rather fond of this saying, since he quoted it on other occasions, too: "There are many unnecessary people in every large consumption centre: we feed officials who rub shoulders with us, disguised bourgeois and speculators. Such unnecessary consumers violating the basic law of "if a man will not work, he shall not eat", must be rounded up on a regular basis." See Lenin 1972: 421. According to Karev, Lenin considered this principle to be the main argument for socialism. See Karev 1962: 68.

[180] Just a slip of tongue: instead of the technique, the methods were to be developed. This was to become the Stakhanovite movement.

[181] Stalin gave direct orders for the text of the Polish constitution and amended the draft more than fifty times. For example, he replaced the word "private property" with the term "personal property", which later caused problems for Polish lawyers. See Persak 1998: 27.

[182] In fact, the text of the draft constitution was published by *Szabad Nép* on 7 August 1949, on page 2–3.

[183] On 10 August, the *Szabad Nép* published letters and telegrams from "readers", addressed to Mátyás Rákosi. According to the editor's commentary: "And there is something present in each comment: the awareness that this constitution, like all our achievements so far, was created on the basis of our liberation, that is, the victories of the Soviet Army and the help of the Soviet Union. Words of gratitude speak to the great liberator from each factory, because it provided

so the bill was presented to Parliament on the 10th, where committee negotiations followed on the 12th. On 18 August, at the proposal of Mátyás Rákosi,[184] the bill was passed with unanimous enthusiasm.[185] In a dictatorship, the drafting and adoption of legislation works like a well-oiled machine. In this case, haste was indeed necessary. The constitution entered into force on 20 August 1949, and thus from that day onwards – until 1990 – St Stephen and the founding of the state were no longer celebrated on 20 August: it became the day of the Stalinist constitution.

Act XX of 1949 on the constitution of the People's Republic of Hungary can almost be classified as a "Potemkin" or a fictitious constitution modelled on the Soviet constitution of 1936, which had been created by the Soviet masters of propaganda. We could say that not a single provision of the constitutions was enforced. In most cases, an "uncodified" authoritarian practice was decisive instead. The ruling elite operated without any sign of constitutionalism.

Fictitious constitutions are largely political rather than legal documents. According to Lenin: "It is a legal instrument of agitation."[186] The constitution was very similar to Stalin's works, of which the brochure entitled *A leninizmus kérdései* was the first to be published in Hungary. It is a "catechism", prose authored in a form of questions-and-answers, intended not to prove but to reveal, confusing the present and the future: a political program in the guise of constitutional law. It defines set goals, applying reverse "historization" to justify the present. Two leading lawyers of the era, Imre Szabó and István Kovács acknowledged, too, that the constitution "[…] is primarily a political document, which ultimately expresses political conditions in the form of rules of conduct".[187]

This applies particularly to the preamble. The first socialist constitutions (those of Bulgaria, Romania and Yugoslavia) included no preamble, while the constitution of Vietnam (1946), Czechoslovakia and the German

a model for this creation of ours, as for all others so far: the Stalinist constitution." See *Szabad nép,* 10 August 1949, 3.

[184] In his speech, Mátyás Rákosi managed to put together quite a mixed metaphor: "The Constitution is a new guarantee, and on this rock we will build our world." See *Országgyűlési Napló,* 1949, Vol. I (8 June 1949 – 22 December 1949), 175. One must wonder whether he knew where this simile originates from?

[185] Ádám 1990: 34.

[186] Bihari 1973: 58.

[187] Szabó 1966: 16; Kovács 1962: 342.

Democratic Republic began with a preamble. A ceremonial introductory part can be found in almost all socialist constitutions drafted after 1949, and it has even gained an increasing role. The 1954 Chinese constitution regulated the leading role of the party in the preamble.[188]

The preamble of Act XX of 1949[189] broke with Hungarian public law traditions and disregarded Hungary's previous constitutional development, history and culture. Introducing the draft constitution to the National Assembly on 17 August 1949, Mátyás Rákosi, made the following statement to justify all that: "Until now, the Hungarian people have not had a constitution. What was generally called a constitution, was in fact nothing but a collection of various legal customs and legislation. In the drafting of our constitution, the preparatory committee, in accordance with Stalin's teachings, strove to record all that exists."[190] According to the 1949 constitution, due to the intent of the legislature to completely erase the past, Hungarian history began in 1945, when "[t]he armed forces of the great Soviet Union liberated our country from the yoke of the German fascists". Only the Republic of Councils was mentioned from the Hungarian historical past.[191] The aspiration to irrationally erase the historical experiences of humanity was a manifestation of the denial of the past.

Tellingly about the servility of the editors, the Soviet Union is mentioned three times in the preamble, that is, every four lines on average.

Applied to cover up the real goals and intentions, so-called "new speak" terms can be discovered in the preamble and almost every chapter of the constitution. For example, a sentence of the introduction declares the following: "relying on the Soviet Union, our people have begun to lay the foundations of socialism, and on the path of people's democracy, our country is advancing towards socialism." The term "people's democracy" is pleonasm, that is, redundancy in linguistic expression, accumulation

[188] Kovács 1982; Constitution of the People's Republic of Albania, 1949; Constitution of the People's Republic of Bulgaria, 1949; Constitution of the Republic of Poland, 1949; Constitution of the Czechoslovak People's Republic 1949; Constitution of the People's Republic of Romania 1949; Constitution of the Polish People's Republic, 1952; Constitution of the People's Republic of Romania 1952; Zhou et al. 1954; Kovács 1985.

[189] Varga 1970: 249.

[190] *Országgyűlési Napló,* 1949, Vol. I (8 June 1949 – 22 December 1949), 168.

[191] Apor 2005: 3.

of terms with the same meaning and therefore unnecessary. As it was invented by Stalin, communist leaders, including Mátyás Rákosi, adopted this concept.[192] The theory of people's democracy was developed by György Lukács,[193] and it was included also in the constitution of Hungary: "People's democracy is a state with whose help, as a result achieved by the Soviet Union and relying on the Soviet Union, the working people are on the pathway from capitalism to socialism under the leadership of the working class. In terms of the function of people's democracy, it is a proletarian dictatorship without a Soviet form."[194]

According to Tamás Földesi, the concept that thus became official, was the most frequently used category of Marxist political literature after World War II. The 12th Congress of the Communist Party of the Soviet Union (17–31 October 1961), the 1960 Declaration of Communist and Workers' parties, and the draft program of the Communist Party of the Soviet Union discussed the history of socialist countries using this terminology.[195]

The legislative part of the constitution consciously aimed for framework law regulation, leaving loopholes and using undefined terms to give authorities a free hand: "In the People's Republic of Hungary, the majority of the means of production are owned as social property by the state, publicly owned institutions, or cooperatives" [paragraph (1) Section 4]. The question is what is the legal definition of the means of production, and what is included in the "majority"?

The provisions of the actual normative text had never been applied in practice, such as paragraph (1) of Section 10 of the constitution ("The supreme body of state power of the Hungarian People's Republic is the National Assembly) or the rules concerning the freedom of the press and the right of assembly enshrined in Chapter VIII.

Paragraph (2) of Section 70 of the constitution stipulated that "[t]he Council of Ministers is obliged to introduce the bills necessary for the implementation of the Constitution to the National Assembly", but no action was taken by the set deadline. The legal institutions declared in the constitution were either never regulated by separate acts

[192] Kogelfranz 1990: 15–16.
[193] Gimes 1948; Ludz 1972: 545.
[194] Rákosi 1949: 3; 1952: 263, 359.
[195] Földesi 1962: 80.

(for example, the referendum [Section 20]),[196] or the separate legislation regulated the grandiloquent principles in an unconstitutional manner (right of association, law decrees concerning associations, the press act).

It is a general requirement for all constitutions to limit the power of the state and to ensure the fundamental rights of the citizens.[197] As opposed to that, the starting point of the socialist constitution and constitutional law was the concept of unified state power, denying the principle of separation of powers and "checks and balances". (As a symbolic step, the government moved into the Parliament, and the Labour Movement Institute moved into the building of the Curia.) Since the issuance of the Declaration of the Rights of Man and of the Citizen (1789), the following requirement is almost a commonplace: "Every community in which a separation of powers and a security of rights is not provided for, wants a constitution."[198] As opposed to that, Yakov Mihailovich Sverdlov formulated the following explanation: "It is most right that in our country the legislative and executive powers are not separated, as in the West. In this way, all problems can be solved expediently."[199]

There were no institutions tasked with safeguarding the constitution. Even the mere concept was rejected on the grounds that there was no need to limit the "power of the people". Therefore, the Administrative Court was downsized between 1945 and 1950. As a first step, drafted on the instructions of the Hungarian Communist Party, Act VIII of 1945 on the National Assembly elections removed adjudication concerning electoral affairs from the jurisdiction of the Administrative Court. This, of course, was no coincidence: the communists already knew then that they would manipulate the elections.

Therefore, from 1950 onwards, the Administrative Court no longer functioned (Act II of 1949 on the abolition of the Administrative Court; Government Decree 4080/1949 on the entry into force and implementation of Article II of 1949 on the abolition of the Administrative Court, and on the establishment of the rules for the financial, personnel and

[196] When the question of a referendum arose during the debate on the Gabčíkovo–Nagymaros Dam in the National Assembly elected for the period between 1985 and 1990, Minister of Justice Kálmán Kulcsár had to admit that, although it is regulated by the constitution, in the absence of an implementing law, no referendum can be called.

[197] Kukorelli 1994: 19.

[198] Hahner 1999: 86.

[199] Quoted by Solzhenitsyn 1997: 361.

jurisdictional arbitration committees).[200] The head of the Administrative Court, János Csorba was deported in 1951.[201] Unlawful decisions could no longer be challenged in court by citizens.[202] And even the possibility of public control or citizen control of the state administration was abolished. On the level of theory, the decision was justified as follows: "Today it is natural that what the government of the people's democracy deems right cannot be changed by any kind of judicial or formal legal decision."[203] However, Act IV of 1957 on the general rules of the state administration procedure enshrined some exceptions to that principle. Law Decree No. 26 of 1972 on the amendment of the Code of Civil Procedure even prescribed the rules of procedure for challenging the decisions of state administrative bodies in court.

To cover up the Soviet-style dictatorship, parliamentary elections were still held, but the list of the members of the Parliament was always drawn up in advance by the party leaders. Elections, thus, stood for nothing but a formal procedure.[204]

The parliaments of the socialist countries, including Hungary, were modelled on the system developed in the Soviet Union, in the absence of any kind of constitutional traditions, during the period of war communism. The so-called "supreme body of power" held sittings twice a year according to the 1918 Soviet constitution, and annually according to the 1924 constitution. Referring to Marx's theory about the nature of the Commune as a state organ, Lenin formulated an opinion in favour of the supreme representative body in which "the representatives themselves are obliged to work: they are to implement the laws themselves and monitor their actual influence on everyday life, bearing direct responsibility to their constituents".[205] The National Assembly could not exercise any of its powers enshrined in the Constitution, even though the division of powers was denied, and the fiction of the unity of power, the primacy of the parliament was to be asserted. In fact, the National Assembly

[200] According to the official position, the administrative courts were bourgeois institutions, and thus had no place in socialism. See Rácz 1990: 172.
[201] Révész 2020: 240.
[202] Stipta 1997: 166.
[203] Quoted by Petrik 2011: 197.
[204] Feitl 1994: 73; Izsák 2013: 63; Feitl 1999: 278; Kukorelli 1981: 188; Horváth 2017b: 181.
[205] Lenin 1965: 45.

had almost no decision-making powers left.[206] It did not even function continuously, but usually held two or three few-days-long sittings a year. Accordingly, it passed very few acts: for example, only two in 1982, and those concerned the budget and the annual balance sheet. The National Assembly had no actual control over the budget, it had no say in the national economic plan, and often even formal election of the president and members of the government was dispensed with.[207]

The government was indicated as the "Council of Ministers"[208] by Act XX of 1949 and defined as the "supreme body of state administration". Denying the legislative–executive–judicial triad, the communist state reduced the division of representative, administrative, judicial and prosecutorial bodies to a mere division of labour. This eliminated the independent category of executive power. The government has lost its former significance and no longer made the most important political decisions. That said, for shorter periods the party's first secretary held the position of prime minister,[209] and in extraordinary situations (1953, 1956),[210] the role of the government was decisive even against the party leadership. But apart from these cases, the government functioned more like a bureaucratic apparatus implementing the decisions of the party leadership. There was a rapporteur for each portfolio in the Central

[206] According to István Bibó's opinion: the parliament "has no authority and no moral credibility, because it is based on a constitution that, in the eyes of the Hungarian people and in the face of history, has forever been linked to the one-party system, this empty straw coat of arms subject to public hatred". See Bibó 1990: 161.

[207] Feitl 2019.

[208] Act of 15 March 1946 of the Soviet Union prescribed that, to make the different terminologies more in line with European customs, the name "Council of People's Commissars" (which was invented by Trotsky) was replaced by the name "Council of Ministers", and the name "ministry" replaced the name "people's commissariats". See Kun 1988: 496; Rayfield 2005.
In Hungary, pursuant to (the incidentally unconstitutional) Resolution No. 26 of 1956 of the Presidential Council of the People's Republic, on Khrushchev's proposal, in order to further distance themselves from Imre Nagy's government, the Council of Ministers was replaced by the "Revolutionary Workers'–Peasants' Government". (In the Soviet Union, for some time after 1917, the Council of People's Commissars was first called the "Provisional Workers'–Peasants' Government" and then the "Workers'–Peasants' Government".) Act II of 1957 amended the Constitution accordingly. The constitutional amendment of 1972 added the word "government" in brackets to the term "Council of Ministers" [Paragraph (1) Section 33 of Act I of 1972 on the amendment of Act XX of 1949 and the consolidated text of the Constitution of the People's Republic of Hungary].

[209] Mátyás Rákosi: 1952–1953, János Kádár: 1956–1958, 1961–1965, Károly Grósz: 1988.

[210] Both times Imre Nagy was the Prime Minister.

Committee, who in fact was the person in charge of the given area. The prime minister was only a member of the Political Committee, except when the general secretary of the party held this position.[211] According to Miklós Németh's summary on the government's deliberations: "government meetings until May 1989 started as follows: I opened the meeting, described the Political Committee's agenda and the decisions made there. If these affected a ministry, I explained what task was assigned to that ministry. There was some discussion about this, not really a debate, but rather lukewarm opinions and comments – quite understandably, one or more members of the government usually dozed off during the meetings […] generally speaking: the government meetings had no stake whatsoever, because the decisions were not made by the government but the Political Committee."[212]

Obviously, it was not for the election results to determine who the President of the Council of Ministers would be. This was well illustrated after the elections of 1953: even though Mátyás Rákosi won the biggest "victory" in the history of Hungarian elections, a few weeks later he was summoned to Moscow and replaced by Imre Nagy as head of the government.

The resignation of Imre Nagy also took place under rather strange circumstances. He submitted his resignation in person on 9 March 1955, in the presence of Antal Apró[213] and Béla Szalai, then in writing addressed to István Dobi, the chairman of the Presidential Council of the People's Republic on 28 March.[214] On Rákosi's instructions, István Dobi did not accept the resignation so that the Central Leadership of the Hungarian Workers' Party could replace Imre Nagy in April.

The appointment of the Kádár Government is even more telling. The legitimacy of the Imre Nagy Government was not brought into question until 4 November 1956. It was recognised by revolutionaries, democratic parties, revolutionary bodies and even – both "de jure" and "de facto" – by the Soviet Union, as it exchanged notes verbales and negotiated with Imre Nagy's government through its representatives. In contrast, the so-called "revolutionary workers'–peasants' government" headed by János Kádár met neither the legal nor the constitutional

[211] Sárközy 2017: 185.
[212] Oplatka 2014: 39.
[213] Antal Apró had been a member of the government from 1952 to 1971.
[214] MNL-M-KS 276. f. 62/1. ő. e.

regulations.[215] Thus, the Kádár Government could only be established through the Soviet occupation.[216] Incidentally, Kádár himself acknowledged this at the closed meeting of the Central Committee of the Hungarian Socialist Workers' Party on 12 February 1960: "at some point, this Revolutionary Workers' and Peasants' Government came into being, and at that time, in certain situations, it had a total of 8 ministers. And, in part, its came into being was not by full constitutional forms, but partly through a personal meeting and partly over the phone."[217]

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[215] Feitl 1993: 102.

[216] That is why it is called the Quisling Government. Having concluded a pact with Hitler, Vidkun Abraham Quisling facilitated the occupation of Norway. His name thus became the synonym of collaborative behaviour.

[217] MNL 288. f. 30. ő. e. 1–49, 25.

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Norbert Kis

Laws of State Evolution – Sub Specie Aeternitatis

Introduction to the final study

Quoting *Ethics,* the introductory study of this volume recalled that Spinoza advocated the observation of things *sub specie aeternitatis* (under the aspect of eternity). The effect of political interests and actions can be considered the eternal aspect of state development. Underlying the state histories presented in the studies of this volume, we find the political interest groups whose advocacy – directly or indirectly – became a state-shaping force. But how does this hypothesis fit the evolutionist approach? The evolutionist approach seeks the *patterns and laws of development* and strives to build a theory from their interconnection. Characterising progressive development, these patterns and laws illustrate the phenomenon in its process. The state-shaping influence of political interest groups is one of the potential laws of state development, which should be integrated in a more complex evolution theory.

What does the concept of evolution mean in terms of society? The concept of evolution is rooted in ancient Greek philosophy. In the 19th century, it became a full-fledged theory of biology, influencing all fields of science as a universal social theory. The idea of "progressive development" was present in the natural philosophies for centuries (Anaximander, Empedocles, Epicurus and the Roman Lucretius). In the introduction of *On the Origin of Species* (1859), Darwin refers to Aristotle as the source of the concept of natural selection. In the era of science (before Darwin), Leibniz, Kant and Malthus, too, drew conclusions from social phenomena as regards the theory of evolution.[1] Also before Darwin, evolution as a topic was popularised by *Vestiges of the Natural History of Creation* authored by Robert Chambers, which

[1] Malthus 1798.

was a well-liked book at its own time (1844).[2] Mostly influenced by Lamarck's biological works, the concept of the "progress of nature" appears also in Herbert Spencer's sociology, whose works also preceded Darwin's. In the Darwinian concept of the biological evolution, the idea of the survival of certain species rested on the theory of natural selection. The evolution theory became a supreme law to all laws of natural sciences, and gradually began to appear as an operation model of all levels of existence. The fundamental idea of the theory was "adaptive dispersal", with the following cumulative theorems:

- replication (survival and procreational) constraint, that is, the replication of an information (pattern)
- mutation of replication
- survival of the most adaptable mutations (natural selection)
- theorem of complexity

Evolution became the explanatory model of the functioning of inanimate matter, the development on molecular level, and the various biological levels of organisation, from genes to cells and neural systems. Its scope of application as a model covers the levels of cultural, social and technological organisation. From a biological development theory, evolution became a universal law of ever more complex successive levels of organisation. According to the *multi-level evolution theory,* there is a selection (survival) struggle on the levels of genes, individuals and groups. The birth of *sociobiology* as a research area was inspired by the experience that evolution strategy unfolds also in the behaviour of human society.[3] Sociobiology examines the organisation of social behaviour based on biological analogies. This rests on the theorem that social behaviour, too, results from evolution, thus its explanation should also be based on the laws of biological development. Science often mistrusts the above theorems, perceiving them as risky temptations of Darwinism. Indeed, from the early 20th century, Darwinism did tempt social theories, giving rise to provocative social explanations and racial theories based on the ideas of social evolution (Edward Burnett Tylor) and social Darwinism

[2] Chambers 1994 [1844].

[3] Wilson 1975. Edward O. Wilson viewed ant colonies as a model for perfectly functioning human societies, leaving several lessons also for those who examine state theory and the functioning of governance.

(William Graham Sumner),[4] intended at that time as a justification of competitive capitalism (Sumner) and Nietzsche's power ethics. The idea of determinism and genetic determination in terms of our social relations collided head-on with the doctrines of social justice. The theory of hereditary behaviour was a breeding ground for the race-based research of intelligence (IQ) (Sir Cyril Burt, Richard Herrnstein). Sociobiology was also received with harsh criticism, inter alia, because it projected the social behaviour of animals on human beings. Sociobiology once again accentuated the theory that humans are not completely rational beings, as the key drive of their actions is evolutionary stability, reproduction and safety – not only at an individual level, but also as a basis for group organisation and actions. The application of evolutionary laws to human societies cultivated uncertainty as regards the postulate of the rationality and freedom of decisions made in human relationships. Political ideologies also made use of sociobiology: the *evolutionary competition of various groups* was an appealing explanation for distinguishing between communists, liberals, or conservatives.[5] Edward O. Wilson's sociobiology did not bring human ethics into question and did not perceive the "survival of the strong" as a law prevailing in society. He was searching for the motives of the social adaptation of humans. He was instrumental in the process that offered evolution theory, or "adaptive dispersal" (replication) as a working model to social sciences at all levels of existence. He inspired the idea of *cultural evolution,* which explains the organisation of communities as cultures' strategy for survival.[6]

Finally, a reference should be made to the *law of increasing complexity.* In biological development, this law means that organisms with more complex information processing have adapted more effectively to their environment. Increasing for more than three billion years, biological complexity is best shown by its most successful prototypes: the human brain and nervous system. Over the course of tens of thousands of years, from the first hordes, tribes and small villages of mankind, complexity resulted in exceedingly complex forms of coexistence in human societies: human cultures have been in the evolutionary phase of state development in the past five thousand years.

[4] Egedy 2009.

[5] Anonymous 2017.

[6] For a summary of cultural evolution see Csányi 1980: 95–112.

The state as a phenomenon of cultural evolution

In the theory of cultural evolution, the constraint of replication means that a pattern of social coexistence (organisation) will necessarily expand and change (be mutated), through increasing complexity, adaptation and selection. The genesis of the state as a "cultural pattern" can be traced back to the time when the social organisation became more complex. The characteristics of the state have spread in all civilisations (replication) independently of each other (for example, in the Inca or Aztec cultures that developed in isolation from the rest of the world). In terms of its spread, changes, diversity, and in terms of selection – that is, the demise or survival of certain states – *we regard the state as an inevitable result of evolution*. Over the course of the tens of thousands of years of their history, the social organisations in prehistoric communities necessarily progressed towards an increasingly complex and hierarchical organisation: towards becoming a state. The law of increasing complexity is evidenced by the increasingly complex state organisation, institutions, bureaucracies, legal system, and the system of services appearing in society. Earth's population has increased eightfold in the last two centuries, and this population pressure also influenced the increase in complexity. The other *rule of evolution is the construction of hierarchies.* Based on the research of Tamás Vicsek and Anna Zefairis, we know that all biological organisms operate in hierarchies of increasing complexity, and that the basic pattern of nature is a chain of hierarchical dependencies.[7]

Together, complexity and hierarchy constitute the structure that balances entropy: orderliness and organisation. Entropy is known as the second law of thermodynamics, but scientific research has shown that it is a universal axiom of evolutionary theory, applying also in other areas of life phenomena.[8] According to the law of entropy, the spontaneous process of isolated systems evolves towards an increasing disorder, that is, eventually all structures break down. States, civilisations and social organisations are also isolated systems in which the law of entropy prevails. According to physical reasoning, the energy level that maintains the complexity necessary for order is constantly "consumed" by entropy. In reverse: the energy generated from chaos at the atomic

[7] Zafeiris–Vicsek 2018.
[8] Christian 2016.

level maintains order, but only temporarily. To overcome entropy, the energy expenditure must always be increased, otherwise the system will be disintegrated by the loss of energy caused by entropy, therefore all that exist aspires to become more complex, so building evermore complex structures is an evolutionary constraint. This is the dynamic relationship between complexity and entropy. Entropy constantly destroys human-made organisations, such as the state, public administration and all specific state institutions. Therefore, constant change and increasing complexity is a necessity for survival and efficiency in all systems of nature and society. Increasing complexity is a way to "abscond" from entropy. In the operation of social organisations, entropy is the inevitable risk of bureaucratism, dysfunction, cumbersome and corrupt operation. The constant "reforms" of institutions and the compulsion to develop them often seem like self-serving, political overaction. However, according to the logic of entropy, an institution must be kept "under the pressure" of development, otherwise the internal gravity of entropic energy loss will lead to disintegration, deceleration and corruption in the operation of the organisation.

However, cultural evolution – and therefore state evolution – derogates significantly from the laws of biological evolution in one aspect. In the latter, the main factor of change is biological mutation, characterised by a sort of "blindness", and nature selects the most adaptable ones from random mutations. But social evolution lacks this "natural blindness", and development is guided by the "free will" and morality of human beings. Modern philosophy postulates relatively free will, so the selection and mutation of states are determined by the adaptation resulting from the "will of human communities", that is, political intention or interest. In the structure of the "multi-level evolution" mentioned above, state development in social evolution is determined by the level of political groups as a selection factor. Political activity is the projection of a homogeneous group interest, the process where that group interest becomes a claim for public authority – or, using the terminology of biology, a claim for survival and proliferation – aimed at influencing the supreme state authority and shaping the state. State and politics are connected instants of the same development process, just as the genesis of law is a parallel evolutionary factor in the development of the state.[9]

[9] Szilágyi 1998: 66.

It is important to clarify the conceptual framework in which we interpret the state in our thesis. With tolerable simplification, we accept the modern concepts of the state as a common conceptual framework valid from the primary states – dating back to the 3rd millennium BC – to the present day. Our concise definition of the concept is that the state is the supreme power over a given population of a given area (following Georg Jellinek).[10] The element of public authority or supreme power is the essential criterion, grasped by Carl Schmitt as follows: the state "creates the unity of a human grouping through the element of power". According to Max Weber, the essence of supreme power is the "monopoly of physical violence", which definition applies to all states, from primary to modern. Any further features of supreme power are of secondary importance in comparison, such as the organisation of rule or governance, political organisation, legal order and law enforcement, all of which can be considered the manifestations of "physical coercion" that change over time.

The paradigm of evolutionary theory is *necessity,* or *determination*. The genesis of state evolution is that the state itself appears in history as a necessary stage of development, a public authority organisation emerging as a consequence of society's increasing complexity and hierarchy. This thesis should not be confused with the Marxist idea that interprets the state as an "objective social need", perceiving it as the necessary result and justification of the "class struggle". As mentioned above, in social evolution, the political group level is the selection factor that determines state development. The driving force of state development is political interest, which means that one or more political interest groups underlie all changes of state development, and their effective advocacy – directly or indirectly – becomes a force of public authority and state-shaping.

From the beginning of the 20th century, there have been attempts – on the part of Marxism and social Darwinism in particular – to define the evolutionary driving force of state development bearing inherent necessity, by generalising the social causes of the genesis of ancient states. The consideration underlying these attempts was the idea that if we unravel the "secret" of state genesis, it can also serve as a general law to explain modern state development. Indeed, the genesis of primary states (pseudo states) – originating in the 3rd millennium BC – offers an

[10] For a conceptual summary see Takács 2011: 162–168; Cs. Kiss 2022a.

attractive field for exploring the driving forces of state development.[11] The term "primary" is based on the interpretation of the history state formation as a sequence of primary and secondary stages (following Klaus Eder).[12] From archaeology to anthropology and history, sciences have been mesmerised by "the arche of state theory", that is, the discovery of the oldest reason(s) of state formation. It seems logical that the explanations of the transformation of primitive societies into civilised states could also refer to the "evolutionary" regularities of later (secondary or modern) state development and politics.[13] At the beginning of the Holocene era (9700 BC), the increasingly large and densely populated societies of farming and animal husbandry gradually developed towards higher levels of organisation and political centralisation. The common point of the theories is that the birth of the states defined by the modern state concept is a necessity in various parts of the world. The inevitable law of the genesis of the state is most convincingly explained by concepts synthesising multiple coefficient factors. The synthesis includes the *theory of internal* and *external conflicts*. According to that theory, it is necessary that in societies with a critical mass, an internal conflict develops between groups or families of different status, which is temporarily consolidated by the fact that one of the groups achieve supreme power, that is, state authority (victory). The Marxist (Engelsian) hypothesis argues that from the outset, the internal conflict arose due to differences in wealth arising from surplus crops, that is, private property. Thus, in the interpretation of state theories based on Marxism, the state is an oppressive and exploitative organisation of a "ruling class". The dreadful political and social consequences of Marxist hypotheses manifested in the communist ideologies of the 20th century. A convincing explanation for hierarchisation – among the many – is the theory emphasising subordination or cooperative organisation related to the organisation of work in agriculture or construction (for example, irrigation systems).[14] According to 20th century anthropology,

[11] By primary states, we mean those social organisations, also considered empires, civilisations and cultures, which can be characterised as "the supreme power over a given territory and a given population". Some of the most important primary states were the following: Sumer, Hittite Empire, Assyria, Babylonia, Persia, Egypt, Macedonia, Greek city states, Roman Empire, India, Moorish Empire, China, and the Inca, Maya and Aztec empires.

[12] Szilágyi 1998: 65.

[13] Service 1962; 1975.

[14] Harari 2015.

archaic societies may have developed *boss personalities* ("great men") who managed the above environmental effects (population growth, internal conflicts, farming, war, work organisation) well, and around whom the critical level necessary for the formation of the public power organisation into a state was developed. The theory of inevitable external conflicts – conflicts between societies – was also fuelled by sociological misinterpretations of the concept of the Darwinian evolution's "natural selection". According to social Darwinist "theories of conquest" (Ludwig Gumplowicz, Franz Oppenheimer),[15] the conquest instinct of ethnic groups is the engine of state development. Conflict theories are based on the probability of violence within and between societies, but they do not in themselves explain the genesis of a state based on a hierarchical public authority organisation. Throughout history, violent conflicts between societies occur usually, but not necessarily or inevitably, so they cannot be considered the oldest reason or general law of state development.[16] Nonetheless, the likelihood of violent conflicts generated the formation of the stratum of soldiers and military leaders, which led to a progress towards higher levels of political organisation and leadership, that is, to the genesis of the state. According to the synthetic theories, the above-mentioned system effects jointly "funnelled" society towards new levels of political hierarchisation and organisational complexity.[17] Work organisation, territorial protection and religious organisation were the instrumental factors that drove farming village communities (in the ancient Middle East) towards the centralised supreme power and state apparatus, that is, the genesis of the state. In the second stage of development (antiquity), in societies engaged in shepherding, the organisation of trade and conquering militarism (militocracies) built the hierarchy and state apparatus into an actual state (ancient Greek and Roman, and early feudal states). Trade encouraged the development of the legal system, while secularisation, religious tolerance and slavery also appeared. In the third stage of development, the early feudal states (Germanic and Slavic tribes) improved the military-based apparatus, thus

[15] Szilágyi 1998: 67.

[16] The monographs authored by Yuval Noah Harari and Steven Pinker are sceptical in terms of the scientific justification of the violent nature of ancient societies. Harari 2015: 64; Pinker 2011.

[17] Lewellen 1992; Cohen 1978: 142.

a decentralised feudal state authority came into being with an emphatic territorial principle *(feudum)*.[18]

The generalisable characteristics of the birth of primary states were only the beginnings of the process of state development, the germs of the evolutionary laws and patterns of ancient, medieval or modern state development. The competing policy-making interest groups that determined the formation of the states of later eras were still little differentiated in the early stages of social development. They became state-shaping forces only after state development progressed to a certain level.

The political group level of state evolution

The theory of the state discusses the "political" character as the *political concept of the state*.[19] We interpret the term "political group" in line with Carl Schmitt's concept of the "political", in the dichotomy of friend and enemy. In addition to the community of interests, the construction and maintenance of group unity includes also the logic of "separation from others". Political interest groups and their aspiration for public authority and state-shaping influence have gradually become more and more diverse and complex. The plural direction of development also provides a *concept of value* to the direction of state development dictated by political interests. Just as human thinking is the pinnacle of biological evolution, increasing complexity in social evolution also means the *development of human values.* According to Steven Pinker, this process was in full bloom during the Enlightenment.[20] Our theory is similar to Hegel's concept of the state, who perceived *state development as the development of values,* and the progress of moral ideals[21] and freedom.[22] An idealist theorist, Herbert Spencer argued that social development is a value-saturated process, a progress towards perfection. Using physical, biological and anthropological empiricism, he strove to underpin that development is characterised by gradual differentiation, the constantly transforming "dispersion" of matter and force. In Spencer's theory of development,

[18] Szilágyi 1998: 103–124.
[19] Takács 2011: 189–201; Cs. Kiss 2022b.
[20] Pinker 2018.
[21] Deli 2009.
[22] Samu 1992: 53

integration is accompanied or followed by disintegration, in a perpetual cyclical change. This is a process towards increased heterogeneity, which can be observed in any group of phenomena, including states.[23] A 20th-century advocate of the idea of development, Teilhard de Chardin defined the essence of the concept of development as the advance of "good" against "evil". According to his evolution theory, the goal of the development of the universe is absolute perfection, progress to the highest level of consciousness.[24] There are views contrary to the above, which perceive social development as a process of value loss (devolution), for example the philosophy of Friedrich Nietzsche or Béla Hamvas, whose thought was selected as the motto of this volume.

Axiology is a field of philosophy, while historiography – which describes and explains the development of states – is neutral, metaphysical, and seeks the mechanical regularity underlying the change of states. Why does a state cease to exist or survive for centuries? Why do the state borders or the form of the state change? In general, the historical narrative considers conquests on behalf of the state and interstate agreements (compromise, peace agreement, etc.) *external factors,* while revolution and civil war are typical state-shaping *internal factors.* The 20th century marked the appearance, inter alia, of the concept of "international interest" rising above state interests, and the common interest of states (international peace and security). Economic and ethnic–national interests are state-shaping powers. This study cannot assume the task of systemising all these factors, we have only highlighted the main types used in historiography, political science and media discourse narratives. This overview also shows that the real (realistic) public power motives behind the conventional narrative often remain hidden, and the cause or motive of change appears in the guise of "public law fictions" (e.g. state interest, interstate treaty). That is illustrated by the Russian–Ukrainian war that began in 2022. While the war has given rise to changes reshaping the Ukrainian state in historical terms (borders, ethnic composition), the narrative referring to the conflict of Russian and Ukrainian state interests provides insufficient explanation. To reveal the political reality behind the relevant state interests, a more realistic explanation calls for the identification of state-shaping changes: the political interest groups advocating the commencement and continuation of the war, and their political interests

[23] Howard 1890: 40–47.
[24] Teilhard de Chardin 1959.

related to public authority (for example, Russian political interest groups and oligarchies, the interest group of U.S. Democrats, Western European liberal interest groups, global financial interest groups, etc.).

We argue that the law of state evolution is that state development is always shaped by one or more specific political group interests. This approach is realistic, as – abandoning simplifications such as "state interest" – it seeks to identify the human intention, that is, the collective will underlying the changes. The nature of political activity is that people unite in interest groups of "friends" or "comrades". According to Cicero's definition, states are formed because "human beings congregate" due to "a social principle that is innate in man", which integrates people into political groups along public affairs *(res publica)*.[25] According to the law of evolution, groups function with dynamics aimed at survival and expansion, acting as a drive for moving towards public power influence and the phenomenon of the state.

The two basic forms of advocacy (influence) are *peaceful and violent* (war, revolution, terrorism) assertion of interests. Within the category of peaceful advocacy, there are two further forms of the appearance of a political interest group, also constituting two phases usually separated in time:

- *groups with pseudo-legitimacy:* political interest groups aspiring to influence or gain legitimate public authority, and thus, to reach a state-shaping position
- *groups functioning in a position of public authority with proper or debated legitimacy* (typically the parties with parliamentary representation in democracies, governing parties of one-party states, prelates of religious states and the rulers of monarchies)

Applying a typology with a different aspect, we can define

- the former as interest groups that only *indirectly* determine the power structure, that is, state development (big tech companies, netocracy, financial interests, civil organisations, media groups)
- and the latter as state-shaping interest groups that appear *directly* in the competition for public authority (political parties, ethnic-based organisations)

[25] Cicero 1928.

In part, the mechanism of peaceful political advocacy is shaped by standards and forms, such as parliamentary or presidential elections, legislation, diplomacy, international treaties, lobbying or corruption, economic pressure and disinformation. We can discover the diverse forms of advocacy in the description of each state-shaping historical event of the past five thousand years of state development.

Types of state-shaping political interest groups

This study is unfit to aim at outlining the comprehensive system of the historical types of interest groups. In the following, we offer a simplified typology to describe the typical political interest groups, found – with various levels of dominance throughout the historical periods – in the competition for supreme power and in the background of state development. The literature on the historical chronology and characterisation of political interest groups would fill an entire library. Eventually, the political interests of all groups turn into public authority demands, but *their primary interests* may be different, similar, or even identical in each group. Survival and expansion (replication) are immanent for all groups, but, for example, in the case of family/kinship alliances, kinship-based dynasties, or dictators, they become also primary interests. Territorial and military – just like cultural and economic – interests are often linked. Religious and ideological interests can also be combined with others. The main types listed below are only examples, but they are suitable for placing the studies in this volume in the paradigm of state evolution: we are searching for the political interests that determine each point of state development and the – one or more – political interest groups that assert them.

- *Family–blood relationship alliances:* a timeless and eternal pattern of building political will, from archaic societies to modern states. Nowadays, the assertion of interests of the family–kinship alliance is still decisive in the formation of states that have not reached the development stage of urbanisation and democratisation or are stuck there. Basically, this group's drive to obtain or strengthen their position of public authority is survival.
- *Tribal alliances:* a higher-level organisation of family–blood relationship alliances. A determining factor in the origin and early development of states. The interests that drove tribal groups towards

gaining state authority were typically the acquisition or defence of territory, and the development of military capability.

– *Aristocratic elites, high castes:* secular orders or castes formed from the elites of the tribal associations were present in all social hierarchies. The social strata with higher power or significant wealth formed homogeneous interest groups and were interested in protecting their wealth or cultural value system, or in expanding them to gain public authority. From the Indian Kshatriya caste to the senators of the Roman Empire *(Senatus mala bestia),* and the baronial and noble orders of the feudal world to today's affluent groups known as oligarchs, these groups shape public authority in an indirect way. Today, they are still dominant in states with developing or weaker democratic institutions.
– *Urban bourgeoisie, guilds:* the urban bourgeoisie determining the development of the state, merchants, and the interest groups of universities and other professions, from the Greek *polis* to the medieval city states of Italy. Their own autonomous world of values became a homogeneous system of interests that gradually dismantled the feudal European state system from the 16th century.
– *Ecclesiastical, clerical, denominational orders:* the first references made to the influence of religious leaders and groups of religious elite date back to the 3rd millennium BC. Their state-shaping influence was decisive in all civilisations. Nowadays, they have public authority in the religious states of the Middle East.
– *Financial companies, associations:* this network extends from the banking houses of Western countries that became trading superpowers in the early modern era to today's global economic interest groups. The archetype of this category was the East India Company and the House of Rothschild, while today it is represented, inter alia, by the Bilderberg Group and media companies.[26]
– *Parties:* modern political parties are the most legitimate and simplest forms of political interest groups. Their interests are usually cultural and ideological in nature: they strive to assert their political values with public authority. Party interests in one-party systems are often transformed into the perverse interests of a dictator (e.g. Stalin,

[26] Pokol 2004. According to Béla Pokol, capital groups as a new level of the building of political will and global political force appeared in the 20th century. More recently, Zoltán Pogátsa discusses the issue in his work entitled *A globális elit.* See Pogátsa 2022.

Mao Zedong, Fidel Castro, Pol Pot, Ceaușescu, Kim Jong-un, Lukashenka).

– *Perverse individual interests – dictators:* throughout history, one-person "political interest groups" have been formed by individuals driven by extreme ambitions, who assumed a historical state-shaping role in public authority with legitimacy gained with military force, by taking the position of party leader, or by having dynastic legitimisation, such as Napoleon, Hitler, Stalin. Their interest was the realisation of their own ideological system, that is, "historical survival".
– *Secret societies:* their role as a state-shaping public power is not proven in the discipline of history or in political science, but they have a place among political interest groups. As examples, the "Templars", the order of the Illuminati, the freemasonry movement, or Opus Dei could be mentioned. Fourteen U.S. presidents were Freemasons, the brothers of Napoleon were the leaders of the Grande Orient de France.[27] The continuity between the Templars and the Freemasons, their role in the French Revolution, and the relationship between these movements and the leading financial interest groups is also examined by historiographic research.[28] *The Square and the Tower* authored by Niall Ferguson provides a scholarly examination of the state-shaping public authority role of the network of secret societies, particularly the history of the Illuminati. Ferguson presents the conspiracy network consisting of nearly a hundred legal and secret organisations and interest groups, the role of which – as he puts it – is generally underestimated by mainstream historiography and stubbornly exaggerated by conspiracy theorists. The author of this study shares the approach of János Bátky – the protagonist of the novel *The Pendragon Legend* penned by Antal Szerb – regarding the role of secret societies, which is similar to his assessment of alchemy.
– *Criminal organisations:* groups of organised crime stand for the illegal form of secret societies, their state-shaping role is typical in African and Latin American developing countries, but it was also present in the history of state development in Italy, Russia, the United States and the Balkans in the 20th century. The scope of their influence is hard to determine, the interest motivation is basically economic

[27] Hahner 2010: 30.
[28] Sághy 2010: 49.

in nature, while their position in public authority is rather a tool than a goal.

- *Kinship-based dynasties:* in all civilisations, until the genesis of modern democracies (republics as regards the form of state) and one-party states, state development was based on the competition for survival and alliances of dynasties. Inter alia, the most important modern European dynasties were the following: Habsburg-Lorraine, Hohenzollern, Windsor, Karadjordjević, Bourbon and Bonaparte. With the survival of monarchies and some dictatorships (e.g. North Korea), the state-shaping influence of dynasties based on royal descent continues to this day.
- *Modern international institutions:* in the new world order following World War II, international and intergovernmental organisations of political and economic nature (World Economic Forum, World Bank, IMF, institutions of the European Union, NATO, OPEC, International Chamber of Commerce, etc.) were interested in strengthening their own institutional influence on public power and legitimacy, implemented through their influence on the supreme power. Their interests are a mix of ideological, cultural and economic motivations, and self-centred institutional survival. Their leaders form an international elite, and their management develops specific neocracies (bureaucracy, juristocracy), forming into political interest groups. Their principled requirements on state governance (e.g. *good governance*) call for inclusive governance with economic actors.
- *Global companies:* the global economy of the 20th century started a tendency that enhances the concentration of capital, so today's world economy is concentrated in the hands of fewer and fewer companies, which have greater financial resources than most countries in the world.[29] These companies strive to influence public authorities primarily with economic motivation and, secondarily, with advocacy affecting consumer culture. Tech giants should be treated as a separate category.
- *Tech giants:* big tech companies[30] build a position of power in the modern information and media society with a specific power policy

[29] *Global Wealth Report* 2022.

[30] For example, Apple Inc, Amazon.com Inc, Microsoft Corporation, Alphabet Inc. (Google), Facebook Inc., Tencent Holdings Limited, Alibaba Group Holding Limited, Samsung Electronics Co., Ltd, IBM, Intel Corporation, etc.

of influence over people (netocracy) and can indirectly influence state development and governance to an increasing extent (for example, by inciting revolutions, uprisings, manipulating public elections).[31] Their interest motivation is basically economic in nature.

– *Civil movements:* civil organisations based on the freedom of association of the 20th century: the civil rights movements of the USA, the pseudo-party movements that determined the development of the Eastern European states (e.g. the Polish Solidarity movement, the Lakitelek and samizdat circles in Hungary), and today's human rights and NGO networks. Their more recent forms are the university and scientific associations forming into civil movements of advocacy.

Table 1: Summary of political interest groups

Historical type of interest groups	Nature of the original group interest
family–blood relationship alliances	*survival*
tribal alliances	*territorial, military*
aristocratic elite, high castes	*cultural, economic*
urban bourgeoisie, guilds	*cultural, economic*
ecclesiastical, clerical, denominational orders	*religious, ideological*
financial companies	*economic*
parties	*cultural and ideological*
perverse individual interest – dictator	*survival*
secret societies	*ideological*
criminal organisations	*economic*
kinship-based dynasties	*survival*
modern international institutions	*ideological, cultural*
global companies	*economic, cultural*
tech giants	*economic, cultural*
civil movements	*ideological*

Source: Compiled by the author.

[31] Kis 2019.

Conclusions

According to our thesis, the effect of state evolution is not exclusive to the level of state interests, but it also appears at the level of political interest groups operating largely on the basis of a demand for public authority. Research should aspire to seek the political group interests underlying the various forms of state development, which – at a higher level – are considered interests of national, economic, or ideological nature. The paradigm of political interest groups demystifies the references made solely to "state interests" or "great power interests", that is, to the ideals of ideological, economic, or political values. In that regard, following Béla Hamvas's thought selected as the motto of our volume, this paradigm intents to close the gap between theory and reality. It is to be reiterated that this paradigm is of descriptive and fact-finding nature. In our value-based, idealistic approach, the building of political will and the interstate relations should indeed be driven by sovereign state interests and legitimate governments. In the conservative nationalist ideal of state evolution, state development is shaped peacefully by legitimate governments representing the national interest. The thesis of our research and the studies of this volume may shine new light on historical entities, such as the Transatlantic Alliance, Asia, Europe, the European Union, Western and Eastern Europe, Central Europe, nation states, or the Austro–Hungarian Monarchy. The evolutionist paradigm of research can uncover the pre-Westphalian, modern state history and the true drives of the post-Westphalian, ongoing political sovereignty debates, and identify the real motives underlying the issues of sovereignty.[32]

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[32] Máthé 2023.

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States are the result of cultural evolution. With this in mind, the book summarises the research of five university professors on the development of European states, with a special emphasis on the Hungarian state. The authors justify the thesis that group and individual political interests have been and continue to be the driving force behind the development of states, which are not independent of each other. According to this view, in different historical periods, the assertion of interests by political interest groups with similar patterns became a force that shaped public power and the state. Exploring the group interests behind state development demystifies the reference to "state interests" or "great power interests", ideological, economic or political values. The thesis of the research and the essays in this volume can shed a different light on historical phenomena such as the transatlantic alliance, Europe, the European Union or Central Europe. Further reflection on the book may also reveal to the reader the real drivers of the political sovereignty disputes that are still taking place today between international organisations and nation states.

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