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National Identity and Constitutional Patriotism in the Context of Modern Hungarian History

An Overview*

Since the end of the eighteenth century, Hungarians have considered themselves a nation of the “millennial constitution” and a “nation of lawyers.” What meanings, identity-founding values, and interpretations of the past are associated with the concepts of constitution and constitutionalism in Hungarian public thinking and scientific discourse? Furthermore, to what extent is there any consensus concerning principles, and how coherent is the context of Hungarian constitutionalism as a product of national history? In this overview, I show how the political program of constitutionalism underwent a transformation from an elite-project to a common emotional foundation of constitutional patriotism in 1848. I also examine how, after the Austro-Hungarian Compromise of 1867 and in the interwar period, the emotional bonding of citizens to their political institutions weakened and several myths of the Hungarian exceptionalism gathered strength in scientific and political discourses. Four decades of socialism extinguished almost completely any sense of constitutional consciousness, already only flickering, among the people, as well as their trust in the world of politics. Finally, the many examples of embittered debates on symbolic questions after the regime change in 1989/90 and the much-criticized circumstances of the drafting of a new constitution in 2011 demonstrate convincingly that a constitutional patriotism based on broad societal consensus has not yet formed in Hungary. The successive political regimes used constitutional values and the memory of the struggles for constitutionalism only as symbols or slogans to reach their short-term political aims. The political elites in Hungary utilized the constitutional consciousness of the society instead of working to strengthen it.

Keywords: constitutional patriotism, national identity, Hungarian history, symbolic politics

Constitution, Identity, and History

The expression constitutional patriotism associated with Jürgen Habermas has undergone a number of modifications since it was coined in the 1970s, giving rise to significant professional and public debates. Originally, the term was meant

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to play a role in the formation of the new German national identity after World War II, flourishing again in the early 1990s in the countries of the former Soviet bloc in Central Eastern Europe and frequently used in the public discourse of the mostly leftist intelligentsia in connection with the processes of European integration and constitution-writing. Rather than examining the history of the uses of this term, I wish only to note that recently it has played a role in peeling the identity of the political community away from traditional national consciousness, imbued with nationalism and damaged multiple times, and linking communal identity to universally accepted human rights, democratic values, and constitutional institutions as integrational bases, thereby strengthening civic participation in public life and the development of tolerant, self-critical civic attitudes (a political culture of a citizenry). Habermas also linked this concept with the idea of forming a cosmopolitan solidarity, a “multicultural citizenship” (e.g. in the future European federal state). Later, however, he emphasized instead that “[d]espite a very common misunderstanding, ‘patriotism linked to the constitution’ means that the citizens wholeheartedly accept the principles of the constitution, not only in their abstract substance, but very specifically out of the historical context of the history of each nation.”

What is important in the context of this inquiry is the fundamental hypothesis of the concept: “In a pluralistic society, the constitution expresses a formal consensus. The citizens want to regulate their living together according to principles that are in the equal interests of each and thus can meet with the justified assent of all.” That is to say, there exists a commonly accepted system of norms for constitutionality, a common stock of concepts and words, as well as an image of the past both in the actual political community (polity) and on a larger, for example European, scale.

Interestingly, the conservative philosopher Roger Scruton, who firmly rejects the ideas described above and insists on the importance of preserving national identity, also believes in the existence of common constitutional values inspiring the English nation, and the patriotism linked to them. That in his writings he worries about the cracking of the centuries-old cohesive force of the British

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4 Habermas, “Citizenship and National Identity,” 496.
system of legal and political institutions caused by the spread of consumer culture and not least the “patronage” of the European Union is another issue.\(^5\)

Given the relevance the concept has acquired in contemporary political and theoretical discussions, it would seem justified to consider the meanings, identity-founding values, and interpretations of the past that have been and are associated with the concepts of constitution and constitutionality in Hungarian public and academic discourses. To what extent is there a consensus concerning principles, and how coherent is the context of Hungarian constitutionality as a product of the national history that the “old” and “new,” as it were, identities of the political community can both rely on?

Naturally, one cannot give precise answers to these questions, but rather can only venture conjectures, since exciting factors in political life such as loyalty, trust, pride, and identification are difficult to measure. Moreover, the available sources mostly allow only glimpses into scholarly debates and discourses defined by the political elite, and are usually silent about the political attitudes of society.

\textit{The Formation of Constitutional Consciousness as of the Second Half of the Eighteenth Century}

The political program, starting from above, of building the nation and the development of the “national sciences” in the service of this project, and, later, the building up of the bourgeois state were processes that gradually, during the long nineteenth century, pushed autonomous legal life on the local level and various customary laws into the background through codified customary law and “official” written legislation, while, through the channels of education and the forums of the old and the new public spheres, new political values, sentiments, and interpretations, which could later be folklorized, were attached to this legal material. Thus, a general system of norms, a common stock of concepts, and shared ways of thinking came into being that could later serve as the basis for a wider communal identity associated with constitutionality.\(^6\) Naturally, a consciousness of this kind was basically shaped by the thinking, the public behavior and the political objectives of the prevailing political elite, especially


in a country like the Kingdom of Hungary, which was very divided ethnically, culturally, and in terms of property. Still, as a result of these complex processes, which are difficult to map, a (self)image has taken deep roots, according to which the nation-building and state-building Hungarians are characterized, through their incessant struggle for independence, by strong public legal traditions and a legal turn of mind, adhering often perhaps to an irrational extent to its legal fictions (Hungarians are usually seen by foreigners as an ungovernable, rebellious people). Since the nineteenth century, Hungarians have often associated their national character with the terms “millennial constitution” and “nation of lawyers.” In 1939, a famous Hungarian poet, Mihály Babits, wrote the following in his tableau on the Hungarian character:

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

The clearly perceptible strengthening of constitutional consciousness is basically linked with the intellectual impact of the Enlightenment and the struggles between the Hungarian Estates and the Habsburgs in the second half of the eighteenth century. Emperor Joseph II (1780–1790) broke with the centuries-old customs of dealing with the Estates: he did not have himself crowned king of Hungary, he did not summon the national assembly (Diet), etc. He set out to implement a program of modernization along the ideas of the Enlightenment, but the means he employed were absolutistic. The Estates opposed his efforts, in their struggle relying heavily on the arguments of the thinkers of the French Enlightenment. The works of Montesquieu, Rousseau, and Voltaire, soon after they had been written, became favorite readings (in the original, but often in Hungarian translations, too) of the political elite, providing the Estates with a far too practical set of arguments in their wrestling with the enlightened absolutism represented by Joseph II.

8 Of course, the roots of patriotism based on constitutional consciousness go back to earlier times, see e.g. Balázs Trenčsényi and Márton Zászkaliczky, eds., Whose Love of Which Country: Composite States, National History and Patriotic Discourses in Early Modern East Central Europe (Leiden–Boston: Brill, 2010).
They set the model of representative constitutionalism still organized on the basis of Estates against the theory of centralized state. In their numerous plans, the Estates argued, drawing on the theory of natural law, that since the monarch had violated the ancient “social contract” with them, a totally new contract was needed. Referring to the principle of popular sovereignty (by people they meant themselves, of course) and the spirit of laws, they demanded that the Diet be summoned, and under the influence of the events in France they decided to make a written constitution which would significantly limit royal power. In 1790–1791, approximately five hundred pamphlets were published putting forth proposals for changes to the political situation and the constitutional conditions of the country. Furthermore, the ideas of the French Enlightenment concerning the division of powers, the social contract, and human rights appeared not only in official proposals and political pamphlets, but in popular plays and school verses as well.

However, this Hungarian Enlightenment was rather peculiar, indeed, since as Ferenc Eckhart observed, “it held Montesquieu and Rousseau in one hand and the Tripartitum in the other.” That is to say, the Estates wished to apply only those principles of modern constitutionality to Hungarian conditions which upheld their privileges. And to support this effort, they used the Tripartitum, a work by István Werbőczy, who in addition to reviving and summarizing the cardinal laws and definitive legal customs of the country in 1514, complemented his work with the theory that the king and the (legally and politically equal) nobility are present together in the Holy Crown of Hungary, that is to say, they together practice sovereign power.

The constitution-making fever, especially as a result of the increasingly frightening news from France and the countermeasures of the new king, Leopold II (1790–1792), soon abated, the monarch and the Estates returning to the time-honored rules of the game of the constitutionality of the estate system. It is undeniable, however, that a few important elements of modern-day constitutionality, which in the perception of both the Hungarian Estates and the

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9 See, for example Henrik Marczali, “Alkotmánytervezetek 1790-ben,” Budapesti Szemle 125, no. 351 (1906): 393–422.
10 Sándor Eckhardt, A francia forradalom eszméi Magyarországon (Budapest: Franklin, 1924).
11 Ferenc Eckhart, A Szentkorona-eszme története (Budapest: MTA, 1941), 254. For this, see also: M. István Szijártó, A Díztan: A magyar rendek és az országgyűlés 1708–1792 (Budapest: Osiris, 2005), 29–43.
sovereign could be reconciled with their interests and which did not violate the dualist system of the Estates, would become part of the Hungarian legal system.

New words were added to the vocabulary of Hungarian politics in these decades. In the 1780s, the Latin *constitutio* and the Hungarian *alkotmány* and *alkotmányozás* began to be used with their present-day jurisprudential meaning. The Hungarian word *alkotmány* also appeared for the first time in Corpus Juris in Act 1791:X. According to studies in intellectual history, it was also during the constitutional struggles of the late eighteenth century that references to ancient, thousand-year-old constitutionalism became part of a definitive mode of discourse. According to this argument, there exists an ancient (legal and political) system of customs, handed down by generations, which would outline the nine-hundred-year old and, later, thousand-year old, organically and continuously developing unwritten constitution of Hungary. And this constitutional development was essentially identical with the history of the nation, which at that time meant only the political community taking part in governance, that is, the nobility. Thus, the protection and complete preservation of constitutional customs, rights and privileges was seen as a duty and a fundamental prerequisite of national existence. “The slogan, almost second to none in its ability to make Hungarian hearts beat more rapidly, was born.” So constitutionality became part of the national consciousness and a source of national pride, though only keeping in mind the following:

[A] number of identity variations interpreted themselves in the symbol of the Homeland, thus the patriotism of those days was a set of different and diverging phenomena and the use of the term patriotism in the plural would seem to be justified. This is the moment of coming into being, the time of narratives and symbols being reordered and organized into a new unity.

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13 The rapidity of the change is indicated by the fact that the augmented edition in 1767 of the dictionary of Ferenc Pápai Páriz did not include this new meaning of *constitutio*. Ferenc Pápai Páriz, *Dictionarium Latino–Hungaricum et Hungarico–Latino–Germanicum* (Budapest: Universitas, 1995), 142. For the expansion of the meaning of the word *alkotmány* (constitution), see Loránd Benkő, ed., *A magyar nyelv történeti-etimológiai szótára* (Budapest: Akadémiai Kiadó, 1967), 1:134.


Although there was a clearly perceptible shift in the meanings of the words *baza* (homeland), *nemzet* (nation), and *alkotmány* (constitution) in the nineteenth century, these concepts were put to a diverse array of political uses. The reference to ancient constitutionality, depending on the actual political interests, was invoked to serve either the maintenance of the stability of relations among the Estates and the given political structure, as in the case of the conservatives during the Reform Age (1825–1848), or it was used to justify the liberal program of the extension of rights and the uniting of interests, showing after significant reinterpretation the democratic spirit it represented. Or, finally, it was used to serve the aspirations for independence against Vienna. Those who, like the centralists of the Reform Age, did not wish to speak the language of the ancient constitutionality and preferred to use arguments of natural law to emphasize the need to create the conditions for civilization, progress and, within that, codification (of a scientifically constructed written constitution) found themselves playing a marginal role in Hungarian political discourse.  

The suggestion of a parallel between British and Hungarian constitutional developments had an important role in deepening the feeling of constitutional pride. By then, the view that with regard to rank and age the Hungarian constitution could be compared to British constitutionality had become a widely held conviction. Indeed, Lajos Kossuth, one of the leaders of the Hungarian liberals, thought that “Hungarian civic institutions are not only similar to, but in some respects better, more glorious than, those of Great Britain.”

The proximity of two important dates in British and Hungarian constitutional history offered an attractive parallel to support this contention: the Magna Carta issued in 1215 and the Golden Bull in 1222. By the second half of the nineteenth century, another argument had been made: by that time Great Britain and Hungary were the only countries in Europe with no written constitutions.

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Although the British-Hungarian parallel generated by the national pride of the elite cannot be supported by facts of legal development, it has become part of the school curriculum and public consciousness.19

As was the case in so many other countries of Europe, the political system in Hungary was placed on new foundations in 1848. However, the liberal elite, upon coming into power, deliberately would not undertake open and comprehensive constitution-making in the midst of revolutionary events and limited itself to temporarily regulating the system of political institutions. They wished to leave the task of writing a constitution to a subsequent, popular representative parliament. This objective, however, was thwarted on account of the defeat of the war of independence. Nevertheless, the acts passed in April, 1848 came to be regarded, both with a view to the legal system and in a symbolic sense, as the fundamental laws of the country on the level of national memory, and that is how these acts are still discussed in Hungarian jurisprudence. The communal experience of 1848/49 and its subsequent memory created a common emotional basis, the integral parts of which were, on the one hand, the sense of freedom coming from laws (the introduction of general sharing of taxation, the abolition of socage and tithe, the termination of manorial courts, etc.) providing for equality before the law and, on the other, the pride and trust experienced in connection with newly created or renewed political institutions (such as responsible government and a representative parliament). The language of the April acts also clearly indicated the widening of the borders of the body politic: the old expressions of the estate system were replaced in Hungarian laws with terms like “all the inhabitants of Hungary,” “the whole Hungarian people,” “the citizens of the country,” and “fellow citizen.” These communal sentiments came to be symbolically embodied in the date of the Hungarian revolution of 1848: March 15. The differing interpretations with regard to the

19 For example, the doctrine of the relationship between the Golden Bull (“The letters patent including the Constitution of Hungary”) and the Magna Carta was published first in 1849, in the extremely popular schoolbook, which was published in seventy editions, of István Losontzi. István Losontzi, Hármas kis tükör (Pest: Tratner and Károlyi, 1849), 41–42. For this, see also: András Cieger, “A pecsét sok oldala: Az Aranybulla mint emlékezeti hely,” in Megtalálható-e a múlt? Tanulmányok Gyáni Gábor 60. születésnapjára, ed. Zsombor Bódy, Sándor Horváth, and Tibor Válc. (Budapest: Argumentum, 2010), 403–13. Parallel with the spread of this doctrine, the translation of the works of English political philosophy (e.g. Bentham, Mill) also began in the Reform Age: Béla Mester, “Mill magyarországi recepciója és a 19. század magyar politikai gondolkodása,” in Közöltetek a magyar filozófia történetéhez Magyarország és a modernitás, ed. Béla Mester and László Perekz (Budapest: Áron Kiadó, 2004), 351–91.
contemporary event were pushed into the background, and that date became the
day of freedom and modern constitutionality.\textsuperscript{20}

The Weakening of Patriotism and the Strengthening of the Myths of Hungarian Constitutionalism (1867–1945)

After the defeat of the war of independence, constitutional patriotism became
even stronger because the unwritten constitution absorbed and represented
several well-known values (the desire for independence, anti-Habsburg habits,
constitutional resistance) and new symbols (Kossuth’s cult, commemorative
rituals of the 1848 revolution, etc.) during the period of Habsburg absolutism.
However, the Austro-Hungarian Compromise of 1867 met with significant social
rejection despite its rational political program. People were not enthusiastic about
the new political system, yet in time the majority would prove loyal to it. But an
extension of legitimacy that went beyond mere passive endorsement would have
needed emotional identification and enthusiasm expressed in symbols. However,
fifty years were not long enough for that change: the ruling powers failed in
their attempt to create new community-forming symbols that would strengthen
the established political regime, and they were prevented by the written and
unwritten rules of the Compromise of 1867 from identifying with the symbols
preserved by the nation. Thus, mutually exclusive traditions came into existence
after the Compromise: a centrally formed state patriotism, relying on a measure
of loyalty by the citizens on the one hand, and, on the other, a national patriotism
with its own rites, surviving in the social public.\textsuperscript{21}

It is also obvious that both traditions had reached a crisis by the early
twentieth century. On the one hand, the legitimacy of the constitutional
system of the Compromise, which was uncertain to begin with, had become
considerably worn-out: the complicated legal and political system struggled
with serious functional problems, constitutionality and individual rights never
emerged, the prestige of the parliamentarism declined, and so on. On the other,
the opposition forces regarding themselves as the true heirs to the legacy of
1848 had over the course of the decades gradually abandoned the program
of consolidating constitutionality, their activity amounting increasingly to little

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\textsuperscript{20} András Gerő, \textit{Imagined History: Chapters from the 19\textsuperscript{th} and 20\textsuperscript{th} Century Hungarian History of Symbolic Politics}
(New Jersey: Center for Hungarian Studies and Publications, 2006), 137–51.
\end{flushright}
more than empty show and ritual. And, finally and not least, throughout the period, the set of citizens who could legally (through their right to vote, for instance) participate in political decision-making remained very small: only six percent of the population could vote during the entire period. These factors had destructive effects on the pride felt for constitutional conditions and parliamentary institutions. It would seem that during the five decades of the dualist regime, various constitutional myths attempted to replace the political functions of the nearly unified interpretation of history and the legitimizing symbols. Harping on the millennial constitutionalism of the country, they tried to support the legitimacy of the compromise with Austria, and, on the other hand, they emphasized Hungarian supremacy in opposition to the political demands of national minorities.

While its cult was growing in the second half of the nineteenth century, constitutionality increasingly survived in memories. Constitutional institutions were not established and there were not real attempts to adapt to European norms. Rather, taking refuge in alleged national traditions became the rule. This is clearly indicated by the development of jurisprudential education in Hungary, which turned—comparatively late, but all the more bellicosely—into a propagation of constitutional myths. As late as in 1874, Hungarian constitutional and legal history was made an independent subject for primary examination in legal studies (prior to the Compromise, instruction in that subject was forbidden), and in 1892 it had a department of its own in Budapest only. Imre Hajník, first commissioned to teach the subject, supported the idea of a parallel presentation of universal and Hungarian legal developments:

Thus legal historians must elevate themselves to a European standpoint when lecturing on the development of Hungarian legal life, following the changes and the significance of European ideas of the age, examining when and how and through the confluence of what factors these ideas influenced statal and social life of Hungary.22

By the turn of the century, however, in the wake of long internal discussions, the views of the so-called historical-nationalist legal school had triumphed. According to the leading professor of this school, Ákos Timon, “the Hungarian people arrived at the pure concept of statehood, of real public power before other European state-forming peoples,” and so it is not on the processes of reception

but on the study of the independent organic development that attention must be focused; “we must have the national direction of legal history” prevail here, too.\textsuperscript{23} As a result of this attitude, the department of European legal history was terminated at the Budapest law school in 1912.\textsuperscript{24}

Given all this, it is no wonder that the cult of Werbőczy flourished without interruption. The importance of his work survived in modern constitutional thought. The political message of his \textit{Tripartitum} is perfectly summarized in the preface: it is to the credit of Werbőczy’s work that it stressed the importance of the cooperation of the crown and the nation, justified the monarch’s right of patronage, and enhanced “in the national consciousness the sense of public liberty, independence, and constitutionality.”\textsuperscript{25} The cult of this work, useful for political purposes in many ways, and of its writer in the nineteenth century is precisely indicated by that fact that after \textit{Tripartitum} had been professionally translated under the aegis of the Hungarian Academy of Sciences in 1844, biographies of Werbőczy were published, a street was named after him in Budapest, and a statue of him was erected in a public square in 1908.\textsuperscript{26} Finally, in his two-volume work of legal history, Béni Grosschmid connected the two most important myths of Hungarian constitutionalism: he demonstrates at some length the relationship between British (proprietary) law and the Hungarian notion of law as recorded in \textit{Tripartitum}.\textsuperscript{27}

By the turn of the nineteenth and twentieth centuries, the new building of the Hungarian Parliament had been built in Budapest. It was modeled after Westminster, and its architect, Imre Steindl, called it “the Temple of Constitution.” It was intended as a proclamation of respect for Hungarian constitutionalism and parliamentarism. The politics taking place within, however, were less and less able to meet the values suggested by the building. It is sufficient to mention only the series of scandals in the early twentieth century that shook the Hungarian

\textsuperscript{23} Ákos Timon, \textit{Magyar alkotmány- és jogtörténet}, 3\textsuperscript{rd} ed. (Budapest: Hornyánszky, 1906), IV.
\textsuperscript{24} Zoltán József Tóth, \textit{Magyar közjogi bagnományok és nemzeti öntudat a 19. század végétől napjainkig} (Budapest: Szent István Társulat, 2007), 61–73.
\textsuperscript{25} Sándor Kolosvári and Kelemen Óvári, “A fordítók előszava,” in Werbőczy István Hármaskönyve (Budapest: Franklin, 1897), XXXII.
\textsuperscript{27} Béni Grosschmid, \textit{Werbőczy és az angol jog} (Budapest: Franklin, 1928).
Parliament, which consequently gradually lost its dignity. “It is as if the traditions of Hungarian constitutionality had been lost during the move,” Ferenc Herczeg, a famous Hungarian writer and member of the Parliament, wrote in his memoirs.\(^{28}\)

The communist ideology and political arrangements of the Hungarian Soviet Republic of 1919 brought about a sharp and spectacular break. Its leaders wished to create the ideal communist state, transcending nations and classes, by means of the dictatorship of the proletariat. This attempt, however, lacked broad social support, so lasting loyalty could not develop in favor of the new political regime. The leaders of the Soviet Republic, following the Leninist example, applied open terror and used the means of “monumental propaganda” to deepen the civic consciousness of the working class and propagate communist constitutionalism.\(^{29}\)

The bourgeois legal order of earlier days was immediately restored after the fall of the communist regime. Creating a real civic constitutional patriotism, on the other hand, proved much more difficult because the losses of territory, citizenship, jobs, family ties (and so on) on account of the Trianon peace treaty caused a general identity crisis on national, local and individual levels. Prime Minister István Bethlen, the emblematic figure of the interwar period, made an attempt during his term in government to recreate constitutional consciousness. He made the following remarks in his speech outlining the program of his government:

> The Hungarian nation lived retired into its own shell, so to speak, in the Hungarian globe, allowing itself to be led by self-delusion regarding its strength and tasks. There was another consequence: it developed a practically one-sided legal turn of mind. In accordance with this legal turn of mind, we have come to regard the whole world as if we were able to combat every difficulty holding the *Corpus Juris* and a bunch of contracts. [...] We have overestimated state life in the role of the national life.

According to Bethlen, the way out of the crisis could be through a careful democratizing of nineteenth-century parliamentarism (suffrage reform, and the

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\(^{29}\) By having the monuments of the previous regime covered and rebuilt, the communists endeavored to erase all signs referring to the millennium-old history of the country. In detail: Boldizsár Vörös, “*A múltat végképp eltörölni*? Történelmi személyiségek a magyarországi szociáldemokrata és kommunista propagandában, 1890–1919” (Budapest: MTA Történettudományi Intézete, 2004).
reform of the Upper House, etc.), and especially through the strengthening of
national self-consciousness and cohesion. 30 One small slice of that program was
the integration of more modern knowledge of the constitution in the system
of education. This meant, on the one hand, more efficient teaching of civics in
public education, and, on the other, breaking the hegemony of the historico-
nationalist legal school in training lawyers. The aim of the first effort was “to
plant” “civic sentiment in the soul of the next generation,” the formation
of civic behavior, which was conscious, socially sensitive, and loyal to the
established regime.31 Reforms to the teaching of legal history at the university
aimed at critically reviewing pseudo-scientific dogmas, which were nevertheless
deeply embedded in the national consciousness. Ferenc Eckhart, appointed head
of the department of legal history in Budapest in 1929, declared war on the
legal historical view which insisted on the existence of an ancient Hungarian
constitutional genius. He rejected the myth of millennial constitutionalism
which traced the roots of modern legal and political institutions to the ancient
homeland. He later wrote:

I conceived it to be my calling to have the completely chauvinistic
Hungarian legal history, according to which Hungarian legal and state
development is something quite special, replaced with teaching legal
history based on economic and social development. And since the
economic and social development of the neighboring Slavic peoples
are similar to the people of Hungary, in the discipline and the teaching
of legal history a comparison with the Slavic peoples instead of British
analogies should serve as the basis.32

At the same time, the lengthy public debate over the scholarly position of
Ferenc Eckhart indicates that there was no consensus at the time concerning
the interpretation of constitutionalism.33 On the one hand, the regime itself
encouraged a number of cults reinforcing national pride and the community of
fate, closely linking them to the widely supported program of revisionism (in

30 For Bethlen’s speech in 1921, see István Bethlen, Válogatott politikai írások és beszédek, ed. Ignác Romsics
(Budapest: Osiris, 2000), 118.
31 Gyula Korniss, Kultúra és politika (Budapest: Franklin, 1928), 319. Korniss was the Secretary of State
for Public Education from 1927 to 1931.
32 Eckhart’s manuscript quoted in Barna Mezey, “Utószó,” in Ferenc Eckhart, Magyar alkotmány- és jogtörténet
(Budapest: Osiris, 2000), 411. On his scientific program, see Ferenc Eckhart, “Jog és alkotmánytörténet,” in
33 The discussion analyzed, e.g. Tóth, Magyar közjogi bogyományok, 17–61.
order to regain the millennial borders, for instance). The elite in power practically used (and reinterpreted) everything from the glorious past that could serve that purpose. The significance of symbolic politics increased even compared to the second half of the nineteenth century, as is evidenced by the number of commemorative laws for national heroes, holidays and historical events: their number prior to 1848 was one, during the five decades of the dualist monarchy, thirteen, but between 1920 and 1944, fifteen such acts were passed and included in *Corpus Juris*.

However, by the late 1930s, references to constitutional traditions tended increasingly to provide arguments for restricting equality before the law and parliamentarism. The glorious past of Hungarian political life and ancient Hungarian laws were equally suitable as justifications for stripping the Jewish citizens of the country of their rights or for that matter introducing a corporate, authoritarian state model promising a new estate system. Prime Minister Pál Teleki justified his proposal for a constitutional reform in the following way:

> Europe’s form of life in terms of world power, democratic liberalism, has ceased to exist along with its public, political and parliamentary forms. Our parliament, despite the changes, is still like that, and cannot meet the requirements. It discusses too much and too long, gets lost in details, lives its life in party struggles, and is a workshop of spectacle and not life. What is more, its form is not originally Hungarian.

This kind of argument went so far that a number of authors began to question whether the liberal achievements of the revolution of 1848 could be included among the constitutional traditions of the Hungarian nation, since they believed that the sudden introduction of legal and political constructions in a revolutionary situation, borrowed mostly from abroad, went against organic Hungarian legal development. Therefore, parliamentary government, according to this idea, must be replaced by a model of a corporate state.

The first pioneers of the so-called populist movement (népiek) turned sharply against the interpretations discussed so far when formulating their relation

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34 For instance, István Egyed refers to the Laws of King (Saint) Ladislas I in connection with the anti-Jewish measures: István Egyed, *A mi alkotmányunk* (Budapest: Magyar Szemle Társulat, 1943), 158.
to the constitutionalism of the past. Breaking with the dominant discourse, they denied that the millennial constitutionality formed and mythicized by the political leadership at the time was an integral part of the identity-consciousness of Hungarians. István Győrffi elaborated, after Károly Tagányi, the program of a comprehensive study of Hungarian legal life in local legal affairs because he believed that only the customs of pure, unimpaired Hungarian peasant culture could represent a true national legal system, in contrast with foreign, alien laws, which were tolerated under the pressures of necessity. Their more distant aim was to use their conclusions to lead “legislation separated from the popular outlook” back to true national traditions, and thereby create “more Hungarian law.”\[37\] The same idea was formulated in literary terms by Dezső Szabó, for instance, who provided a new interpretation of Hungarian history by identifying Hungarians with peasants—enslaved, exploited, but bearing pure Asian character:

> [T]he past thousand years has been a chamber of tortures for Hungarians […] And it was this past that created the glorious ancient constitution, which has been a procurative and protective mechanism for all those who created the Hungarian people from themselves. It is precisely this past and this ancient constitution that we want to make history irreversibly, and build in its place a totally new world, new constitution, new law and order.\[38\]

Thus, those who expressed their views between the World Wars seemed to have agreed that there was no palpable unified civic consciousness and no constitutional patriotism, but they significantly differed with regard to the causes and the potential solutions. The general identity crisis typical of the period caused serious problems in interpreting constitutionalism and history.

**The Period of Constitutional Ignorance – The Age of Socialism**

The four decades of socialism almost completely extinguished the constitutional consciousness of the people, which was uncertain anyway, and their trust in the world of politics. When the Constitution of the Hungarian People’s Republic (Act 1949:XX) had been made, an era of flagrant defiance of laws began. Although the communist constitution stipulated that “all power belongs to

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the working people,” securing broad social and cultural rights for citizens in principle, the violation of human rights assumed massive proportions, and the rule of law no longer functioned. In this period of pseudo-constitutionalism, it made no sense to refer to the text of the constitution, and it was dangerous to evoke constitutional values.39

In the parliamentary debate on the constitution, which lasted hardly two days, the participants, surprisingly, often mentioned the millennium-long history of Hungary favorably. “We, Hungarian communists and the people’s democracy with us, guard and nurture with the utmost possible care all the living traditions of the thousand-years-old history of Hungary, capable of development,” said the General Secretary of the Hungarian Workers’ (Communist) Party, Mátýás Rákosi, for instance.40 However, as secretary of state for public education Géza Losonczi said, “Hungary has two pasts.” “We regard ourselves as the successors and inheritors not of Zápolya, but Dózsa, not of the Habsburgs but of Rákóczi and Kossuth, not of Bethlen and Horthy, but of Ságvári and Bajcsy-Zsilinszky.” That is to say, while the constitution broke with the history marked by exploiters and traitors, it professed to have a fate in common with heroes representing revolutionary traditions of independence.41

The comments quoted above notwithstanding, the Preamble of the final text of the 1949 constitution did not include any reference to the traditions of the Hungarian people. Instead, the text marks a deliberate and sharp break with the past. The socialist constitutionalism’s own “time,” according to the introduction, began in 1945, with the liberating maneuvers of the Soviet army, and there is only one brief reference, by way of precedent, to the experiences of the Hungarian Soviet Republic of 1919.

In the propaganda publications of the Rákosi era (1948–1956) and the early Kádár period, the constitution appeared not as a catalogue of rights, but rather

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39 Actually the pseudo-constitutional era had already begun in Hungary at the end of the 1930s (eg. with anti-Jewish laws). After World War II, the rule of law could be restored only for a few years until the communist takeover.

40 For Mátýás Rákosi’s speech on August 19, 1949, see Az 1949. évi június hó 8-ára összehívott országgyűlés naplója (Budapest: Athenaeum, 1950), 1:178–79.

41 For the speech of Géza Losonczi see ibid., 181. According to the politician János Zápolya/Szapolay (Hungarian king, 1526–1540), the Habsburg rulers (1526–1918), István Bethlen (prime minister, 1921–1931), and Miklós Horthy (Regent of Hungary, 1920–1944) represented the dark (feudal, repressive etc.) side of the Hungarian history, but György Dózsa (leader of the peasants’ revolt in 1514), Ferenc II Rákóczi (leader of the war of independence, 1703–1711), Lajos Kossuth (leader of the war of independence, 1848–49) and Endre Ságvári and Endre Bajcsy-Zsilinszky (martyrs of the anti-Nazi movement) symbolized the progressive traditions of the Hungarian past.
as a system of obligations. Propaganda materials highlighted the ideologically important passages in the constitution, while denouncing the earlier political regime and legal system of Hungary. In the 1950s, it was the responsibility of party activists and librarians singled out for propaganda activities to distribute publications popularizing the principles of the constitution in workers’ hostels and waiting rooms at railway stations, build “constitution corners” in libraries and factories, and organize literary readings in connection with the constitution.\(^{42}\)

August 20, the celebration of the first King of Hungary, Stephen (Saint) I, was desacralized and appropriated. The new constitution, passed on August 20, 1949, was regarded as a second foundation of the state, as the beginning of the building of the ideal communist state. According to the memoirs of a communist cultural politician, József Darvas:

\[\text{[the decisive factor in picking the date was] to demonstrate the historical will to break with, to dispute, to turn against the state ideal of Saint Stephen, which over the course of the centuries has been distorted and become reactionary, the state ideal, which in its own time, a thousand years ago, was progressive, yes it was progressive because it helped Hungarians survive and find a place in Europe, but this state ideal has become an instrument against progress in the hands of the ruling classes, [...] an instrument in the oppression of the Hungarian people and the other peoples living in the territory of Hungary at the same time.}\(^{43}\)

Overt propaganda from the 1960s, the period of consolidation of the Kádár regime, was replaced by a conspiracy of silence about the fundamental values. Knowledge of the constitution had grown threadbare. The celebration of the constitution on August 20 had gradually turned into a nondescript public festival. The “soft” dictatorship of Kádár no longer wished to change the old traditions completely. Rather paradoxically, a reference to the thousand-year-old history of Hungarians found its way into the introductory text when the constitution was amended in 1972: “Hungary has been kept alive and sustained

\(^{42}\) The thematic anthologies compiled in Szabó Ervin Library (Budapest) were meant to provide assistance for this. See e.g. Andor Tiszay, *Alkotmányunk tiszteletére, a terv teljesítéséért*, (Budapest: FSZEK, 1953); *Alkotmányunk ünnepe: Ajánló bibliográfia* (Budapest: FSZEK, 1953).

by the people’s work, by their willingness to make sacrifices, and by their societyforming power.” (Act 1972: I.) According to a later account, the changes were made because they wished to transcend the old, communist interpretation of the past, according to which Hungarian statehood had essentially come into being only in the wake of the liberating military maneuvers of the Soviet army.\(^{44}\) It was at this time that the word “citizens” replaced “workers.”

At the same time, civic knowledge concerning constitutional values and institutions continued to fade. A survey in 1965 already indicated that the legal knowledge of the population was rather uncertain, especially with regards to the field of constitutional law.\(^{45}\) Even official propaganda did not try to hide this deficient knowledge in the late Kádár era. In 1986, people in the street were asked as part of a television program, in connection with August 20, about what the constitution said, what the function of the national assembly was, and what the form of government of the country was. In general, people either gave ill-informed replies or embarrassed smiles.\(^{46}\)

**Contradictory Traditions of Constitutionalism after 1989**

After the transition in 1989/90, long and desperate debates began within the new political elite on alternative interpretations of the past and parallel historical traditions in connection with, for instance, the new coat-of-arms of Hungary, the new state holidays and the legal standing of the president of the republic, and, later, the reburial of various figures of history.\(^{47}\)

To sum up these debates one could say that despite the immense energies which collided, no coherent or consensual historical concept of Hungarian constitutionality emerged, leaving us with vying and to some extent conflicting interpretations of history. At the same time, even public figures speaking the same political language could rely on significantly differing traditions when justifying their positions. This is especially true of the language of “national history.”


Nevertheless, the fact that the political elite of the Kádár era was unable expunge this discourse from public discussion and imagery clearly indicates its deep roots (one need only see the debate on the constitution in 1972). Neither have public figures today managed to shed this discourse, though they definitely do not wish to speak this language. They sometimes produce texts that refer (with evasive vagueness) to the “close texture of constitutional customs.”

In 1996, it became obvious that the plan of the regime-changing forces to return to the program of making a constitution after the disturbed and transitional period of the transformation had failed. The new constitution, having been promised many times, had not materialized in the political meetings or in the codification process, and the moment of grace of the change of regimes had passed in that respect, as well. The parliamentary parties could not work out a consensus on certain issues and values (e.g. constitutional symbols, historical traditions), thus no final draft was prepared.

The collective identity associated with constitutionality did not develop in Hungary after the democratic transition. As András Arató claims,

[w]e have a constitution and a Constitutional Court, but the constitution has failed to become the focus or have the political consciousness of the people and the political class organized around it, thus constitutional patriotism has failed to develop.

In the decade following the change of regimes several of the “founding fathers” who had created the new political setup shared this view: “Since the change of regimes, respect for the constitution, which was weak in the first place, has been gradually weakening,” philosopher János Kis wrote. Political analyst Péter Tögyessy explained this with his contention that “Hungarian parliamentarism is


50 István Somogyvári, “Az alkotmányozás két évtizede,” in Formatori iuris publici. Ünnepi kötet Kilényi Géza professzor hetvenedik születésnapjára, ed. Barnabás Hajas and Balázs Schanda (Budapest: Szent István Társulat, 2006), 399–420. The antagonistic interpretations of history have been clearly visible in the parliamentary debates of recent years. The political weight of these debates is enhanced by the fact that the issues in question hide the differing views of the political figures on the constitutionalism. See e.g. Tóth, Magyar közjogi hagyományok, 238–84; Zoltán Gábor Szűcs, “Napok romjai: Diszkurzív politikatudományi esettanulmány a ‘Köztársaság napjáról’,” Politikatudományi Szemle 19, no. 4 (2010): 109–32.


52 János Kis, “Az alkotmány véglegesítése,” in Majtényi and Miklósi, És mi lesz az alkotmánnyal?, 50.
difficult to like.”

Even those few who stood firmly for upholding constitutional conditions unchanged were obliged to speak of a certain deficit of legitimacy and place their trust, for want of a better alternative, in “invisible constitution-making,” i.e. in the normative function of the Constitutional Court.

Thus, most critics think they have found the main cause of the lack of constitutional patriotism in the script of the change of regimes in 1989. The main cause of the lack of social consensus, according to the interpreters, was that the political transformation and the shaping of the constitutional framework took place essentially way above the head of society and was realized through a compromise between the feebly legitimate old and the new political elite, and there was no symbolic act of social approval, such as a referendum. The method of a political settlement chosen at the time, that is, the much-praised bloodless, negotiated transition, made a sharp confrontation with the past impossible and even accepted a certain legal continuity with the previous regime.

The former political leadership never had to answer for what it had done, and no restitutions were made in terms of property or information, an approach that was justified with reference to the values of continuity in the rule of law and the practical considerations of the manageability of the state. In the years following the transition, the Constitutional Court supported this script with its interpretations of law in the name of reconciliation. These measures were probably in accordance with constitutional norms and could be justified with rational arguments, too (it is customary to point a finger here to the state of the budget as well as to national security considerations), but they greatly hindered emotional identification with the new constitutional structure.

Constitutional identity was not reinforced by the passing of the new Hungarian fundamental law in the spring of 2011, either, although the legislators attached a lengthy preamble to it, which can be interpreted as a catalogue of national pride and constitutional patriotism. The Avowal of the National Faith evokes the Christian and European roots of the country, its alleged freedom-fighting tradition, and the “outstanding intellectual achievements of

55 Comprehensively András Körösényi, “Mozgókony patthelyzet,” in Gombár, Túlterhelt demokrácia, 7–49.
the Hungarian people.” It emphatically mentions the “achievements of our historical constitution” and the Holy Crown, which is expressive of the ancient history and legal continuity of the Hungarian state, but at the same time the legislation sharply separates its “own past” from the months of occupation by Nazi Germany and the decades of communism (1944–1990). However, this hasty constitution-making was not preceded by any serious social, professional or political discussion. The final text is not the result of compromises and thus cannot be haloed by any broad consensus. Several social and political groups have regarded certain formulations in the National Avowal and the Fundamental Law as direct assaults against them, and a large section of the legal profession felt insulted, and pointed out a number of assumed and/or real faults in the document. The politicians celebrating the new fundamental law in the Hungarian State Opera were obliged to leave through the back door because thousands of people were protesting against the fundamental law in the street. The fundamental law, described as “hard as granite,” has been amended five times since its passage, which “did not really enhance the social legitimation of the Fundamental Law under attack by the opposition anyway.” Even commentators looking upon the circumstances of the birth of the new fundamental law with understanding eyes are obliged to admit that the text is struggling with a legitimation deficit, and they can only hope that in practice it could be made acceptable for as large a part of society as possible by “refined interpretative maneuvering” and “creative constitutional interpretation.”

**Conclusion: The Period of Private Constitutionalism**

This essay has discussed only one apparently small, symbolic question among the many complicated problems of constitutionalism and constitution making. The sketchy survey above, however, wished to point out how inextricably the

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58 The Transitional Provisions of the Fundamental Law made the Hungarian Socialist Party, the biggest party of the opposition, responsible for the crimes of communism. The Constitutional Court repealed these passages on formal grounds in 2012.


issue of the past is interwoven with the relationship between constitutionality and identity. For the image formed of the past affects the actual program of constitution making, interfering with the respective arrangements of power factors, with the choice of legal solutions relating to political institutions, and so on.

This works in reverse, too: someone who discusses individual legal or political scientific issues of constitution making will often express opinions on national history (looking for institutional precedents, siding with old values, or rejecting certain traditions).

If there is not at least a minimum of consensus regarding the interpretation of the past and fundamental constitutional values, this will eventually weaken the democratic political system.

The gaps between the different interpretations are rather wide even today: the various political forces from time to time leave traces of the constitutional principles to which they adhere in parliamentary documents, the legal code (in the form of resolutions, proposals, memorial acts), or as part of official ceremonies, but these gestures are not backed up by the constitutional patriotism of the political body in the larger sense.

The content of constitutional patriotism is always shaped definitively by those above, through, for example, education, certain cults or the public discourse thematized by them. At the same time, the above survey has shown that the interpretations concerning the constitution, from its taking shape in the eighteenth century, have never been unified, thus constitutional patriotism could derive its force from a number of traditions. That patriotism, however, had finally disintegrated by the early twentieth century at the latest. It had become dishearteningly polyphonic, and was then centrally withered for decades. After the democratic transition, the new content of constitutional patriotism has not crystallized. What we have instead is a chaotic mixture of traditions and values.

It would seem that as long as there is no rapprochement on the level of political elites and the functioning of Hungarian constitutional institutions continues to falter it is hopeless to expect a consolidation of the constitutional knowledge of society at large and the development of conscious civic mentality. More precisely, this consciousness is capable of revival in situations of crisis: on such occasions, the individual citizen or assorted smaller groups of society will conjure up their incompletely acquired and confused knowledge of the history of centuries of constitutional struggles and will attempt to apply the experiences drawn from them to the political happenings of the present. Thus, Hungarian
constitutional consciousness is not progressing toward the post-national level envisioned by Habermas, nor is it going to find renewal in the national framework desired by Scruton, but instead survives on a local level, in the form of the “private constitutionalism” of associations, civic movements, occasional organizations, and petition drives. And then it speaks not the language of pride, but rather that of discontent.

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