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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für Kaiser und Könige* the establishment of the world's first multinational concern and the closely related, still not outdated organisational forms were also attributed to the Fuggers.[1]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.

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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.

*

"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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