

ROLE OF THE HOLY CROWN DOCTRINE AND 'HISTORICAL CONSTITUTION' IN THE HUNGARIAN CONSTITUTIONALISM

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The Kingdom of Hungary did not have a written constitution until 1945 but after the World War II radical changes took place in our constitutional history as in 1945 the form of the government became republic instead of kingdom, and then in 1946 a temporary „little constitution” was adopted. Unfortunately, this democratic framework did not last for long. In 1949, with the first written constitution, based on the Soviet example of 1936, Hungary became a country of some kind of dictatorship of the proletariat (people’s republic, under the pressure of the Soviet Union and the Red Army). During this period citizens’ rights only had ideological content. The 1949 Constitution received new content in 1989, thus, it can be regarded as the foundation of the democratic state setting, which, after the first free election in 1990 was rewritten by political forces in more than fifty instances.

Between 1990 and 2010, the necessity of the adoption of a formally new constitution was carried out from time to time and with varying intensity. Finally, the adoption of the new constitution was based on both political and legal reasons. Its legal justification was that the text of the Constitution did not establish a new political system and the constitutional preamble referred to the temporary situation. The political viewpoint regarding the necessity of the new constitution was the economic-moral and political crisis that began from the left-wing government. As it is well known, the new Hungarian Fundamental Law was accepted by two-third government majority in the Hungarian Parliament. In this changing situation constitutional theories dealing with the state behind the formal text of these constitutions shall be found to be interesting and influential.

1. Meanings of ‘historical constitution’ and the holy crown doctrine

For centuries the Hungarian constitutionalism was based on the spirit of ‘historical constitution’ which is organized around the so-called *Holy Crown doctrine*, which, from historical viewpoint, signified the composition of different organic laws as for example:

- ❖ *Organic Laws* of King Stephen I;
- ❖ *Aranybulla* (Golden Bull) – adopted by the noble-assembly in 1222; declared all nobles’ rights and privileges against Hungarian Kings and feudal society;
- ❖ *Tripartitum*: written by nobleman *István Werbőczy* in 1514 in legal Latin language and is considered to be a summary of ancient Hungarian constitutional practice;
- ❖ *April Laws* of the Hungarian Revolution against the Habsburg Empire in 1848,
- ❖ *Law of the Compromise* between the Hungarian Nation and the Habsburg Monarchy in 1867.

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In parallel with these organic laws, the doctrine of the Holy Crown, connected to the spirit of the historical constitution, was slowly developed and had some special and traditional meanings:

- ❖ in the Middle Age the whole Hungarian Kingdom and the privileges of the noble,
- ❖ after the Compromise of 1867, the rights and duties of every citizen, the modern Hungarian Nation-State, and finally,
- ❖ after the World War I and the conclusion of peace at Trianon in 1920, the relation of the Nation to its territorial lost.

As for today's constitutional environment, with the adoption of the Hungarian Fundamental Law, this viewpoint reappears in the long National Avowal: „[W]e honour the achievements of our historical constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation.”

It would only be proper to ask what can be signified as the intention of Constituting Power. Why do these historical achievements return in the text of the new constitution in the 19th century? First of all, it is necessary to analyze the Hungarian theories of the state during the birth of political ideologies in the 19th century, then its effects on the adoption or rejection in our constitutional law and the most important differences between the contemporary opinions of these theories.

2. Theories of State in the Second Period of the 19th Century

Modern theories can be divided into three periods.

2.1. First period (1867-1945)

From 1867 to 1945, based on the conservative idea of the state those works dominated which dealt with the Holy Crown doctrine and the importance of customary law deriving from the Middle Ages. Hungary, as part of the Habsburg Monarchy, in consequence of the Compromise did not have a written constitution in comparison to other European States for example France (different constitutional papers dated back to 1830 and 1848) or Italy (*Statuto Albertino* dated back to 1861); thus, the Hungarian constitutional situation was compared to the British one. In my opinion, these decades are highly important and essential in order to understand contemporary changes. Historicism and its German branch deriving from *F. C. von Savigny*, side by side with the *Hegelian* conservatism was the only legal school in the Hungarian political philosophy. Why? Positivism and legal positivism only influenced a strict circle of “progressionists”. While with the political philosophy of Enlightenment and the French Revolution the first written European constitutions contained some principles such as popular sovereignty, separation of powers and protection of individual rights by various forms or mechanism of limited government which are the most important bases of a democratic political system and the European branches, the political liberal ideology influenced the political and legal theories of the 19th century; it looked as if the Hungarian constitutional and political situation stopped in the development. These outcomes can clearly be seen in the works of the first representatives of the „modern” Hungarian legal school, first of all *Imre Hajnik*, *Ákos Timon*, *Gyula Kautz*, *Ignác Kuncz* and *Győző Concha*.

In his book entitled *Hungary from the Kings of the House of Arpad to the Consideration of Entailment and Feudal Europe* (published in 1867), *Imre Hajnik* founded the theory of legal continuity. What does it mean? The ordinate professor of public law saw a symbol in the

Holy Crown which could be interpreted as the community of Hungarian citizens. From the first centuries of the Hungarian constitutional history, the Holy Crown symbolized the free parts of the Hungarian Kingdom: the noble, delegates of free royal cities and the kings. Then, in another book entitled *The Universal History of European Law from the Beginning of the Middle Ages to the French Revolution* (published in 1898) via analyzing the history of the Holy Crown, Hajnik thought that the Holy Crown united the parts of the Hungarian society. As a result of that, Hajnik made distinction among the nation of nobles described in Tripartitum, the concept of modern nation based on the Revolution of 1848 and the (then) modern nation of the Compromise of 1867. The latter was a „constitutional”, „sovereign” and „autonomous” nation-state connected to the *Holy Crown doctrine and the concept of organic state*. The Holy Crown as *the subject of state-power is a living organism* which represents the separation of powers. Its parts are members of the legislative and executive power: the King and the Hungarian nation/citizens included in the historical constitution. Members of the Hungarian Nation changed because at the Revolution of 1848 the nation was equal with the nobles, then, with Hungarian citizens.¹

In the first edition (in 1895) of his book entitled *Politics (Politika) Győző Concha* created the scientific foundations of a conservative state's idea, which, in my opinion, is situated behind the concept of the National Avowal. Concha contrasted the schools of positivism (legal positivism) and social Darwinism and elaborated on the classification of social sciences. Following *Hegeľ's* method, Concha considered that the state was the *syntheses* of the individual and the first “natural group”, the family is based on love and the society is represented as the antithesis of the family. From this point of view, the *concept of state is submitted to the science of Politics*. „The State is the highest manifestation of morality and perfect liberty in which people can realize their personality.”² People(s) do(es) not exist without the state, thus, personal and individual purposes are parts of the state's goals. It is crucial important to understand the large philosophical difference between the concept of Concha in contradiction to the program of Enlightenment. Based on the opinion of Concha: „...the idea of a person is expressed in his/her own spirituality, not in his/her biological and physical reality with many contrasting interests and needs... every individual has intellectual and sentimental purposes. In the imperium of purposes the ideas of good / justice / sanctity / beauty are situated in which humanity believes, thus, those are the motors of human activities.”³ In this motive the author submitted the material goods to the spiritual ones. „Human life begins when a man feels the intimacy and the irrationality of his spirit in oneself, and then proves to overcome his finite nature... Life remains a secret if it is unable to understand the infinite character of humanity, its large difference from the natural essence. The life of a man is an infinite fight against the finite existence for elevating his character over the finite nature.”⁴

It can be seen that the anthropology of Concha contains typical conservative elements because instead of liberal values such as individual liberty, self-fulfillment in modern society which can be realized through the production and expropriation of material and cultural

¹ Mezey Barna: *Magyar alkotmánytörténet* [The Constitutional History of Hungary]. Osiris Kiadó, Budapest, 2003. 262-264.

² Egresi Katalin: Concha Győző konzervatív állameszméje [The Conservative Theory of State for Concha Győző]. *Jog, Állam, Politika* Vol. I (2009) No. 1. 77-107.

³ Egresi: *op. cit.* 82.

⁴ Egresi: *op. cit.* 89.

goods or separation of society and state, Concha prefers spirituality and religious form of life. Concha confronted with the conception of József Eötvös,⁵ who, in his book entitled „*The Dominant Ideas of the Nineteenth Century and Their Impact on State*”, sustained individual liberty as supreme value of a person, consequently, provided the state with special functions in the modern society: a) purpose in oneself, b) manifestation of individual liberty, c) supreme power over the person and the society d) perfect morality in the community’s life.⁶

Eötvös and Concha were two different personalities in the 19th century. According to József Eötvös, the state in its minimal sense is only an instrument of individual purposes. Analyzing the main – wrong and right - meanings of three modern ideologies such as a) liberty, b) equality and c) nationality, on the basis of his viewpoint Eötvös said that: „People are not born free but can become free.”⁷ How? In the modern society, which is free from different privileges, a man is capable of finding his happiness through self-fulfillment in civil life. In this sense the State’s role is only to guarantee possibilities for self-realization in the form of equality before the law. The good State is in which:

- ❖ the constitution guarantees the individual liberty against the power of the State;
- ❖ separation of powers is guaranteed through different state organs;
- ❖ separation of civil society and political state is realized;
- ❖ equality is an instrument for the realization of personal liberty, thus, only recognizes equality before the law.⁸

Behind Concha’s theory the state, in the sense of public law, possesses completely other elements. Political institutions are deriving from the spirit of people’s folk (*Volksgeist*), hence, the constitution is the symbol of historical development. „Historical constitutions are everywhere the manifestations and institutionalizations of common historical experience with the fact that citizens accept and support political institutions that were being developed for centuries through public customs instead of radical changes of revolutions.”⁹ In this sense, this historicism as an ideology is capable of ensuring the constitutional continuity of a political community which is expressed in the Holy Crown doctrine.

When making the relationship between the nation and the state clear, Concha utilized Hegel’s political philosophy and the method of *Gierke*, who regarded the state as a legal

⁵ József Eötvös: 1813-1871 – born in Buda, member of Hungarian aristocracy, travelled much in Europe, where he got acquainted with representatives of liberal political philosophy (first of all *John Stuart Mill* and *Alexis de Tocqueville*). During the period of Reform Age (1825-1848), Eötvös played significant part in a discussion about the system of local autonomy in which Eötvös proposed to establish the modern and civil public administration, made the Hungarian Government responsible in front of the Parliament, proposed the centralization of administrative/local system in contradiction with the „municipalists” who wanted to protégé the independence of local counties against the Habsburg Empire. During the third period of revolution in 1848, he was the minister of religion and public education in the first independent Hungarian government. After the fall of the revolution and fight for freedom, Eötvös wrote his book of two volumes entitled “*The Dominant Ideas of the Nineteenth Century and Their Impact on State*” from 1851 to 1854 in exile. After the Compromise, Eötvös again assumed the direction of ministry of public education. See further, Schlett István: *Eötvös József* [József Eötvös], Gondolat Kiadó, Budapest, 1987.

⁶ Egresi: *op. cit.* 90-92.

⁷ Schlett: *op. cit.* 306.

⁸ Cf. the special edition entitled Eötvös, József: *The Dominant Ideas of the Nineteenth Century and Their Impact on the State*. Columbia University Press, New York, 1996. Vol. 2. 127-129., 133-136. and 154-156.

⁹ Egresi: *op. cit.* 94.

personality: „The first form of invisible personality and uniqueness will grow in *folk* which does not have conscience that is, pure will without conscience. The second form is the *nation* with conscience, in which the folk gives itself law because it is worthy of knowing its economic, social and legal needs. From the antithesis of folk and nation derives the STATE which manifests on the highest level, the only will in the form of sovereignty... Sovereignty and will are elemental parts of the State itself.”¹⁰

After the World War I in a special constitutional situation based on Act 1 of 1920, Hungary was a Kingdom without a King. Referring to the theory of legal continuity, the political system did not give up the institution of the King because it confronted with the spirit and achievements of the 1918 Revolution – which was at the same time the short period of the first Hungarian Republic – and until creating order regarding the authority of Head of State, the Provisional National Assembly elected Regent with secret ballot. Its sphere of authority was from time to time extended by different governments so the executive power became much stronger than the legislative one. Behind the function of the authoritarian state we must mention an important discussion about the Holy Crown doctrine between two influential interwar-period professors. In his essay entitled „*History of Law and Constitution* (published in 1931), *Ferenc Eckhart* analyzed the Hungarian public law and the spirit of historical constitution and considered that the Hungarian noble-nation, together with the Polish and Czech constitutional developments, adopted the Frank-German norm. In this context Aranybulla as a document of Hungarian feudal public law was also the adoption a European norm. Eckhart criticized the Holy Crown doctrine, refuting its original essence. *Kálmán Molnár*, Eckhart’s co-author of discussion emphasized the special character of the Hungarian constitutional development in the Holy Crown doctrine. In his essay, Molnár made it evident that the nature of law has „a transcendental center” that could not be described with positive norms of bills. From these meanings it emerges that the Holy Crown doctrine is not equal with the „territory of the Holy Crown” or the „goods of the Holy Crown”. Distinguishing the formal text of bills from the scientific theories, summarizing that: „the doctrine of the Holy Crown is the synthesis composed from different dates of constitutional sources and their legal and historical interpretations. The Holy Crown is not only a collection of constitutional acts but it is a *scientific system, doctrine and theory*.”¹¹

It may be established that in the first period of the Hungarian constitutional theories the state was of organic essence with many conservative, historical and national meanings, while it repressed liberal values, simultaneously.

2.2. *Second period (1945-1989)*

Regarding the second period (1945-1989), the first written constitution was adopted in 1949; constitutional theories disappeared, in fact, public law lost its important role during the period of state-socialism. Concurrently, with the proclamation of the Hungarian

¹⁰ Egresi: *op. cit.* 92.

¹¹ Kocsis István: *A Szent Korona-tan* [The Holy Crown Doctrine]. Püski Kiadó, Budapest, 1996. and Egresi Katalin: A köztársasági eszme és a szentkorona-tan a két világháború közötti magyar politikai gondolkodásban [The Idea of Republic and the Holy Crown Doctrine in the Hungarian Political Thought between the Two World Wars]. In: Feitl István (ed.): *A köztársaság a modernkori történelem fényében* [The Republic in the Light of Modern History]. Budapest, Napvilág Kiadó, 2007. 240-272.

People's Republic the historical constitution and Holy Crown doctrine stopped to exist in sense of public law.

2.3. Third period (post-1989 period)

In the third period starting from the fall of not democratic regime, during the transition (1989/90) discussions about the constitution and constitutional values were renewed. In Act 64 of 1990 and 83 of 1995, the Holy Crown was part of the national symbols of the Republic of Hungary without having public law meaning. Then in the Resolution of the Parliament (No. 119/1996) its appendix contained an important element about the Holy Crown. The text of the new constitution has to refer to the Holy Crown but not in connection with the meanings of the doctrine: „the Preamble shall shortly and excessively mention the subject of constitution-making, that is, the Parliament, the community of Hungarian citizens, historical traditions of Hungary – including the Holy Crown and the thousand years old legal continuity of Hungarian statehood, constitutional universal values such as liberty, equality, fraternity, human rights and their protection, and finally, respect of rule of law and popular sovereignty. The Holy Crown can be regarded as the memory of our constitutional history; however, it must not have meanings of public law. Republic as being the form of the state, and the democratic method of exercise of power are reconcilable with our constitutional symbols. The Holy Crown embodied the community of Hungarian citizens from these. This part of our symbols represents the fact that every person is part of the public power.”¹² In my opinion this interpretation contains an important contrary. Although, it refers to the peoples (folk) when considering the power's subject, it regards the Holy Crown as symbol of the Hungarian (state-) community. With this viewpoint it oversteps the historical context in strict sense.

During the discussion of Act 1 of 2000, in remembering the foundation of the Hungarian state and the Holy Crown it represented an unbridgeable gap between the views of different political parties. The Hungarian Socialist Party did not maintain the adoption of the Holy Crown doctrine in sense of public law because with „Republic” being the form of the state and the written constitution of transformation in 1989 the constitutional situation was *not* reconcilable with this doctrine and the historical constitution. In this political sense the legal continuity between past and present does not exist, thus, the Holy Crown can exclusively be part of historical memory. On the contrary, the conservative political forces only considered the breach of legal continuity which means the possibility to return to the constitutional situation of the past.¹³ This conservative viewpoint became stronger with the adoption of the Fundamental Law: „the Preamble also refers to the Hungarian Crown of Saint Stephen (977-1038), the king who founded the State... the theory of the Holy Crown has been a peculiar cornerstone of Hungarian public law. According to this, the nobility (the nation) was to be regarded as member of Crown as an expression of shared sovereignty. The Crown is *not merely an object, but subject of statehood*. As the interpretation of the Basic Law

¹² Egresi Katalin: A Szent Korona tan és a köztársaság eszméje a magyar politikai gondolkodásban – egy 1999-es törvényjavaslat jelentősége [The Holy Crown Doctrine and the Idea of Republic in Hungarian Political Thought – The Relevance of a Bill of 1999]. *Leviatán*, Vol. 3 (2005) No. 4. 34.

¹³ Egresi: A Szent Korona tan és a köztársaság eszméje... 35.

should look to the historical constitution of Hungary, the theory of the Holy Crown – certainly under the republican constitutions – is not just of historical relevance.”¹⁴

In my opinion it is necessary to quote Act XXXI of 1989, in which the Holy Crown was regarded as symbol of the Hungarian state as the arms of the Republic of Hungary. The constitutional principles of our constitutional situation were summarized in the Preamble i) multi-party system, ii) parliamentary democracy and iii) market-economy with social meanings, which were also the rule of law. Following this, political elites agreed in a new content of that constitution which could be the foundation of the democratic state-setting. Now, the concept of the nation is based on a common culture, language and common fate. The Constituting Power took a leap *from the nation of noble to the nation of Hungarian citizens inside and outside of frontiers* with the aim of creating the concept of cultural nation. The common culture as a connective link between past and present is the heritage of conservative meanings of state.

3. Constitutional Values of Fundamental Law

The Hungarian Fundamental Law has a completely new structure compared to the previous constitution. The long *National Avowal* is followed by the *Foundation*. The next part is the chapter on *Freedom and Responsibility* containing provisions on fundamental rights, which is followed by the *Structure of the State*. The National Avowal is more than a preamble as it is a conventional element of the national constitution. It contains a festive declaration with many national and historical elements/values.¹⁵ The first chapter of the Fundamental Law is called National Avowal and it refers back to the 19th century national hymns of the Hungarians, namely to *Himnusz* (Anthem) by *Ferenc Kölcsey* and to *Szózat* (Proclamation) by *Mibály Vörösmarty*. It is a combination of particular historical references and universal value-statements. The reference to Saint Stephen’s reign is traditionally regarded as the founding moment of the Hungarian State.

The Constituting Power described Hungarian history as the acknowledgement of independence, spirit of national identity and social communities. After the historical recapitulation we find the catalogue of basic values. Then again historical references appear: non-democratic regimes and the national socialist-communist dictatorship. It re-establishes the constitutional continuity by connecting 19 March 1944 and 2 May 1990 as the two endpoints of a totalitarian constitution, overcoming national tradition. „Our Fundamental Law shall be the basis of our legal order: it shall be a contract among Hungarians of the past, the present and the future; a living framework which expresses the nation’s will and the boundaries within which we want to live.”¹⁶

In my opinion, that fact that the Fundamental Law adopted a conservative viewpoint in the National Avowal is a return to the historical past. Confronted with the Constitution of the Hungarian Republic, the Fundamental Law prefers human existence together with other values. In contradiction with the Constitution, which included an individual and a liberal

¹⁴ Shanda Balázs: Nation and State. In: Lóránt Csink – Balázs Schanda – András Zs. Varga (eds.): *The Basic Law of Hungary. A First Commentary*. Chapter III. Clarus Press Ltd, Dublin. 2011.

¹⁵ Smuk Péter: National values in the Hungarian Fundamental Law. In: Zivković, Milan (ed.): IV. *Medunarodni Naucni Skup Multikulturalnost i savremeno drustvo: Pravo, bezbednost: zbornik radova*. Pravne i poslovne akademske studije dr Lazar Vrkatic, Faculty of Law, Novi Sad, 2013. 359-376.

¹⁶ Cf. the last paragraph of the National Avowal.

vision, the most apparent change is the salient circle of conservative values. In the National Avowal after historical values, the Constituting Power recognizes human values that are based on community vision: „we hold that human existence is based on human dignity. We hold that individual freedom can only be complete in cooperation with others. We hold that family and nation constitute the principal framework of our coexistence, and that our fundamental cohesive values are fidelity, faith and love. We hold that the strength of community and the honour of each person are based on labour, an achievement of the human mind. We hold that we have a general duty to help the vulnerable and the poor. We hold that the common goal of citizens and the State is to achieve the highest possible measure of well-being, safety, order, justice and liberty. We hold that democracy is only possible where the State serves its citizens and administers affairs in an equitable manner, without prejudice or abuse.”¹⁷

Here, we find the list of the basic values, starting out from human dignity. As in the argumentative practice of the Hungarian Constitutional Court, human dignity is the base of human existence, but only individual freedom is connected to the human urge of *cooperation with others*. It draws the values of fidelity, faith, love, labour and the general duty to help the vulnerable and the poor. This viewpoint establishes social virtues and common goals supported by the state and its own values of well-being, safety, order, justice and liberty. Confronted with the experience of non-democratic regimes and the individual vision of fundamental rights, after the transition, the Fundamental Law prefers the category of society in the triangle of person-society-state.

However, certain changes may be observed in relation to human dignity. While the Constitution jointly regulated the right to life and human dignity, the Fundamental Law regulates the right to life after declaration of the sanctity of human dignity.¹⁸ „This difference may result in a significant dogmatic change, as it is assumed that the monist doctrine of the relation between life and dignity will be transformed into a dualist one.”¹⁹ The National Avowal declares that human existence is based on human dignity, but just in a personal significance.

Furthermore, Fundamental Law mentions a number of communities that gain the sense of constitutional status: for example marriage, churches, political parties, associations, trade unions, Hungarian Academy of Sciences, Hungarian Academy of Arts and institutions of higher education.

In the chapter of Foundation the Constituting Power, the Fundamental Law defined the state as an independent and democratic one governed by the rule of law. Although, the form of state of the Republic is not an irrevocable clause in comparison to other nations' constitutions. The sovereignty of people appears through its elected representatives or in exceptional case, in a direct manner. Against the previous constitution, the Fundamental Law mentions the principle of separation of powers which is the base of functioning of the Hungarian State.

¹⁷ Cf. the third paragraph of the National Avowal.

¹⁸ Cf. Balogh Zsolt – Hajas Barnabás: Rights and Freedom. In: Lóránt Csink – Balázs Schanda – András Zs. Varga (eds.): *The Basic Law of Hungary. A First Commentary*. Chapter III. Clarus Press Ltd, Dublin. 2011.

¹⁹ Cf. *ibid.*

4. Summary

Analyzing the text of Hungarian constitutions, which were born in different historical situations, it can be highlighted that these norms include some interesting motives. Behind the formal and legal documents different values and principles exist regarding the reflection of the mentality of a political community. Behind the Hungarian Fundamental Law the constitutional law returns to the spirit of historical and national values. This conservative ideology appears in the long National Avowal which is more than a preamble. It contains a festive declaration with many national and historical elements/values. The Constituting Power described Hungarian history where the independence with the spirit of national identity, and the acknowledgement of social communities were declared which is at some point different from the provisional constitution.