

SUMMA

1956, ITS CAUSES AND CONSEQUENCES

KATALIN BOTOS

After World War II, but especially after the revolution of 1956, a large scale experiment was launched in Hungary and other countries under Soviet domination, which had only been tried in the Soviet Union in the previous 3 decades. The major questions were whether spontaneous market forces could be replaced by centrally planned human actions and whether a catching-up with the West could be speeded up. Industrialised countries that achieved economic development by a free market mechanism made a number of state interventions after the 1929 crash. However, it remained a question whether social problems like unemployment could be solved based on Marxist theory. This was supposed to be done by eliminating the private ownership of operating assets, which were considered to be the root of all problems. In the early 50ies the go-stop policy resulted in cyclical deterioration of the living standard of Hungarian people. There is a paradigmatic change in the economic policy after the 1956 revolution: living standard of the workers became intangible. This helped legitimating the Kádár-regime and this is the main cause of the international indebtedness of the country.

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DIE GRÜNDE DES AUSBRUCHS DER REVOLUTION IM JAHRE 1956 UND DIE VERFASSUNGSRECHTLICHE LAGE DER KÁDÁR-REGIRUNG ATTILA HORVÁTH

Die Studie klärt zuerst die Frage, warum die Geschehnisse am 23. Oktober 1956 in Ungarn Revolution und Freiheitskampf waren, beziehungsweise warum es das Kádár System als "Gegenrevolution" bezeichnen wollte. Nach der Definition des Begriffes Revolution zeigt der Autor, aus welchen Gründen die Revolution ausgebrochen war, obwohl die Bevölkerung im durch die sowjetische Armee besetzten Land alle Gründe zur Unzufriedenheit hatte. Die Wichtigsten von diesen: katastrophale Wirtschaftslage, die Entbehrungen der Bevölkerung, Entrechtung (sowohl Vermögen als auch Menschenrechte), die Wirkungen des verlorenen Krieges, der Terror der Geheimpolizei und der Partei, das Entehren des nationalen Selbstbewusstseins, die Lügen der herrschenden Elite. Auf der anderen Seite: Die Krise in der Staats- und Parteiführung.

Der zweite Teil der Studie zeigt, dass die sogenannte Revolutionäre Arbeiter Bauer Regierung, heute die von János Kádár geführte Quisling-Regierung, von der sowjetischen Führung eingesetzt wurde, kam auch nach den damaligen Rechtsregeln verfassungswidrig zustande.

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1956 AS JUDGED BY ETHICS AND LAW,
OR THE MORAL UNITY OF THE LAW'S RESPONSIVENESS
AS A POST-TOTALITARIAN DILEMMA

CSABA VARGA

It is a shame for law and order built upon the ruins of Communism that by referring to the Constitution's clause on Hungary as "an independent democratic country ruled by the law", the new regime's privileged legal protection has been extended to the criminal deed of the dictatorial past by a gesture equating physical time of the period of lawlessness to legal time under consolidate conditions, i.e., to legal time with expiry when the period of statutory limitations is passed. For the Constitutional Court declared that facing with a past of law-annihilation is excluded from this very rule of law, if the perpetrator implemented for itself a pardon. Or, accordingly, our formal legal instrumentality positively sanctions even political murder and torture provided that the state, having once commissioned such deeds, keeps on to be dictatorial enough to survive the period of limitations it granted for itself. This is a vacuum of moral ethos, further aggravated by the circumstance that the same Court has acknowledged the availability of a legal response surpassing limitations if a forum superior to it, i.e., international humanitarian law, would impose it. Such an indifference rejecting the very basics of justice and equity can easily degenerate into a factor blocking the ideal rule of law from being fed back by democratic popular support.

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THE CASE OF IMRE NAGY AND HIS ASSOCIATES.
THE FIG LEAF OF LAW COVERING UP POLITICAL MURDER

TIBOR ZINNER

Professor Zinner's lecture described the process influenced time to time by factors of international power politics leading to the execution of the prime minister of the 1956 revolution and his 'associates', by which the old wish of Communist Party leader János Kádár was fulfilled. The trial was clearly the result of political intentions. The Party did its best to cloak the crime committed against the prime minister and his comrades but it was not at all easy.

The lecturer named all politicians and lawyers on both sides of the border who participated in the process. He described how the administrators of justice served

those in power and detected their accomplices in jurisdiction who unlawfully punished innocents. Professor Zinner proved that reprisals in the Kádár era including the martyrdom of Imre Nagy and his comrades was nothing but the dismal restoration of retaliation in Rákosi's times.

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KIRCHENRECHTLICHE ASPEKTE DER ÖKUMENISCHEN BEWEGUNG

LÓRÁND BOLERATZKY

Die Kirchenrechtswissenschaft hat sich mit der modernen Ökumenischen Bewegung noch nicht in nennenswerten Umfang befasst. Eine Disziplin „Ökumenisches Kirchenrecht“ gibt es noch nicht. Dessen Ursache ist dass die Ökumenische Bewegung ihre entscheidende Impulse zu einem erheblichen Teil nicht vom kontinentaleuropäischen, sondern vom angelsächsischen und amerikanischen Kirchentum empfangen hat.

Es kann man nur darin handeln, einige Grundlagen der Ökumenischen Bewegung unter kirchenrechtlichen Blickwinkel zu untersuchen. Es ist allbekannt, dass die Ökumenischen Bewegung auf protestantischen Ebene aufgewachsen ist. Unter der gesichtlichen Entwicklung war wichtig die Erörterungen Schleiermachers und Söderbloms, ebenso wie die vorgeschriebene Konferenzen.

Katholischer Seite hat man mehr wichtige Schritte gemacht in 1983 in Kraft tretende Codex, wo als Aufgabe vorgeschrieben ist die Unterstützung der Ökumene. Es sind schon einige sehr günstige Erfolge geboren, so z. B. die Vereinbarung in 1965 zwischen der Katholischen und Orthodoxen Kirchen und in 1999 untergeschriebenes Dokument in Augsburg zwischen der Katholischen und Lutherischen Kirchen.

Zwischen den Kirchen muss man ein ganz speziellen Rechtsverhältniss ausarbeiten, wo die Kirchen ihre Unabhängigkeit bewahren können. Dazu können auch die Konferenzen Hilfe zuleisten, als rechtsgründende Organe. Die Ökumenische Bewegung in letzten Zeit hat sehr grosse Schritte gemacht, immer zu näher kommen zum Gotteswort: „Ut omnes unum sint.“

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HUNGARY AND THE FORMATION OF EUROPE

GYÖRGY BOYTHA

In the course of the historical Asian migration towards the west the Hungarians settled in the Carpathian basin and owing to their central geopolitical position became a buffer power on the fermenting European continent between East and West. Their first royal dynasty, the Árpáds derived the Christian legitimacy of the Hungarian crown directly from Rome by rejecting Orthodox aspirations and also refusing subordination to German rulers, adopting, however, both Byzantine and Bavarian experiences in governance. Hungary had fought against Tartars, Turks and Germans

alike and emerged in the late Middle Ages as a decisive European power paralleling the Holy Roman Empire; once even forcing the latter into a personal union under the emperorship of the Hungarian king Sigismund Luxembourg. The technological advent of transatlantic navigation, however, rapidly shifted the power from the essentially landlocked countries to up to then “end of the world” nations at the western shores of Europe. Readily access to overseas resources gave birth to new European powers. The Habsburgs had to turn to the East, where the Turks invaded weakening Hungary, which between them fall into three parts. It succeeded only gradually in getting reunited, under Habsburg rule and in a reorganized Europe. The country, fighting with varying success for its sovereignty, found its on equal standing only in the second half of the 19th century as part of the dualistic personal union of the Austrian-Hungarian Monarchy, tying its European interests to Austria. After World War II. the peace treaties dictated in Paris recognized Hungary’s full independence but deprived it of two third of its historical territory and population, aggravating its development and assertion of sovereignty between the rising Soviet communism and German nazism. After the defeat of Germany and the nazism in Hungary, which had been an occupied ally of Germany unsuccessfully trying to break away from it, the newly established Hungarian Republic started to develop a western type multiparty democracy. However, under Soviet occupation the state-party based dictatorship blocked western orientation and resulted in economic and political backwardness. After the collapse of the Soviet Union and change of her regime Hungary is in a position again to participate in shaping Europe and to recognize various possibilities of influencing co-decisions, contributing to planning long range strategy, enjoying common security and to benefit from community funds. It is Hungary’s constitutionally anchored interest and duty to contribute to the establishment of European unity.

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THE ONTOLOGICAL BASIS OF HINDU LAW

JÁNOS JANY

In Hindu concepts there is nothing similar to the Western idea of law. By contrast, *rta* and *dharma* are notions placing law into a broader horizon with a clear holistic feature. *Rta*, the objective system of the universe guarantees that no one can escape from its rules and all human beings should live in accordance with the cosmic order. This theory of the *Vedas* was later elaborated and the concept of *dharma* came into being, focusing on the social functions of the individuals and the social groups called *varnas*. Meanwhile to live in accordance with the *dharma* of each social group and individual was regarded as the greatest merit, to break its rules was *adharmā*, not only an unlawful act but a misdemeanour of serious consequences.

The first sui generis written works on *dharma*, the *sūtras*, came into being most probably in the 6th Century B.C.E, characterised by names such as *Gautama*, *Baudhāyana*, *Āpastamba* and *Hārīta*. The next step to elaborate the rules of *dharma* in detail was achieved in the *sāstra*-literature, containing works of extreme importance

such as the *dharmaśāstra* of *Manu*, *Nārada* and *Yājñavalkya*. These and other *śāstras* were elucidated during the Middle Ages by the commentaries, the third genre of the literature on *dharma*. The Hindu concepts on the state also fits into the framework of *dharma*, pointing to the role of the king in the system, called *rājadharma*. *Kautilya's Arthaśāstra* works out in detail one of the most important prerogatives of the king, penal sanction (*danda*), and gives unscrupulous advises to the ruler how to be successful and escape the *mātsya-nyāya*, the law of the fish.

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L'ATTUALITÀ DELL'IDEA TOMISTA DELLO STATO

GÉZA KUMINETZ

Durante la storia umana e alla base della medesima sono nati diverse teorie dello Stato. Una parte di queste teorie statali difendeva e conservava lo status quo, l'altra parte invece costruiva modelli utopici. Nel secolo scorso dominava praticamente un modello statale che voleva distruggere quel che trovava davanti a se. Oggi, ai tempi dello Stato del diritto, sentiamo una crisi enorme nelle nostre società perché la forza dello Stato é molto debile. Anche il potere religioso si trova in una situazione simile. Dominano i lobby. In linea di massima é questa la nostra ereditá. Tutte queste teorie dello Stato hanno qualche difetto e proprio per questo motivo non hanno potuto sopravvivere i Stati fondati su questi modelli.

Che ne pensa il cattolicesimo? Esiste un'idea dello Stato veramente realizzabile e stabile? Il cattolicesimo dice di sí. San Tommaso d'Aquino ha elaborato i fondamenti di questa teoria dello Stato, che é simultaneamente reale e ideale. Secondo il suo concetto la formazione di uno Stato nella vita di un popolo, é una conseguenza naturale e la coronazione dello sviluppo sociale. Un popolo o una società diventa perfetto perché funziona come una persona morale. Proprio per questo motivo diventa sovrano. Il potere statale garantisce, da una parte il fine della società stessa e delle comunità inferiori, d'altra parte ha tutti i mezzi necessari per la realizzazione del medesimo. Lo Stato o piú precise il potere statale si occupa del bonum commune. Questo concetto non toglie i diritti delle comunità inferiori dello Stato. L'idea tomista dello Stato é la sintesi fra l'idea assolutistica e l'idea della sovranità del popolo. Lo Stato non esiste per se stesso, ma piuttosto uno strumento per poter far applicare i cosiddetti diritti naturali della persona umana e delle comunità inferiori allo Stato. E lo Stato é il primo responsabile della realizzazione del bonum commune davanti a Dio. Allora, questo concetto dello Stato non tollera ne il capitalismo, ne l'imperialismo, ne militarismo, ne nazionalismo, ne internazionalismo, ne rivoluzionismo, ne liberalismo, ne assolutismo. Secondo questa idea la società funziona come un organismo. In fin dei conti, l'idea tomista dello Stato é un tipo sacrale, ma nello stesso tempo non é una forma teocratica. Come tipo sacrale difende e fa applicare l'ordine morale. Nella questa prospettiva non può esistere l'antagonismo fra l'ordine morale e l'ordine giuridico. Questo Stato é veramente uno Stato dei diritti, e vero custode della pace sia nella società sia fra i popoli.

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DEVELOPMENT OF THE CLERICAL DUTIES
AND RIGHTS BASED ON THE 11TH–12TH CENTURIES CANONICAL
COLLECTIONS

SZABOLCS ANZELM SZUROMI

If we observe the different canonical sources from the 4th and 5th centuries until the 11th century, we can see the gradual clarification of the deacon-priest-bishop hierarchical order, and the proper power of bishops. The peculiarities of the different orders were not defined exactly because of the strong influence of two great early canon law collections, namely the *Canones Apostolici* and the *Statuta Ecclesiae antiqua*. But the newly inserted patristic material also did not contain clear definition as we can see in the Gregorian compilations and in their sources, especially works of St. Jerome, St. Cyprian and St. Augustine. The clerical degrees became more specified in the course of the theological and institutional development of the Early Middle Ages, and reached full clarification in the 11th century, which has improved well by the precise research of Jean Gaudemet and Roger E. Reynolds. From the structure and the basic themes of the *Decretum Burchardi Wormatiensis*, Book 2 we can set up a general overview on the clerical duties and rights in the early 11th century. Anselm's Collection, Ivo of Chartres's work and the *Decretum Gratiani* contain more detailed and systematized discipline regarding the clerical duties and rights as compared with Burchard's Decree. The canonical material of these collections marks well, that rights can be only instruments to fulfill the primary mission of the church in order to promote the salvation of souls.

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THE RELEVANCE OF THE ECKHART-DISPUTE

ZOLTÁN J. TÓTH

The Hungarian historical unwritten constitution is the formal expression of those guarantees which ensure the functioning of institutions and the basic freedoms. It represents traditional laws and customs, but also the laws formulated in 1848, and again in 1867 as well as the modern law system. It provides security and constitutionality to both continuing traditions.

The new constitutional structure's legal and political legitimacy is that some elements have been taken from the Arpad Age; that is to say fundamental statutes, lawbooks and that complete formulation of customs (*consuetudo*) known as Holy Crown Statutes, which is constitutional expression of the Holy Crown Theory. The claims of constitutional legitimacy guarantees, with the emphasis on continuity with past, has its origin in the medieval Hungarian Kingdom.

Ferenc Eckhart, the professor and head of the Department for Hungarian Constitutional Law and Law History in the University in Budapest, was respected and influen-

tial person in the Hungarian academic life. He published call “Hungarian history of law” in 1931 about how scientific and chauvinistic was the commonly held understanding of the Hungarian constitutional development in general. His study caused a wide-ranging and deep political and scientific debate.

Summarizing what has been written above, we can say that the differences what we on the philosophy of history find are mainly caused by different point of views, rather than by the conclusion of positivistic, analyzing researches.

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INSTRUMENTS OF PRIVATE LAW AND LEGAL SUPERVISION
IN THE HAND OF THE PUBLIC PROSECUTOR IN ENVIRONMENTAL
AFFAIRS

BALÁZS GERENCSÉR

This paper examines the public prosecutor’s competence in the field of environmental law. The environmental law is the only branch of law where the prosecutor has instruments in all the fields of law: public law, private law and criminal law as well. According to the Constitution the public prosecutor has mainly criminal law role in the jurisdiction. Nevertheless, nowadays the private instruments are increasing in the practice of the prosecutor. This paper aims to present these fields of practice through acts, cases and interviews.

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ON SOME ELEMENTS OF SOCIALISM’S
LEGACY IN THE LEGAL DOCTRINE

ANDRÁS JAKAB

In the law of the formerly socialist states many elements can be identified as left-overs of the old regime. This refers not only to legal norms but also to the application of the law by courts and authorities as well as to legal thinking and doctrine. This essay takes Hungary – which in general is quoted as a case of a largely successful transition in the field of law – as an example to show where socialist law and socialist legal thinking have left their traces in today’s law. Examples from legal theory, from public and private law illustrate the dangers that this legacy may mean theoretical inconsequence or even a danger for a legal culture based in the ideas of the rule and law and the Rechtsstaat if there is no awareness. The author suggests how to overcome the rests of socialist law or how to transform them into acceptable elements of the modern legal culture.

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ELEMENTE UND VERMITTLUNGSFAKTOREN
DER BYZANTINISCHEN KULTUR IM MITTELALTERLICHEN UNGARN

LÁSZLÓ KOMÁROMI

Es ist immer noch eine wenig erforschte Frage des mittelalterlichen ungarischen Rechtes, inwieweit es die byzantinischen Gesetze beeinflusst haben. In dieser Abhandlung werden deshalb auf Grund früherer ungarischer Forschungsergebnisse – als Vorfrage zum byzantinischen Einfluss im rechtlichen Bereich – die anderen Elemente und Vermittlungsfaktoren der östlichen Kultur im mittelalterlichen Ungarn skizziert.

Als erster unter den Vermittlungsfaktoren ist die griechische Kirche zu nennen. Im ersten Teil wird deshalb die Beziehung der Ungarn mit dem östlichen Christentum von der Zeit der Wanderung bis zum 13. Jh. untersucht. Am Anfang dieser Periode bemühte sich Byzanz das ungarische Volk durch Missionsbischöfe zum Christentum zu bekehren. Die östliche Kirche blieb in Ungarn – besonders im südlichen und östlichen Teil des Landes – auch nach der Landnahme bedeutend, wenn auch westliche Priester ins Land strömten. Die römische und die byzantinische Kirche, lateinische und griechische Klöster lebten in Ungarn friedlich nebeneinander. Die letzteren verloren erst danach ihre Bedeutung, als das IV. Laterankonzil (1215) den Bischöfen ausdrücklich vorschrieb, in die griechischen Kirchen und Klöster römische Priester zu schicken.

Auch die politisch-dinastischen Beziehungen zwischen Ungarn und Byzanz sind als Vermittlungsfaktoren zu betrachten. Nicht nur zeitweilige Kriegsbündnisse, sondern auch dauernde Verwandtschaftsbünde (byzantinische Prinzessinnen als ungarische Königinnen und umgekehrt) trugen zum guten Verhältnis bei. Unter Béla III. – der 10 Jahre lang als möglicher Nachfolger von Manuel I. Komnenos in Konstantinopel erwachsen ist – kam es sogar zum Plan einer byzantinisch-ungarischen Personalunion, die schließlich wegen der Geburt eines Sohnes von Manuel gescheitert ist. Doch hat das byzantinisch-ungarische Bündnis weiterbestanden. Das byzantinische Reich, das vom 13. bis zum 15. Jh. allmählich verfiel, erhielt mehrmals Hilfe von dem seine Blütezeit erlebenden ungarischen Ständestaat.

Als weiterer Faktor der Übermittlung der byzantinischen Kultur soll noch der Handel erwähnt werden. Schon während ihrer Wanderung haben die Ungarn am nördlichen Küstengebiet des Schwarzen Meeres wichtige Handelswege entlang gehaust. Der archäologischen Funden zufolge hat sich später, im 10-11. Jh. die Mehrheit des ungarischen Handels nach Byzanz und Richtung Balkan gerichtet, und von dort hat Ungarn die meisten Waren bekommen. Die Funden enthalten byzantinische Zierstücke, Schmucksachen und Reliquienschreine. Daneben spiegeln sowohl königliche Gebrauchsgegenstände als auch die Ornamentmotive von manchen ungarischen Domkirchen die Popularität der byzantinischen materiellen Kultur.