

The Historical Constitution (...) Has Transformed into Legal History

Unpublished works of legal scholars on Hungary's historical constitution and constitutional history

Schweitzer Gábor, Szente Zoltán

The book presents a selection of unpublished works of some Hungarian legal scholars on Hungary's historical constitution and constitutional history. Before each text, readers will find an introductory study that provides the context of the original authors' writings or notes from university/legal academy lectures, along with a brief professional biography of the authors, highlighting the most important content elements, characteristics, and innovations of the sources. The largely unknown, previously hidden sources presented here can make an important contribution to the understanding of the historical constitution and are an indispensable work for specialists dealing with the constitutional and legal history of Hungary.

The authors featured in the volume had the decisive part of their careers in the last third of the 19th century and the first half of the 20th century, although most of them also lived through the communist takeover of power. They belonged to the important lawyers and scholars of the interwar period, but there were also those careers were already past their peak or whose significant careers only awaited them after World War II.

Ödön Polner (1865-1961) belonged to the first category; during World War I, he was already the rector of the newly founded Royal Elizabeth University in Bratislava and previously had a substantial administrative career. Conversely, Andor Csizmadia's (1910-1985) academic career mainly took off after World War II during the communist regime. József Barabási Kun (1875-1946), Vilmos Szontagh (1885-1962) and István Egyed (1886-1966), like Pollner, belonged to that group of scientifically active lawyers, who first gained work experience in public administration and then built their academic careers. (From an Eastern Slovak perspective, it is interesting that during the First World War, Szontagh was briefly the elected mayor of the town of Jelšava.)

Among the selected group of authors, several other similarities also emerged. One of these was their fundamentally national conservative or liberal-conservative political orientation. Many of them moved comfortably within various fields of public law, and this was not related only to constitutional law and administrative law. The consequent political legitimist (supporter of the Habsburg restoration) Kálmán Molnár (1881-1961), for example, at one time taught canon law so that, as a public lawyer, he would not have to teach the law and institutions of the system established in the 1920s. He also taught Hungarian public law to Otto von Habsburg, who was already living in exile. László Búza (1885-1969), on the other hand, entered Hungarian legal memory more as an international lawyer.

Perhaps the most internationally well-known lawyer was István Csekey (1889-1963), who taught at the University of Tartu (Estonia) during the interwar period. In addition to Western Europe, he was also well acquainted with example of Finland. Csekey was thus active as a legal comparativist. Later, from the third decade of the 20th century he worked in Hungary. The mentioned professors taught at various law academies, and several of them ended their teaching careers as university professors at the Faculty of Law in Budapest. After all, it was the most prestigious institution in Hungary.

The texts of the professors reviewed in the book dealt with topics that defined professional discourse between 1920 and 1949. Thus, besides the nature of the Hungarian constitution, it also addressed issues such as the form of the state, the legal status of the interim head of state, the Doctrine of the Holy Crown, legal continuity, and previous issues such as the nature of the former monarchy, etc.

The concept and content of the historical constitution, as well as the temporal limits of the entire construct, became particularly interesting to Hungarian constitutional lawyers again after the adoption of the new Fundamental Law in 2011. The preamble of the Fundamental Law, in fact, mentioned the unwritten Hungarian historical constitution in several places, which had shaped Hungary's legal and political life until 1945. However, in 1945 a new era began, and the parliament elected at that time adopted Act I on the proclamation of the Hungarian Republic in February 1946. This was not simply a declaration and a change of state form, but the mentioned act also served for a few years as a provisional small constitution.

After the Fundamental Law introduced the concept of the achievements of the historical constitution, currently not only the Hungarian Constitutional Court but also the legal profession is trying to clarify this concept, as these achievements must also be considered in interpreting the constitution and resolving constitutional conflicts. This has led to a serious increase of interest in Hungarian constitutional history among public lawyers dealing with current law. This demand was reflected by the two renowned Hungarian constitutional lawyers and legal historians Gábor Schweitzer and Zoltán Szente, who compiled and edited the reviewed volume. Both belong to the more cautious experts in the field, meaning they do not advocate for an overly broad interpretation of the historical constitution or romantic legal excursions into the feudal era. They start from the assumption that it only makes sense to speak of a modern constitution from the late 18th century onwards. Their conceptual attitude towards the continuation of the historical constitution is largely revealed by the title of the book, which they borrowed from one text of professor Vilmos Szontagh from 1947: „The historical constitution (...) has transformed into legal history.”

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