

Gábor Schweitzer

Development in Public Law I

Topics

Written constitution vs historical constitution: the case of Hungary.

The constitution and the Hungarian “national spirit”.

The constitutional status of the Hungarian Kingdom within the Habsburg Monarchy between 1723-1918.

The relevance of the Pragmatic Sanction (1722/1723) and the codification of the settlement (1867).

The constitutional institutions of the liberal Hungarian state.

The collapse of the Habsburg Monarchy and Hungary in 1918: the period of the first Hungarian Republic.

The inter-war period: a monarchy without a monarch.

The status of the governor as a head of state.

The concept of continuity and the doctrine of the Holy Crown.

Written constitution vs historical constitution

English historical constitution

Magna Charta Libertatum 1215

Habeas Corpus Act 1679

Bill of Rights 1689

Act of Settlement 1702



István Csekey

Hungarian constitution

(1943)



The case of Hungary

„The constitution of this ancient state is the most original creation of the Hungarian national spirit. Its provisions have never been systematically summarised in a single basic law, in a constitutional instrument. The Hungarian constitution is the result of a thousand years of gradual, if not always continuous, uninterrupted development. The Hungarian Constitution is thus a historical constitution, the rules of which are bound up in laws and customary agreements that have been created in different periods, not in a single constitutional charter, the so-called charter. And in the world, it can only be compared to the English constitution.”

- cardinal laws
- constitutional customary law
- > flexibility
- > until Act XX of 1949



The constitution and the Hungarian “national spirit”

Another characteristic feature of the Hungarian historical constitution was that its spiritual roots stem from the depth of the **"people's spirit"** and the **"national genius"**, which means that the "spirit of the constitution" must be felt when deciding constitutional issues.

Indeed, the constitution was considered to be the **'most noble'** institution. This was the position taken by **Móríc Tomcsányi**, professor of public law at the Budapest University of Sciences, among others, in the period between the two world wars. These contemporary opinions indicate quite clearly that the historical constitution's difficult-to-assemble corpus of detailed legal texts had been overlaid with layers of obscure content, extra-legal elements that made interpretation difficult.

“National Avowal

(...)

We honour the achievements of our historic constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungary’s statehood and the unity of the nation.

We hold that the protection of our identity rooted in our historic constitution is a fundamental obligation of the State.

We do not recognise the suspension of our historic constitution due to foreign occupations.

(...)

Article R(4) of the Fundamental Law referred to the historical constitution’s achievements as regards the methods of constitutional interpretation.

„Article R)

(...)

(3) The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal contained therein and the achievements of our historic constitution.”

Basic Law 2011



MAGYARORSZÁG ALAPTÖRVÉNYE

(2011. április 25.)

DÍSZKIADÁS



Magyar Közlöny Lap- és Könyvkiadó Kft.
Budapest, 2011

Basic law 2011 = hibrid constitution

written (codified) fundamental
law

historical (uncodified) constitution

While the long-established construction of the historical constitution has been placed in a new context in 2011, the Constitutional Court, above all, is obliged to point out the achievements of the historical constitution as a new category in the process of constitutional interpretation. The exploration of the achievements also means that the Constitutional Court must also reflect on the historical constitution that recalls bygone eras, since it can draw from it the scope of the achievements it intends to incorporate or reintroduce into the present constitutional framework. It is another question what the long-term implications of an interpretation of the constitution based on the achievements of the historical constitution might be, since professional opinions are divided on this point.

Written constitutions

1, usually summarised in a single solemn act

- referred to in the literature as charters (Constitution, Verfassung, Ústava, etc.)
- the decisive norms governing the structure and functioning of the state and the rights and duties of its citizens are contained in a law at the top of the hierarchy of legal sources
- different from other laws in both its name and the way it was drafted

2, basic law

- > Federal Republic of Germany (1949 Grundgesetz)
- > the Basic Law was intended to be temporary
- > the Basic Law will cease to be in force when the constitution of the German people, drawn up 'by free will', comes into force
- > Bonn Basic Law still governs Germany's constitutional life

3, written constitution forming the body of the constitution together with other laws

- > constitution of the French Republic (1875 and 1940) -> summarised in three constitutional laws
- > December Constitution of the Austrian Empire of 1867 -> combination of seven constitutional laws
- > Sweden's present-day constitution -> consists of four organic laws (Regeringsform + 3 laws).

The constitutional status of the Hungarian Kingdom within the Habsburg Monarchy between 1723-1918



Diet 1687/1688

1, the Hungarian orders renounced the right of resistance (*jus resistendi*) against the unlawful measures of the monarch granted in the Golden Bull (the Hungarian Magna Carta) of 1222 at the Diet

2, Act II of 1687, they declared that they recognised the legitimate first-born son of the House of Habsburg as their ruler for perpetuity

The Hungarian orders thus renounced the right to freely choose their king.

Diet of the Orders: upper house

lower house



Status of the Kingdom of Hungary within the Habsburg Empire

- allowing the female succession of the Habsburg dynasty
(Act I of 1723, Pragmatica Sanctio)

- Hungary, together with the rest of the Habsburg Empire, was to be "indivisibly and inseparably" and "mutually and jointly" possessed by the common ruler

(Act II of 1723)

- monarch undertook, on behalf of himself and his successors, to respect the rights and freedoms of the order, as well as privileges and immunities, as the legally crowned King of Hungary (Act III of 1723)



LOCOTENENTIAL COUNCIL:

- main governing body headed by the Nádor (Palatine)
- operated under the control of the central authorities in Vienna
- based in Bratislava / Pest
- clergy, nobility and gentry

Act XI of 1741:

"the matters and affairs of the country" would be conducted and managed by the ruler through Hungarians

ROYAL HUNGARIAN CHANCELLERY

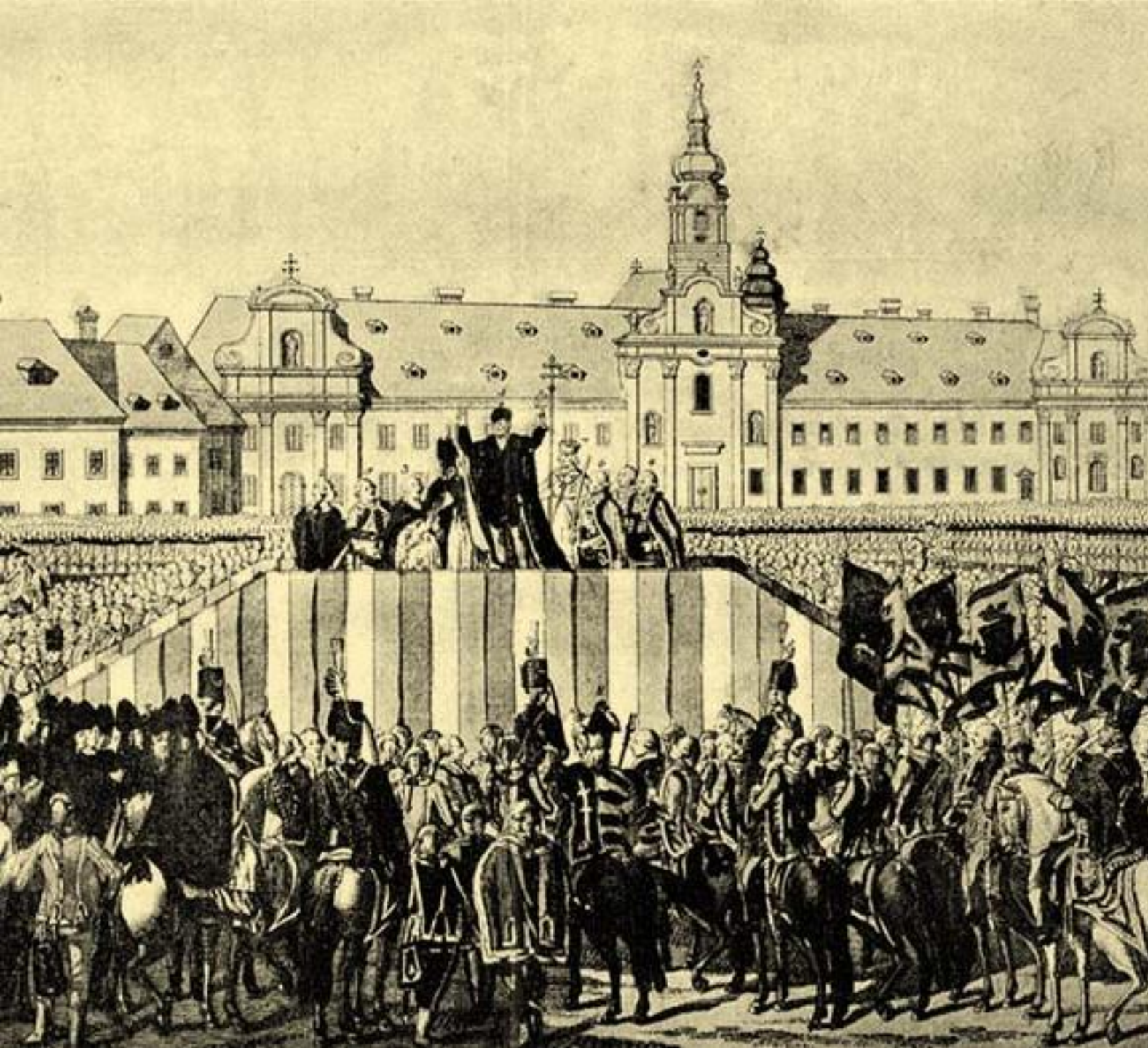
ROYAL HUNGARIAN CHAMBER

Buda Diet 1790/1791

Act X of 1791:
declared that Hungary was a free and independent country with its own 'state existence and constitution' in the whole legal form of its government

Act XII of 1791:
enshrined the principle that the creation, abolition and interpretation of laws were the joint responsibility of the legally crowned monarch and the Diet

Act XII of 1791
limited the monarch in that he could only exercise executive power within the limits of the law



Equality before the law

Responsible government

Public taxation

Civil liberties

**The reform era between
1825 and 1848**

**The dawn of bourgeois
constitutionalism: the
constitutional aspirations of the
1848/49 Revolution and War of
Independence**

Act V of 1848: it made the exercise of suffrage independent of the order status, introduced the institution of censured suffrage

Act IV of 1848: provided for the annual convocation of Parliament in Pest

Act III of 1848: establishment of a Hungarian government responsible for the legislature in Buda-Pest

Act VIII of 1848: imposition of public taxation

Acts IX and XII of 1848: the abolition of unpaid labor and the tithe

Act XV of 1848: abolished the institution of ancestral property, which had made noble estates unmarketable for half a millennium

Act XX of 1848: Equality of rights between religious denominations

Act XVIII of 1848: principle of freedom of the press

Act VII of 1848: unification of Hungary and Transylvania

Act XXII of 1848: creation of a national guard

1849

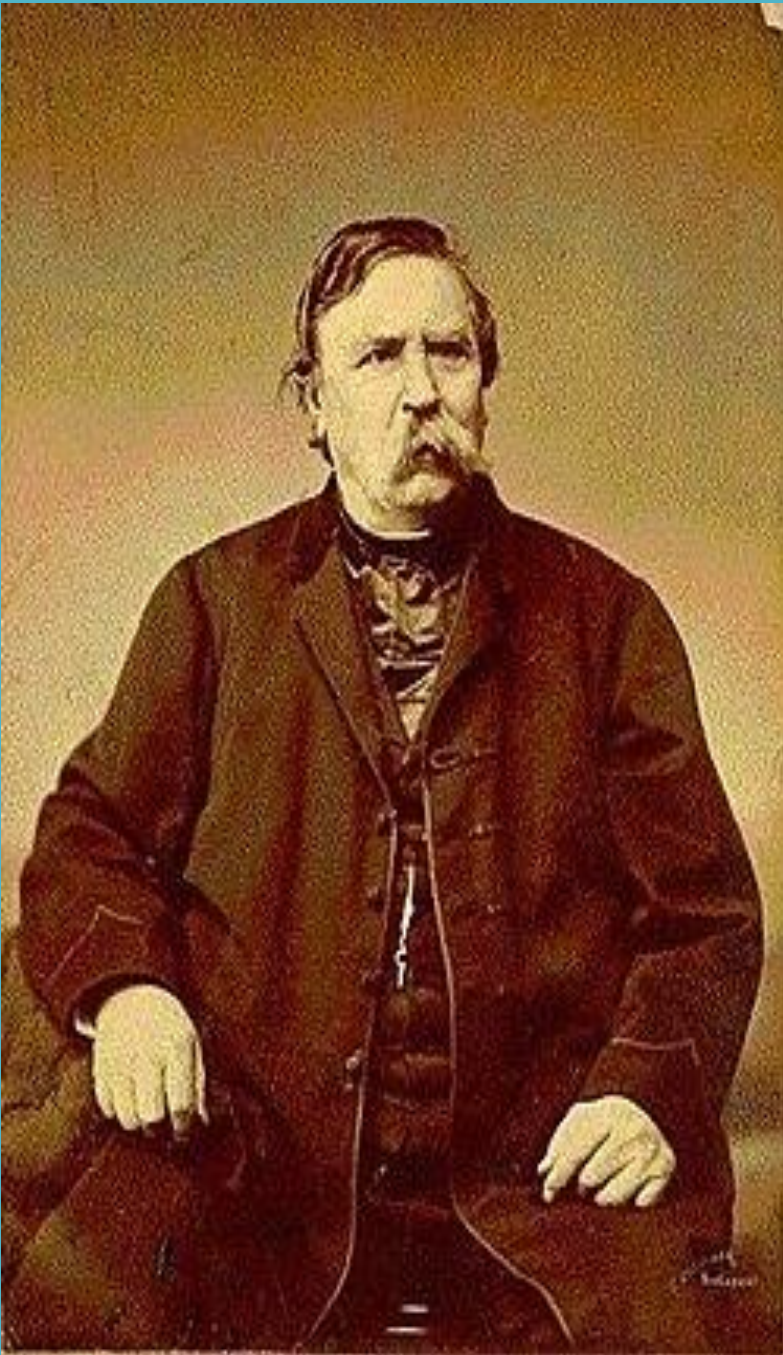


- Parliament's resolutions with the aim of creating equal rights for national minorities (June 1849)

- Declaration of Independence (April 1849)

Governor-President: Lajos Kossuth

- planing a written constitution (June 1849)



The Austro-Hungarian Compromise (1867-1918)

- based on the provisions of the Pragmatica Sanctio,
- drafted by Ferenc Deák on the Hungarian side
- provided the public law framework for decades for the Austro-Hungarian Monarchy that was created after the Compromise



- the Pragmatica Sanctio recognised Hungary's unity and governmental autonomy
- it required the security of the Habsburg Empire to be safeguarded collectively



Act XII of 1867

- common affairs: foreign affairs, military affairs and related financial affairs
- Hungary was essentially free to manage its own internal affairs
- It was this construction that allowed the development of the institutions of a liberal civil state and society in the first decades of dualism within the given public law framework

Act IV of 1869

- separated public administration and the judiciary, thus accelerating the development of modern judicial institutions in Hungary

Local Government Acts (1880s)

- put territorial and local administration on a civil basis

Act XXVI of 1896.

- institutional guarantee of the rule of law
- Administrative Court
- judicial review of administrative decisions
- the jurisdiction of the court was established by the legislator on the basis of taxation.



Irányi Dániel.

Classical civil liberties

- Act XVII of 1867: emancipated the country's residents of Israelite religion
- the right of assembly / the right of association regulated by statutes
- 1894/1895: partial separation of church and state
 - free exercise of religion
 - compulsory civil marriage
 - compulsory state register of births and deaths
 - Israelite denomination was given legally accepted status

Downsides of the bourgeois transformation



- Provisions on electoral rights brought narrowed the scope of those entitled to vote in the general elections (**Act XXXIII of 1874**);
- The right to vote was only extended on the eve of the First World War;
- The 1885 reform put the Upper House, which functioned as the second chamber of the legislature, on a civil basis, by reducing the number of ecclesiastical members thereof, and by increasing the number of members of the Upper House to be appointed by the monarch;
- Growing governmental intolerance towards nationalities and the burgeoning workers' movement at the turn of the 19th and 20th centuries;
- Hungary's constitution was not codified in a single constitution;
- „The most valuable feature of the Hungarian constitution was precisely its historical character, the originality of its institutions, rather than the "thoughtful consistency and regularity" of its rules;
- **Gyula Schwarcz** (1870s), both as a political writer and as a member of parliament, proposed the creation of a written constitution.

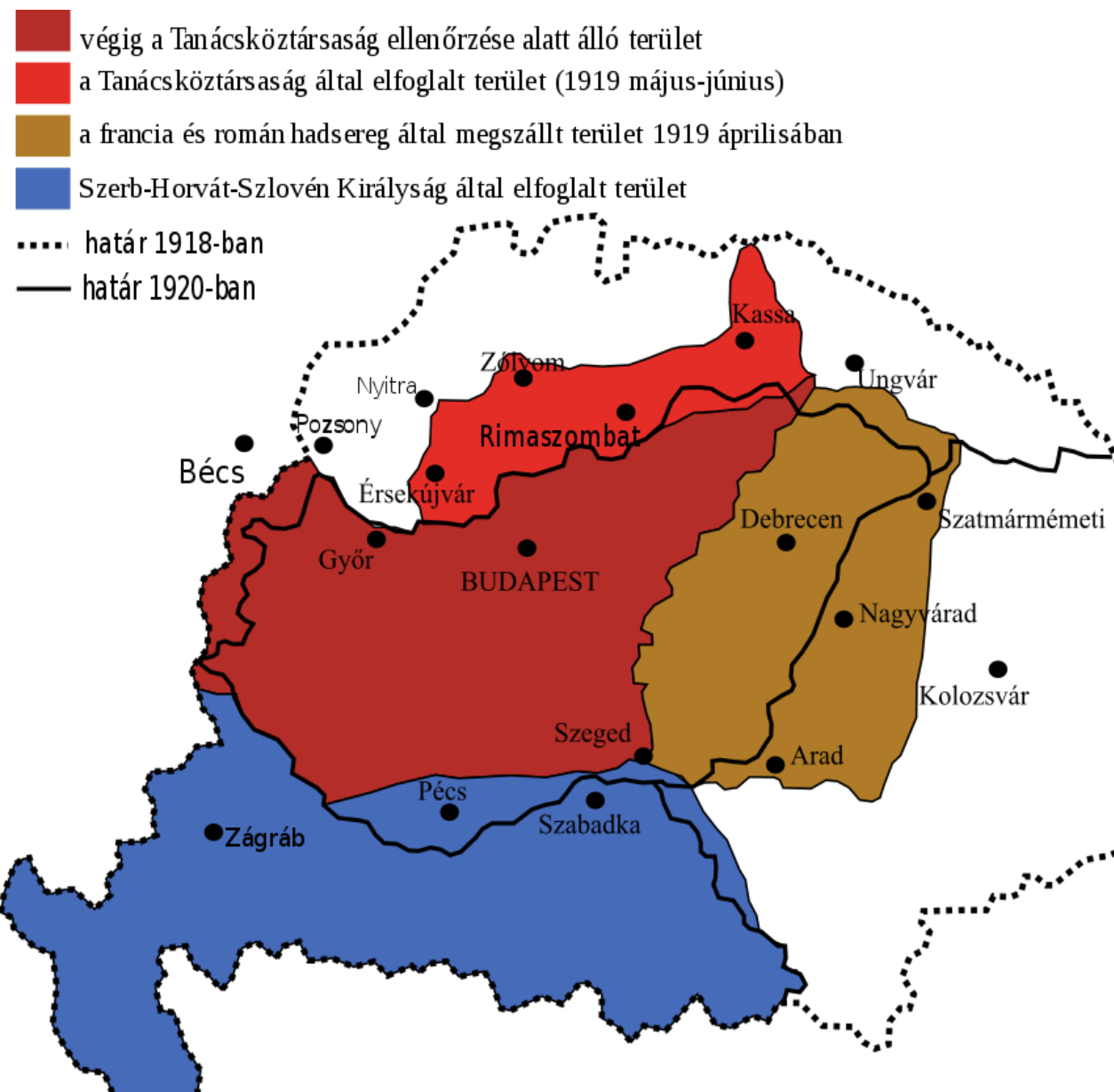


The collapse of the Habsburg Monarchy and Hungary in 1918:

the period of the first Hungarian Republic

- „Aster Revolution" on 30-31 October 1918
Hungarian National Council, led by M. Károlyi
- Eckartsau Declaration of 13 November 1918
- 16 November 1918: Hungary's independence
form of government: people's republic
provisions of the Pragmatica Sanctio: no longer
valid

- The People's Decree on the form of government referred the **drafting of the constitution of the People's Republic** to the National Assembly, which was to be elected;
- until the Constituent Assembly decided otherwise, supreme state power would be exercised by the **People's Government** under the presidency of Mihály Károlyi;
- series of **People's Laws** laid the constitutional foundations of the civil democratic Hungarian People's Republic
 - woman suffrage in the general and local elections (People's Law I of 1918);
 - constitutional elections to the National Assembly (People's Law XXV of 1919);
 - protection of the form of government of the People's Republic (People's Law XI of 1919)
 - freedom of the press (People's Law No. II of 1918);
 - right of association and assembly (People's Law No. III of 1919);
 - the reorganisation of the various levels of self-government and the right of self-determination and autonomy of the German, Ruthenian and Slovak nationalities.
- 11 January 1919: the Hungarian National Council temporarily entrusted Mihály Károlyi, the then Prime Minister, with the duties of President of the Republic.



- Revolutionary Board of Governors
- 21 March 1919: proletarian dictatorship known as the Soviet Republic in Hungary
- Soviet-Russian model, broke with civil democratic principles
- doctrine of the unity of power
- predominance of the executive
- legislative, executive and judicial power was exercised by workers', peasants' and soldiers' councils
- revolutionary courts
- multi-party system was replaced by the exclusive political power of a single party, the Hungarian Socialist Party
- Provisional Constitution of the Soviet Republic (2 April 1919)
- Constitution of the Socialist Federated Soviet Republic of Hungary (23 June 1919)

133 days

The inter-war period: a monarchy without a monarch. The status of the governor as a head of state. The concept of continuity and the doctrine of the Holy Crown.

formal continuity

- creation, modification or abolition of legislation may be carried out by the competent authorities in accordance with the provisions of Act XII of 1791;
- monarch and the legislatur may alter the public law of the country;
- it served the needs of the Habsburg-Lorraine dynasty;
- the requirement of formal continuity of law did not in itself imply the restoration of Habsburg rule, or even the maintenance of the monarchical form of government itself.

substantive continuity

- the content of the laws should be in line with the spirit and principles of the Constitution;
- if this condition was met, continuity could be restored;
- 'fidelity to the constitution' means, first and foremost, adherence to values;
- this is manifested in adherence to the monarchical form of government, constitutional government, bicameral legislature, self-government, civil liberties, minority rights, independent judiciary and the constitutional guarantees.

- first National Assembly elected in 1920
- second National Assembly elected in 1922



Act I of 1920 on the Restoration of Constitutionalism and the Provisional

Settlement of the Exercise of the Prerogative of Head of State;

Act XLVII of 1921 on the abolition of the imperial rights of Charles IV

and the succession to the throne of the House of Habsburg,

Act XXII of 1926 on the establishment of the upper house of Parliament

Móric Tomcsányi: „the situation from the constitutional point of view as requiring only the restoration of royal power to fully restore legal continuity. Until that happens, the functions of the head of state will be performed by the governor, with limited royal powers and on a temporary basis”.





István Egedy: "The constitutional fever that had swept Europe after the end of the war and led to the drafting of a new written constitution in a significant number of states could not gain strength in Hungary. [...] The National Assembly did not consider it its task [...] to establish a new constitution for Hungary; on the contrary, it set itself the task of returning to the ancient constitutionalism and only in order to achieve this task did it bring into being certain temporary, auxiliary institutions."

- The laws adopted from 1920 onwards maintained the "thousand-year old" constitution of the Hungarian state, while amending it to take account of exceptional circumstances.
- As soon as the basic institutions of the historic constitution can continue to function, amendments become unnecessary.
- the exercise of the supreme power of head of state was temporarily entrusted to the Governor under Act I of 1920
- >> permanent Head of State

Governor



-> temporarily vested with the exercise of the powers of the Head of State by Act I of 1920

-> Acts XVII of 1920, XXII of 1926, and XXIII of 1933 (e.g. adjournment, dissolution of the National Assembly and then of the Diet, appointment of members of the Upper House

-> Act II of 1942: office of Deputy Governor

-> It was suggested that the governor should be granted the right to confer nobility, to enforce laws and the right of supreme patronage.

-> A symbolic proposal was also made to call the governor, who was the interim head of state, a prince.

Form of government in Hungary

1. Act XLVII of 1921: "the ancient form of government of the kingdom unchanged"
2. quasi-republic?
3. Adolf Merkl (Vienna 1925): "aristocratic republic with a royal touch"
4. Karl Anton Rohan (Europäische Revue 1929): 'royal republic' or 'monarchy without a king'

Holy Crown doctrine:

- legitimised royal power, in the service of territorial revisionism
- the king himself derives his power from the Holy Crown, which embodies sovereignty and is transferred to the monarch by the act of coronation
- source and subject of all public power is vested in the Holy Crown
- ownership of the territory of the country also belongs to the Holy Crown



Kálmán Molnár

"According to the doctrine of the Holy Crown, the Holy Crown meant the state itself. Today it is more than that. Today the state is: Truncated Hungary. The holy crown is the thousand-year-old Hungary.,,

Holy Crown: synonym for the Hungarian state

"the judicial power of the state courts is exercised in the name of the Hungarian Holy Crown." (Act XXXIV of 1930)

Thank you for your attention!