

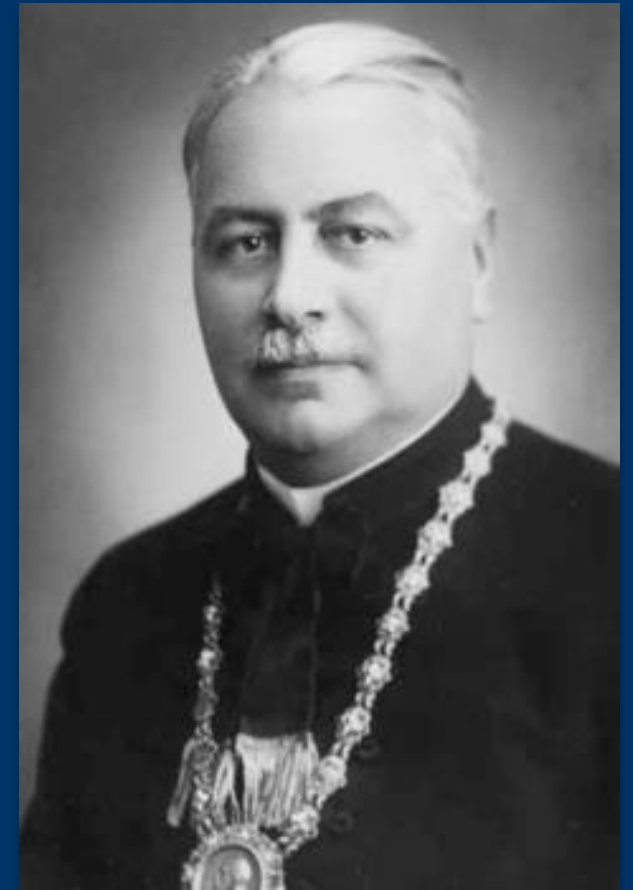
CHANGES IN PUBLIC LAW II.

Prof. Dr. Gábor Schweitzer

HISTORICAL CONSTITUTION VS NEW DIRECTION OF PUBLIC LAW: AUTHORITARIAN CONSTITUTIONAL IDEAS AND THE HUNGARIAN CONSTITUTION BEFORE WWII

István Eged (1886-1966)

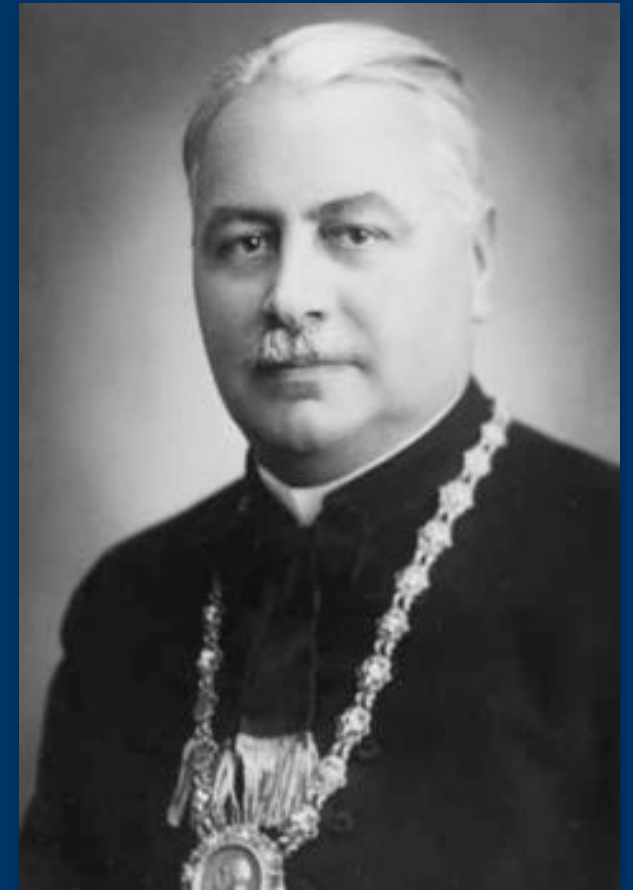
- ❖ Significant characteristic features of the new direction of constitutional law
 - ❖ strengthening the power of the head of state,
 - ❖ marginalization of parliamentary and party system,
 - ❖ arising idea of corporatist bodies within the structure of the legislation,
 - ❖ restriction of immunity of MP,
 - ❖ centralisation of public administration,
 - ❖ independence of the government from representative bodies,
 - ❖ endowment of the government with extensive legislative powers



HISTORICAL CONSTITUTION VS NEW DIRECTION OF PUBLIC LAW: AUTHORITARIAN CONSTITUTIONAL IDEAS AND THE HUNGARIAN CONSTITUTION BEFORE WWII

István Eged (1886-1966)

- ❖ The need to reform the Hungarian constitution
- ❖ Hungarianism
- ❖ Our Constitution (1943)
 - ❖ differences between the fascist and national socialist systems and the Hungarian constitutional system
- ❖ Military, economic and political alliance of interests with the Axis powers did not necessarily have to include the transformation of the Hungarian constitutional system, although he did acknowledge certain overlaps



HISTORICAL CONSTITUTION VS NEW DIRECTION OF PUBLIC LAW: AUTHORITARIAN CONSTITUTIONAL IDEAS AND THE HUNGARIAN CONSTITUTION BEFORE WWII

István Csekey (1889-1963)

- ❖ The German Führer State (1936)
 - ❖ Weimar Constitution was not formally repealed, although it was profoundly changed by major constitutional laws
 - ❖ Enabling Act
 - ❖ Referendum Act
 - ❖ Act on the Unity of Party and State
 - ❖ Reich Building Act
 - ❖ Act on the Head of State of the German Reich
 - ❖ Reich Governors Act
 - ❖ Act on the Structure of the Armed Forces
 - ❖ Municipal Act
 - ❖ Nuremberg Race Laws



HISTORICAL CONSTITUTION VS NEW DIRECTION OF PUBLIC LAW: AUTHORITARIAN CONSTITUTIONAL IDEAS AND THE HUNGARIAN CONSTITUTION BEFORE WWII

István Csekey (1889-1963)

- ❖ The Constitution of Hungary (1943)
 - ❖ Hungary's historical constitution should develop its own ancient constitutional institutions
 - ❖ No need to import foreign experiments
- ❖ To divide Hungary into racial elements would be a denial of Hungarianness
- ❖ Act XV of 1941 was intended '*to protect the Hungarian race from further intermarriage with the Jews*'



HISTORICAL CONSTITUTION VS NEW DIRECTION OF PUBLIC LAW: AUTHORITARIAN CONSTITUTIONAL IDEAS AND THE HUNGARIAN CONSTITUTION BEFORE WWII

Kálmán Molnár (1881-1961): Is there still a Hungarian genius?
(1938)

- ❖ He considered the attempted imitation of totalitarian state systems in Hungary to be dangerous because the submission to totalitarian ideas would undermine the foundations of the country's survival as an independent state. What need could there be for an independent Hungarian statehood if there were no separate Hungarian '*state-organising genius*'?



HISTORICAL CONSTITUTION VS NEW DIRECTION OF PUBLIC LAW: AUTHORITARIAN CONSTITUTIONAL IDEAS AND THE HUNGARIAN CONSTITUTION BEFORE WWII

Béla Török (1914-2012): The Hungarian and the authoritarian constitution (1940)

- ❖ Both the Hungarian constitutional approach and the authoritarian constitutional approach were characterised by a public-political orientation and the assertion of the '*popular element*'
- ❖ Adoption of certain unspecified principles of the authoritarian constitution with the constraint that the interests of '*the Hungarian spirit and the spirit of the Hungarian state*' should be taken into account



REACTIONS TO ANTI-JEWISH LEGISLATION

- ❖ Act XXV of 1920 ('*numerus clausus*')
 - ❖ Limited the proportion of Jews admitted to universities and colleges of higher education to the proportion of Jews within the general population
- ❖ Act XV of 1938 ('*first anti-Jewish law*')
 - ❖ reduced the permitted ratio of Jews in the so-called freelance professions (e.g. solicitors, public notaries, engineers, journalists, actors) to 20%, as well as at financial, commercial and industrial ventures employing more than ten people
 - ❖ not only members of the denomination of Judaism, but also people who had converted after 31 July 1919 were to be considered Jews
- ❖ Act IV of 1939 ('*second anti-Jewish law*')
 - ❖ reduced the proportion of Jews employed by industrial and commercial firms to 12%,
 - ❖ proportion of Jews admitted to universities and colleges of higher education was limited to 6% with the exception of the technical university, to which a limit of 12% was applied

REACTIONS TO ANTI-JEWISH LEGISLATION

Albert Kaas (1885-1961): The Jewish Question (1938)

- ❖ Equality of rights and human rights were respected by the states only to the extent that they did not endanger the universal interests of the community. When the real public interest so required, the principle of equality of rights was restricted.



REACTIONS TO ANTI-JEWISH LEGISLATION

Vilmos Szontagh (1885-1962)

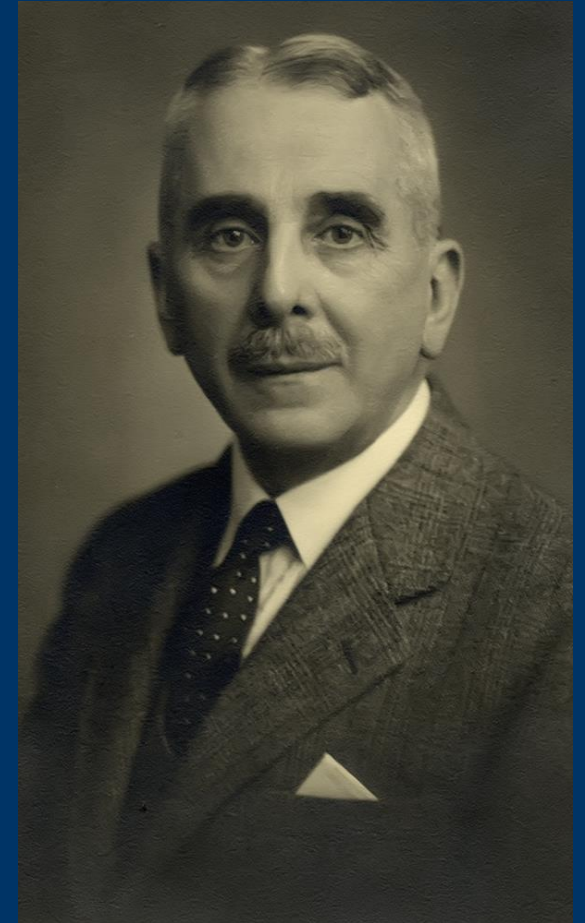
- ❖ The Jewish Law and the Hungarian Constitution (1939)
- ❖ The Jewish Law from a Jurisprudence Perspective (1939)
- ❖ The question of unconstitutionality can arise against any law if the provisions of the law in question are not in accordance with the constitutional view of the time of its adoption.
- ❖ When Act XVII of 1867 on Jewish Emancipation was adopted, the '*liberal constitutional approach*' was still dominant, whereas at the time when Act IV of 1939 was adopted the '*nationalist constitutional approach*' was already predominant, a view that does not tolerate the self-serving assertion of classes, orders or races at the expense of the 'ideal of nationalism' and 'national statehood'



REACTIONS TO ANTI-JEWISH LEGISLATION

Móric Tomcsány (1878-1951): Public Law of Hungary (1943)

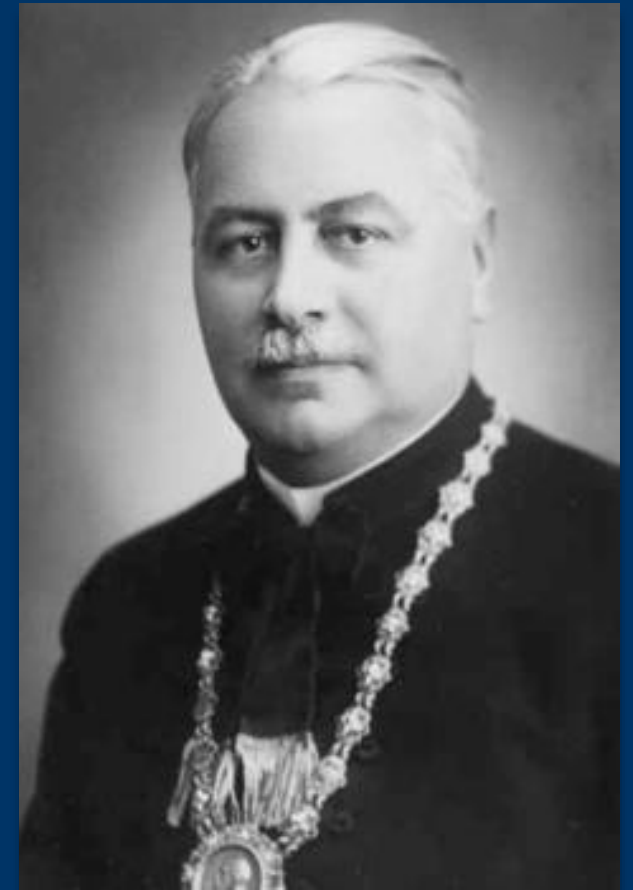
- ❖ He considered the purpose of the anti-Jewish laws to be the harmonization of the economic and social position of Jews – which had jeopardized the development of '*the Hungarian race and the Hungarian nation*' – with their proportion within the national population
- ❖ all restrictions are acceptable, provided they were truly necessitated by the '*vital interest of the nation*'



REACTIONS TO ANTI-JEWISH LEGISLATION

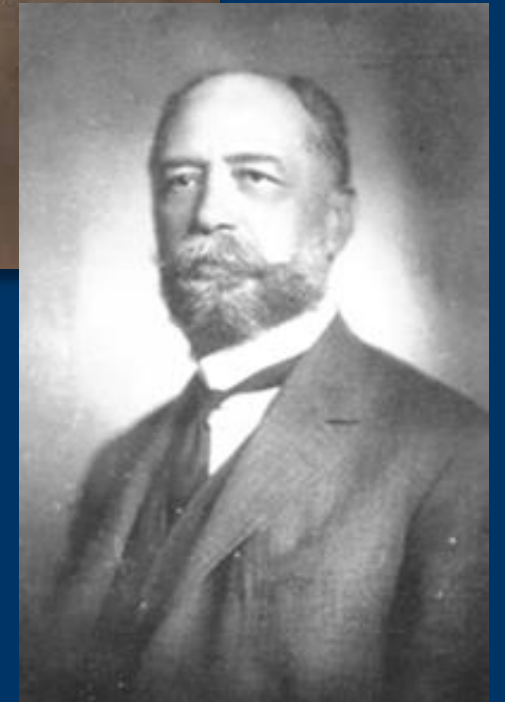
István Eged (1886-1966): Our Constitution (1943)

- ❖ The restrictions introduced in the economy, in social and public life were aimed at '*maintaining the Christian character of the state*', '*protecting the purity of the race*' and '*ensuring a leading role for the majority*'
- ❖ The principle does not preclude '*certain groups of the national society being constrained to proportional success*'



REACTIONS TO ANTI-JEWISH LEGISLATION

- ❖ Pesti Napló (Pest Journal), 5. 5. 1938: *'We are impelled by our Christian faith, our patriotic convictions and our insistence on the country's European convictions and our national independence to abide by the principle of the equality of citizens before the law, achieved by the best minds of European Hungarians during the most beautiful period of our history'*
- ❖ Kálmán Molnár (1881-1961), Polner Ödön (1865-1961): explicitly rejected the first and second anti-Jewish laws



THE FORMATION OF THE SECOND HUNGARIAN REPUBLIC (1946-1949)

- ❖ Act I of 1946 on the form of government of Hungary: republic
- ❖ Act I of 1945
 - ❖ Provisional National Assembly (Ideiglenes Nemzetgyűlés) is the sole representative of state sovereignty
 - ❖ Passed a resolution on sovereignty, provided for the provisional exercise of the rights of the head of state, elected the members of the Provisional National Government, and gave authorization to the government to conclude an armistice agreement
- ❖ Act III of 1945
 - ❖ National High Council (Nemzeti Főtanács) was established to exercise the powers of the head of state
 - ❖ President of the National High Council: Zsedényi Béla



THE FORMATION OF THE SECOND HUNGARIAN REPUBLIC (1946-1949)

- ❖ Act VIII of 1945 - suffrage
- ❖ Act XI of 1945 - provisional exercise of state powers
- ❖ Independent Smallholders, Agrarian Workers and Civic Party, the Hungarian Communist Party, the Social Democratic Party of Hungary and the National Peasant Party
- ❖ Margit Schlachta
- ❖ Act I of 1946: the republic as an institution is not contrary to *'the properly perceived organic development'*, and, at the same time complies with the will of the National Assembly representing the nation



THE FORMATION OF THE SECOND HUNGARIAN REPUBLIC (1946-1949)

- ❖ Preamble: the most important natural and unalienable rights of the citizens
 - ❖ The right to personal freedom, the right to human life free from deprivation, the free expression of thought and opinion, the free exercise of religion, the right of association and assembly, right to property and personal security, the right to work and a decent human livelihood, the right to education and the right to participate in the governance of the state and local governments
- ❖ The president of the republic
 - ❖ Election, four years
 - ❖ The president of the republic shall represent the Hungarian state
 - ❖ Depository of the executive branch through the relevant responsible ministry
 - ❖ He could return any act once only
 - ❖ Declaration of war and peace
 - ❖ Limited power of pardon

THE FORMATION OF THE SECOND HUNGARIAN REPUBLIC (1946-1949)

- ❖ István Csekey, 1947: *Not even during ten centuries has such a significant constitutional act been drafted as Act I of 1946 on the form of government of Hungary*”¹⁸. Two years later, in the Autumn of 1948, during the communist takeover, Minister of Justice, István Ries had the following to say: *Hungary will need a new constitutional act “because Act I of 1946 has been superseded.*



THE ADOPTION OF THE STALINIST CONSTITUTION (ACT XX OF 1949)

- ❖ Hungarian Workers' Party: need to create a people's democratic constitution
- ❖ Act XX of 1949 on the Constitution of the Hungarian People's Republic
 - ❖ Based on the 1936 (Stalinist) Constitution of the Soviet Union
 - ❖ State of '*workers and working peasants*'
 - ❖ The Hungarian People's Republic is a part of the socialist world system
 - ❖ National Assembly as the supreme organ of state power, exercising all the rights deriving from sovereignty
 - ❖ Presidential Council of the People's Republic: power to issue decrees
 - ❖ Council of Ministers: supreme body of state administration
 - ❖ Declaration of the principle of judicial independence
 - ❖ Rights and obligations of citizens and workers of the Hungarian People's Republic
- ❖ Act I of 1972 on the Comprehensive Amendment of the Constitution

THE COLLAPSE OF SOCIALIST “CONSTITUTIONALISM” AND THE FORMATION OF THE THIRD HUNGARIAN REPUBLIC IN 1989/1990

- ❖ National Round Table
- ❖ 18. 9. 1989
 - ❖ Peaceful political transition to a multi-party system, parliamentary democracy and the rule of law, with a social market economy
- ❖ Act XXXI of 1989
 - ❖ comprehensively amended the content of Act XX of 1949
 - ❖ entered into force on 23. 10. 1989

Thank you for your attention!