

BOOK REVIEWS

A History of the Hungarian Constitution: Law, Government and Political Culture in Central Europe. Edited by Ferenc Hörcher and Thomas Lorman. London: I.B. Tauris, 2018. 366 pp.

The enactment of the new Hungarian Basic Law has triggered a considerable amount of literature on the Hungarian constitution today and in the past. This volume belongs to the second category: it describes Hungarian constitutional history from a predominantly historical-political perspective, focusing mainly on the nineteenth and early twentieth centuries. Since the present Basic Law is to be interpreted in light of the “achievements of our historical constitution,” as it sets out in article R) section (3), constitutional history is not only *l’art pour l’art*, but has an at least potential impact on today’s constitutional practice. Unsurprisingly, most works on constitutional history are written by lawyers. This volume, however, is edited by a philosopher (Hörcher) and a historian (Lorman), and most of the authors are British or Hungarian historians.

The connection between today’s Basic Law and the development of Hungarian historical constitutionalism is made in the first chapter of the book. The subsequent eight chapters describe and analyze Hungary’s constitution from the late Middle Ages until 1946. Special attention is given to the reform debates in the eighteenth century and their influence on the Parliament of 1790/91, the early nineteenth century and the “revolutionary” laws of 1848, constitutional theory and practice after the Settlement of 1867, the interwar period, and the reestablishment of Hungarian constitutionalism in 1946, including the transition into the socialist constitution of 1949. After these descriptive and interpretative parts, the final two chapters look at the modern Basic Law and ask how a development of several centuries can or cannot be incorporated into present-day law, as well as whether it is desirable to do so at all.

The first two chapters show that the “constitution” did not start as such. Until the late eighteenth century, we only find a constant struggle for power between the crown on the one side and the nobility on the other. Alongside this continuous political dualism, the Tripartitum by István Werbőczy caused legal thinking to stagnate on a late medieval level so that no constitutional impulses could come from legal science. This changed when the late eighteenth century discovered “[ancient] constitution” (*[ősi] alkotmány*) as a term and an inter alia legal concept, retroactively construing a “historical constitution” for the country,

mainly as a source of legitimacy for the ruling elites and their ancient privileges, such as the exemption from taxation, as well as for the Catholic church. Thus, the ancient constitution became an argument primarily designed to preserve and legitimize social and religious inequality. Even the 1848 laws did not bring about a radical change, as Hörcher's analysis of that legislation and its "father," Lajos Kossuth, explains.

A certain focus lies on the constitutional history of the time after the Compromise (1867–1919), which is justified because that epoch, alongside 1946, is the primary point of reference of the allusion to "our historical constitution" in today's Basic Law. The Compromise era shows a failure of the democratic ideals of 1848 and the prevalence, in contrast, of late feudal structures defended by a nobility clinging to their antediluvian privileges. In defense of these privileges, the "ancient constitution" played an important role, because it was endowed with historical-national prestige, but as it was not laid down in a charter, it did not have a clearly defined content, and this allowed the governments of the day to say whatever they pleased (whatever best suited their needs in a given situation) about constitutional rules. This book also shows that Hungarian governments never failed to set aside a constitutional or statutory rule if they felt that it hampered their political ambitions. One prominent example of this is the Nationalities Act of 1868.

After 1920, Hungary pursued an insecure middle passage between the need to change (in part because of the state's independence) and the desire to preserve the old constitutional system or at least the image of it, branded with the misleading term "legal continuity." Here, it becomes clear how much the ideology of an "ancient constitution" can prevent necessary adaptation to new circumstances. On the other hand, the "Small Constitution" of 1946 is presented as a relatively successful effort to modernize the ancient constitution without abandoning entirely the tradition it represented. Balázs Fekete argues this case quite convincingly and thus persuasively proves the dominant view wrong according to which act 1946:I terminated historical constitutional continuity.

The last two chapters by Kálmán Pócza and Ferenc Hörcher try to determine the extent to which the historical processes described in the previous chapters can be used in the interpretation of the Basic Law of 2011. They approach the question from a political point of view, thus circumventing the majority opinion of legal science according to which the Basic Law's reference to "the achievements of our historical constitution" is at best symbolic. Pócza uses a theoretical approach, which does, as such, not give an immediate answer

to the question, but it shows paths for further research which may make the historical constitution useful for today's constitutional and legal purposes and requirements. Finally, Hörcher and Pócza ask whether incorporating ancient law into a modern constitution is useful and desirable. They assemble the pros and cons of the usefulness of such an enterprise and refer to future insights from the perspective of desirability.

The book contains several appendixes with the English translations of several crucial constitutional documents from 1222 until 2011. Some of these documents have now been published for the first time in English.

This book neither gives a comprehensive description of the “ancient constitution” nor does it analyze the “achievements of our historical constitution” from the point of view of modern constitutional law. It does serve, however, as a starting point for a predominantly politological analysis of what the “ancient constitution” can mean to a modern political-constitutional culture. As such, it is of interest not only to political scientists, but also to lawyers who get the opportunity to take a step back and look at an overall picture extending beyond the limitations of legal discourse. Finally, a reading public interested in the general political structures of Hungary will find a wealth of information in this volume.

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