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Defining the New Polity: Constitutional Memory in Hungary and Beyond

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Abstract

This article examines constitutions as a special effort of constructing long-lasting national memories. These images of the past become, with the assistance of the constitutions, canonised in the heart of the entire legal system that should be obeyed by each and every citizen. The conceptions of history represented by the Constitution are effectively spread by the government machinery and maintained unchanged for a relatively long time due to the solid character of constitutions. This study focuses on the characteristics of Eastern European constitutions and more specifically on the Hungarian Constitution's history-images and their relation to identity. The Hungarian Constitution is the most recent European case that has been brought into the limelight of the international media because of its questionable jurisdiction process that ran against the contemporary democratic values of legal thinking in the Western hemisphere. The present study draws on legal sources and debates of legal experts in the making and assessment of this legal document. In addition, the analysis also relies on public discourse related to the reception of the troubled legislation and its modification process.

Introduction

Constitutions are legal and political documents which is why they are generally investigated through the prism of either legal studies or political science. This article, however, examines constitutions as an identity-building process of a certain polity, a special effort of constructing long-lasting national values. This endeavour relies *per se* on a particular interpretation of history which intends to link well selected moments of the past to become the breeding ground for future memories. In addition, every

new constitution marks a historical moment representing a radical alteration in the political thinking because a new legal foundation was needed (Ackerman 1991, 7-16; Láncki 2012, 18-32).

Our **main argument** is that new constitutions redefine the identity of the polity and this act of re-identification is dependent on what we call *constitutional memory*, which canonises an interpretation of the past to be remembered as the ground of the whole legal system. Constitutional memory reveals also the immanent understanding of the rule of law of the new polity.

This study focuses on the characteristics of Eastern European constitutions and more specifically on the latest Hungarian Constitution's aim to construct an identity through the use of history (see Miklóssy 2013; Nyssönen 2013, 2017; Könczöl 2017; Pogány 2013; Belavusau and Gliszczynska-Grabias 2017). The Hungarian Constitution is the most recent European case that received much publicity because of its dubious legislation, incompatible with Western democratic values. Due to international pressure, the Hungarian Constitution, issued in April 25, 2011, has been altered six times since January 2012, and the seventh amendment was on the way in May 2018 (HVG May 29, 2018). The Hungarian case becomes particularly interesting when analysed in relation to Eastern European legal traditions. After the collapse of Communist rule, the Eastern European states started to combine their national traditions with the liberal values they were expected to adjust to by the European Council. Bill Kissane and Nick Sitter (2010, 1-5) estimated that nationalism was on the rise, in a new subject, i.e., in constitutions. The Hungarian case reveals this Eastern European dilemma but also the temporal context, reflecting EU-scepticism that has been rising in the Eastern members of the Union since 2008.

The **main questions** we investigate are: 1) *what is worth remembering* according to the Hungarian political elite, and 2) *how this defines identity* of the new polity, in a particular historical time and place. Constitutional memory is examined through the Preambles, which are special introductions to constitutions. The Preambles remind the people about the highlights of their past that are so important that they need to be elevated into the constitution (Nyssönen 2017; Voermans, Stremmer and Cliteur 2017; Belavusau and Gliszczynska-Grabias 2017). The focal points comprise the idea of homeland, which may or may not coincide with the geographical boundaries of the country, cultural heritage and language, indicating the continuity of a nation as a cultural community. Sometimes even national symbols – flag, emblem, anthem – are mentioned, as the visible code distinguishing the nation. By analysing the content, style and function, Wim Voermans, Maarten Stremmer and Paul Cliteur (2017) noticed how the use of a Preamble is becoming a common practice. Thus, the newer the Constitution was, the more likely it was that it had a Preamble. Out of 190 analysed Constitutions 158 has one,

and only 32 do not. Particularly from those 44 enacted since 2000, Hungary among them, only three (Qatar, Maldives, Somalia) do not have a Preamble.

New constitutions create a political discontinuity: a new frame of reference, i.e., the value system, the legal and political culture, and the level of constitutionalism. Reforming the basic framework of rights and duties of the citizens towards the state is one of the most powerful reminders of the temporality of statehood. By laying down the new legal cornerstones for the societal being, the constitutions thus establish a bridge between the past and future. The constitution-writer positions the new polity into a flow of time, marking a new boundary vis-à-vis the old state of affairs. Even though constitutions are declarations of modernising the entire legal and societal structure, nevertheless it is necessary to include strong links to historical continuities. (Scheppelle 2008)

Our analysis draws also on a theoretical trend concentrating on how legal instruments deal with the past and how laws shape collective memory, on the one hand, and how historical perceptions influence legal thought and de facto legislative processes, on the other. There is a growing literature studying memory laws, focusing particularly on transitional justice and policies of remembering. (Belavusau and Gliszczynska-Grabias 2017) We could argue that constitutions are special species of memory laws in a sense that their primary functions are to define a new polity that needs an anchorage in memory, thus they are *indirect memory laws*.

Memory, in this article, is a political construction rooted in the process of selecting, creating and marketing a certain conception of the past. (Kalela 2012, 82-112.) Memory has attracted increasingly multidisciplinary scholarly attention, marking the broadening stream of investigations by prefixes, like collective, vernacular, social, cultural, communicative or institutional – and in our case ‘constitutional’ memory. This aspect sheds light on how constitutions conserve memories and keep reminding the citizens of carefully selected events and symbols, which are considered worth remembering by the highest legislative body, the national parliament. Even such a multinational community as the European Union, in its Lisbon Treaty, refers to Europe’s religious and cultural heritage and ‘recalls’ the historical significance of the end of the political division in Continental Europe. (Pakier and Stråth 2010) These types of ‘institutionalised heritage’ (Beim 2007, 8) represent a consensual version of history and function as *political assets*. (Kuutma 2012, 28) As Wulf Kansteiner (2002, 182) pointed out, an officially sanctioned heritage is always intended to preserve certain perceptions for the long durée.

The conceptions of history represented by the Constitution are effectively spread by the government machinery and maintained unchanged for a relatively long time due to the solid character of constitutions. In order to alter the understanding of history on this level, a new Constitution is needed. Defining what is worth remembering from the past via constitutions is a powerful means of strengthening the sense of community as well.

Methodologically, our study draws on legal sources, i.e., the preambles, constitutions, or other laws related to constitutions, but we use also accounts of legal experts. In addition, the analysis relies on public discourse in connection to legislative processes. We assess also a wider Eastern European context where we distinguish the contents of the preambles from a comparative perspective. What is interesting here is how the preambles of other post-communist countries display constitutional memory. We concentrate especially on the Hungarian case, which we analyse through the images of the past mentioned in the preambles. We assess whether these images display traces of continuity and what ruptures can be found. We then elaborate how these changes and continuities present in the Hungarian Preamble mark the political boundary of the polity. This is a cross-disciplinary study combining the different analytical approaches and temporal gazes of political science and history.

Continuity and Change in East European Legal Thinking

A constitution provides literally the foundation for a national legal system. Ironically, these basic principles, that represent the core of legal thinking and guide legal practice, rely the least on actual legal expertise. Constitutions are characteristically the products of laymen, i.e., of politicians that populate the parliaments and debate about values according to their party standing. Constitutions are also hard to hammer out because in democratic systems they require an unquestionable consensus supported by a considerable majority. The purpose of this practice is to safeguard the legal system from quick changes, which could launch confusion not only in the legal practice, but most importantly also among the citizens about their rights and duties in relation to the state. Hence, constitutions are fairly stable, most of them can last several generations, bringing a sense of predictability and reliability to any political system. This durability also denotes the continuity of the memory about what justice and values mean in the national perception.

Since constitutions mark a dramatic moment and present a snapshot of the political situation, they often become a part of history themselves. Such dramatic change took place in Eastern Europe with the collapse of state socialism (in 1989/1991) that demanded the complete modernisation of the

political and legal systems. The new constitutions had to define the departure from the communist system and ensure that the authoritarian power structures could not be restored. The post-communist constitutions therefore required either a substantial majority in the parliaments (two thirds in Croatia, Hungary, Macedonia, Poland, Slovenia, three fifths in the Czech Republic and Slovakia, or three fourths in Bulgaria) or a referendum (as in the Baltic states, Romania and Poland in 1997). This requirement was to prove that the new societal system relied on wide popular consensus. This type of mutual understanding is rare in any democratic system thus it represents a historical moment of exceptional concord.

Legal thinking began to diverge in the East and the West from the 17th century on, due to the different relation between the state and citizens (see Miklóssy's article in this volume). Particularly, the subjects of great Eastern Empires – in Austria, Turkey and Russia – lacked legal protection against the arbitrariness and excessiveness of power. In the West the first legal document curbing the king's might, the Magna Charta, originated already in 1215, and the first modern constitutions – the Declaration of Independence of the United States in 1776 and the French Constitution in 1791 – reflected the new principles of the Enlightenment, the right of individuals to freedom, equality and private ownership.

After the First World War, the collapse of the Eastern Empires did not bring however any significant change in the Eastern part of Europe. Whereas in the West, individualism strengthened the evolution of democratic legal thinking in the interwar period, in the East – conversely – the newly drawn nation states accentuated the priority of national community over the individual citizen. This meant in practice that the rights of the individual were acknowledged only in connection to the membership of the nation that became increasingly circumscribed as an exclusive community. Furthermore, from the 1930s onward with the expanding anti-Semitic legislation, it became evident that the membership of the nation overruled citizenship. In areas that fell under the Soviet Empire in the interwar period or right after the Second World War, individual rights were equally void and even the idea of counterbalancing state power was absurd in the proletarian dictatorship.

Relatively soon after the collapse of state socialism, between 1990 and 1992, new constitutions were brought about in most of the Eastern European countries, marking the end of the communist era. In order to acquire the acceptance of the Western international community as soon as possible, it was important to accelerate the democratisation process by means of new constitutions. The new legislations were successful in making the expected impression and nine countries were granted membership of the Council of Europe. (Lesage 1995, 10-13; Kulcsár 2004, 113-134; Kovács 2012)

The new constitutions displayed not only the legal traditions but also the new political elites' perceptions of the nationally significant Past. The Latvian Parliament, for example, wanted to nullify the entire Soviet period by restoring the first Constitution from 1922 as the basis for the new codification process in 1990. The last sentence in the current codex reminds of the fact that the first Constitution was '*Adopted by the Constitutional Assembly of the Republic of Latvia at their meeting in 15 February 1922*' and symbolically the new Constitution was issued on the same day seventy years later in 1992. (Parliament of the Republic of Latvia, 1992) With this expression, the Parliament reminded the people not only about the time of independence before the Soviet occupation but also pointed out that the Latvian legal traditions of the 1920s were sufficiently modern and democratic to serve the current constitutional needs of the post-communist state entering the new Millennia. At the same time, it was a statement directed to the West emphasising that even in this remote Eastern corner of Europe there existed democratic traditions already in the interwar era.

There is also another type of continuity that the post-communist countries found particularly important to stress in order to counterbalance previous experiences with the Soviet Empire: the longevity of statehood. The Lithuanian Constitution from 1992 described the bravery of the country in defending its integrity over centuries enabling the preservation of the nation's spirit, language and scripts (Seimas of the Republic of Lithuania 1992). States that look back to an imperial past naturally recall the greatness as an integral part of their national traditions. In the Slovak Constitution of 1992 there is a categorical declaration that the state rests upon the spiritual heritage of Cyril and Method, and on the historical legacy of the Great Moravian Empire of the ninth century (Guide to the Slovak Republic 1992). The Czech Constitution of 1992 announces that the new Republic is loyal to the heritage of the medieval Czech Crown's lands (Parliament of the Czech Republic 1992). The longer the national history the better: the Croatian Constitution (dated in 1990) underlines the inviolable continuity of the Croatian state since the seventh century and raises twelve further milestones that depict unquestionably the '*perpetuation and development of state-building, grounded in the historical right of the Croatian nation to full sovereignty*' – as it was necessary to prove that Croatia deserved its independence (Croatian Parliament 1990).

The declarations of permanent statehood bore an additional meaning that becomes understandable only in the regional context and in reference to the troublesome common past. Croatia and Slovakia became parts of the Hungarian kingdom in the eleventh century, and from the seventeenth century together with the Czech lands all were subdued by the Habsburg Empire, which turned into the Austro-Hungarian Dual Monarchy in the 1860s. The evocation of historical continuity sends a

politically loaded message, particularly to the neighbouring countries, about the genuine right of a nation to populate a spatial locus. From time to time, transnational polemics burst out about which nation possessed an area first, but this is also a question of pedigree: which nation could establish statehood earlier. Since state borders and the boundaries of nations do not converge in Eastern Europe, the historicity of the state is obviously less important than the longevity of a nation that displayed a state-forming capacity. The irony of this type of thinking in the 1990s is that it actually resembles Marx's and Engels' perceptions of the progressiveness and historic potential of nations that only deserved statehood in opposition to un-historic nations – the very same theoretical background that all of these countries wished to forget.

Constitutions make statements not only about the historicity of statehood but they often define carefully who belong to the nation which is entitled to the state. The Slovak Constitution demarcates the community as '*We, the Slovak nation*', and continues '*together with members of national minorities and ethnic groups living on the territory of the Slovak Republic*'. The definition leaves no room for speculations, whose nation is in question, but at the same time clearly combines the nation with the territory, the territory of the Slovak Republic. On the contrary '*We, the members of the Hungarian nation*' i.e. Hungary does not refer to any state or territory (Hungarian Government 2011). However, already the same first sentence '*with a sense of responsibility for every Hungarian*' broadens the concept of nation at least regionally, if not globally. Poland – also using the famous US '*We the People*' formula defines itself in the following way: '*We the Polish Nation – all citizens of the Republic*'. Seemingly the Polish definition confirms that all citizens belong to the nation, whilst in the Czech case '*we*' refers to citizens of Bohemia, Moravia and Silesia instead of the nation.

Interestingly, the usage of '*we*' in the texts of the early 1990s constitutions has another historical aspect especially in the post-communist context. After several decades of dictatorship, characterised by the huge gap between people and power, now the national assemblies wished to accentuate unity and democratic representation in founding documents. The representatives of the people emphasised with this phrase that everything that follows in the text is also '*naturally*' shared by all since this is the declaration of the will of '*We*' the People.

Hungarian Traditions of State and Citizenship

The current Hungarian Constitution, issued in 2011, has a peculiar historical background starting in the Round Table negotiations back in 1989, which brought down the communist system. The first free elections took place in March-April 1990. During the Round Table negotiations, the old 'Stalinist' constitution from 1949 was thoroughly modified, in order to quickly create a legal framework to assist the transition to democracy and market economy. According to the short Preamble, it aimed to be only a provisional document. Thus, whether the thoroughly modified constitution was still 'Stalinist' or *de facto* a new one, became the subject of lasting political debates. In the 1990s the idea of a new constitution was on the agenda every now and then but, as the modified one still functioned relatively well and with the lack of a broad consensus, the topic lost its priority. The Venice Commission (the European Commission for Democracy through Law, established by the Council of Europe in 1990) in 1995 criticised the existing version but, even though the governing coalition enjoyed the necessary two-thirds majority in the Parliament, a new constitution was not produced at the time.

Creating a new constitution was not a topic in the political campaign of the parliamentary elections in 2010 either. The situation changed when the national conservative party, Fidesz, gained a two-thirds majority (68 %) granting the opportunity to rewrite the constitution, now called '*Fundamental Law*'. There is an important difference in this renaming: while *Constitution* refers to the whole societal-political system *constituting* a state, *Fundamental Law* relates to the hierarchy of the legal system and the *entity of laws*. The significance of this difference becomes conceivable if we examine the legislative process. The content and the parliamentary procedure, where the Fidesz was completely reluctant to achieve consensus, divided the parties. Most of the opposition marched out, only the extreme right Jobbik party participated in the parliamentary discussions. The Fundamental Law was proposed, discussed and completed within six weeks in April 2011, based exclusively on a one-party decision. The Venice Commission criticised the shortcomings – the lack of consensus and the weakening of the system of checks and balances (Venice Commission 2011). Despite the criticism of the EU Commission, the law took effect in January 2012. In other words, the hierarchy of power overruled broad popular consensus in constituting the new polity. The Fidesz laid down the *ground rule* and also the *modus operandi* for the foreseeable future.

The new constitution represented a watershed in post-communist development. On the one hand, it marked a clear change to previous legislation, adopted before and after the communist rule, in 1946 and in 1990. Both of them represented a gradual transition in downgrading the significance of the

Parliament for the benefit of executive power. (Körösenyi 2015, 83; Sente 2016, 213-234) On the other hand, while the legislative conduct resembled one-party practices in the communist era, the adopted historic images, however, pointed towards pre-communist legacies of the interwar period.

Richard Ned Lebow pointed out that political elites aim to create meanings to the past and to distribute and to root them in a given society. In this struggle about the past, a constitution is politically a heavy weapon, and according to Lebow, there are two options in this situation: opposing and finding alternative memory or, on the contrary, leaning more and more on narratives stressing special features and achievements of a particular nation. (Lebow 2006, 13-32) The Fundamental Law declared continuity with the legal tradition of the '*Holy Crown Doctrine*' (Hung. 'Szent Korona Tan'). The Holy Crown is visible in the coat of arms, linking the idea of modern state to the first king, St. Stephen, and the origins of Hungary (Magyarország Alaptörvénye 2011, 5, 9, 11). The Holy Crown Doctrine refers simultaneously to an over 500 years old ensemble of laws (the Codex of Werböczy from 1514) defining the jurisdiction of the state, and also to the concept of sovereignty. The long tradition of written laws obscures the fact that it actually preserved the mentality of the ancient common law, accentuating criminal law and retribution. Thus, until the 19th century this ideational tradition obstructed the evolution of liberal legal thinking and, especially, of individual rights vis-à-vis state power, which was the ground for the principles of equality and human rights (Bódiné et al 2003, 13-38, Romsics 2010, 5-17). To put it differently, by maintaining the Holy Crown Doctrine, the Fundamental Law wanted to underline that the historical state and contemporary legal principles are intertwined issues. Hungarian political history of the 20th century illustrates that democratic constitutionality had grave defects with drastic consequences on human rights (Romsics 2010, Sente 2011, 1-14). The Holy Crown furthermore had been perceived as a concrete legal entity representing the highest and undivided power, practiced by the executive authority (Kocsis 1995, Zlinszky 1999, 7-34). This however indicates that there is a political will to respect the traditions of strong government. The Crown represented the exclusive right to possess the state and its subjects until 1918. The artefact of the Crown is a focal point in conservative Hungarian political thought and exhibited in the Parliament building since 1999.

The Holy Crown Doctrine contains yet another aspect that is related to the idea of the nation and particularly to the boundaries of the state. It can be seen as the key principle of foreign policy. Contrary to the Slovakian Constitution mentioned earlier, there is no reference to territory in the Hungarian counterpart. The imitation of the American phrase '*We the People*' in the Hungarian Fundamental Law is reformulated as '*We the members of the Hungarian nation*', which has a strong

reference not to the citizens populating the country, but to a wider nation. Although in some languages like in English 'nation' can be a synonym of 'people' or 'citizens' without any ethnic reference, the Hungarian language makes a clear distinction between nation and citizen. The Hungarian word 'nation' ('nemzet') refers first and foremost to a culture-community that claims a much wider geographical dimension than current territory of the state, including not only the East Central European region but also the global diaspora. The concept of the nation is cherished in the Hungarian political memory as the myth of 15 million fellow Hungarians inhabiting the Carpathian Basin. According to the official views, Hungarian minorities still suffer assimilation policies in Slovakia, Romania, Serbia and Ukraine, hence, it is the duty of the Fidesz-administration to take care of them irrespective of state borders. The European Union criticised the phrasing of the Fundamental Law for the lack of guarantees that the government would respect the territorial integrity of the neighbouring countries (European Parliament 2011). Thus, while the 1990 Constitution had already mentioned the state's responsibility towards Hungarians living outside the state borders, in the Fundamental Law this paragraph is more detailed. At first, the article D defines the ultimate purpose: '*Motivated by the ideal of a unified Hungarian nation, Hungary shall bear...*' and then it mentions that Hungary shall '*continue to support their effort to preserve their Hungarian culture and foster their cooperation with each other and with Hungary*'. (English version of the Hungarian Fundamental Law)

The idea of a constitution is to define the relation between state power and its subject, and their rights and duties towards each other. Hence, constitutions are political statements about the moral bindings that formulate a community. The community, however, can be understood according to the ethnic-cultural or civic concepts, therefore, constitutions always define the boundaries of the nation they concern (Tsagourias 2007, 1-14). The political significance of the above-mentioned Holy Crown Doctrine is that it contains the cultural idea of the nation that exceeds the contemporary borders of Hungary by reminding of the geographic greatness of the original kingdom of St. Stephen in the 11th century. Consequently, it brings an ancient state concept into the current discourse over the nation by marginalising the notion of citizenship. The debate on the subject was further neutralised by the legal acknowledgement of dual citizenship for those who were covered by Holy Crown Doctrine and the old kingdom. Indeed, what makes Hungary a particular case is its large ethnic population just beyond the borders, whilst Hungary itself is rather homogenous. The dual citizenship now acknowledges people who have lived in Romania, Slovakia, Serbia, Ukraine or Austria, for generations as citizens.

The initiative for double citizenship came from the diaspora: in 2003 when it was certain that Hungary would join the EU, minority organisations in Serbia and Romania feared that EU-membership would

close the borders. With the help of the Hungarian World Organisation, Hungarians managed to gather 474 000 signatures and thus a referendum was organised in 2004. The referendum, however, was not valid because only 37.5% of the whole electorate voted, therefore, it did not proceed to Parliamentary discussion (Nyyssönen and Korhonen 2010, 119-141). After the landslide victory of the Fidesz in 2010, the new conservative government immediately issued the bill granting double citizenship, first without the right to vote in parliamentary elections (Magyar Parlament 2010) – but later this was also granted (Nyyssönen & Metsälä 2018). The Fidesz wanted to correct the failure of the 2004-referendum, which was now called a *national treason*, as the vice PM Zsolt Semjén concluded in his article on ‘Politics of Nation’ (*Nemzetpolitika*). According to Semjén, it was a question of national solidarity and repairing the injustice of Trianon (Egry 2012, 177). Trianon was the palace in Versailles where the Paris peace treaty was signed with Hungary after the First World War. The treaty obliged Hungary to surrender two thirds of its territories and 70 percentage of its population to neighbouring countries. Ever since, this loss has been referred to as ‘Trianon’ in the Hungarian discourse.

It can be argued that the recognition of the transnational concept of the nation instead of the citizens of the country in the Fundamental Law raises problems that have relevance for the rule of law. The rights and duties coded in the relation of the citizen and the state have now diverged. There are ‘citizens’ who pay their duties (i.e, taxes) to their host countries but they still have the right to influence the state of affairs in Hungary, without legal consequences. Thus, the Fidesz-administration created double standards for citizenship: there are citizens who have rights and duties, and the ones who enjoy only rights in the country where they do not live.

Besides the issue of double citizenship, Hungarian ‘nation politicians’ made another move. On its 90th anniversary in 2010, they commemorated Trianon in the Parliament as a *Day of National Unity* (Hung. *Nemzeti Összetartozás Napja*). In fact, this was the Fidesz version of a united Europe without borders, openly challenging the resolution 1335 of the Council of Europe from 2003. Slovakia and Romania, in which the largest Hungarian minorities live, protested against the bill. The administration keeps running into conflicts with the neighbouring countries on its interpretation of the nation. The Székely flag (the Székelys or Seklers are a Hungarian minority that enjoyed an autonomous stance between 1952 and 1968 in Romania) became a subject of fierce disputes with Romania that restricted the use of the flag (Népszabadság 2013). As a response, the EU flag was switched with the Székely flag, which has been hoisted on the Hungarian Parliament building ever since 2013, as a ‘symbol of national solidarity’. Constitutional memory is not the same as *history*, although they have much in

common. The main difference is commemoration, which exceeds the critical study of history. Memory is becoming commemoration through veneration, as Allan Megill (2007, 29-30) puts it.

Conservative Revolution

The constitution of 2011 defined the boundary between the end of an old era and the beginning of a new chapter of time, which also makes a potential historical reorientation possible. As József Szájer, the chairman of the Hungarian constitution-writing committee, remarked “*Change must start from the foundation*”. This was a direct reference to the conservative revolution carried out by the ruling Fidesz party and begun with the constitution. (Ablonczy 2012, 15) Conscious re-identification of the political system took place gradually, containing the concentration of power, weakening the rule of law and introducing law and order instead. Consequently, this process led to undermining the tripartite division of power, questioning the rights of individuals in contrast to community rights, limiting the freedom of media, assembly and the civil sphere, by and large. For this well-structured plan of a systemic change an ideology was needed to justify the actions for the public. This ideology was provided by the new constitution, with an emphasis on national-conservative values grounded in a recognisable continuity. (see Miklóssy’s article in this volume) The aim here was obviously to re-imagine the ‘imagined community’ (Anderson 1983) by anchoring the imagination to bits of the national warehouse of memory, recognisable by the common man.

The Fundamental Law is anchored in the past. Indeed, sometimes called “mission statements”, the Hungarian Preamble reveals it all: The introduction passage, called the ‘National Avowal of Hungary’ (Hung. Magyarország nemzeti hitvallása) connects national identity with religious faith. In fact, the Fundamental Law was published on an Easter Monday (April 25, 2011), which is an immensely important holyday in Roman Catholicism, which is the main religion in Hungary. The Fundamental Law declares that Christianity saved and preserved the nation (Magyarország Alaptörvénye 2011, 5). This perception is rooted in a prevalent interpretation of history stating that the nomad Hungarian tribes of the 9th century would have disappeared from the map had they not been settled by forceful conversion, which established the spiritual ground for the new statehood. This understanding represents a broad consensus in the Hungarian historiography and constitutes a central part in the National Curriculum (Gubcsi 2011, 81-88).

Christianity also has a hidden meaning in the Hungarian tradition because it is not any type of Christian faith but a euphemism for Roman Catholicism. By choosing Rome instead of Byzantine orthodoxy, Hungary bound itself to the Western cultural hemisphere. This historical link to the West

grew in importance especially in the heyday of the slogan ‘Back to Europe’ in the 1990s when it was used as an argument against the previous communist system. However, the Constitution of 2011 has a reference point in the contemporary European conservative stream that wants to accentuate Europe’s Christian roots in contrast to the multiculturalist agenda. Consequences of this policy can be seen for example in the refugee crisis, in which the Hungarian government has maintained a strict policy line against more liberal views in the European Union.

There is an embedded problem in weaving together the idea of nation and religion in the case of any modern Constitution. The Constitution is a legal document that is supposed to encompass citizenship; in other words, the state should stay value-neutral in relation to its citizens. According to the philosopher János Kis, value-neutrality means the absence of regulation that can secure freedom of choice and hence establish equality (Kis 2011, 5-22). Legal experts, on the other hand, argued that the constitution has a duty to actively build a multicultural and flexible society, which is why an absence of regulation is insufficient. Some even claimed that there is no place for religion in a modern constitutional state. One cannot elevate a particular religious view to be legally valid for all (Küper 2011, 93-107). Others contended that a neutral state which avoids taking a stand on spiritual matters does not take into consideration the religious needs of its citizens and, in fact, is practically elevating the norms of atheists as a general value – hence is discriminative from the believers’ point of view (Schanda 2012, 278-285).

After the renewed Fidesz-victory in the 2018 parliamentary elections, Viktor Orbán has declared to build a “Christian democracy” (see Nyssönen’s article in this volume). It is evident that this idea could be traced to conservative values expressed in the Constitution. The National Avowal of Hungary refers to God, i.e., “God bless the Hungarians”, as the role of Christianity in preserving nationhood. Religious faith is supported by other conservative elements, defining for example the concept of family as the *Article L* states, Hungary “*shall protect the institution of marriage as the union of a man and a woman...family as the basis of the survival of the nation*”, and “*shall encourage the commitment to have children*”. Furthermore, *Article U* refers to threats “*systematically devastating the traditional values of European civilization.*”

There are parties in Europe and beyond, which consider themselves “Christians”, and “Democrats”, but which do not necessarily agree with PM Orbán’s illiberal policies.

Constitutional Memory and the Rule of Law

Perceptions of history are subjected to ever changing interpretations and debates. When a certain interpretation of past events is selected and elevated to become an integral part of a constitution, which is by nature a peculiarly long-lasting entity, then a snapshot of history is lifted outside of time and cemented into an unchanging mental sphere. Since constitutional memory is raised above the reach of critical debates, it turns into *canonic history*. With the assistance of constitutions, these canonised images of the past become rooted in the heart of the entire legal system, which should be obeyed by each and every citizen. The legal validity of constitutions lends a false accurateness and thus justification to a history-interpretation.

Due to the fact that constitutions are practically the products of political elites and as legal matters they are issued from above covering the whole community of citizens, constitutions are extremely effective means of dispersing certain values and conceptions. In a country such as Hungary where interpretations of history are inevitably the subject of bitter political discussions about right and wrong, institutionalising a certain view of the past, is ending discourse (Jeszenszky 2011; Julesz 2012, 15-27). This definitiveness was reinforced by publicising now ‘official’ history: paper copies of the Preamble were sent to all primary school children between the age of 10 and 15.

Constitutions are explicit statements of the conditions of citizenship since constitutions clarify what the most important values, rights and duties are that a particular people should respect if they want to belong to that community. Thus, historical understanding, created and codified by constitutions becomes irresistible national memories efficiently demarcating national unity and identity. Constitutions with a rigid stance towards the past and a strictly defined value-base limit the leverage of the individual who does not fit into the exclusively described community. The new situation, created by these constitutions, marks not only the introduction of an undemocratic political culture, but more importantly, it indicates a radical transformation of the relation between the state and citizens, where the state unilaterally changed the rule of the game. This, furthermore, signifies that the core mechanism of the rule of law is altered by slipping into law and order where the individual is losing the right to defend his-/herself against the arbitrariness of state power.

There is the embedded dilemma of the constitutions themselves: should they function as bridges between past, present and future, or alternatively should they emphasise change and departure from an era and open up a new start for a society. Scheppele (2008) reminded that since new constitutions bring about the reorganisation of the affairs of the state, hence, they inevitably mark moments of

political crisis. The Hungarian Constitution of 2011 represents in this respect a decisive rupture with the previous power elite's system. Sadursky (2009) pointed out that the post-communist transition period was affected by a 'constitutional dialogue' between the Eastern European nation-states, the EU and regional institutions (see also Topidi and Morawa 2010, 1-14). While preparing for the EU-membership, constitutionalism reflected a considerable degree of convergence with European norms, nevertheless, after the 2008-crisis and strengthening EU-criticism, a new attitude towards constitutionalism has been emerging. The Hungarian case indicates that the constitutional arrangement of the transition era did not satisfy the elite's constitutional demands. The Fundamental Law, thus, is an undoubted manifestation of the need to redefine the state-hood, citizenship and integrity of the country – and therefore also a new ideology to support the intended systemic change. Creating a new constitutional memory is an inevitable element of the ideational foundation.

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