

## Transition to Democracy in Central and Eastern Europe: Experiences of a Model Country - Hungary

Antal Visegrády

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### Repository Citation

Antal Visegrády, *Transition to Democracy in Central and Eastern Europe: Experiences of a Model Country - Hungary*, 1 Wm. & Mary Bill Rts. J. 245 (1992), <http://scholarship.law.wm.edu/wmborj/vol1/iss2/6>

# TRANSITION TO DEMOCRACY IN CENTRAL AND EASTERN EUROPE: EXPERIENCES OF A MODEL COUNTRY — HUNGARY

by Antal Visegrády\*

On the eve of the second millennium, we find ourselves in historic times. History is like the ocean. Years of quiet, when gentle winds blow and waves splash against the shores, alternate with stormy times, when waves rise like mountains and hit against the shore as if they would swallow the land. In history, as well, there are periods of quiet, continuous development, but there are also periods of fierce and aggressive change, when the dormant forces of history erupt onto the surface. Of course, history does not change as fast as the world of nature. Very often, a whole generation must disappear before the conditions that seem petrified can change.

We are now witnessing a radical turning point in Central and Eastern Europe, giving a totally new and different aspect to the continent. Though a detailed analysis will only be possible from a historical distance, the revolutionary political changes in recent months present a real challenge for scholars. This paper analyzes the peaceful transition of the countries of the region from the "empire" of dictatorship to the world of democracy. The key issues of study are the history, development, present state, and future of democracy, the rule of law, human rights, constitutionalism, and civil participation and disobedience in Central-Eastern Europe, paying special attention to Hungary. This multi-dimensional comparative analysis not only illustrates the issues but places them in new light.

## I. THE PROCESS OF DEMOCRATIC TRANSITION IN THE COUNTRIES OF CENTRAL- EASTERN EUROPE, FOCUSING ON HUNGARY

"People may produce revolts, but revolutions never. Revolutions are not produced by people, but of themselves."

Lajos Kossuth

The major peculiarities of the historical development in the societies of Central-Eastern Europe — such as Czechoslovakia, Poland, and Hungary — are easily discernable.<sup>1</sup> The societies were delayed and did not originate from within the countries. The societies of Central-Eastern Europe were formed at the periphery of the continent, creating a permanent political, economic, and social disadvantage in comparison with the Western and Central European centers. Additionally, taking over external models (for example, the Hapsburg Empire) became a permanent constraint, politicizing every aspect of society.

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\* Antal Visegrády is Professor of Jurisprudence and Political Science at the Janus Pannonius University, School of Law, in Pécs, Hungary.

<sup>1</sup> See generally, 1-4 ISTVÁN BIBŐ, VÁLOGATOTT TANULMÁNYOK [SELECTED PAPERS] (1986 and 1990); 2 PATRIC GELARD, LES SYSTÈMES POLITIQUES DES ÉTATS SOCIALISTES (1975); KÁLMÁN KULCSÁR, A MODERNIZÁCIÓ ÉS A MAGYAR TÁRSADALOM [MODERNIZATION AND THE HUNGARIAN SOCIETY] (1986); JENŐ SZÜCS, VÁZLAT EURÓPA HÁROM TÖRTÉNELMI RÉGIÓJÁRÓL [OUTLINE OF THE THREE HISTORICAL REGIONS OF EUROPE] (1983); ANTAL VISEGRÁDY, EASTERN EUROPEAN GOVERNMENT AND POLITICS chs. 2, 5 (1990); IVAN VÖLGYES, POLITICS IN EASTERN EUROPE 3-103 (1986).

Politics penetrated into the other spheres of the society and politicized them, causing abnormal development not only in these spheres of activity, but also in the development of the political system and political culture. As a result, only some elements of the Western European political system appeared in these regions — such as a deformed version of parliamentarianism in Poland and Hungary. Between the two world wars, Czechoslovakia was the only state which had a system of Western-style democracy. Again, in the period following World War II, Central-Eastern European societies developed according to an external model — the Stalinist Soviet model. The historical and social conditions, both internal and external, of “building a new society” increased the predominance of the political system and the problematic phenomena which correspond with it. History has shown that the socialist political system either does not work or presses so hard in those countries that adopt it that it is not able to ensure its own political legitimacy for long, not even in a reformed version.

In recent decades the political changes in the Central-Eastern European countries included a revolution, such as that of Hungary in 1956, and several reformatory movements, such as those in Prague in 1968 and those in Poland during 1980 and 1981. In the second half of the 1980s, it became apparent that a new political system with a rule of law, namely a parliamentary democracy, was needed.

The external conditions for a democratic change of this type matured. The foreign policy of Soviet Premier Mikhail Gorbachev ensured a favorable international milieu which, by clearly giving up the Brezhnev doctrine, enabled other Central and Eastern European countries to detach themselves, not only from the influence of the Soviet zone, but from the “real” socialism which had proved to be a deadlock in history. Essentially the same regimes of authoritarianism started to collapse in Central and Eastern European countries. In Poland, the authoritarian regime functioned with elements of a limited neocorporative-type pluralism.<sup>2</sup> While the regime in Hungary governed under a theory of liberal paternalism, its counterpart in Czechoslovakia ruled in a pure authoritarian form.

It is not accidental that in the scientific literature these changes of regime in 1989 to the 1990s are called “constitutional,” “peaceful,” and “velvety” as a “negotiated” revolution. The Polish and Hungarian transitions were dominated by negotiations between the communist government and the oppositionist forces, while the East German, Czechoslovakian, and Bulgarian transitions were typified by nonviolent, mass mobilization. Only the Romanian political transition was sparked by violence.

The chain reaction started by the Hungarian and Polish political changes played a dominant role in the development of Czechoslovakia, East Germany, Bulgaria, and Romania. One similarity of the East German, Czechoslovakian, and Bulgarian transitions is that the former communist governments were not willing to start political reforms until it was too late.

#### *A. The Hungarian “Constitutional Revolution”*

On September 27, 1987, with the establishment of the Hungarian Democratic Forum, Hungarian opposition forces concentrated in Lakitelek. The first mass demonstration demanding free elections, on January 30, 1988, was a plain challenge against the communist regime, as was the demonstration celebrating the 140th anniversary of the Hungarian revolution and war of independence of 1848. János Kádár, the secretary-general of the Hungarian Socialist Workers’ Party, which had been in power for thirty-two years,

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<sup>2</sup> Pluralism based upon group units such as trade unions.

declared in a television interview that "there is no crisis in Hungary."<sup>3</sup> Yet, at the conference of the Hungarian Socialist Workers' Party in May 1988, the conferees acknowledged the necessity for reform. Most of the "former staff" was dismissed. For example, Károly Németh, Sándor Gáspár, György Lázár, and Miklós Óvári left the supreme governing body. Kádár was forced to resign his post as secretary-general on May 19 and received the formal post of president. Károly Grósz succeeded Kádár. Grósz actually held two posts, secretary-general and prime minister. This "policy of strong hand," concentrating power, had the obvious purpose of avoiding political collapse. Power relations helped Rezső Nyers and Imre Pozsgay to positions in the "public order oriented" governing body.<sup>4</sup> In November 1988, Miklós Németh became prime minister.

The fall of 1988 brought important changes to Hungarian politics as the future political structure developed. On September 3, the Hungarian Democratic Forum began its existence as a political organization; the Free Democrats' Association followed on November 13. The Recsk Association was established; the Independent Smallholders' Party declared its continued existence under the new government and was joined by the Hungarian People's Party and the "Publicity Club." In October, an act on association and assembly was passed, legitimizing political organization.

The idea of recognizing a multi-party system in Hungary irritated the conservative wing of the Hungarian Socialist Workers' Party. On October 29, Károly Grósz, the party's secretary-general, declared that the party would prevent chaos and anarchy, insisting that it was the population's desire to realize changes within the existing framework of socialism.

What forced the party committee to recognize the multi-party system was the "Pozsgay-putsch." In a radio declaration, Imre Pozsgay called the revolt of 1956 a "popular rising," confronting the governing body with an undisputed fact. At the party meeting on February 10 and 11, the Central Committee was forced to break officially with the one-party system to avoid splitting the party, and consequently, the party gave up its monopoly of power.

On May 8, János Kádár was dismissed from office and replaced by Rezső Nyers, indicating that the reform forces within the Hungarian Socialist Workers' Party were forging ahead. Then, on June 23 and 24, the presidency was reformed to become a position to be shared by four people (Károly Grósz was joined in power by Imre Pozsgay, Rezső Nyers, and Miklós Németh).

The period between March and October of 1989 was a time of "negotiated-type transition." Opposition forces functioning as parties became accepted, and the Hungarian Socialist Workers' Party was no longer able to avoid negotiating with them. Politically, the country became lawless (*ex lex*): on one side, the State Party was no longer legitimate; on the other, the oppositionist parties had not yet been legitimated.

On March 22, 1989, at the initiative of the Independent Jurist Forum, the Opposition Round Table was formed. Its members were the Bajcsy-Zsilinsky Friendly Society, the Young Democrats' Association, the Hungarian Democratic Forum, the Free Democrats' Association, the Independent Smallholders' Party, the Democratic League of Independent Trade Unions, and later the Christian Democratic People's Party. On June 13, the negotiations of the so-called National Round Table started with three participants: the Hungarian Socialist Workers' Party, the Opposition Round Table, and the "Third Side."

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<sup>3</sup> Budapest Television Service (Mar. 17, 1988) in FBIS-EEU, Mar. 18, 1988, at 18-21.

<sup>4</sup> See Georg Schöpflin et al., *Leadership Change and Crisis in Hungary, 1988 PROBLEMS OF COMMUNISM* 23-46.

Negotiations regarding substantive issues were completed on September 18. On economic questions, viewpoints were nearly the same. On political questions, everyone agreed to modify the constitution, to support the continued existence of the political parties, and to advocate change through a "peaceful transition." The participants also agreed to introduce the post of "president of the republic," begin parliamentary elections, dissolve the Workers' Militia, order an accounting of the properties owned by the Hungarian Socialist Workers' Party, and remove members of "The Party" from their offices.

On June 16, 1989, the mass demonstration at the exhumation of Imre Nagy<sup>5</sup> and his companions meant the obvious victory of the opposition. The rehabilitation of 1956 symbolized the end of the regime. The symbolic action, the legal rehabilitation of Imre Nagy, happened on July 6 — the same day János Kádár died.

As the parliament began to function simultaneously with the executive organ of the old regime, the country proceeded towards a transition. On September 10, the frontiers were opened to the East-German refugees, promoting German national unity. The parliament passed all the cardinal acts that the National Round Table had agreed upon earlier. On October 23, 1989, the Hungarian Republic was proclaimed.

On October 5 through 7, 1989, the Hungarian Socialist Workers' Party held its last congress, when it dissolved itself and founded a new party, the Hungarian Socialist Party. The failure of Károly Grósz and many others followed. The number of party members decreased from 700,000 to some 10,000 by the end of the year, and the Hungarian Socialist Party was ousted from the mainstream of political life.

Individual political activism and the rivalry between the two strongest opposition parties, the Hungarian Democratic Forum and the Free Democrats' Association, marked the period between October of 1989 and April of 1990. The elections in March and April of 1990 ended the four decade old one-party system in Hungary. Through the elections, the parties gained popular legitimacy. The parliamentary elections on March 25 and the second round on April 8 cleaned the "political palette;" from among the more than fifty parties which took part in the elections, only twelve were able to prepare a national ticket, and only six reached the four percent limit required to become a parliamentary party.

The electoral law passed in October of 1989 divided the country into 176 individual constituencies (congressional districts) and twenty regions (nineteen regions and Budapest). The distribution of the 386 seats in Parliament was as follows: 176 seats to individual constituencies, 158 to party tickets of counties, and the remaining seats were divided according to national surplus, or fragment votes.

The rival parties represented various political interests. The Hungarian Democratic Forum represented the national Christian-Democratic interest. The Free Democrats' Association represented the liberal-democratic interest. The Hungarian Socialist Party supported so-called socialist (rather than communist) principles. The Social Democratic Party acted upon principles of social democracy not well-expounded. The Independent Smallholders' Party, espousing a conservative peasant policy, demanded new agrarian reform. The Young Democrats' Association had rationalistic pragmatic conceptions. The environmental protectionists had several representative organizations, such as the Green Party and the Duna-circle.<sup>6</sup> The new Hungarian Socialist Workers' party functioned with a program of traditional, "Kádár-style" socialism.

Free elections meant the freedom to choose whether or not to participate, as well; the former 90% "obligatory participation" became a thing of the past. In the first round

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<sup>5</sup> Imre Nagy became Prime Minister in the 1956 revolution and was executed in 1958 by the Kádár regime.

<sup>6</sup> The Duna-Circle is a political party dedicated to the preservation of the Danube River.

of the elections, 5,093,000 people, amounting to 65% of the eligible population, voted. In the second round, only 45.5% of the population participated.

The Hungarian Democratic Forum won the election with 42.5% of the votes cast, giving them the right to form a government. They formed a coalition with the Independent Smallholders' Party (11.4%) and the Christian Democratic Party (5.4%) to develop a 59% majority. The Free Democrats' Association (23.8%) became the second strongest opposition party. The Hungarian Socialist Party won 8.5% of the vote. The Young Democrats' Association took 5.7%. No other party won representation.

One explanation for the electoral success of the Hungarian Democratic Forum was that it nearly became a "people's party" at election time. The party had a collective nature that appealed to almost every social class, thereby gaining the support of voters with different views and political leanings. The policy of "the peaceful force," promising a slower but safer political and economic transition, advocated by well-known and respected individuals such as Sándor Csoóri, József Antall, Lajos Für, and György Szabad, grew in popularity.

The Free Democrats' Association appeared as a party favoring radical political change and gained supporters from the elite and intellectual classes who were attracted by the promise of a fast and radical change of regime. The Independent Smallholders' Party owed its third-place victory to its political traditions and to its view on agrarian policies. The success of the Young Democrats' Association was attributable to their youthful, easy political style, their radical oppositionary behavior, their impressive professional competence, and the charisma of their party leaders. The Christian Democratic People's Party owed its success largely to its simplicity and political traditions. The Left — the Social Democratic Party and the Hungarian Socialist Workers' Party — suffered a serious defeat at the elections. The defeat of the Hungarian Socialist Party reflected their unpopularity.

After the elections, the two strongest parties, the Hungarian Democratic Forum and the Free Democrats' Association, made a "pact" to enable them to govern the country. The parties agreed on voting patterns for those laws that Parliament was required to pass with a two-thirds majority. The vote of censure against individual ministers was canceled; a constructive vote of censure could only be made against the prime minister or the whole government respectively. A secret agreement provided for the president of the republic to be chosen from the Free Democrats Association.

The coalition government (the combined powers of the Hungarian Democratic Forum, Independent Small Holders' Party, and Christian Democratic People's Party) of József Antall introduced itself in the Parliament on May 23, 1990. The Parliament elected Árpád Göncz to be president of the republic. In September, the government introduced a "national renewal" program, and the Holy Crowned arms returned as the national symbol of the country.

The political change of regime was completed by the local authorities through two rounds of elections on September 30, 1990 and October 14, 1990. The 3,039 settlements were divided into three different constituency systems: settlements with fewer than 10,000 inhabitants employed a so-called "small-ticket system," settlements with more than 10,000 inhabitants used a "miscellaneous-ticket" system, and a simple "ticket-system" was introduced in the capital. Due to the intensification of the economic crisis and the people's disappointment in the lack of a speedy "recovery," the parliamentary parties suffered heavy losses to the so-called "independents." The people placed their confidence in the local authorities, irrespective of party affiliation. Out of the 2,930 settlements, 82.8% of the elected mayors were independent. Among the candidates for local governmental bodies in the "small-ticket system," independent mayors were elected 63.5% of the time. On the other hand, among the candidates of the 162 local communities

with more than 10,000 inhabitants, independents were elected only 15% of the time. In contrast with the parliamentary elections, the Free Democrats' Association and the Young Democrats' Association — separately and in alliance — won with 40-42%.

In the first round, the rate of participation in small settlements was 51%; it dropped to 34% in the second round. Towns participated at a rate of 33% and 28.6%, respectively. In Budapest 37% of the citizens participated in the first round and 35% in the second. According to party power relations, the country broke up into three parts:

- (1) in the capital, a clear party-representative local authority;
- (2) in towns, a party-representative local authority, but allowing independent persons, small parties and civil organizations as well; and
- (3) in villages, a non-party representative local authority with a majority of independent persons.

With the conquest of the opposition in local authorities, a certain kind of "dual power" was formed: government-coalition party members took the majority in the parliament as the opposition seized the majority in local authorities. Because democracy stands on several legs, this shared power may actually strengthen the political balance.

The specific transition which took place in Hungary between 1987 and 1990 differs greatly from the transformation which occurred in other Central-Eastern European countries.<sup>7</sup> The Hungarian transformation was historically unprecedented, partly because there was no previous socialist society that became something other than a socialist, post-communist society.

The Hungarian transformation was also unprecedented because revolutionary changes were accomplished in a peaceful and orderly manner and were reached by negotiations that preserved the governing ability of the central power. Unlike East Germany and Romania, in Hungary, no one destroyed the state machinery or the institutional political power. Furthermore, the state machinery did not become paralyzed, as had occurred in Poland and Czechoslovakia. Instead, the central state and party power machinery were dismantled following the agreements between the opposition and the governing political forces, safeguarding the economic and social reproductive capacity of the country.

Unlike other political transformations, in Hungary, the state party peacefully handed over power after negotiating and accepting a compromised solution. Through democratic elections, the state power yielded to the winning parties. Due to these unprecedented traits, the Hungarian transition proceeded smoothly, without political annihilation or chaos.

### *B. Hungary: Learning from other Countries' Experiences*

The political changes in Spain have held international and Hungarian interest from the mid-1970s. In Spain, democracy was established and steadied between 1975 and 1982, and the political system that developed still exists today. Thus, it is worth discussing how relevant the Spanish example can be to Hungary.<sup>8</sup>

Although politically Spain came from the right and Hungary from the left, the ambition of the two states was the same: to create a social and democratic rule of law where the state protects human liberty and dignity and creates the cultural, economic, and legal preconditions to ensure the free and total evolution of the personality. Both countries

<sup>7</sup> See MIHÁLY BIHARI, DEMOKRATIKUS ÚT A SZABADSÁGHOZ [DEMOCRATIC WAY TO FREEDOM] 118-19 (1990).

<sup>8</sup> See, e.g., András Bozóki, *A Magyar Átmenet Összehasonlító Nézőpontból* [The Hungarian Transition from a Comparative Point of View], 8 VALÓSÁG 16 (1991).

inherited an authoritarian political system run by old leaders, which was destroyed peacefully to give way to a pluralist democracy. In both states a competitive parliamentary system was formed with a firm government majority and a strong opposition.

However, one can find social and economic differences of great importance. Significantly, in Spain, the democratic forces took over a working market economy and civil society, while, in Hungary, both of these elements were missing.<sup>9</sup> Spain was in a more favorable situation regarding international relations as well, because its political ambitions were supported by all the neighboring and Western countries. Taking these comparisons into consideration, these great differences in the internal and external circumstances produced different approaches in making the transition to democracy.

The political parties were still able to draw upon the experience of other countries during their change of regime. The Hungarian opposition parties borrowed from the experiences of the Polish Round-Table negotiations, and the East German opposition parties borrowed from both of these experiences. In Hungary, the former communist party (the Hungarian Socialist Workers' Party) assumed a new name (the Hungarian Socialist Party) and entered the political arena with new faces. The Polish, East German, and Bulgarian communist parties followed this example.

Some features of the Hungarian transition may be helpful not only to countries of the region, but may also instruct states around the world.<sup>10</sup> As a result of Gorbachev's consolidation of power, Hungary was driven by Moscow's "push" for changes and the West's "receptiveness" to change. The two most significant preconditions for change were the disintegration of the party state and the emergence of an open, internal rift within the political and economic elite. A third prerequisite for change was "to take the lid off" the authoritarian system and to open up the way for the political organization of civil society. A fourth preliminary condition was pacifying the party apparatus, separating the state apparatus from the party apparatus and abolishing the nomenclature. Finally, the fifth preliminary condition for change was a radical shift in society's political orientation. This change manifested itself in the people's refusal to accept the legitimacy of one-party rule and the popular acceptance of the emerging opposition groups.

The young democracies of Central-Eastern Europe genuinely desire to learn from the Western European countries and the United States' 200 years of experience with a democratic constitution. Of course, the democratic rule of law in the Central European region takes forms that reflect the traditions and culture of the respective countries.

The pull of Western Europe and its form of democracy is felt in Central-Eastern Europe. There are strong, traditional ties between Poland and France, between Czechoslovakia and some Western European states, and between Hungary and Germany. Hence, Central-Eastern Europe's adoption of institutions based upon models found in Western Europe is understandable.

Americans, nevertheless, may also contribute as Central and Eastern Europe builds the foundations of democracy and constitutionalism. From the earliest days, the American experience has been a beacon to those who cherish the democratic ideal. While American constitutionalism has been nurtured, in good part, by indigenous experience, the great ideals of American freedom travel well. For example, the Hungarian revivers of constitutionalism were particularly interested in the separation of powers and in creating a strong, independent judiciary of Madisonian conception.

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<sup>9</sup> For example, in Hungary in the 1930s there were 14,000 social clubs. At the end of the 1940s, there were 2,000, and at the beginning of the 1950s, only 50 to 60 were left.

<sup>10</sup> See László Bruszt, *The Negotiated Revolution of Hungary*, in *DEMOCRACY AND POLITICAL TRANSFORMATION* 213, 224-25 (György Szoboszlai ed., 1991).



Modern experience proves that in the long run it is important for Central and Eastern European countries to adopt some elements of the Anglo-Saxon legal systems, including a powerful judiciary.<sup>11</sup> According to American scholars who are helping to write or revise constitutions for Central-Eastern Europe's new governments, some features of the American Constitution, like those on the presidency, the enumerations of presidential powers, and the electoral system, are not likely to be copied.<sup>12</sup> The Central and Eastern European countries have parliamentary systems in the European traditions, where duties of the head of state and the head of government are divided between two separate officeholders.

## II. THE PRINCIPAL POLITICAL AND LEGAL PROBLEMS OF THE DEMOCRATIC TRANSITION

"We have done away with the totalitarian system, but we have yet to win democracy."

Czechoslovakian President Vaclav Havel

With the collapse of the socialist system in 1989 and 1990, opposition forces were unified in their wish to introduce social development of the sort that has been functioning for a long time in Western Europe and the United States. It is, however, another question what kind of steps should be taken to follow this development, and, on the other hand, which claims can be realized within one to two years, and which ones are those that need half a decade or more to be executed. The following discussion analyzes the key issues of a democratic transition, such as the rule of law, democracy, the participation of the citizens and civil obedience, human rights, and the defense of constitutionalism. This discussion is approached from a historical perspective, concentrating on Central-Eastern Europe, especially Hungary.

### A. *The Problem of Rule of Law in Central-Eastern Europe*

The term "rule of law" essentially has been applied to two state systems. The "Rechtsstaat" (of a formal meaning) system mainly appeared in German legal theory and to a certain extent in Central-Eastern Europe. The essence is that government administration functions according to rules of law.<sup>13</sup> The second system appeared after World War II, drawing upon lessons learned from the German Third Reich and to a lesser extent from the Stalinist political system. This system interprets the rule of law as a substantial value; the system's characteristic features first appeared in the Anglo-Saxon legal principle of rule of law. The important difference between the two models is that in the formal "Rechtsstaat," the state is primary and governs according to the laws. Governance by action-at-law is a characteristic feature.<sup>14</sup> In the substantial-meaning "rule of law," law is primary, and governing is effectuated "sub lege."<sup>15</sup>

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<sup>11</sup> See ANTAL VISEGRÁDY, *THE ROLE OF COURTS IN THE DEVELOPMENT OF LAW* (forthcoming 1993).

<sup>12</sup> See A.E. DICK HOWARD, *DEMOCRACY'S DAWN: A DIRECTORY OF INITIATIVES ON CONSTITUTIONALISM, DEMOCRACY, AND THE RULE OF LAW IN 1991* 8-10 (1991); Robert A. Dahl, *Transition to Democracy*, in *DEMOCRACY AND POLITICAL TRANSFORMATION*, *supra* note 10, at 9, 18-19; Lis Wiehl, *Constitution, Anyone? A New Cottage Industry*, N.Y. TIMES, Feb. 2, 1990, at B6.

<sup>13</sup> See 2 PAUL LABAND, *DAS STAATSRRECHT DES DEUTSCHEN REICHES* 1876-82 (1963).

<sup>14</sup> See NOBERTO BOBBIO, *THE FUTURE OF DEMOCRACY: A DEFENSE OF THE RULES OF THE GAME* (Roger Griffin trans., 1987).

<sup>15</sup> See HENRY DE BRACON, *DE LEGIBUS ET CONSUEUDINIBUS ANGLIAE* (George E. Woodbine ed., 1915).

It is no mistake that in Eastern Europe — eastern Poland, historical Hungary, and south of historical Hungary — neither rule of law conception appeared in either theory or in practice; the idea of restricting the ruling power with laws was inconsistent with the Byzantine political and legal traditions that were widespread in Eastern Europe. Such a restriction was also inconsistent with the Eastern political culture which, in different times and ways, also influenced the political development of this region. To Eastern Europe, rule of law meant the sovereign will in a legal form.<sup>16</sup> To Hungary, however, this Eastern European interpretation of law was unfamiliar. The historical explanation for this is that the Hungarian legal system and legal culture, like Western legal systems, were based on Roman law. The idea of rule of law appeared relatively early in the thirteenth century in Hungarian legal thinking, but the legal development following the compromise of 1867 with the Austrians was essentially built on the idea of the formal rule of law until World War I. From there, Hungary basically established a Central European legal system.<sup>17</sup> In spite of this, in the nearly five decades following World War II, the “socialist” political model and legal thinking of Eastern Europe were forced upon Hungary. This successfully broke up the institutional network of the rule of law. One can distinguish two distinct periods in the attitude of Marxist political science and jurisprudence towards the problem of “rule of law.” The literature of the 1950s, 1960s, and even that of the 1970s was characterized by the flat refusal of “rule of law,” replacing it with the institutions of socialist legality.

In contrast, in the last decade, political theorists have combined the ideas of the socialist state and the rule of law, argued in favor of the resulting socialist rule of law, analyzed the conditions for its realization, and theorized about the organization of its political and legal safeguards.<sup>18</sup> They have defined the criteria of a socialist rule of law as a democratic state of separated powers, governed by a constitution, that functions to initiate constitutional and administrative courts, create real independence for judges, develop the principles of self-government, effectuate the rule of law, guarantee human and civil rights through comprehensive legislation, strengthen democratic institutions and legal order, realize the conditions of a reliable legal regulation, and aid in developing the citizens’ legal culture. Consequently, if a socialist country incorporates these elements in organizing its state and legal system or improves its existing institutions in this direction, this qualifies as socialist rule of law.

The immense changes that have occurred recently in the region put the realization of parliamentary democracy on the agenda in order to facilitate peaceful political transitions from the one-party system into the multi-party system and from the party-state to the rule of law. In making the transition to the rule of law, Central-Eastern European countries should utilize the experiences of the different types of rule of law that have developed so far, while also paying attention to the distinctive historical, political, social, and economic characteristics of their state and region.

The Hungarian Constitution of 1989-1990 serves as a good example for countries transforming from a socialist political system into a pluralistic rule of law system. The

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<sup>16</sup> See Kálmán Kulcsár, *Lehet-e Jogállam Magyarországon [The Possibility of Rule of Law in Hungary]*, in JOGRENDSEZERÜNK A XX. SZÁZAD VÉGÉN 7 (1990).

<sup>17</sup> Which was similar to the world of the Anglo-Saxon legal system in so far as historical customary law survived in many respects, mainly in the field of Private Law and Constitutional Law.

<sup>18</sup> See, e.g., Lajos Ficzere, *Szocializmus és Jogállamiság [Socialism and Rule of Law]*, 3 JOGTUDOMÁNYI KÖZLÖNY 105 (1988); Karl A. Mollnau, *Selbstverständnis der Rechtswissenschaft und Sozialer Rechtsstaat*, 1 NEUE JUSTIZ 2 (1990); Zoltán Péteri, *A Jogállamiságról [On the Rule of Law]*, 9 MAGYAR TUDOMÁNY 726 (1989); V. G. Tihina, *A Szovjet Jogállam Problémái [The Problems of Rule of Law in the Soviet Union]*, in DOLGOZATOK AZ ÁLLAM - ÉS JOGTUDOMÁNYOK KÖRÉBŐL 157 (Antal Ádám ed., 1989).

principle of the sovereignty of the people is declared by a provision that states: "The Republic of Hungary is an independent democratic constitutional state" where "all power belongs to the people."<sup>19</sup>

The Constitution protects the people against autocracy, as follows: "None of the organizations of society, of the state bodies nor of the citizens shall direct their activities towards acquiring, violently exercising, or exclusively wielding power. Everyone shall be both entitled and obliged to take lawful measures against such endeavors."<sup>20</sup>

The principles of the multi-party system and the separation of the Party from the public power are also guaranteed: "Political parties may — under observance of the Constitution and the constitutional legal rules — be freely formed and freely operated in the Republic of Hungary."<sup>21</sup> Also, "the parties shall not directly exercise public power. Accordingly, no party shall have the right to guide any state body. . . ."<sup>22</sup>

The Hungarian Constitution, adopting the essence of the Fifth Amendment to the U.S. Constitution, declares that: ". . . no person shall be deprived of his/her liberty unless reasons provided by law therefore subsist and the procedure provided by law is conducted."<sup>23</sup>

Logically following from the principle of separation of powers and from the existence of the institutions of direct democracy is the declaration that the "Parliament, exercising its rights, deriving from the sovereignty of the people, provides for constitutional order of society and defines the structure, orientation and conditions of governing."<sup>24</sup>

The Hungarian Constitution restored the republican presidency and the republican form of state, stating, "The President of the Republic is the head of state of Hungary: he/she embodies the unity of the nation and watches over the democratic operation of the mechanism of state."<sup>25</sup>

The newly-created Court of Constitutionality examines whether the legal rules conform with the Constitution and carries out other duties referred to it by law. "If instances of incongruity with the Constitution are found, the Court of Constitutionality declares the Acts or other legal rules in question null and void."<sup>26</sup> The Constitution further provides that "Everybody shall have the right to initiate the procedure of the Court of Constitutionality in cases provided by law."<sup>27</sup>

A new institution — that of an ombudsman — is initiated following the Western European and Polish models: "The Parliamentary Commissioner for Administration shall be in charge of examining the shortcomings coming to his/her notice concerning constitutional rights, or having them examined, and taking general or individual measures for the remedy thereof."<sup>28</sup> "Everyone shall have the right to initiate the Parliamentary Commissioner's procedure in cases provided by law."<sup>29</sup>

To ensure the independence and objectivity of the administration of justice, the Hungarian Constitution declares that: "Judges shall be independent and subject only to law. They shall not be members of political parties and shall not display any political

<sup>19</sup> A MAGYAR KÖZTÁRSASÁG ALKETMÁNYA [hereinafter HUNG. CONST.] § 2, paras. 1, 2.

<sup>20</sup> *Id.* § 2, para. 3.

<sup>21</sup> *Id.* § 3.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* § 55.

<sup>24</sup> *Id.* § 19.

<sup>25</sup> *Id.* § 29.

<sup>26</sup> *Id.* § 32/A.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* § 32/B.

<sup>29</sup> *Id.*

activity.”<sup>30</sup> Similarly, “[P]ublic prosecutors shall neither be members of political parties nor display any political activities.”<sup>31</sup>

Perhaps these selected provisions also demonstrate that Hungary’s modified Constitution endeavors to integrate the main thrust of European and American legal development with Hungarian constitutional and state development.

Hungary has never had a legal regulation like the present one, which has established a substantial rule of law built on constitutional basic principles.<sup>32</sup> Naturally, this lawmaking process has only begun; there is a need to create further rules of law and to correct the ones already functioning.

It is well known that the realization of the constitutional rule of law depends not only on legal regulation but on social, political, and cultural elements as well. From among all these, I would like to emphasize only one. The existence and effectiveness of the rule of law turns upon its ability to ensure human personality and liberty, here and now in Central-Eastern Europe. The most important obligation of legislators, appliers of law, and jurists is to protect the human content of the rule of law — to protect humanity and other inherent values of law.<sup>33</sup>

### B. *To the Question of Democracy*

Jean-Jacques Rousseau, one of the greatest philosophers of democracy and the “Citizen of Geneva,” while meditating on the Social Contract, wrote in his work: “Taking the term in its strict sense, there never has existed, and never will exist, any true democracy. It is contrary to the natural order that the majority should govern and the minority should be governed.”<sup>34</sup> He added, “If there were a nation of gods, it would be governed democratically. So perfect a government is unsuited for men.”<sup>35</sup> In spite of this skeptic prophecy, numerous human communities, generation after generation, gave up their lives to establish a democratic form of government.

The communist and communist-controlled regimes that emerged in various European and Asian countries after World War II were officially called “people’s democracies.” Marxian doctrine holds that “the parliamentary democracy of the Western type is not a democracy, but rather a dictatorship of the ruling minority, the bourgeoisie.”<sup>36</sup> Only the socialist or people’s democracy is the “true democracy.” The collapse of the socialist-communist societies revealed that communism turned out to be a historical deadlock.

The common historical task of the Central-Eastern European countries is to establish democracy in both the institutions and the souls — the political culture. This means more than mere legislation or creation of organizations and institutions. This is the political creation of the nation. The victory of the new democratic governments in Central-Eastern Europe requires a new program promoting democracy. The establishment of democracy in these countries cannot be forced or follow one single sample, but it must be diverse, freely chosen, and built from below. Diverse approaches towards democracy

<sup>30</sup> *Id.* § 50.

<sup>31</sup> *Id.* § 53.

<sup>32</sup> The newly elected Parliament passed 178 laws (half of them statutes) within a year. During the same time, the government passed 190 decrees and 119 resolutions.

<sup>33</sup> See LON L. FULLER, *THE MORALITY OF LAW* (1969); JOSEPH RAZ, *THE AUTHORITY OF LAW* 163-229 (1990).

<sup>34</sup> JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT* 70 (Lester G. Crocker ed., 1967).

<sup>35</sup> *Id.* at 71.

<sup>36</sup> I G. N. MANOW ET AL., *MARXISTISCH-LENINISTISCHE ALLEGEMEINE THEORIE DES STAATES UND DES RECHTS* 222-51 (1974).

are being constructed in Poland, Czechoslovakia, and Hungary, but these approaches will only be successful if they are broad enough to include every ethnic community, so that everyone can value democracy as a freely chosen historical path.

Hungary's most spectacular changes began in the political sphere and essentially stayed there. As we saw above, the democratic establishment of institutions has been and is weltering, and one after the other has come to a constitutional framework for a new system both on the national and local levels. The transition process is far from finished, but what has already come to being is working.

Hungary is in the second period of the transition, when the elements of the old and new system subsist collectively, combining and colliding with each other. A good example of this is the development of one of the pillars of pluralist democracy, the process of party formation.

In the fall of 1988, boundless party-forming was characteristic. The elections one and one half years later not only limited the party-forming process, but stopped it in some respects. After the elections, six parties remained. Their activity, their everyday presence in the parliament, and their continuous political publicity, shows that the multi-party system is at work guaranteeing democracy. Parties that did not get into the Parliament are still heard from rather accidentally — mostly in connection with flagrant scandals.

As public attention shifted towards parliamentary work, the existence of the parties was subordinated in some respects to what they could achieve and produce in the everyday parliamentary fight. The existing parties must deepen and extend the social bases, and new parties must emerge to fill in the cracks.<sup>37</sup>

This is the point where we can interpret the principal difference between party forming in Western Europe and Hungary. In the Western-European tradition (mainly the Anglo-Saxon, the French, and the German), there are not only great party-forming trends, but the party-system gradually loses from direct political functions. On the one hand, corporative mechanisms free from politics came in to being. On the other hand, the parties themselves got over a "depolitization" phase, the essence of which is that they learn not only the political but the economic, professional, elective and pragmatic tasks of the society's integration.

Such modifications did not take place in the Hungarian historical party-systems; politics were always politics and no other manner of the society's integration developed within party politics. On the other hand, no such corporate mechanisms came into being which could have lightened party-politics and could have performed the complex task of the society's non-political integration. The Hungarian history has no overall, established tradition for the economic development of society and for the representation of its interests, and replacements for such traditions took shape in the present new system.

The new system is represented largely by parties which bear political functions.<sup>38</sup> However, democracy has requisites other than pluralism: the human operation of power and the controlling mechanisms, the political publicity, and the assurance of opportunities for participation. We must build democracy not only in institutions, organizations, and laws, but inside ourselves as well. Without respect for moral and political values, no moral politics exist, and there is no political nation which is built from

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<sup>37</sup> See LÁSZLÓ KÉRI, *ÖSSZEOMLÁS UTÁN [AFTER THE COLLAPSE]* 78-87 (1991); Rudolph L. Tökés, *A Második Átmenet Politikája Magyarországon [The Politics of the Second Transition in Hungary]*, in *MAGYARORSZÁG POLITIKAI ÉVKÖNYVE* 305 (1991).

<sup>38</sup> Notably, an active Social Democratic Party — a requisite of Western democracies — is absent from the Hungarian political palette.

below.<sup>39</sup> Democracy must be built in the souls, in the emotions, and in the everyday life. Only a democracy that is based on morals and everyday practice can be strong.<sup>40</sup>

As mentioned earlier, in Poland, Czechoslovakia, and Hungary, the political culture, ethics, and strength of democratic political activity did not and could not entirely take shape. In all three countries, a certain distrust towards the current power based upon centuries-old experience survives. Because system changes are still in their first stages, the parties cannot really prove their alignment towards democracy. Nevertheless, the faith of democratic activity conceded by political organizations and citizens can establish democratic political activity. This development could conceivably come about in two ways.

In the everyday political arena, the conflicts, conciliations, decision-making, and compromise-searching processes of business federations and the political subsystem may shape the norms, ethics, and culture of democratic politicization so that people can clearly understand the advantage of democracy.<sup>41</sup> All these must be accompanied by the political-legal training of citizens. In the former socialist counties, the depoliticization of the people resulted in most of the people concentrating on consumption and private life. Starting from this base, from 1988 to 1989, these countries became susceptible to the slogans and programs of the opposition.

Democracy cannot be proclaimed by laws — democracy needs democrats! An important task of the young democracies in Central-Eastern Europe is to work out a system which educates citizens to be “democrats” because “it goes hand in hand with the kind of schooling its children get.”<sup>42</sup> In addition, educational institutions and the media must strive to clarify and raise awareness of the nature of parliamentary democracy, the rule of law, human and civil rights, and the democratic political and legal culture. If the citizens thoroughly become acquainted with the order of our democratic constitutional state, the mistakes of the past, and the requirements of the future, their political activity, their sense of responsibility, and their readiness for cooperation will increase, and they will be willing to make sacrifices, if necessary.

In this respect, I think we can count on Western-European and American experts, programs, and extensive training of teachers, lawyers, and other professionals. A very important question in the new democracies is how to promote an equitable economic development and contain social unrest. To do this, the Central-Eastern European countries need a new type of democracy, not just a new democracy.<sup>43</sup>

Central-Eastern Europe hopes to establish an efficient mechanism of conflict-regulation and crisis-management based on a large national consensus and participatory rights. In the democratic transition of Central-Eastern Europe, a formalistic or procedural model of democracy would not work properly, and would certainly alienate people from politics. The people of these countries need a clear commitment by the new democratic state to enable all citizens to exercise fully their democratic political rights by providing all the necessary social and economic preconditions.

René Marcic properly pointed out that the constitutional state and democracy have common roots.<sup>44</sup> A constitutional form of government kept in check by the supreme

<sup>39</sup> FERENC DONÁTH, MAKÓI KIÁLTVÁNY *passim*.

<sup>40</sup> BIHARI, *supra* note 7, at 97.

<sup>41</sup> See Tamás Fricz, *Rendszerlehetőségek Magyarországon [System-Possibilities in Hungary]*, 10 VALÓSÁG I (1991).

<sup>42</sup> HOWARD, *supra* note 12, at 7.

<sup>43</sup> See Atilla Ágh, *Transition to Democracy in East-Central Europe: A Comparative View*, in DEMOCRACY AND POLITICAL TRANSFORMATION, *supra* note 10, at 116-19.

<sup>44</sup> See René Marcic, *Art Demokratie*, in KATOLISCHES SOZIALLEXIKON 138 (1964).

power of the people guarantees that the rule of law and human rights are truly realized. The rule of law must be democratic in its content as well as its procedure. The new government of Central-Eastern Europe must protect democracy and protect the rule of law from breaking down.

### *C. The Question of Citizens' Participation*

The peculiar development of the political participation of the people in Central-Eastern Europe has historical and ideological bases. Historically, as a consequence of a social structure still containing feudal elements, the political system was structured in a way that did not give widespread permanent and conscious experience of political participation, even though such an experience was common in the central and western parts of Europe. We can only talk about "deformed participation:" the submissive attitude of a citizen became typical under a paternalistic political structure.

Ideologically, most socialist constitutions give citizens the right to participate in public affairs in the two most important spheres of public life: the workplace and the dwelling-place. Direct political participation was liberally interpreted in the first decades of socialism, using reference to the Leninist ideology. Party-democracy, union-democracy, cooperative-democracy, factory-democracy, school-democracy, and dwelling-democracy were all interpreted as direct democracy. As a result, no national plebiscites were held in these countries for forty years.

Thus, political participation in the Eastern-European communist system was largely symbolic. Real participation in decision-making, or even in the selection of decision-makers, did not take place at a mass level. In every selection, between 95% and 99.9% of the people voted for the candidates listed on the ballots. Voting was a patriotic duty in which the citizenry were required to participate. In 1983, the Hungarian electoral law gave the right to the Patriotic People's Front to nominate "unofficial" candidates against whom the "official" party candidates must wage "vigorous" electoral battles for the right to represent electoral districts in the various councils and the Parliament. The reasons for the introduction of this "democratization" reform-arrangement may have been that the party-leadership sought to affirm the people's right to political participation, to widen social consensus, and to confirm its own legitimacy with little risk.<sup>45</sup>

Political participation also involved acts of "spontaneous demonstrative public assent." For instance, there were huge, government-approved demonstrations on May Day. Yet, police-terror was applied against the participants of anti-system demonstrations like those in the fall of 1989 in Czechoslovakia.

In Hungary, a new type of political activity emerged during the 1980s, comparable to the social environmental and student movements in the Western countries. Approximately 1,000 people participated in a network of the new social movements. These movements both supported transformation of the system and affected the existing social-political environment.

During 1989 and 1990, after the system-transformation in the Central-Eastern European region, elections finally came to mean the freedom of participation. In Hungary, as a result, local self-governments were established, replacing the "Soviet-System." The introduction of the self-government model to the firmly established pluralist political conditions promoted the institutional framework for local political interest.

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<sup>45</sup> See ELMÉR HANKISS, KELET-EURÓPAI ALTERNATÍVÁK [ALTERNATIVES IN EASTERN EUROPE] 106-16 (1988); VÖLGYES, *supra* note 1, at 186-89.

After the first months of inexperience, the advantages of a system of self-government, independence, and democracy have been proven. At the same time, the problems, largely in connection with their effectiveness, have become apparent. Independence appears with the establishment and operation of government and with the evolution of local creativeness and production. The real advantage of self-government is that government activity conforms to the demands of the governed. Local governments can freely apply the policies of both representative and direct democracy. The recent development of power at a local level is closely connected with the success of direct participation, which guarantees the autonomy of local societies. Because the autonomy of civil society has been abandoned and now lies only at the level of political pluralism, there exists no proper base for local social policy to initiate direct participation — local referendum, establishment of communities, public hearings — in self-government.

For example, the Hungarian Self-Government Act instructs the local communities on the conditions and frequency for holding public hearings. Out of lack of experience, some larger cities organize only one hearing a year, inviting the community to congregate into a large room to make general complaints. Public hearing such as these make little sense and are similar to the former “public” Soviet report-back meetings. The cultural lack of argumentativeness and aspiration for interest-reconciliation can be felt. This void is most apparent in larger cities where the battles over party politics overshadow disputes concerning community interests. The recent attention municipal corporations have shown towards establishing and executing concrete community programs has been a pleasant change. Therefore, the politics of local democracy have caused many of these municipal corporations to be suspicious of local political organizations, widely demanding the right to recall a mayor. European experiences with self-government warn that the government must be held accountable for its work, not during, but after the electoral cycle.

To summarize, we can verify that the Hungarian political mechanism is pluralized, but not properly decentralized. The difficult task of decentralization belongs not only to the government, but also to the political parties and to civil society. While the economic, constitutional, and, in particular, the political conditions of the region are not ideal, these must not be used to gloss over the shortcomings and mistakes of the participants in local politics. We must not be satisfied with the undoubtedly great change that brought power to local organizations in Hungary. Only the efficient operation of local power can bring us the feeling of revelation.

#### *D. The Problem of Civil Disobedience*

The obligation of obedience to the state and state law is an ancient problem of mankind.<sup>46</sup> The knowledge of this, naturally, developed in society as a result of several elements, the most important of which is the social experience developed throughout the course of history. Beginning with the fact that some of the rules of law are accepted by only a part of the society, we must distinguish between voluntary attitudes approving of rules and non-voluntary attitudes following the rules merely through the fear of sanctions or loss of prestige.

Obedience to law expresses a political element evidenced by the recognition of the legality of civil disobedience by numerous scientists and legal documents even before the actual age of revolutions. Theorists of natural law have much to say on the subject of civil disobedience. St. Thomas Aquinas believed that those in power who neglect the

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<sup>46</sup> See SOPHOCLES, *ANTIGONE* (Richard E. Braun trans., Oxford University Press 1973).



interest of the community for the pursuit of individual profit have to be overthrown.<sup>47</sup> According to John Locke, those who unite to form a society only partially give up their natural power; they do not give up the right to resist.<sup>48</sup> Even Jean-Jacques Rousseau considered revolt against a despot to be lawful.<sup>49</sup> The Hungarian Golden Bull of 1222 ends in a "resistance clause" stating that if the king or any of his "successors would like to act against these provisions at any time, by force of the document, the bishops, like as all the serfs and nobles of the country, together or separately, at present and forever have the right to resist the provision without committing the sin of faithlessness."<sup>50</sup>

Contemporary jurisprudence<sup>51</sup> and the political practice of modern times have a distinct image of civil disobedience. Contemporary natural law theory focuses on the consent to law rather than its source; whether we ought to obey the law must depend, in at least some measure, on what the law demands of us. Therefore, the right to rebel against an unjust regime and the right of civil disobedience to particular policies or law are forms of negative freedom. Legal positivist conceptions, on the other hand, profess the following of rules of law according to their state validity.<sup>52</sup>

Civil disobedience in Central-Eastern European countries is not a product of today. In Hungary, "passive resistance" against the Hapsburg-rule appeared in 1849, after the suppression of the revolution and the war of independence. After its forty-year-long prohibition in the period of socialism, we are now witnessing the reviviscence of the right to resist. The cause stems from the unsolved existential problems accumulated from the social, political, and economic changes in the region, mobilizing crowds to resist both concrete state provisions and the absence of them. New governments must be prepared for the uneasy task of solving public concerns while meeting the requirements of political rationality.

Civil disobedience is a political means, an outside-of-the-law activity that is free from violence. Item three of the Hungarian Constitution says that "[n]one of the organizations of society, of the state bodies or of citizens shall direct their activities towards acquiring, violently exercising or exclusively wielding power. Everyone shall be both entitled and obliged to take lawful measures against such endeavors."<sup>53</sup> The provision establishes the right and obligation to resist anti-constitutional actions or, more precisely, to take energetic measures against such activities, but only for certain cases.<sup>54</sup>

However, it must be emphasized that the provision was not permitted to be used as legal justification for civil disobedience.<sup>55</sup> At the beginning of 1990, when the Social Democratic Party called for civil disobedience against the so-called "interest-tax," again, the Constitutional provision was not permitted to be used as a legal basis for the refusal

<sup>47</sup> SAINT THOMAS AQUINAS, *SUMMA THEOLOGICA* (Editio Decima Quarta ed., 1885).

<sup>48</sup> JOHN LOCKE, *TWO TREATIES OF GOVERNMENT* (1683).

<sup>49</sup> ROUSSEAU, *supra* note 34.

<sup>50</sup> The Golden Bull of 1222 is the Hungarian parallel to the English Magna Carta.

<sup>51</sup> See, e.g., LORD DENNIS LLOYD & MICHAEL D.A. FREEMAN, *LLOYD'S INTRODUCTION TO JURISPRUDENCE* 146-47 (1985); JEFFRIE G. MURPHY & JULES L. COLEMAN, *PHILOSOPHY OF LAW* 11-32 (1990); RAZ, *supra* note 33, at 262-75.

<sup>52</sup> An investigation in Poland, Germany, and the Netherlands a few years ago well-illustrated the practical value of these tendencies. One of the questions asked whether rules of law considered unjust or incorrect in the opinion of the questioned person should or should not be obeyed. The distribution of positive answers was as follows: in Poland 45%, Holland 47%, and Germany 66%. Wolfgang Kaupen, *Public Opinion of the Law in a Democratic Society*, in *KNOWLEDGE AND OPINION ABOUT LAW* 43, 46 (C.M. Campbell et al. eds., 1975).

<sup>53</sup> HUNG. CONST. § 3.

<sup>54</sup> See Kálmán Kulcsár, *Az Alkotmányosság és a Kontinuitás [The Constitutionality and the Continuity]*, 8 VALÓSÁG 12 (1991).

<sup>55</sup> Statute XXXI of 1989 (Hungarian autonomous statute).

to honor the law. Likewise, in the fall of 1990, a taxi-blockade protesting an increase in the price of gas was deemed unconstitutional because its realization contradicted the statutory right of assembly.<sup>56</sup> The practice of the right of assembly must not realize a criminal act and must not injure the rights and liberty of others.

Nevertheless, civil disobedience, without violence and infringement of the law, functioning as a means of promoting social development, is considered acceptable by democratic rules of law.<sup>57</sup>

### *E. The Question of Human Rights*

One of the teachings from the forty-year socialist history of the Central-Eastern European countries is that the classic human-civil rights "were not in their right place." This misalignment delayed the development of these countries and contributed powerfully to those disorders and social-political crises which emerged during and immediately after the Communist period.

In general, the monolithic evaluation of human and civil rights prevailed in Central-Eastern Europe. According to this mindset, socialist human rights are fundamentally different from the bourgeois human rights. The preconditions for realizing human rights were created for the first time in the socialist countries. Under the socialist view, the functions of these rights have changed; human rights no longer operate as personal rights because citizens do not need to be protected from a state that represents their interests. For this reason, the socialist legal system is not based upon human rights either. The preference in the socialist system for economic, social, and cultural rights and the limited recognition of citizen rights suited the one-party political system of the Central-Eastern European countries. Without this preference, limited rights of citizens would have appeared in the constitutions of these countries. This ambivalence, if not contradiction, was increased through international agreements (UN documents, Helsinki closing document), creating a special incoherence with regard to human rights.

For example, in the former socialist constitutions, civil rights — among them the freedom of association and assembly — could have been practiced only when in accord with the interests of socialism. On the other hand, the aforesaid international documents compose a pluralist model which does not draw the boundary of such rights with reference to one party or to social organizations.

The system transformations that occurred in 1989 and 1990 decisively changed the field of human rights in the Central-Eastern European countries. As part of establishing the democratic rule of law, human rights finally took their proper place. The new conception of rights resulted in a change in terms of the quality and quantity of the rights based upon the most modern model in the world. This new model breaks decisively from socialism. The state is no longer a "bestower" — a caring paternalist state — but a "servicing" state. The individual is the "possessor" of the basic human and political rights resulting from his civil being. Although he now bears the burdens of his citizenship, he is also a legal entity in the full meaning of the word. As a citizen, the state exists by and for him. The political system depends on him.

<sup>56</sup> Statute III of 1989, § 2, item 3. The government, for political reasons, ended the blockade through an agreement of general amnesty negotiated with the representatives of the employers and employees.

<sup>57</sup> Some natural law theorists have sought to justify such activities as being lawful, possibly even when violence is deployed, if the activity or the law which is the subject of attack is demonstrably — whatever that may mean — contrary to its natural law. See e.g., TED HONDERICH, *VIOLENCE FOR EQUALITY: INQUIRIES IN POLITICAL PHILOSOPHY* (3d ed., 1980).

The Hungarian Constitution of 1990, as amended, states: "[t]he Republic of Hungary recognizes the inviolable and inalienable fundamental human rights; the observances and protection thereof shall be a duty of high priority of the State."<sup>58</sup> An order taken from the German Constitution, the Grundgesetz, interdicts the legal restriction of the contents of these fundamental human rights. To interpret the parameters of a single fundamental right, the Hungarian Constitution created the Constitutional Court.<sup>59</sup> The provisions of the amended Constitution reflect the new system of human rights as a fundamental value. The new 1989 regulation of the rights of association and assembly also reflect the new value system and meet international standards for human rights. The act recognizes the right of association as a fundamental and unconditional human right precipitating from the sovereignty of the people. By virtue of this, every citizen has the right to establish organizations and to participate in their activities with others. The founders of the Constitution were entrusted with the power to decide what kind of assemblies have a purpose in harmony with the constitution and are not prohibited by law. The act sets up two restrictions in this respect: no armed organization can be established and no social organization can be established primarily for economic-entrepreneurial activity. The explanation for this latter provision is that such organizations can be established under the Companies Act.<sup>60</sup>

The act, in comparison with the former regulation,<sup>61</sup> traces from new angles the state's supervision over organizations that were established on the basis of the right of association. The new act terminates the rights of administrative organizations to practice any kind of general legal or professional supervision over social organizations. To assure legality, only the courts — on the basis of a petition from an attorney — can issue obligatory orders against social organizations.

A separate act in the Constitution is concerned with the activity and management of political parties.<sup>62</sup> Political parties stand out among other social organizations that were established on the basis of the association right. Here, as well, the act treats the right to assembly as universal and fundamental, permitting the holding of peaceful meetings, demonstrations, and gatherings in which participants can freely express their opinion. The participants of these programs can impart their collective opinion to those who are interested. As a consequence, the free practice of the right of assembly is inextricably linked to the freedom of speech and petition right.

The right of assembly is restricted to prevent citizens from gathering for a criminal purpose or to infringe upon the rights and freedom of others. Additionally, the assembly must be peaceful, a legitimate condition present in almost every constitution worldwide and in international law. Further, if the program is to be held on public property, the organization must pre-register. Finally, under certain conditions, the act permits the police to maintain order. The framing of the rights of assembly and association were very important early steps towards the building of the Hungarian democratic rule of law.

To conclude, I would like to suggest that, as a result of the social transformation in the Central-Eastern European countries, two commendable outcomes have emerged: first, such values as human independence, self-determination, honesty, and reputation play an expanded role, and, secondly, the list of the rights of the individual have significantly expanded.

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<sup>58</sup> HUNG. CONST. § 8.

<sup>59</sup> *Id.* § 32/A.

<sup>60</sup> Statute VI of 1988.

<sup>61</sup> THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF HUNGARY, Act XX (1949).

<sup>62</sup> Statute XXXIII of 1989.

*F. On the Role of the Constitutional Court in the Rule of Law*

Rule of law means not only constitutional order based upon certain legal principles that limit the exercise of state power, but also the existence and functioning of institutions that maintain the recognized norms. When the Hungarian Constitutional Court was established, Western European, American, and Polish experiences were considered. The Constitutional Court was not given a clearly defined mission;<sup>63</sup> because of the historical context of its formation, the Constitutional Court had exceptional freedom to develop its place in the constitutional order. This included not only its political importance and jurisdiction, but also its legal character in a narrow sense as well.

However, the act establishing the Constitutional Court has become controversial as its flaws have become apparent. The dilemmas of the Constitutional Court's political and constitutional roles arose regularly during the first year.<sup>64</sup> The court on many occasions was directly challenged by political cases that came before it for consideration.<sup>65</sup> Specifically, the court was asked to determine whether its primary duty was to ensure abstract constitutional order or to remedy individual injuries affecting fundamental human rights.<sup>66</sup>

The Constitutional Court is entirely based on an abstract norm control. The competence of any constitutional Court includes prejudicial and subsequent inquiry on bills, statutes, or any other legal means in respect of their possible unconstitutional character.<sup>67</sup>

The two basic problems of a typical Constitutional Court cases have become publicity and the situation of the petitioner. With regard to publicity, the Constitutional Court has imitated an actual, public trial in only one case — the interest tax. In a case concerning capital punishment, the trial was more like a public hearing of experts. The Constitutional Court has also refused to hold public sessions according to the Italian model, where the brief opinion of the parties is read for the information of the press and the public. Instead, "trials" have become battles of the pen. With the introduction of concurring and dissenting opinions, the Constitutional Court has followed foreign examples without adopting an original method.

The situation of the petitioner is also a problem; abstract norm control can be requested by anyone. The different aspects of the problems are related to the theoretical role of the Constitutional Court (abstract order or individual legal remedy), the random revision of "old" legal material, the simply formal — hierarchical — unconstitutionality, and validity problems, in such a manner that there is an interrelationship between all of the above items and the specific questions of the change of regime.

Abstract norm control, as the primary activity of the Constitutional Court, makes the court into a guardian of the hierarchical legal system. Most recently the Constitutional

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<sup>63</sup> See László Sólyom, *Ellenőrzött rendszerváltás [A Controlled Change of System]*, 1991 VILÁGOSSÁG 365.

<sup>64</sup> One unexpected but resolvable problem for the Constitutional Court was how to screen the great number of petitions received. It was decided that the general secretary should review those petitions not falling within the jurisdiction of the Constitutional Court — and not worth referring somewhere else. He would explain in an informal and private letter that the Constitutional Court could not deal with that particular problem.

<sup>65</sup> Such cases as the Land Act, the interest tax, and issues relating to the President of the Republic directly challenged the court.

<sup>66</sup> This question has been on the agenda since the Constitutional Court was founded, though the examination and clarification of it only commenced at the end of the first year.

<sup>67</sup> Statute XXXII of 1989, para. 1.

Court has tried to move away from the abstract, hierarchic protection of the Constitution towards a remedy of individual grievances.

Issues of incompatibility between the democratic Constitution and the legal provisions enacted in the former regime are frequently brought before the Constitutional Court, but only in fragmented and random intervals. As a result, the Constitutional Court abrogates selected regulations that are unconstitutional rather than commenting on the wider issue of the validity of every piece of pre-revolutionary legislation.

The Constitutional Court also maintains the heritage of declaring unconstitutionality for formal reasons. Under the Suffrage Act,<sup>68</sup> those who stayed abroad on the day of voting were prevented from voting. Arguing that a fundamental right was restricted by a simple act and not by an act of constitutional force, the Constitutional Court considered it to be a limitation upon the constitutional right to vote.<sup>69</sup>

The Hungarian court may interpret the Constitution in two manners: (1) "theoretical" interpretation independent of specific cases, and (2) interpretation of the Constitution with a view towards individual, concrete cases. The two questions about the President of the Republic were answered by a positivistic interpretation of the Constitution.<sup>70</sup> In contrast, the Prime Minister's petition for the interpretation of Articles 70/A and 13 of the Constitution — the so-called "land act case"<sup>71</sup> — automatically required the Constitutional Court to outline the concept of unfavorable discrimination. In the decision, the Constitutional Court made an effort to preserve its independence from daily politics and, at the same time, set forth the legal ramifications of the basic question of the fate of state property after a political change of regime. In the judgment, the Constitutional Court properly established its role at the intersection of politics and constitutionality.

The most frequent topics of Constitutional Court interpretation are equal protection of rights,<sup>72</sup> the right of human dignity,<sup>73</sup> the conditions for imposing limitations on fundamental rights,<sup>74</sup> and the right to the protection of personal information.<sup>75</sup>

In interpreting the right of human dignity, the Constitutional Court adopted the legal development achieved in the fields of "general personal rights" and constitutional privacy. The Constitutional Court also outlined the original concepts about the relationship between the rights to life and dignity with reference to capital punishment. By the court's interpretation, the state may use the ultimate means of limitation only if the protection of the other right cannot be achieved by any other means and the limitation may not be broader in its extent than is absolutely necessary. The American doctrine of compelling state interest as well as the German doctrine of proportionality appear occasionally in the practice of the Constitutional Court. Meanwhile, the clauses allowing limitation on fundamental rights were replaced by the amendment of Section 8<sup>76</sup> — also based on a German model — prohibiting any limitation of an essential, fundamental right. This amendment was mixed with the above criteria (an unnecessary and disproportionate limitation infringes the essential contents). Of the rights listed, the court's most important interpretation was defining the contents of the right to protection of personal records and data.<sup>77</sup>

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<sup>68</sup> Statute XXXIV of 1989.

<sup>69</sup> HUNG. CONST. § 3, para. 8.

<sup>70</sup> Alkotmánybíróság [hereinafter Hung. Const. Ct.], 1990 Magyar Közlöny [MK.] No. 7 (Hung.).

<sup>71</sup> Hung. Const. Ct., 1990 MK. No. 21.

<sup>72</sup> HUNG. CONST. § 70/A.

<sup>73</sup> *Id.* § 54.

<sup>74</sup> *Id.* § 8.

<sup>75</sup> *Id.* § 59.

<sup>76</sup> Statute XL of 1990, para. 3.

<sup>77</sup> Hung. Const. Ct., 1990 MK. Nos. 2, 11, 18, 20; Hung. Const. Ct., 1991 MK. No. 11.

III. <sup>6</sup>CONCLUDING REMARKS

“Hungary’s moments are dear.”

István Széchenyi

One may say that the transformations of the political systems in the three Central-Eastern European countries — Poland, Czechoslovakia, and Hungary — have been definitively achieved. It is obvious that the newly established party structure will succeed. It is only a matter of time until the parliamentary government, the local business federation, and the balance and the task-division of interest conciliation between employers and employees take shape.

Many social conflicts will accompany the destruction of the almighty state and the stabilization of the new institution-system. However, transforming society is a bigger problem. There is a relative consensus among most of the citizens and the politics-making elite that essentially a market system must be established, but one that is tempered to be humanized and socially just. With regard to establishing this social market economy, the key issue is privatization; no modern civil economy and society can exist without a private property interest. Health insurance to protect against sickness and the infirmities of old age is another necessity. The incorporation of these basic Western principles and policies should not be exclusive to other ideas and notions of democracy. Rather, it foresees that we establish a society firmly rooted in democracy, but only in accordance with the political, economic, and cultural features of our region. The American, English, French, Scandinavian, and Latin forms of democracy, to name a few, all incorporate their own peculiar institutions, means, and methods.

This article proposes that new channels of development be instituted in Central-Eastern Europe. This does not mean any kind of provincialism, but only the realistic accounting of the conditions and values of the countries of the region.<sup>78</sup>

Every country in Central-Eastern Europe, including the Republic of Hungary, can establish a democratic society from its own strength. Real social and political consolidation can only be achieved, however, by joining the European Community. Therefore, to this end, the signing of the contract in December of 1991 to become associate members has great significance.

In conclusion, it is not an exaggeration to assume the democratic transitions of the three countries in question will provide an example for those countries of the world that still live under a dictatorship, and, still, the experience can positively affect the continued process of opening up the Eastern-European countries. This is why we scholars must do everything possible to ensure the success of this complex system-transformation.

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<sup>78</sup> See Fricz, *supra* note 41, at 2.