

12-31-2019

Changes in the Legal System: A Comparative Essay Based on the Hungarian Experience

Attila Harmathy

Follow this and additional works at: <https://digitalcommons.law.lsu.edu/jcls>



Part of the Civil Law Commons

Repository Citation

Attila Harmathy, *Changes in the Legal System: A Comparative Essay Based on the Hungarian Experience*, 12 J. Civ. L. Stud. (2019)

Available at: <https://digitalcommons.law.lsu.edu/jcls/vol12/iss2/2>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Journal of Civil Law Studies by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

CHANGES IN THE LEGAL SYSTEM: A COMPARATIVE ESSAY BASED ON THE HUNGARIAN EXPERIENCE

Attila Harmathy*

I. Foundation and Development of the Hungarian State.....	220
II. The Compromise of 1867.....	225
III. The Period of the Planned Economy	235
IV. The Period After the Collapse of the Planned Economy	244

ABSTRACT

This article is an attempt to understand the development of law, more particularly the civil law, in a country under constant changes, addressing history, sociology, economics, political science, languages, literature, arts, and, most importantly, civil law itself.

The country's history starts from the foundation of the Hungarian state in the 11th century, in the middle of Europe, trying to be independent between strong Western kingdoms and the Byzantine Empire, and creating legal rules based on Christian values. This aim was pursued under the domination of different empires: Tatar, Turk, Austrian, Russian, and German.

Political history helps understand the slow economic and social development, the special importance of public (constitutional) law, the importance of cultural development. Over the centuries, the development of civil law was connected with legal development in other countries of Europe, yet without a formal "reception" of Roman law. Attempts were made to codify civil law on basis of the classical civil codes but for different (mainly political) reasons without success. Consequently, although special important laws were enacted, Hungary had no written Constitution until 1949 and no Civil Code until 1959. Hungarian civil law was to a great extent

* Professor emeritus, Eötvös Loránd University Budapest. This article is based on the 41st John H. Tucker, jr. Lecture in Civil Law that was delivered on November 8, 2018 at the Louisiana State University, Paul M. Hebert Law Center.

judge-made law, with published decisions of the Supreme Court (the Curia) since the early 19th century, having binding force under conditions specified by Acts of Parliament.

After World War II a politically controlled and centrally directed planned economic system prevailed. Nevertheless, the Civil Code of 1959 reflected the previous Hungarian civil law. As a result of a slow political détente, the importance of comparative law kept growing and civil law could develop, to contribute to the profound changes in the political framework leading to a new political system in 1990. Since that time, the Hungarian civil law developed within the framework of European harmonization and Hungary became a member of the European Union in 2004. The Civil Code of 2013 was drafted in this context.

Keywords: Hungarian civil law, change of legal system, comparative law and changes of law, history of Hungarian legal system, reception of Roman law, codification of the civil law, court practice

Changes dominate our everyday life. Generations are classified in accordance with the date of birth in relation to their capability of adaptation to change. Important changes are present in the field of law requiring revision of basic legal phenomena as well. Changes of basic elements of law are not topics of legal history only¹ but are parts of everyday legal experience (some examples are given in the last part of this paper). There were spectacular changes in countries belonging to the former Soviet bloc, particularly in 1989 and 1990, when political, economic, social, and legal systems collapsed, and very different systems were established in a very short period of time. Several scholars visited these countries to examine (to some extent, as in a laboratory) the special events. It was clear that the changes taking place in the different countries concerned could not be understood without examining the international connections. It

1. Paul Mitchell has emphasized in his inaugural lecture at the Faculty of Laws, University College London, that the change of law is too important to be left to historians as law is in constant change. See Paul Mitchell, *Patterns of Legal Change*, 65 CURRENT LEGAL PROBLEMS 177 (2012).

was obvious also that the changes taking place in the different countries were determined by the political, economic, social bases and history of the countries concerned. Changes of political, economic, and social systems were not unknown of, but the circumstances were very different: in 1945 the German state collapsed, albeit in very different circumstances (and the changes were not directed by the new German state under control of the allied powers).²

The present paper outlines system transformation in Hungary. In the 20th and 21st centuries, a crucial question of the economic, social, and legal system was the role of the state. It concerned the basic infrastructure of the modern society. Recently, there have been considerable changes in the role of the state in different countries, which have resulted in important changes in legal regulation.³ Although the main topic is transformation of the legal system, this article will be focused on some of the main institutions, namely persons, property, contracts, and successions, i.e., basic institutions of the civil law according to continental European legal understanding.

The transformation of the main rules of the above institutions in Hungary is dealt with not only in their connections with politics, economy, and society, but also having in mind some basic aims of comparative law. This approach entails that law is considered as part of culture,⁴ serving both practical and scientific interests,⁵ asking what functions different legal institutions have in different countries,⁶ taking into consideration the given economic and social

2. MICHAEL STOLLEIS, *GESCHICHTE DES ÖFFENTLICHEN RECHTS IN DEUTSCHLAND* IV 32-37 (Beck 1999).

3. John Bell, *Administrative Law in a Comparative Perspective*, in *COMPARATIVE LAW, A HANDBOOK* 293-294 (Esin Örüçü & David Nelken eds., Hart 2007).

4. FRANZ VON HOLTZENDORFF, *ENCYKLOPÄDIE DER RECHTSWISSENSCHAFT* 14-15 (Josef Kohler ed., Duncker und Humblot 1904).

5. ÉDOUARD LAMBERT, *ÉTUDES DE DROIT COMMUN OU DE DROIT CIVIL COMPARÉ*, INTRODUCTION I. 915-916 (Giard et Brière 1903).

6. KONRAD ZWEIGERT & HEIN KÖTZ, *AN INTRODUCTION TO COMPARATIVE LAW* 44-45 (3d ed., Tony Weir trans., Clarendon Press 1998).

conditions⁷ and the kind of people concerned who dominate the legal system.⁸ Some kind of comparison is present at every step in the meaning formulated by René David: stepping up the level of studying rules of a foreign law in order to understand phenomena.⁹

The basis of this article is the concept outlined by outstanding French historian Fernand Braudel: the present is the outcome of experiences from much longer ago. Recent and remote history is the key for understanding the present and problems of every kind: political, social, economic, cultural phenomena.¹⁰ Accordingly, it seems that the complicated overall transformation of the political, economic, social, legal system can be understood taking into account the historical and international background. This article covers four periods of changes:

- the foundation of the Hungarian state,
- the second part of the 19th century and the early 20th century,
- the years after World War II,
- the period since 1989.

In each period a historical overview is given as background information. It is followed by a short characterization of some important legal institutions of the period. The third part outlines changes in some institutions of civil law in the given period.

I. FOUNDATION AND DEVELOPMENT OF THE HUNGARIAN STATE

The first transformation of law summarized in this part starts in the period of the foundation of the Hungarian state. It took several centuries and can be characterized briefly as a centrally directed, very slow process which was uneasily accepted by the society, but

7. PIERRE ARMINJON, BORIS NOLDE & MARTIN WOLFF, *TRAITÉ DE DROIT COMPARÉ* 38 (LGDJ 1950).

8. Max Rheinstein, *Legal Systems*, in *INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES* 208 (David L. Sills ed., Macmillan 1968).

9. RENÉ DAVID, *TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL COMPARÉ* (LGDJ 1950).

10. FERNAND BRAUDEL, *A HISTORY OF CIVILISATION XXXVI-XXXVII* (Richard Mayne trans., Penguin 1993).

the change was a necessity under the prevailing conditions at the time.

The Hungarian state is in the Carpathian Basin. This part of Europe was strategically important already during the period of the Roman Empire. Roman troops invaded a great part of the territory up to the Danube River in the first century A.D. The river could serve as defense for the Empire against tribes coming from Asia and at the same time as possibility to transport goods to the Black Sea.

The Hungarian tribes invaded the territory several centuries after the fall of the Roman Empire, probably in the 10th century A.D. They were breeding animals, but farming was also familiar to them.¹¹ For some years they tried to move further, and several groups attacked villages and cities in Western Europe, but they suffered serious defeats in the middle of the 10th century. They had a similar experience moving eastwards and facing the strong Byzantine Empire. They realized that they had no possibility of moving forward to find new territories where they could get animals; they had to settle down and to start agricultural production, farming in the Carpathian Basin.¹²

The change from nomad to sedentary tribes took place during a long period starting most likely in the 10th century. The economic change was closely connected with political and social transformation. Nomadic life presupposed different economic, social, and political conditions, and the change required a rather period, starting in the 10th and 11th centuries.¹³ The transformation was not quiet; often, clashes broke out.

The process of changes was not isolated from other parts of Europe. In the neighboring Western part of Europe, in the Austrian and Bavarian lands, power struggle was going on in the 10th and early 11th centuries; this resulted in a strengthened position of the Bavarian king. The Hungarian leader, understanding the power relations

11. ISTVÁN FODOR, VERECKE HÍRES ÚTJÁN... 241-246 (Gondolat 1975).

12. IGNÁC ROMSICS, MAGYARORSZÁG TÖRTÉNETE 36-37 (Kossuth 2017).

13. KORNÉL BAKAY, A MAGYAR ÁLLAMALAPÍTÁS 22-35 (Gondolat 1978).

in the country and in the neighboring countries, established relations with the Bavarian ruler. As a result of the agreement, his son married the sister of the Bavarian prince, was baptized a Catholic and got the name of Stephen. He became the first Hungarian king and had a great role in changing the religion of the Hungarian people to Christianity.

Converting to Christianity was important from the European political point of view and it was of great importance for the future of Hungary. In territories to the east of Hungary, the Byzantine religion and influence gained ground and so the Hungarian eastern frontier became borderland of the Christian part of Europe.¹⁴ The difference was essential, partly because religion had a great importance in medieval times. Religion also impacted political life, and even the structure of the state. In the Eastern European (Byzantine) structures, the Church was subordinate to the power of princes and absolute central power prevailed.¹⁵ In Hungary, a different system was established. The first Hungarian king, called later Saint Stephen, was crowned approximately in 1000 by the pope, who was not politically strong at that time. In addition, according to the prevailing view of the Catholic Church of that time, the authority of the pope and the power of the king were complementary in nature.¹⁶

Stephen did not become vassal of anyone, and he obtained the right to invest bishops and establish bishoprics. He invited several priests from Western European countries and established several bishoprics all over the country, which later on played an important role in the transformation of the political and economic system and in the education of the people.¹⁷

14. ANDREAS KRAUS, *GESCHICHTE BAYERNS* 63-64 (Beck 1988).

15. Jenő Szűcs, *The Three Historical Regions of Europe*, in *EUROPEAN LEGAL CULTURES* 33 (Volkmar Gessner, Armin Hoeland & Csaba Varga eds., Dartmouth 1996) [hereinafter *EUROPEAN LEGAL CULTURES*].

16. PÉTER ERDŐ, *JOG AZ EGYHÁZ HAGYOMÁNYÁBAN ÉS ÉLETÉBEN* 55-56 (Szent István 2016).

17. BAKAY, *supra* note 13, at 22-35, 142-152.

According to historians, the difference between the development in Western Europe (establishing the feudal system) and that in latecomers such as Hungary was in close connection with the period of change. In Western Europe, the social transformation was slow, organic, taking nearly 500 years. On the contrary, the change in Hungary was relatively rapid and the reorganization was the consequence of more central intervention “from above.”¹⁸

Some elements of the legal system can be found in the Acts of King St. Stephen. The Acts reflect the central position of the king: the ownership of the crown and the property granted to anyone by the ruler shall be protected.¹⁹ The owner of the property has the right of disposal and his disposition shall be respected after his death, too.²⁰ These were new elements in comparison with the former system of nomad tribes.

The close connection between property law, family law, and law of succession was reflected by the rule according to which upon decease of the husband, the widow was entitled to possess and use all property until she died, or she married again. Upon the death of the widow, all property fell back to the king unless there were relatives of the deceased husband.²¹ The rule was a clear indication of the property structure, of the woman’s legal position in the family and of the inheritance system. The role of the family and the crown remained of decisive importance until the late 19th century.²²

18. Szűcs, *supra* note 15, at 34.

19. Laws of King Stephen I, ch. VI (Hung.), *reproduced in* 1 THE LAWS OF THE MEDIEVAL KINGDOM OF HUNGARY (János M. Bak, György Bónis & James Ross Sweeney ed./trans., Charles Schlacks 1989).

20. Laws of King Stephen I, ch. V (Hung.), *reproduced in* 1 THE LAWS OF THE MEDIEVAL KINGDOM OF HUNGARY (János M. Bak, György Bónis & James Ross Sweeney ed./trans., Charles Schlacks 1989).

21. Laws of King Stephen I, ch. XXIV (Hung.), *reproduced in* 1 THE LAWS OF THE MEDIEVAL KINGDOM OF HUNGARY (János M. Bak, György Bónis & James Ross Sweeney ed./trans., Charles Schlacks 1989).

22. EMILIA WEISS, A TÚLÉLŐ HÁZASTÁRS ÖRÖKLÉSI JOGÁLLÁSA 86-87 (Akadémiai Kiadó 1984).

The essential elements of the fundamental change of the political, economic, social, and legal system were established in the 11th century. Nevertheless, it took a long time (centuries) until it was completed. According to historians, the process of transformation was directed mainly from above (by the central power) in contrast with the West European development. In addition, the nobility (having a privileged position) represented a larger proportion of the society than in the West. At the same time, the proportion of free citizens was considerably higher: every 20th or 25th person was a nobleman in Hungary, while only every 100th person in France. On the other side, every 10th person was a free citizen in France. In contrast, with Hungary where only every 40th or 50th person was a free citizen at the end of the Middle Age period.²³ The number of cities and that of their inhabitants was small in comparison with those of Western European countries. The position of cities, from a public law point of view, was similar to the general system: it was not based on vassalage but on taxpayer subordination.²⁴

In the early 13th century, the king's position was weakened and in 1222 the ruler, Andrew II, had to make a compromise with the noblemen and the clergymen. In the so-called Golden Bull (similar to Magna Charta of Great Britain of 1215) he promised to convoke the diet regularly and respect fundamental rights. The Golden Bull was an essential part of the Hungarian constitutional system up to the 20th century.

The Hungarian kingdom was strong when it was founded. Later it became weak because of several reasons (attacks by Tatar troops, battles of several interest groups). The legal machinery functioned all the time. The language was Latin. At the beginning of the medieval period, a considerable part of the country's lawyers studied abroad, mainly in Paris (those who could not afford

23. Szűcs, *supra* note 15, at 35.

24. GYÖRGY GRANASZTÓI, A KÖZÉPKORI MAGYAR VÁROS 150-151, 158-159 (Gondolat 1980).

to go to foreign universities studied while working in chancery).²⁵ A legal historian characterized the situation saying that the country may have been undergoverned, but it was over-judicialized.²⁶ On commission of the king, a chancery lawyer called Werbőczy, playing an important political role too, collected the statutes and the abundant customary law. He presented the collection (called *Tripartitum*) to the diet, which approved it with the aim of enacting customary law. The text, however, does not have the royal seal, so it was never signed into law. Nevertheless, it was published a few years later and applied as customary law until the 19th century.²⁷

II. THE COMPROMISE OF 1867

The second period of changes was in the 19th century. The problems faced in the second part of the 19th century, however, were rooted in medieval times. The transformation of the system was realized partly by central direction, partly as adaptation to changing conditions.

In the 14th century, the Hungarian kings could strengthen the central power, and Hungary was one of the richest countries in Europe (e.g., its gold mines produced more than five times as much as any other European state).²⁸ According to the available data from the second period of the 15th century, the king's yearly revenue corresponded to that of the French or Spanish ruler (leading powers of that period).²⁹ A dark period of the Hungarian kingdom started,

25. FERENC ECKHART, *A SHORT HISTORY OF THE HUNGARIAN PEOPLE* 37 (Grant Richards 1931); GYÖRGY BÓNIS, *A JOGTUDÓ ÉRTELMIÉGE A MOHÁCS ELŐTTI MAGYARORSZÁGON* 13 (Akadémiai Kiadó 1971).

26. MARTYN RADY, *CUSTOMARY LAW IN HUNGARY* 5 (Oxford University Press 2015).

27. See Péter Bónis, *The Tripartitum and the European Ius Commune, with Special Regard to the Commentators* 36 *ZEITSCHRIFT FÜR NEUERE RECHTSGESCHICHTE* 197-210 (2014) for the evaluation of the importance of the *Tripartitum*. See also RADY, *supra* note 26, at 15-20.

28. CARLILE AYLMER MACARTNEY, *THE HABSBURG EMPIRE 1790-1918* 36 (Macmillan 1969).

29. ROMSICS, *supra* note 12, at 129.

however, in the 16th century when a great part of Hungary was occupied by the Turkish army. This period did not simply entail an occupation, but continuous battles which lasted for 150 years. Most of the country was devastated and the central territories became practically empty: the inhabitants left for places outside battlefields or they were killed. The Turkish army tried to invade even Vienna more than once, but they did not succeed in capturing the city. At the end, the Habsburg king managed to agree with several European powers to create a unified European army which was strong enough to defeat the Turkish army in 1697. This battle resulted in the liberation of Hungary from the Turkish army.

During the period of the Turkish invasion, the territory of the Hungarian kingdom was divided into three parts: the middle part was invaded by the Turkish army, the Western part was ruled by kings belonging to the Habsburg family, and the Eastern part together with Transylvania (considered to belong to the Hungarian kingdom) was independent (nevertheless paying taxes to the Turkish ruler in exchange for not attacking). The Habsburg king was at the same time king of other countries (Austria, Czech kingdom), but all these countries were governed separately. The Hungarian state organs functioned according to Hungarian legal rules. However, there were central organs directing the whole empire with no participation of the different countries, e.g., in diplomatic or military questions. In Hungary, the local administration was exercised by Hungarian organs, where the Hungarian noblemen had a decisive role.³⁰ The Hungarian state functioned in accordance with the system established by Stephen and his successors.

After the end of the Turkish invasion, the country needed reconstruction, but the king's policy had other objectives. There were serious tensions between the king and the country. At the beginning of the 18th century a revolution broke out and lasted for several years with some assistance of different countries (mainly that of France

30. *Id.* at 187-188.

being in war with Austria). Lacking the necessary resources, the revolutionary army surrendered to the king's army in 1711. A few years later, however, the king had serious problems as he had no son and his daughter's (Maria Theresia) right of succession was denied by several European rulers pretending their own right of succession. The king made a compromise with the Hungarian diet. The diet recognized the rights of the king's female successor, and the king recognized Hungary's constitutional order and system of public administration.³¹

There was a peaceful period during the reign of Maria Theresia (who was supported by the Hungarian noblemen in her right-of-succession struggle) but after her death, the political struggle started again. King Joseph II was not even crowned as he did not want to accept the independent Hungarian legal system. The Parliament was not convened; the king ruled by means of decrees. Before his death, the king withdrew the decrees. Although the political tensions between his successor and the country had not ceased to exist, a compromise was achieved. In 1790, it was proclaimed that the new king promised under oath to respect the Hungarian legal order. That was already the period of the French Revolution. The French Revolution influenced Hungarian intellectuals too (some of them were executed or imprisoned), but there were no social or economic effects.

In the 18th century, Hungary was underpopulated, with a ruined agricultural economy. On the contrary, in the developed Western part of Europe, the first industrial revolution was going on. There was a fundamental change in production, the population was growing, urbanization developed, and social relations were changing.³² The revolutionary ideas and later on the Napoleonic wars had a great effect in other European countries, too, particularly

31. Acts I, II, and III of 1723 (Hung.).

32. W. A. Cole & Phyllis Deane, *The Growth of National Incomes*, in THE CAMBRIDGE ECONOMIC HISTORY OF EUROPE VI 4-11 (H. J. Habakkuk & M. Postan eds., Cambridge U. Press 1966).

in the German states. In Hungary the economy developed very slowly. Means of production in agriculture had not developed (the abolishment of serfdom took place only in the middle of the 19th century),³³ the industry was underdeveloped, and the lack of capital was a crucial problem of the economy as a whole.

In 1848, revolutions started in several European countries, including Austria, but they were put to an end soon. In March 1848, a revolution started in Hungary, too. Social, economic, and political tensions led to a national revolution against the ruler.³⁴ The ruler, Ferdinand, abdicated in December 1848 and the new Habsburg king, Franz Joseph, asked for the help of the Russian czar, who immediately sent his troops to Hungary. In October 1849, the Hungarian army had to surrender to the Russian army, which was in overwhelming majority. The young new king promulgated a new constitution based on the idea of a unified legal position of all countries under his rule.³⁵ For Hungary, the consequence was the loss of independence, the end of the Hungarian legal system, including parliament, courts, and local administration.

In a few years, however, the emperor had to face serious difficulties. The Austrian army lost battles in multiple European wars. The consequences of the war lost against Prussia in 1866 were particularly hard. Austria had to consent to the formation of Germany, from which Austria was excluded, and there were also financial problems. These events had serious consequences in Austrian domestic policy, too. The emperor had to recognize that Austria was no longer a German state, but a state with several nationalities, and the best solution seemed to be to make a compromise with the Hungarians.³⁶

33. Act IX of 1848 (Hung.).

34. GÉZA VÁRADY, EZERNYOLCSZÁZNEGYVENNYOLC, TE CSILLAG 28-36 (Gondolat 1976).

35. HEINZ SCHÄFFER, *Die Entwicklung der Grundrechte*, in HANDBUCH DER GRUNDRECHTE IN DEUTSCHLAND UND EUROPA VII/1 15-16 (Detlef Merten, Hans-Jürgen Papier & Heinz Schäfer eds., Müller & Manz 2009).

36. MACARTNEY, *supra* note 28, at 543-546.

In the second part of the 19th century a great transformation occurred in Europe: national states were created. The Habsburg emperor had to take into consideration that the conditions for creating a nation state were developed in Hungary, while in the case of other nationalities of the empire they were achieved sometime later.³⁷ After long negotiations, a compromise was made. An act was passed establishing that the king had promised under oath to respect the laws of Hungary, recognizing the constitutional and administrative independence of the country, and that the relationship of Hungary with other countries governed by the king would be the same as it had been determined in the Acts of 1723.³⁸ The Hungarian parliament recognized at the same time that foreign and military matters concerning all countries of the king would be decided and administered in common.³⁹

The compromise of 1867 opened for Hungary a new period of development. The country regained independence and fast development started. In the second part of the 19th century, the social and economic changes were important in Western European countries and it had an effect on other countries, too. In Hungary, all sectors of the economy achieved fast development; Austrian and German capital investment had a great role.⁴⁰ The state supported by different means the development of the economy; urbanization, industrialization, railway systems, and education developed.⁴¹ Although the development was important, the economy and society of Hungary could not achieve the level of the developed countries of Europe.⁴²

37. Gábor Gyáni, *Modernität, Modernismus und Identitätskrise*, in *KULTURTRANSFER UND KULTURELLE IDENTITÄT* 11, 17 (K. Csúri, Z Fónagy & V. Munz eds., Praesens 2008).

38. Act II of 1867 (Hung.).

39. Act XII of 1867 (Hung.).

40. ANDRÁS GERGELY & ZOLTÁN SZÁSZ, *KIEGYEZÉS UTÁN* 220-224 (Gondolat 1982).

41. GYÖRGY KÖVÉR, *IPAROSODÁS AGRÁRORSZÁGBAN* 26-35 (Gondolat 1982); MACARTNEY, *supra* note 28, at 703-705.

42. At the beginning of the 20th century the great majority of the population worked in the agriculture; see PÉTER HANÁK, *MAGYARORSZÁG A MONARCHIÁBAN* 330 (Gondolat 1975).

As a result of the fundamental political, economic, and social changes, the question was what kind of change would take place in the legal system.

The public law problems were reflected by Act No. I of 1687, which confirmed the rights promulgated in the Golden Bull (with the exception of the right of resistance to the king). The Act promulgated the recognition of the right of the king's son to be the next king on condition that prior to the coronation the future king would have to take oath to maintain all pre-existing rights and privileges and to recognize the rights promulgated in the Golden Bull. The reason why the Act was passed was to declare the independence of the country connected only by the personality of the king to other parts of the Habsburg Empire. Consequently, the king was bound to rule the country according to Hungarian rules and only the Hungarian Diet (Parliament) had the right to authorize the king to levy troops and to raise taxes.⁴³ During all of the 18th and 19th centuries, constitutional law issues were in the center of interest.⁴⁴ The prevailing concept (since the early period of the Hungarian state) was the "Saint Crown," meaning the unity of the king, the noblemen, and the territory of the state. Its important element was the limitation of the king's power.⁴⁵

It was declared that an act could be passed only with the consent of the Parliament; rights and privileges were acknowledged, and the court system and the independence of the courts were respected.⁴⁶ An important element of the Hungarian legal system was that decisions of the Supreme Court, the *Curia*, made since

43. ECKHART, *supra* note 25, at 144.

44. DOMOKOS KOSÁRY, *CULTURE AND SOCIETY IN EIGHTEENTH CENTURY HUNGARY 163-164* (Corvina 1987).

45. ENDRE NAGY & LAJOS RÁCZ, *MAGYAR ALKOTMÁNY- ÉS KÖZIGAZGATÁSTÖRTÉNET 45-46* (Gábor Máthé ed., HVG Orac 2007); BARNA MEZEY, *MAGYAR ALKOTMÁNYTÖRTÉNET 97-98* (Osiris 2009).

46. Act XII of 1790/91 (Hung.).

1723, were collected and published in 1800; since that time, decisions have been published regularly.⁴⁷

In the 19th century, particularly after 1830, the economy started developing slowly, but there were many hindrances. The law itself was mixed in nature: there were a lot of feudal elements, and some new rules fostered development. In the 19th century (particularly in the first part of it), something similar was also happening in other European countries,⁴⁸ but feudal elements remained important in Hungary because of the history of the country.

After the fall of the revolution in 1849 and with the new system introduced by the king, Hungarian law was abolished, the Hungarian court system ceased to exist, and the Hungarian system of administration was no longer in operation. Austrian law entered into force, the administration and the courts were replaced by new organs. Hungary was an administrative unit of the empire. The Austrian Civil Code became effective in Hungary in 1852. From a different perspective, one had to recognize that in the economic field the new system had advantages: no more taxes in commercial connections within the empire, free movement of capital, and construction of railway lines. Steps were also taken in other fields for modernization (e.g., in education). In the political field, however, passive resistance prevailed: the majority of the population was against the political power.

In spite of the general attitude against the political system imposed on the country, it is fair to recognize that some progress was made in the field of the law. Feudal elements of the legal system were eliminated. The ancient rule of limited rights of ownership (ensuring rights to the family and to the crown) was abolished, ensuring free disposal by the owner (to alienate or to mortgage the property), which paved the way for loans. The Austrian system of land registry

47. IGNÁ CZ FRANK, *A KÖZIGASÁG TÖRVÉNYEI MAGYARHONBAN I* 73-74 (Magyar Királyi Nyomda 1845).

48. HELMUT COING, *II EUROPÄISCHES PRIVATRECHT I* (Beck 1989).

was introduced, and it had an important role in loans and the purchase and sale of land. The Austrian Civil Code entered into force, replacing Hungarian customary law. The drafting of the Austrian Civil Code lasted for a long time and during this period many changes took place. The Code as a whole brought nothing very new, but during its preparation several smaller new elements cropped up.⁴⁹ The basic ideas of the Austrian civil law were not absolutely new for Hungarian lawyers, as they were mostly based on Roman law constructions. In Hungary, no reception of the Roman law took place as in some other European countries, but Roman law was not unknown (different constructions prevailed, however, particularly in property law and in matrimonial law, where canon law was applied).⁵⁰

In the early 1860s, the king made some concessions because of the problems in international relations and it seemed necessary to ease political tensions within the realm. One of the measures taken was the reestablishment of the Hungarian judicial system. The question was, however, what kind of law should be applied by the courts. Up to that point, no agreement had been reached between the king and Hungary (an overall passive resistance still existed).

By that time profound changes had taken place in social and economic conditions, but they needed confirmation in the political and legal fields to continue with the changes. The basic question was whether foreign law should be accepted or if, instead, the old Hungarian rules should be chosen and work out new rules based on those old rules. The crux was the change of the legal system.

49. Johannes Pichler, *Der Kampf um die Kodifikation*, in *RENAISSANCE DER IDEE DER KODIFIKATION* 18, 22 (Franz Bydlinksi, Theo Mayer-Maly & Johannes Pichler eds., Böhlau 1991).

50. GYÖRGY BÓNIS, *KÖZÉPKORI JOGUNK ELEMELI* 66-67, 87, 96 (István B. Kállay ed., Közgazdasági és Jogi Könyvkiadó 1972); IMRE ZAJTAY, *The Permanence of Roman Law Concepts*, in *EUROPEAN LEGAL CULTURES*, *supra* note 15, at 68; GÁBOR HAMZA, *ENTSTEHUNG UND ENTWICKLUNG DER MODERNEN PRIVATRECHTSORDNUNGEN UND DIE RÖMISCHRECHTLICHE TRADITION* 377 (Eötvös Universitätsverlag 2009).

One hundred years later, Alan Watson published his ideas on legal transplants. According to him, many legal rules make little impact on individuals and it is important that there be a rule; legal rules are not peculiarly devised for a particular society and this is not a matter for great concern.⁵¹ The opposite view was expressed by Otto Kahn-Freund. He summarized the position saying that not only the knowledge of the foreign law is required, but also its social and political context. The use of comparative law for practical purposes becomes an abuse if it is informed by a legalistic spirit which ignores this context of law.⁵²

In 1861, a conference of chief justices was convened. The conference had the task to work out proposals concerning the law to be applied by the courts. The question was partly to modernize the legal system. From this point of view, the simplest way would have been to continue to apply the Austrian Civil Code, which was in force at that time in Hungary too. The opposite position was to stick to the independence of Hungary and to return—at least provisionally—to rules of the Hungarian law which reflected in many respects a heightened level of social and economic development. At that time, however, the king had not been crowned and no political agreement had been reached; the country still was passively resisting.

The conference of justices decided to return to the old Hungarian rules, with some exceptions which seemed inevitable. One of those exceptions was the regulation of land registration and the rules of the Austrian Civil Code on that matter. Maintaining these rules in force until new rules would be enacted seemed inevitable. The conference also prepared rules of procedure, so that the court system could start working. The conference presented the decisions to the Parliament. The Parliament and later the king also approved the decisions, but no act was passed because of the constitutional crisis.

51. ALAN WATSON, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* 101 (2d ed., Scot. Acad. Press 1974).

52. Otto Kahn-Freund, *On Uses and Misuses of Comparative Law*, 37 *MOD. L. REV.* 1-27 (1974).

Thus, the Supreme Court, the *Curia*, published the decisions to be applied as interim rules until new rules would be enacted by the Parliament.⁵³

As a result of the interim rules, a part of the rules on property and succession was modified, but the rest of the civil law needed modernization. After the compromise, a very active legislative activity started, and different drafts of a future civil code were prepared. There were different ideas as to the reception of concepts or rules of other countries, particularly those of the German lawyers and that of the commercial code of the German states. The debate about the reception of foreign rules continued. On the one side, the reception of the rules of developed countries was requested irrespective of any political or other aspects.⁵⁴ On the other side, the importance of maintaining traditional positions was emphasized.⁵⁵

The development of legislation demonstrated the correctness of Zimmermann's statement (made about a different topic) that different parts of the civil law have different features, and so family law and the law of succession are very dependent on social conditions. Also, property law and contracts may be different in nature.⁵⁶ Thus, the Commercial Code of 1875 was based to a great extent on the Commercial Code (of 1861) of the German states.⁵⁷ Meanwhile, the laws on family law, including marriage, (distinguishing canon law and state law rules) were a reflection of Hungarian political and social relations. Later on, more than one draft of a Civil Code was prepared and presented to the Parliament, but the bills were not ap-

53. JÁNOS ZLINSZKY, WISSENSCHAFT UND GERICHTSBARKEIT 168-169 (Klostermann 1997).

54. REZSŐ DELL'ADAMI, AZ ANYAGI MAGÁNJOG CODIFIKÁCIÓJA 318 (Athenaeum 1877).

55. Quoted by MÁRIA HOMOKI NAGY, GESCHICHTE DER ZIVILRECHTLICHEN KODIFIKATION 488-489 (Gábor Máthé ed., Dialóg Campus 2017).

56. REINHARD ZIMMERMANN, THE LAW OF OBLIGATIONS, ROMAN FOUNDATIONS OF THE CIVIL LAW TRADITION 19 (Oxford U. Press 1996).

57. ISTVÁN APÁTHI, A MAGYAR KERESKEDELMI TÖRVÉNY TERVEZET 8-9 (Heckenast 1873).

proved by the Parliament because of different political reasons. Although there were several separate acts concerning civil law relations, the Hungarian civil law remained to a great extent judge-made law until 1959.

III. THE PERIOD OF THE PLANNED ECONOMY

The third period started as necessity, but shortly transformed into a fast centrally directed, forced series of changes which were alien to the society and economy. It led to a new period of changes (discussed in the fourth part of this paper).

The development of the Hungarian society and economy came to an end when World War I started. The war had disastrous consequences for the country. After the war, the country faced economic crisis. Germany started World War II in 1939, and Hungary (geographically between Germany and the Soviet Union) entered into the war in 1941 as an ally of Germany. The preparation for the war and the war itself hindered the development of the society and the economy. In March 1944, the country was invaded by German troops, in September 1944 the Soviet Army entered into the Carpathian Basin, in December 1944 started the battle of Budapest that lasted until February 13, 1945. The war had disastrous consequences for the country. Many Jews were killed in concentration camps (Jewish communities represented 5 per cent of the population, and after the war that figure declined to 2 per cent),⁵⁸ several hundred thousand people died in battles or were taken to the Soviet Union, means of communication, railways, bridges, and dwelling houses were destroyed. Units of the Soviet Army stayed in Hungary even after the end of the war and left the country only in 1991. The Communist Party seized power in 1948 and created a new political and economic system.

58. IVÁN T. BEREND, *CENTRAL AND EASTERN EUROPE 1944-1993* 5 (Cambridge U. Press 1996).

Before 1948, Hungary had multiple acts containing elements of the constitutional order, but no single constitutional charter. In 1948 a constitutional act was voted by the parliament of the new political system.⁵⁹ The preamble of the constitution expressed the aim to create a very new political, economic, and social system with the help of the Soviet Union. A strongly centralized political system was brought about with no political freedom. As that was the period of the Cold War, the economy was designed to prepare for the next war. On basis of central direction, heavy industry was developed, even if Hungary had no raw material and no energy resources for it. There were some changes after the death of Stalin in 1953, but a stricter political control returned soon. In 1956, revolution broke out, but it was oppressed by the Soviet Army. After a period of vengeance, concessions were made by the political power and living conditions became better in Hungary than in most of the other socialist countries. As a result of the *détente* in international political relations, Hungarians had the opportunity of having contacts with the Western world. Step by step, Hungarian lawyers could establish international scientific relations, mainly by means of comparative law.

The centrally directed economic system became practically bankrupt. In the mid-1960s, a so-called economic reform was introduced, but soon came to a halt because of political reasons. The international economic changes, including the oil shock, had serious consequences for the Hungarian economy. The system could not be maintained in its original form. Economic and political changes took place step-by-step, but these had not modified basic elements. Foreign debt and structural problems resulted in the bankruptcy of the system by the end of 1980s, in close connection with the collapse of the Soviet bloc.

After World War II, between 1945 and 1948, the first steps taken by the state aimed at restarting life in the country in ruins. In the

59. Act XX of 1948 (Hung.).

field of legislation, the first step concerned the constitutional position. It was declared that Hungary is a republic and members of parliament are elected by the people of Hungary.⁶⁰

One of the serious problems before the war was the ownership structure of land. Few owners (among them noble families) possessed a great part of agricultural land, and the number of landless peasants was high. Social tension was high. The government between the two world wars distributed some land, but that distribution was of small importance. At the end of World War II, the Communist party forced land reform in all Central and East European countries. In Hungary, a radical land reform was implemented⁶¹ and it resulted in typically small estates (140–280 acres), where it was hardly possible to make any profits on farming.⁶²

In the first years after 1945, important steps were taken aiming at social changes. As early as in the period of World War I the role of women had changed: as men were soldiers and far away from the family, women became the center of the family and, at the same time, women were the ones who had to work. The same happened twenty years after the end of World War I, during World War II. As a result, the position of women changed profoundly, even in countries of Central and Eastern Europe. In Hungary, a sign of the important change of the position of women in society was the act of Parliament recognizing the right of women to pursue university studies with the same rights as men.⁶³

In connection with the changes during the war period, the concept of family changed all over Europe. As husband and wife were far from one another and as social control systems did not function in the same way as in years of peace, the role of the social institution of marriage lost its former importance.⁶⁴ At the same time, property

60. Act I of 1946 (Hung.).

61. Act VI of 1945 (Hung.).

62. BEREND, *supra* note 58, at 20.

63. Act XXII of 1946 (Hung.).

64. HARTMUT KAELBLE, *SOZIALGESCHICHTE EUROPAS* 28, 36-37 (Beck 2007).

relations had also changed and they were closely connected with family relations.⁶⁵ For example, keeping immovables for the family was very important in an agrarian society, but this did not have such importance in an urbanized society with mass production and a different property structure.

In Hungary several acts of Parliament were passed after 1945 concerning problems of family relations. Changes in the society's family and property structure were reflected in the modification of succession rules. As during years of war there were huge numbers of death cases, inheritance issues had to be solved every day. Furthermore, the succession rule based on the concept of large families was unacceptable in the middle of the 20th century, particularly under post-war communication possibilities.⁶⁶ Consequently, the right to inherit was limited to members of the smaller family. Another important step was the regulation of the rights of children born out of wedlock, ensuring them equal rights as other children (the number of these children was important, partly as a result of relations during war period, partly because of the high number of rapes committed by soldiers of the invading army).⁶⁷

The period between 1948 and 1990 was characterized by constant changes in the legal system in accordance with the transformation of the political system. The main feature of the new system was central direction in all aspects of political, social, and economic life. At the beginning, it was a strict system, later it was more relaxed and, at the end, steady erosion was salient. The political process was only partly reflected by the civil law.

The political aim was to get rid of every element of the former regime as soon as possible. Ownership relations changed quickly. State ownership was established by means of a series of legal rules

65. JEAN CARBONNIER, *FLEXIBLE DROIT : POUR UNE SOCIOLOGIE DU DROIT SANS RIGUEUR* 264 (10th ed., LGDJ 2001).

66. Act XVIII of 1946 (Hung.).

67. Act XXIX of 1946 (Hung.).

on nationalization: property was taken from private owners (including even smaller dwelling houses) promising that some kind of compensation would be afforded, but this only took place after the collapse of the system (i.e., after 1990).

The political aim of abolishing private ownership could not be achieved, however, in the field of agriculture. Two or three years after the land reform, when a great part of the population became owner of land, it was politically not feasible to nationalize land. During the whole period of the political system, land was formally not taken from peasants, it was not nationalized. Collectivization took place in the form of creating cooperatives. Peasants were forced to become members of cooperatives, transmitting their land to cooperatives, but formally keeping the right of ownership. Later on, however, no one could state which piece of land belonged to whom—after the changes of 1990, what should be given back caused serious problems.

The transformation of agricultural relations was realized not only by forced creation of agricultural cooperatives, but by other means, too. Industrialization needed great investment. The national economy destroyed by the war was unable to finance the investment. The solution was imposing a great part of the burden on agriculture, on peasants, by means of taxation. Peasants who could not pay the taxes were put to prison. With the exception of the old generation, people fled from villages to cities, where the new industrial enterprises needed workforce. The thousands of newcomers in cities having problems of shortage of flats caused additional problems and social tensions. The mass movement from villages to cities also contributed to the weakening of family ties and had several other consequences (increase of alcoholism, health problems). One of the consequences was that family ceased to be the economic unit of society.⁶⁸

68. ENDRE NIZSALOVSZKY, *A CSALÁD JOGI RENDJÉNEK ALAPJAI* 101 (Akadémiai Kiadó 1963).

Consequences of social changes were reflected by changes in family law rules: equality of spouses was recognized, common ownership of spouses became the rule, and hard conditions of divorce were abolished.⁶⁹

As a result of the agricultural policy, private ownership on land was maintained, but with restrictions. Not only ownership of land could not be abolished, but in general the political situation was not favorable to terminate private property. Consequently, ownership, including the right of inheritance was maintained.⁷⁰

Companies were nationalized. Private economic activity was restricted and taxed heavily. Contractual relations were regulated in detail by central state organs. Market relationships between the nationalized enterprises were replaced by plan targets. Rules of the so-called plan contracts changed often. Disputes between state enterprises were no longer decided by courts, but by special state organs.⁷¹

The transformation of the whole body of civil law according to the requirements of the new political system was not easy, as the civil law was not codified. It was to a great extent judge-made law. Decisions of the Supreme Court had a decisive role. Therefore, the Government asked the Supreme Court to reconsider decisions of principle and publish the list of decisions which remained applicable.⁷² In 1952, a new code of procedure in civil law litigation was passed by the Parliament.⁷³ The code limited the parties' rights in the procedure and strengthened the role of the court and of the public prosecutor.

In 1953, the drafting of the Civil Code started. The best professors of civil law participated in the drafting committee and had an active role. The bill of the code was presented to the Parliament in

69. Act IV of 1952 (Hung.).

70. Sections 7 and 8 of the Constitution of 1949 (Hung.).

71. Analysis was given by GYULA EÖRSI, *A TERVSZERZŐDÉSEK* (Akadémiai Kiadó 1957).

72. Government decree No. 4338/1949. (XII. 6.) MT rendelet (Hung.).

73. Act III of 1952 (Hung.).

1959 and it was accepted without any serious debate.⁷⁴ The first Civil Code in Hungarian legal history contained only 685 sections. The reason was that the economy was being constantly reorganized and there were political changes, as well. Important changes took place in agriculture: forced organization of agricultural cooperatives was coming to an end. The state direction of the economy was under constant redesign. Under these conditions, the courts had an active interpretation role, and the traditional decisive role of the Supreme Court remained, but in a modified form.

The Civil Code contained rules of political importance concerning the role of the state and the special position of state property. However, in the field of contracts and the law of succession the main ideas of the civil law of the pre-war period were maintained. Nevertheless, the rules on contracts also reflected the requirements of the planned economy.

It was obvious that the drafters of the code had relied in many aspects on the draft of the Civil Code of 1928, on the pre-war court practice, and on legal theory. In contrast with some other countries of the socialist political bloc, the Hungarian Civil Code adopted only some elements of the political changes. Due to this fact, the Code could serve later on—with several amendments—the process of returning to the market economy.

In the 1960s the serious structural problems of the system became evident. At the same time, groups within the ruling party aiming at realizing political reforms gained ground. The political leadership accepted the concept of reform. In the field of economy, the main idea was to abolish strict detailed central direction and combine planning with an operative market. It was an important change and it needed serious transformation of the system. Important changes were needed in legal rules, too. The Hungarian reform ideas were in harmony with similar reform concepts

74. Act IV of 1959 (Hung.).

in Poland and Czechoslovakia.⁷⁵ The reform could not be realized, however, because the political development in Czechoslovakia went further than it was acceptable in the Soviet Union and in political hard-liner countries. In autumn, Czechoslovakia was invaded by armies of the countries of the Warsaw Pact and the reform was put to an end.⁷⁶ In Hungary, the change was not complete. Some elements of the reform had been implemented. A special mixed system was brought about.

Differences in the legal system became even more apparent by the end of the 1970s and 1980s. At the end of 1970s, the second oil shock caused problems in the world economy. Different countries reacted in a rather different way, which mirrored the special nature of each of the systems of those countries.⁷⁷ The Hungarian economy was near bankruptcy and it was necessary to take steps towards a market economy, as the centrally-directed plan economy was inefficient. Private activities were permitted in secrecy. In agricultural cooperatives, peasants were permitted to have a small private economy. The importance of hidden private economy was particularly great in agriculture already in the 1970s and 1980s. About 38-50% of agricultural produces, which could be sold to the world market, was brought about by private units.⁷⁸ Furthermore, agricultural cooperatives obtained the right to start with additional, non-agricultural activities (e.g., create units pursuing construction activities). Under the umbrella of state enterprises, units were created making contracts with enterprises for production.

The general reform ideas gained ground again. In the field of civil law, legislation realizing reform ideas, stopped in early 1970s,

75. See LAW AND ECONOMY IN SOCIALIST COUNTRIES (Gyula Eörsi & Attila Harmathy ed., Akadémiai Kiadó 1971) (discussing concepts of legal questions of the economic reform in different socialist countries).

76. BEREND, *supra* note 58, at 145-152.

77. TERENCE DAINTITH ed., LAW AS AN INSTRUMENT OF ECONOMIC POLICY (De Gruyter 1988).

78. István Harcsa & Imre Kovács, *Farmerek és mezőgazdasági vállalkozók*, in TÁRSADALMI RÍPORT 1996 104 (Rudolf Andorka, Tamás Kolosi & György Vukovich eds., TÁRKI 1996).

and got ground in 1977, when a general revision of the Civil Code took place.⁷⁹ In many respects, it was a return to previous civil law rules which were not compatible with strict central planning. This development recalls Hayek's statement concerning the role of public law expressing socialist and totalitarian ideologies but withering away: "public law passes but private law persists."⁸⁰ In the case of Hungary in the 1970s, however, the situation was complicated as a great part of the civil law was full of public law elements. This was particularly so in the field of property law (rules on state ownership and restrictions on private property), rules on state-owned enterprises and a part of contracts (contracts between state-owned enterprises). In 1977, the essential elements of property law could not be modified due to political ideas. Simultaneously, with the modification of the Civil Code, rules on state-owned enterprises also changed (strengthening the position of directors of state enterprises—the change had serious consequences in the second part of the 1980s in the process of privatization).⁸¹ As a result of the changes, the situation has been characterized in the mid-1980s as a mixed economy.⁸²

By this time, the government permitted the population of Hungary to travel abroad and to engage in academic contacts, even if under strict conditions. Hungarian scholars could get acquainted with new scientific results. In the legal field, the main field of academic contacts was comparative law. In Hungary, there was a tradition of participating in comparative law contacts. Professor Elemér Balogh participated in the establishment of the International Academy of Comparative Law and he was

79. Act IV of 1977 (Hung.).

80. FRIEDRICH A. HAYEK, *LAW, LEGISLATION AND LIBERTY* 134-135 (Routledge & Kegan Paul 1973).

81. Act VI of 1977 (Hung.).

82. János Kornai, *A magyar gazdasági reform jelenlegi helyzetéhez és kilátásaihoz*, in *GAZDASÁGUNK HELYZETÉRŐL ÉS FEJLŐDÉSÜNK PROBLÉMÁIRÓL* 33, 49 (Róbert Hoch & Iván Major eds., MTA Közgazdaságtudományi Intézet 1985).

Secretary General of the Academy during many years.⁸³ The Academy of Comparative Law became an important field of contact since the late 1960s, but it was not the only channel of getting information. Contacts could be established with French, German, English, and even U.S. universities, research institutes, and organizations. The contacts and information helped Hungarian lawyers in (among other fields) codification. Thus, the amendment of the Civil Code of 1977 contained rules on consumer protection in the law of contracts, then a rather new tendency even in the law of developed countries of Europe. The new regulation of contracts has also considered changes such as those related to the problems of long-term contracts.⁸⁴

Another new element of the amendment was the regulation of the widow's right of succession. The traditional rule was the right of usufruct over the deceased's property. Under the conditions of the modern society, the traditional rule caused serious problems. The typical object of the property was no more land but movables and money. Another factor causing problems was the change of family relations. Divorce became a typical issue and in several cases the right of usufruct of a young widow practically excluded the right of succession of descendants (e.g., in the case of a car). Therefore, the amendment of the Civil Code introduced the right of replacing usufruct with the right of inheritance of a child.

IV. THE PERIOD AFTER THE COLLAPSE OF THE PLANNED ECONOMY

In the 1980s, problems in Hungarian economic and social relations became unmanageable. The government had to openly admit that the debts of Hungary with foreign debtors were so great that the state budget could hardly cope with them. Several state-owned en-

83. Louis Milliot, *Elemér Balogh (1881-1955)*, 78 BULLETIN DE LA SOCIÉTÉ DE LÉGISLATION COMPARÉE 805 (1955).

84. See, e.g., several articles of Ian R. Macneil and specifically, IAN R. MACNEIL, *THE NEW SOCIAL CONTRACT* (Yale U. Press 1980).

terprises were practically bankrupt. The standard of living decreased.⁸⁵ In 1989, the economic situation became even worse. Debts increased although the selling of state enterprises (privatization) had already started. The Hungarian currency was devaluated, the standard of living decreased, and interest rates increased. The bankruptcy of the state was evident and almost admitted openly.⁸⁶ In international relations, it became evident that the Soviet Union also had serious difficulties, its position became weaker and was unable to maintain its positions in the countries of the Warsaw military pact. The diplomatic activity of the United States and of the Federal Republic of Germany increased particularly in Hungary and Poland.

Under the changing conditions, the position of the Communist party could not be maintained although concessions were made in the economic and political fields in the 1980s. The most important step in the process of transition to a new system was the Act of Parliament on associations in January 1989.⁸⁷ Although the act concerned private law associations too, its political importance was due to the fact that it also permitted political associations. Political groupings became stronger, and an opposition platform was brought about.

The withdrawal of a part of the Soviet troops from Hungary started in April 1989. In May 1989, Reagan and Gorbachev met in Moscow. In July 1989, President Bush visited Poland and Hungary. In September 1989, Hungary opened the border to citizens of East Germany staying in Hungary to leave for Austria (it was a step towards the collapse of the regime in East Germany). The political and military alliance of the Warsaw Pact was dissolved at the end of June 1991. In June 1991, the last Soviet troops left Hungary.

85. Unofficial but published grounding of Act XVII of 1988 on state budget of 1989 (Hung.).

86. Unofficial grounding of Act LII of 1990 on the realisation of the state budget of 1989 (Hung.).

87. Act II of 1989 (Hung.).

In 1989, the government started negotiations with the opposition in the framework of the so-called round-table meeting and an agreement was reached on free elections, amendment of the Constitution (changing its character essentially), and establishment of the Constitutional Court. As a result of the election, a new Parliament started its activity in May 1990 and in this Parliament the opposition parties had the majority of deputies. A new epoch started changing the whole political, economic, and social system.

A special feature of the change of the system was that every element had to be reconstructed and even new bases had to be created. That was the situation in the political life, too. Political parties had been destroyed as a result of the 1948 Communist political takeover (traditional peasant, labor parties ceased to exist and their leaders were either put into Russian or Hungarian prisons or had to leave the country). The ruling party was more an instrument of direction than a political party in a democratic system. Consequently, no political experience existed. In the process of system change, new parties were created but on an uncertain basis. This is reflected by the fact that two of the parties which were among the winners of elections during the period after 1969 ceased to exist after the new elections. Another party which had been a member of the governing coalition in an election period later could not get any seat in the Parliament.

Although political life was heated, every government could remain in office for the four-year period, meaning that political stability had been prevailing in spite of the serious social and economic difficulties. Immediately after the changes, the opposition was very strong in the Parliament and governed mass media. Since 2010, the same party has won the elections, recently winning a two-third majority in the Parliament.

At the time of the collapse of the former regime in 1989, no-one had clear ideas about changing the political, social, economic, and legal systems simultaneously. The problem was, however, that the task was not only to build up a new system but to modernize the

economy as well. The social dimension of the changes was unclear; political and economic questions were in the foreground.

It has been pointed out that the original relative backwardness of the country did not change during the 1948–1990 period, and that the forced industrialization preferring heavy industry created new structural economic problems.⁸⁸ Economists and sociologists have studied the problems of the transformation of countries which belonged to the Soviet bloc and worked out different theories. One of the questions discussed was whether the same solution could be applied in Asia (e.g., Vietnam), in countries of the former Soviet Union, and in the different European countries. Another important question was whether the development could be organized from above by the state.⁸⁹ A further problem of general character was whether these countries had to go the same slow way of building a new economic and social system as it had happened in Western European countries or if a “jump over” was possible. Furthermore, the question was put whether Western legal models should be imported for building up new society and economy.⁹⁰

No one had clear answers to the fundamental questions, but politicians had to act under the pressure of the day and mixed answers were given. It was, however, evident that it was impossible to introduce the common law as a whole in countries having several hundred years of legal background and a very different social and economic environment. Thus, the starting point was the system as it was in 1989–1990. The political basis was the amendment of the constitution in 1989 (followed by several amendments later on) and, after many years, the new constitution of 2011.

88. David F. Good, *The Economic Lag of Central and Eastern Europe: Income Estimates for the Hapsburg Successor States, 1870-1910*, 54 J. OF ECON. HIST. 869, 888 (1994).

89. Lawrence P. King & Iván Szelényi, *Post-Communist Economic Systems*, in THE HANDBOOK OF ECONOMIC SOCIOLOGY 205, 210-216 (2d ed., Neil J. Smelser & Richard Swedberg eds., Princeton U. Press 2005).

90. Thomas W. Waelde & James L. Gunderson, *Legislative Reform in Transition Economies: Western Transplants A Short-Cut to Social Market Economy Status?* 43 INT'L & COMP. L. Q. 347-378 (1994).

The system as a whole was, however, different from that of a market economy even if changes had happened in the previous years. One of the requirements was ensuring free entry to the market, regulating the right to be an entrepreneur (it had not been permitted before 1989). Company law was to be worked out. Special rules of capital market were needed. Behavior in the market had to be regulated (e.g., protection of consumers, prohibition of unfair competition). New rules on price regulation and loans, including the bank system in general, were very much needed. Rules on bankruptcy were required in a market in operation. Among the conditions for the existence of a market was the system of information: registers (data concerning the participants of the market and land registry informing of ownership of land and mortgage). Rules of procedure were also needed. Some of these rules could be borrowed from other countries, but the bulk of the work to be done depended on local conditions.

In addition to the creation of the conditions for the market to operate, the government had to solve problems of huge debts. Privatization of state-owned enterprises started before 1989, but the danger was that the national economy would suffer huge losses. Some kind of control had to be worked out. It was, however, difficult to exercise control as the property to be sold had no real price: there was no market; the price system was artificial and lacked any real basis. Restoring the economy into the position of 1947 was impossible because of several reasons, but some kind of compensation was to be given by the state to all those who suffered. The basis was the acceptance of continuity.

From the very first moment of the transformation of the system, the question was the recodification of civil law. Although there were different opinions, the position was accepted that foreign experiences were to be studied, but it was not advisable to start with codification work when the whole political and economic system was in

transformation.⁹¹ In addition, in 1988, negotiations were going on with the European Economic Communities and a partnership agreement was reached in 1994.⁹² Under the agreement, Hungary was obliged to harmonize its rules with those of the Communities. Harmonization had started much earlier than the official signing of the Agreement. The transformation of the legal system was also influenced by the signing of the European Convention on Human Rights promulgated in 1994, but had been taken into consideration since the commencement of political changes.⁹³ These international commitments have influenced Hungarian legislation to a great extent in the field of civil law, too.

In April 2003, the Council of the European Union made a decision on the admission of Hungary and several other countries to the European Union and in 2004 Hungary became a member of the European Union.⁹⁴ Hungarian civil law developed since that time accordingly. The work on the preparation of the draft of a new Civil Code started in 1998. The work lasted for several years.⁹⁵ At the end, the new Civil Code was adopted in 2013. The Code maintained continuity of traditional civil law theory but incorporated the necessary changes, including new rules derived from the law of the European Union.

This article focuses on the changes of the system, so no information or analysis of the Code will be given. It has to be mentioned, however, that the preparation of the Code and the transformation of the civil law system has got great support from the comparative law contacts with German, French, U.S. lawyers and the regular round-

91. Results of some of the consultations were published: *QUESTIONS OF CIVIL LAW CODIFICATION* (Attila Harmathy & Ágnes Németh eds., Institute for Legal and Administrative Sciences of the Hungarian Academy of Sciences 1990); *BINDING FORCE OF CONTRACTS* (Attila Harmathy ed., Institute for Legal and Administrative Sciences of the Hungarian Academy of Sciences 1991).

92. Voted by the Hungarian Parliament, Act I of 1994.

93. Act LXXXVI of 1994 (Hung.).

94. Act XXX of 2004 (Hung.).

95. See LAJOS VÉKÁS, *AZ ÚJ POLGÁRI TÖRVÉNYKÖNYV ELMÉLETI ELŐKÉRDÉSEI* (HVG-ORAC 2001) for an analysis of theoretical problems found in the Code.

table conferences with British professors headed by Hugh Beale which were held every year for an eleven-year period.

One of the central questions of civil law is the person. In the period before the changes, human beings as subjects of law were of minor importance. State-owned enterprises and cooperatives were the subjects of economic life. In 1989 and the following years, lawyers studied mainly questions of company law and transformation of state-owned enterprises. For practicing lawyers, it was unknown that in a market economy the *entrepreneur* has a central role.⁹⁶ One of the crucial problems of the period since World War II until the period of changes was the lack of entrepreneurs. It was due in part to the period of war, in part to the system of the planned economy. Before World War II, an important part of entrepreneurs was Jewish, and another important part were of German origin. Because of the Holocaust, a great part of the Jews were killed before the end of the War. After the war, most ethnic Germans were expelled from the country because they had been Nazi collaborators. Between 1949 and 1954, over 300,000 families of entrepreneurs, small businessmen, and middle-class professionals were deprived of their property. Several hundred thousand Hungarians were killed during the war or taken to Soviet labor camps. The agricultural transformation (by means of cooperatives) and the tendency of leaving villages and starting a new life in cities to work in the industry resulted in the nearly complete disappearance of private economy. The entrepreneurial character was nearly eliminated by the 1980s.⁹⁷ The consequences became serious after 1990 when many citizens lost their job and became entrepreneurs out of necessity without having any experience, background, information, or idea of risk. Change of mentality takes a long time and consequences are present in political and

96. JOSEPH A. SCHUMPETER, HISTORY OF ECONOMIC ANALYSIS 893-898 (12th ed., Elizabeth Boody Schumpeter ed., Oxford U. Press 1954).

97. RUDOLF L. TÖKÉS, HUNGARY'S NEGOTIATED REVOLUTION 120-122 (Cambridge U. Press 1996).

social life without any considerable possibility of influencing it by legal rules.

Other hidden elements of changes were social problems. A sign of the problems was the increase of criminality. The increase between 1971 and 1987 was more than 50% and the search was successful only in 30% of the cases of crimes against property.⁹⁸ After political changes, crimes against property remained the most important type of crime.⁹⁹ The increase of criminality was a sign of problems of social values.

Since the 1950s, there was a tendency of instability of marriage, instability of professional activity, increase in death rate, and a decrease of birth rate.¹⁰⁰ Between 1980 and 1989, there was a 75% increase in the number of alcoholics treated in welfare centers and psychiatric hospitals.¹⁰¹ These were serious signs of the need for social and political changes and change of mentality accordingly. The problem is that it is very difficult to change mentality. Nowadays, one of the greatest problems is to stop the decrease in populations, to increase the number of births, and to increase the number of marriages. The fundamental problem is how to restore social values.

Present-day civil law faces all the problems of the changing world.¹⁰² In connection with the main institutions of the civil law, there have been a lot of changes. Starting with the biological revolution, continuing with electronics, telecommunications, computing,

98. Vavró István, *A bűnözés alakulása Magyarországon 1971 és 1987 között*, 95 STATISZTIKAI SZEMLE 184-185 (1989).

99. KÖZPONTI STATISZTIKAI HIVATAL, *A JOGERŐSEN ELÍTÉLTEK TÁRSADALOMSTATISZTIKAI VIZSGÁLATA 1990-2003* (Társadalomstatistikai füzetek 2005).

100. Dezső Dányi, *Demográfiai átmenetek*, in SZERVEZETEK, FOLYAMATOK, ÖSSZEFÜGGÉSEK 92 (Tamás Faragó ed., Új Mandátum Könyvkiadó 2002). Rudolf Andorka & István Harcsa, *Népesség és család*, in TÁRSADALMI RIPORT 1990, 11-12 (Rudolf Andorka, Tamás Kolosi & György Vukovich eds., Tárki 1990); RUDOLF ANDORKA, *A MAGYAR NÉPESSÉG TEVÉKENYSÉGÉNEK ALAKULÁSÁT BEFOLYÁSOLÓ GAZDASÁGI ÉS TÁRSADALMI TÉNYEZŐK* 33, 44 (Tamás Faragó, Új Mandátum Könyvkiadó 2002).

101. TÓKÉS, *supra* note 97, at 129.

102. See JUDITH ROCHFELD, *LES GRANDES NOTIONS DU DROIT PRIVÉ* (Thémis, Presses Universitaires de France 2011) for an overview of changes.

new urbanization phenomena, new dimensions of trade, possibilities of travelling and one could continue the list of changes. All new phenomena influence the world of law.

The aim of this article has not been, however, to try to find possible reactions in the field of civil law.¹⁰³ It has been only an attempt to give an overview in the field of civil law of the renewed efforts to react to the historical changes in a country.

103. INTRODUCTION TO HUNGARIAN LAW (Attila Harmathy ed., 2d ed. 2019).