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"Lajos Kossuth in Changing Context: History, Freedom and Memory
in Modern Hungary, 1948–2001"

Pál Kelemen: „Vom Holocaust [...] läßt sich nur mit Hilfe der ästhetischen
Imagination eine reale Vorstellung gewinnen“ – Fremderfahrung und
Gedächtnis bei Imre Kertész

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Mailing address: H-1250 Budapest, P.O. Box 34, E-mail: hstudies@sanni.iti.mta.hu
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CONTRIBUTORS

Thomas COOPER	Indiana University, Bloomington, IN, USA
László CSORBA	Hungarian Academy in Rome, Rome, Italy
Alice FREIFELD	University of Florida, Gainesville, FL, USA
Pál HATOS	Indiana University, Bloomington, IN, USA
Géza JESZENSZKY	University of Economics and Public Administration, Budapest, Hungary
Pál KELEMEN	Eötvös-Loránd-Universität, Budapest, Ungarn
László PÉTER	School of Slavonic and East European Studies, University College, London, United Kingdom
Attila PÓK	Institute of History, HAS, Budapest, Hungary
Csaba Máté SARNYAI	Szeged University, Szeged, Hungary
Agata SCHWARTZ	University of Ottawa, Ottawa, ON, Canada
Mihály SZEGEDY-MASZÁK	Indiana University, Bloomington, IN, USA
György TVERDOTA	Institut d'Études Littéraires, Budapest, Hongrie
Steven Béla VÁRDY	Duquesne University, Pittsburgh, PA, USA
Gábor VERMES	Rutgers University, Newark, NJ, USA
Samuel J. WILSON	University of Rio Grande, Rio Grande, OH, USA

LAJOS KOSSUTH AND THE CONVERSION OF THE HUNGARIAN CONSTITUTION

LÁSZLÓ PÉTER

School of Slavonic and East European Studies, University College, London
United Kingdom

The ancient constitution of Hungary consisted of the mutually recognised rights and obligations of two actors: the Crown and the nobility. The reformers aimed at creating a Hungarian civil society through legislation. Conversion meant the replacement of the constitution, based on rights, by another system, based on statute laws. The April Laws broke the back of the old social order based on hereditary right and laid the foundation of the new Hungary.

Keywords: the Land (*ország*), the crown, *dietaalis tractatus*, civil society, constitutional conversion, personal union, the State

The proposition that the world changed in 1848 may be in doubt elsewhere but not in Hungary. Quite rightly so. The creation of the first Hungarian responsible ministry, the passing of the April Laws, the National Assembly and above all, the War of Independence were the formative events at the birth of modern Hungary. 1848 has become emblematic of national identity. The revolution (always in the singular rather than plural) is credited with the creation of Hungarian civil society out of legally and culturally diverse social groups. Further, the revolution became a focus of national aspirations to attain independence. The revolution also generated conflicts and civil war within the kingdom between the Hungarian and the rival Slav and Romanian movements and these conflicts became a legacy of 1848 as well.

The Hungarian constitution, in the widest sense of the term, was undoubtedly transformed in 1848. The change can be looked at from a variety of perspectives. The ancient constitution offers a vantage point and so does Marxist social theory or modernisation. Yet what I dare call the conversion of the constitution offers a more adequate perspective than the others do for the subject. Why do I believe that?

The ancient constitution consisted of the mutually recognised rights and obligations of two actors: the Crown and the nobility organized in the counties and the diet of the *ország*. Their constitution went through conflicts and accommodations

by *tractatus*, agreements, in 1608, 1681, 1711, 1790 and 1848 leading to the 1867 Settlement. A historical analysis based on the vocabulary of the customary constitution like privilege, *gravamina*, *postulata*, *dietalis tractatus*, reserved rights, fundamental laws and so on, can shed plenty of light on the process. But explanations largely based on this vocabulary would get bogged down in continuities whereas it was the discontinuities that lent character to 1848.

Marxism provides a vantage point that puts all the emphasis on discontinuities: the revolution replaced 'feudalism' with 'capitalism', it abolished serfdom and introduced 'bourgeois parliamentarism' in place of 'feudal absolutism'. For me these are big words. The vocabulary of Marxist metaphysics does not penetrate the subject of the constitution and it is not much use even for understanding social change. How is it, for instance, that in the new 414-member House fewer than ten non-nobles faced the landed gentry and the aristocrats who together made up a robust 74 per cent of the membership? What is commonly regarded by historians as a *polgári forradalom*, 'bourgeois revolution', created a one-class parliament dominated by the landed gentry, *bene possessionati*. In 1861, the preponderance of the aristocracy and the landed gentry rose to 77.3 per cent in the House, where the nobility as a whole possessed 80 per cent of the seats. In the House that passed the 1867 Settlement the proportion of the land-owning nobility rose to nearly seventy-nine per cent. Thus, their proportion in the House from 1848 to 1867 was actually going up. Where was the bourgeoisie?

Modernization theories (Marxist metaphysics in sheepish form) are even less helpful in understanding social or constitutional change. Ministerial responsibility, the concentration camp and the doctrine of mutually assured destruction are all 'modern'. What do they have in common? And what on earth do the very different societies that are lumped together as 'traditional' have in common beyond the trivial point that we would not find Esso 'gas stations' in any of them?

The conversion of the constitution, the term covers a cluster of interrelated theses, seems to me a more adequate analytical tool to unpack and elaborate the constitutional transformation in 1848 and after than are offered by other schemes because it penetrates the subject matter. After 1830 liberal nationalism became the driving force of Hungarian politics. The reformers, Széchenyi, Wesselényi, Kölcsey, Deák, Kossuth, Eötvös aimed at creating a Hungarian civil society through legislation. Conversion, *alkotmányos kifejlés* or *kifejtés*, *Entwicklung*, for the liberal nationalists primarily meant the replacement of the constitution, based on rights, by another system based on statute laws. Or to put it less formally, the system of privileges was to be replaced by a social order based on legal equality. Also, some of the monarch's reserved rights were to be shared with the nation so that representative government could be introduced without the nobility losing its ascendancy in Hungarian society. The central aim of liberal nationalist nobles was the creation of a Hungarian civil society and the establishment of an autonomous

Hungarian state within the Habsburg monarchy. Looking at it from this perspective, conversion meant the transition from the customary constitution based on the bipolarity of the *ország* and the crown to the all embracing legal system, called the "state," created by statute law. Also, conversion had a territorial aspect: the medieval precept of the crown's inalienability was converted to the integrity of the *ország* (a point to which I shall return later). Finally, the social aspect of the process was that through conversion the influence of the gentry increased at the expense of the aristocracy.

The reformers, in general, were committed to the West European idea of civil society, *polgári társaság*, in which all individuals possessed the same rights and duties. Civil society was a political order founded on a unified legal system in which statute laws, which equally applied to the nobles, the clergy, the bourgeois and the serfs, replaced the segmentary, 'barbaric', 'feudal' society based on serfdom, the hierarchy of privileges, legal inequalities, local and provincial customary rights. Equality under the law, personal security, freedom and the right to own property became the new social ideal. The methods were the policies of *érdekegyesítés*, interest-amalgamation, and of *jogkiterjesztés*, the extension of rights (the latter happened to be a confused hybrid).

All this sounds like a liberal social reform package – which it was not. The reform served an end: civil society was to be national. As elsewhere in Central Europe and beyond, liberalism and nationalism, although philosophically incompatible, politically appeared combined: both served social integration. Through legislation the reformers planned to create a single Hungarian community of citizens out of legally and culturally diverse social groups. The *ország* transformed, converted into the Hungarian nation, demanded an autonomous position in the Empire. This program of nation building was successful before 1848. In early nineteenth-century Hungary less than forty per cent of the population was Hungarian speaking. However, the national-liberal program had a wide appeal in the German speaking towns and particularly among smaller ethnic groups like the Jews, Armenians, Zipser-Saxons, Bunyevici and others. But in spite of rapid voluntary magyarisation, the national-liberal program was also fraught with conflict. It put Hungarian politics on a collision course with Vienna. Magyarisation left unaffected the large blocks of Slavonic groups on the periphery which had their own national movements. The diet, overriding strong Croat objections, put through language laws which replaced Latin with Hungarian as the official language of the counties, the dicasteria, the diet and the courts. In 1836 Hungarian became the official language of statute law. From that year the laws also contained provisions to spread the Hungarian language among the non-Hungarian population, enactments as ineffective and unenforceable as they were capable of generating conflicts, which they undoubtedly did, with the non-Hungarian intelligentsia. But national conflicts were probably unavoidable in multi-lingual Hungary. What makes the

nineteenth-century transformation of the country's constitution so peculiar is that an ever growing proportion of a hidebound provincial gentry was inclined to accept the abolition of serfdom and the nobility's prerogatives, including the tax privilege, the principle of equality before the law, and even the introduction of political franchise. The county gentry accepted the social reforms to the extent that they were subordinated to the national program whose implementation would meet their social aspirations.

The objective of the national movement was no less than the building of a unitary Hungarian State, under gentry leadership, with representative institutions covering the whole territory of the kingdom and even beyond. Croatia-Slovenia, the *Militärgrenze*, Transylvania and the Partium, as well as Dalmatia and Galicia were to be merged with Hungary proper. The program to absorb Transylvania and Croatia – two separate *regna* for centuries – into Hungary was based on a claim to pre-existing state-right. From the king's obligation, enshrined in the coronation diploma, to reconquer and reincorporate all lost territories in the kingdom and its adjoined parts, a single *regnum*, Hungary, derived the claim to 'repossess' the other *regna*. The inalienability of the crown, when converted, appeared as the 'integrity' of the *ország*, and the merger of Transylvania into Hungary as 'reunion'. The last objective appeared politically viable. Transylvania's Romanians objected to union, but they lacked political rights. Two out of Transylvania's 'Three Nations' (estates), the county nobility and the Szekels, both Hungarian-speaking, were potential supporters of union. Only the third 'nation', the Saxon *universitas*, opposed it.

In contrast, in Croatia only segments of the nobility, the magnates, the yeomanry of Turopolje and, for a while, County Zagreb were 'magyarones'. The bulk of the educated nobility and honoratiorees formed the Croat national (Illyrian) party under the spirited leadership of the radical Croat intellectual, Ljudevit Gaj. The Sabor rejected the Hungarian claims: Croatia, for eight hundred years a separate *regnum* under the Hungarian crown, had never been a part of the *ország*. The terms found in the *decreta*, '*partes subiectae*' or '*adnexae*', in fact meant *socia regna*. As Hungary and Croatia were 'associated Lands', the Hungarian diet did not have the right to legislate for Croatia except on the basis of mutual consent and interest. Indeed in the past even in 1790, the diet had not enforced the majority principle. That was why the Croat Sabor (not the three Croat counties directly) sent deputies to the diet without putting Croatia's separate position in jeopardy. By the 1840s, however, the Hungarian county deputies at the diet were quite prepared to 'majorise' minorities, particularly on language issues. But the crucial question behind the language issues was the status of Croatia itself.

Lajos Kossuth (1802–1894), who came from a rather humble background, and started out as a journalist in the 1830s, played a major role in the conversion of the constitution. He had a rapid rise in Hungarian politics. The journalist became

leader of the Opposition between 1841 and 1847. The key to this success was his ability to be ahead of others on both the fronts of social reform and national demands. A strong case could be made that the conversion of the constitution carried out in 1848 was to a large extent based on Kossuth's policies.

Take serf-lord relations first. The laws of 1840 introduced 'optional emancipation', i.e., permissive arrangements through which the peasant could redeem all servitudes in exchange for a one-time payment compensation to the landlord. Kossuth argued in his *Pest News* that the law should be implemented whenever a peasant wants to invoke it and is able to meet its demands. On taxation he argued that the nobility should start paying tax, the local rates, to the *cassa domestica* acting as a bank to finance peasant emancipation. On economic policy Kossuth would introduce a protective tariff system against the Austrian produce (Kossuth swallowed Friedrich List's nationalist political economy) in order to develop industry in Hungary. He argued that the towns should have proper representation at the diet on the understanding that they magyarize. As regards Magyarization he distinguished the 'public sphere' from the 'private sphere'. Only the former should be Hungarian but there is a rider: the definition of 'public' is too wide (e.g., it includes the 'new' economy, railways, banking, and so on). Kossuth wants to maintain the county system (against central government – even against responsible government) but it should be democratized even though gentry leadership in it should be preserved.

Kossuth was in conflict with Eötvös and the Centralists over the introduction of representative government, which Kossuth initially opposed. The conflict however was patched up in 1847. The independent and responsible ministry became a desirable aim rather than a program in the Oppositional Declaration drafted by Kossuth and Deák.

Unlike the plans of other politicians, Kossuth's reform program, which included the setting up of a Hungarian State, was predicated clearly on all the Lands of the Hungarian crown. At the diet, from December 1847, Kossuth, by then as leader of the Opposition, repeatedly questioned the very existence of Croatia as a Land. He insisted that under the Hungarian Holy Crown a single nation existed: the Hungarian, and there had to be therefore a single legislature. His speeches, made shortly before the revolution, created an atmosphere which later made any cooperation between Croat and Hungarian politicians improbable.

In the run up period before the revolution Kossuth was not at all radical on the imperial connections. Instead of any shift to demanding personal union, 'common interests' and 'common relations' between Hungary and other Lands of the Monarchy became an accepted part of political discourse. This was because Kossuth and other liberals now assumed that constitutionalism would be (sooner or later) introduced in all parts of the Habsburg Monarchy (and in that case *tractatus* with the monarch would no longer be enough). The Oppositional Declaration had al-

ready alluded to this topic, which then came up in Kossuth's speech at the Circular Session on 22 November 1847 and in the text of his draft Address. It was now the Lower House's view that 'the fullest expansion of the Hungarian constitution' and 'common status relationships' could, if Art. X of 1790 was respected, coexist and the seemingly divergent interests be settled 'in the management of the common imperial state connections' on the basis of parity. There is similar evidence all over in the documents from late 1847. We may digress for a moment to note that these were the terms and concepts that reemerged in the 1860s – facts which historians who censure Deák for abandoning Hungary's rights in 1867 ignore. Notably, however, while Kossuth in 1847 envisaged *tractatus* on the 'common relations' with the Austrian liberals as well as the Court, Deák in the 1860s entered into *tractatus* solely with the monarch.

Even after the July Monarchy's collapse in Paris in February, the Kossuth-led diet, instead of demanding personal union, followed the earlier twin policies of (i) vindicating the claim to the expansion of the constitution by introducing 'national government' based on majority support and (ii) calling for a settlement (*kiegyenliteni*) of the common interests with the other Lands as well as recognising 'our legal relations towards the empire as a whole'. Once, however, the Metternich system collapsed the Hungarian position shifted: it became more radical. Also, in *dietalis tractatus* which now commenced, rules and conventions were repeatedly broken. Now the leaders wanted to secure greater autonomy for Hungary than had been envisaged by Kossuth and others even a few weeks earlier.

Well before the collapse of the Metternich system, however, on 3 March, Kossuth, with an eye to the main chance, had dragged the diet away from the politics of small measures. His "Address" speech had a single theme: the constitution's *kifejtése* (*Entwicklung*), the establishment of national government, a system where the executive power would be responsible to a parliament elected by the nation. The draft Address clearly stated that 'we regard the conversion of the dicasterial (*collegiális*) governmental system to a Hungarian responsible ministry the essential requirement and guarantee of all the other reforms'. The draft then asked the king to send to the diet members of the Gubernium who enjoyed his confidence and who would be responsible (to the diet) for the implementation of the reforms. The Lower House passed the Address on the same day, the Upper House only on the 14th, the day after Metternich fell. By then the situation had changed. The Lower House, under Kossuth's spell, reported to the counties that it expected 'the strengthening, the expansion and the transformation of the constitution'. Indeed, the first attempt to transform the monarch and the *ország's* rights into a liberal legal order, the April Laws, or rather what was read into them in Pest after their enactment, was a more sweeping conversion of the constitution than subsequent attempts; and although it failed conspicuously, it set a standard for Hungarian politics that outlasted even the Monarchy. The European events, Kossuth

reported to County Pest, 'shook the building of the ancient constitution' to its foundations, which had proven to be too constricted. 'Only two pillars remained standing unimpaired and strong enough to support a (new) capacious building, the king and the free legislature' (a dangerously unstable situation, one would have thought). By the free legislature Kossuth meant the Lower House, about to become House of Representatives, rather than the diet as a whole. For the collapse of the Metternich system crushed the authority of the Upper House and deflated even that of the county. Neither institution ever recovered its former place in the constitution. On 14 March the Lower House declared that even before its reconstruction it could perform its duties only as 'the representative of the whole nation rather than of a separate class'. The claim of the Lower House to act as a constituent assembly, a declaration of gentry ascendancy over the aristocracy, was realised in the thirty-one laws of the 1848 *decretum*.

The April Laws broke the back of the old social order based on hereditary right and laid the foundation of the new Hungary. *Ország* rights were converted into the rights of the Hungarian nation, to which at least those who were given the franchise could claim to belong. In the process the rules of *dietalis tractatus* were repeatedly broken. The foundations, improvised, incomplete, and in part temporary, also contained durable rules, notwithstanding the speed with which the whole *corpus* was put through. In the preamble of the April Laws the estates, defining the aims of the *decretum*, listed in the first place the intention to 'unite the interests, under the Law, of the whole Hungarian people'. Yet the Law did not declare the principle of legal equality. Nor was the nobility annulled as a legal status. All in all, legal equality, the principle that all individuals possess the same rights and duties, and personal freedom inspired the legislator in 1848, they were parts of the reform program rather than rights established by statute law.

The emancipation of over nine million peasants in Hungary and in Croatia from their servile condition was the most significant, albeit incomplete, step towards civil society in 1848. Law XI abolished the patrimonial authority of the landlord over the serf. Laws IX and XIII rendered void urbarial obligations and the tithe. The private landlord was to be paid compensation out of public funds to be determined by the new parliament, the tithe went without compensation.

The law established an 'independent and responsible' government. Although the authority of the Hungarian ministry was not properly defined, the April Laws created a coherent system of government so far as it was politically possible to do so in the spring of 1848. The legislator went as far as he could to secure the consent of both sides, which, however, is not to say that the partners agreed to a fudge. The settlement did not last because the partners, *after* its enactment, embarked on policies governed by irreconcilable aims. Kossuth and the Prime Minister Batthyány read 'personal union' into the April Laws as a figleaf for the claim to a separate Hungarian State. The Austrian response was the claim to the exist-

ence of *Gesamtstaat*, read into the Pragmatic Sanction, and ultimately the rejection of the April Laws. Thus, the culprit for the failure of the constitutional compromise reached between the court and the Hungarian leaders was not the *corpus* of the April Laws but the new, rival conceptions of the State that governed policies afterwards. Historians sometimes forget that no constitutional reform should be expected to solve intractable political conflicts.

After Custozza, the revision of the April Laws was demanded by the court and the Austrian government in order to 'restore the supreme government' by subordinating the Hungarian ministry in finance and in army matters to the departments of the imperial ministry in Vienna. Resistance to such a change in Hungary was robust. In the crisis in September the Batthyány government disintegrated; Kossuth became a parliamentary dictator. The Austrian and the Hungarian rival conceptions of 'state' disrupted the foundations of the monarchic union of Lands on which the Habsburg empire had rested for centuries. *Tractatus* in any form was no longer an option. The intractable constitutional conflict was settled on the battlefield because the court decided to impose its constitutional claims by armed force.

Francis Joseph's Manifesto and the announcement of the Imperial Constitution by *octroi* of 7 March 1849 opened a new chapter in Hungary's relationship with the empire. The new monarch, by alluding to his 2 December Manifesto, declared that the guarantee of the future lay 'in der Wiedergeburt eines einheitlichen Österreich' – a program based on the presumptive claim that the Habsburg monarchy constituted a single State. In contrast to the Pillersdorf Constitution the new Constitution applied to all *Kronländer* of the Austrian empire, including Italy and Hungary. Centralisation was the cornerstone of the constitution. There was to be common citizenship, a single legal system and central parliament (in addition to a local diet for each crownland). The constitution broke up the kingdom of Hungary. It severed the connections between Croatia-Slavonia, Transylvania and Hungary proper and it carved out the Serbian Voivody as a separate territory. Each became, like Hungary, a separate *Kronländ*. Paragraph 71 emasculated the April Laws, without formally putting them out of force, and ended Hungary's special position in the empire.

Die Verfassung des Königreiches Ungarn wird insoweit aufrecht erhalten, dass die Bestimmungen, welche mit dieser Reichsverfassung nicht im Einklange stehen, ausser Wirksamkeit treten.

Although this constitution was nowhere in the empire fully implemented before its cancellation in 1851 (and for Hungary it largely remained a blueprint), its announcement affected the course of Hungarian politics. It enabled Kossuth and the national radicals to put through the rump parliament the resolution on 14 April 1849 at Debrecen, to which it had moved because of the advancing imperial army, that Hungary was an independent European state. This move was a direct re-

sponse to the imperial announcement of 7 March. Undoubtedly there were other factors. Görgey and the other generals' brilliant spring campaign leading to the recapture of the capital improved morale. Also, Kossuth, quite unrealistically, hoped that an 'independent' Hungary would attract foreign help. Further, by forcing parliament to burn its boats, Kossuth successfully wiped the floor with the 'peace party'. Based on the House's resolution of the 14th 'The Hungarian Nation's Declaration of Independence' was enacted on 19 April.

The constitutional import of the Independence Declaration went beyond the deposition of the dynasty. For the first time the claim to statehood, based on historic right, was unambiguously expressed in an authoritative document. Hungary, not just a Land, possessed all the attributes, external as well as internal, of an independent European State. The new term *álladalom*, soon to be shortened to *állam* in political discourse, expressed the claim to Hungary's new constitutional status. Kossuth, a *nagy száműzött*, the 'great exile', in Turin after 1867, mourned for the eclipse of the 'Hungarian State' which he, its last representative, had tried to 'restore' in 1848. But was Kossuth its last representative rather than its creator? Did the maker of the constitutional conversion from the *ország* to the State really believe this? Well, there you have it. Leaders sometimes entertain mis-conceptions about their own contributions.