

# The Historic Origins of the National Assembly in Hungary

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**Abstract:** The article examines the roots of Hungarian national assemblies. To discuss the changes of structure and functions from the establishment of the first deliberative assemblies up to the fully-developed feudal Diet, it suggests a conceptual framework for the 'historic' national assemblies. It argues that the roots of the modern Parliament can be traced back to those national assemblies which were no longer simply the occasional meetings of the ecclesiastic and secular aristocracy, but were instead assemblies summoned annually by the king in order to discuss and decide on public affairs of nationwide interest. Although some differences can be discovered between the functions of the earlier, the fully-developed feudal Diets and the modern representative Parliaments, there was an inherent logic in their development, namely, the gradual strengthening of the legislative function as well as the controlling of the Executive.

**Key words:** national assembly, Hungary, early parliaments, feudal diets

1. When faced with the task of defining early legislative assemblies that can be seen as roots of the modern parliaments, we might have at least two different strategies. Firstly, our conceptualization can be based on certain institutional issues, identifying those characteristics which were common features of all legislative chambers as they existed in the time we study, or, as parliaments exist now. On the ground of the features of the modern parliaments, these can be that the legislature

- is a corporate body
  - having a representative character (at least in limited extent)
  - being convened regularly (on schedule), which
  - is an institute of the state
  - exercising public authority.
2. But why should we use the present definition of parliaments seeking their institutional roots? It is hardly doubted that the power institutions of the state, as they stand today, are the products of the last decades or centuries, so, presumably, the modern legislatures can also be regarded as result of a long development. Supposedly, the representative nature of a deliberative body (whatever function it had), its national character (convening delegates from all regions or parts of the country), or, the place in hierarchy of power institutions can be taken into account as minimum institutional standards of early legislatures.
3. The other way is to define legislative chambers by their functions which are conventionally ascribed to the national parliaments. In doing so, we can refer to what is perhaps the most authoritative definition to date in the field, given by Walter Bagehot in his famous book on *The English Constitution*, where he noted the primary functions of Britain's House of Commons to be elective, expressive, teaching, informing as well as legislative.<sup>1</sup> Public law experts and political thinkers in the 20<sup>th</sup> century mostly accepted Bagehot's classification in their writings, and drew up similar registers of general parliamentary functions. Some of the most important mentioned, alongside the legislative and elective, include the legitimative function, whereby political views are openly expressed and political wills consolidated, as well as popular representation, integration, and self-government.<sup>2</sup> Others have drawn attention to the controlling powers of national assemblies, or have defined certain specifics to groups of tasks – which nevertheless play highly significant roles in their respective domains of public law – as parliamentary functions (e.g. federal powers). According to another, perhaps equally well-established definition, the prime constitutional functions of parliament are legislation and exercising restraint over executive power. In this view, these two main functions constitute the very reason for the existence of parliaments, and all individual powers of legislation can be hence grouped around them.<sup>3</sup>

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<sup>1</sup> Walter Bagehot, *The English Constitution*, Collins/Fontana, London and Glasgow, 1971, pp. 150–153.

<sup>2</sup> Klaus Grimmer, "Aufgaben und Zuständigkeiten des Parlaments", in *Parlamentslehre. Das parlamentarische Regierungssystem im technischen Zeitalter*, Raban Graf von Westphalen (Hrsg.), R. Oldenbourg Verlag, München–Wien, 1993, pp. 172–173.; Peter Pernthaler, *Allgemeine Staatslehre und Verfassungslehre*, Springer-Verlag, Wien-New York, 1986. pp. 246–247.

<sup>3</sup> E.C.S.Wade – A.W.Bradley, *Constitutional and administrative law*, Longman, London and New York, 1985, p. 47. Szente Zoltán, *Bevezetés a parlamenti jogba* [An Introduction to Parliamentary Law], Atlantisz Könyvkiadó, Budapest, 1998, pp. 40–62.

4. That said, if however, we extend our inquiries further to include the period of the emergence of national assemblies, we soon find that modern definitions of parliamentary functions are hardly suitable for our purposes. As with almost every other constitutional institution of the state, parliaments have evolved over a long period of gradual development until finally reaching their present form where, in line with their intended purposes, they have been incorporated into the system of the overall power of the state. Therefore, to provide a conceptual framework for our topic, we are forced to rely on the so-called “historic national assemblies” for definition. We need a characterization which allows us to examine the entire constitutional development of the assemblies themselves, i.e., one inclusive enough to allow for the interpretation and explanation of institutional and functional alterations in early national assemblies as well.
5. In the following, then, the term “historic national assembly” will be used to mean the existing Hungarian state body which was created and upheld by the historical so-called “thousand-year-old” constitution of Saint Stephen,<sup>4</sup> the first king of Hungary. This heritage, although its functions have changed over time, was at all times vested with a specific scope of powers and functions, and had a definite composition. Furthermore, it was (at least to a limited degree) always a representative body, set up and operated according to more or less undeviating rules of procedure, which had a nationwide competence, and was granted powers of consultation and rule-making.

## **I. THE DEVELOPMENT AND ORIGINAL FUNCTIONS OF HISTORIC NATIONAL ASSEMBLIES**

6. Some researchers have traced the roots of the Hungarian institution of national assemblies as far back as the 11<sup>th</sup> century. This based on documentary evidence that, on certain occasions under the reigns of King László I and King Kálmán “the Book lover”, assemblies were held on a national scale where both ecclesiastic and secular dignitaries made appearances. These gatherings, it is claimed, “strongly resembled a genuine national assembly [...] decisions were made here and rules created.”<sup>5</sup> However, we should be prudent in handling those claims with caution, and in viewing such 11<sup>th</sup> century assemblages as only the “antecedents” to the Hungarian national assembly. These early forms of

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<sup>4</sup> The “historic” Hungarian constitution consisted of the most important conventions and written laws used and enacted during the “one thousand years” from the rule of the state founder, King Saint Stephen (1000-1038). The first and single written constitution was passed only in 1949.

<sup>5</sup> Mezey Barna (ed.), *Magyar alkotmánytörténet* [Hungarian Constitutional History], Osiris Kiadó, Budapest, 1995, p. 76.

the 11<sup>th</sup> and 12<sup>th</sup> centuries, which demonstrably served as the direct predecessors and perhaps even the preliminary conditions of the institution type defined above, and were the prototypical vehicle of its activities, are best regarded as but the precedents of the institution of national assemblies if we are to adopt the above definition of the “historic national assembly”.

7. Early consultative assemblies of a nationwide character were, on the other hand, no longer simply the occasional meetings of the ecclesiastic and secular aristocracy, but were instead assemblies summoned annually – pursuant to the provisions of the Golden Bull of 1222<sup>6</sup> – to discuss matters of common interest, or the “affairs of the state”, and to advise the king on such matters, or even to hand down decisions concerning various issues.<sup>7</sup>
  
8. Hungarian legal historians generally hold that the institution of national assemblies evolved from the days of the royal courts. The Golden Bull of 1222 stipulated that nationwide assemblies be held “on the day of our sacred king” in the city of Székesfehérvár, the coronation city of Hungarian kings, in the presence of the supreme ruler. Here the king exercised his prerogative of jurisdiction, which stated that the supreme judicial power rested at all times with the king. On such occasions, royal jurisdiction was not limited strictly to passing judgments in individual cases, for it soon became customary for the king to interpret, and sometimes to confirm, various laws of his kingdom at these court days.<sup>8</sup> Since court days also offered an opportunity for those present to state their grievances to the king, we may regard them as one of the tools whereby control was exercised over the power of the king.
  
9. Still, the assemblies that gathered on the court days held at Székesfehérvár originally had no legislative functions. Their powers were merely that of jurisdiction, or the administration of justice, and the first documents evidencing their rule-making competences date from as late as the end of the 13<sup>th</sup> century.

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<sup>6</sup> Act I of 1222. The Golden Bull, quite similarly to the English Magna Carta Libertatum, was a letter of privileges devoted to provide guarantees for the nobility against arbitrary actions of the king and the barons. Its provisions were promulgated in several laws in 1222.

<sup>7</sup> According to the Hungarian historian Mihály Horváth, the nobility urged to hold the nationwide assemblies in Székesfehérvár annually, “because the kings got bored with wandering each county separately”, in a time, when the enactment of national laws was necessary against the abuses of the aristocratic oligarchies. Horváth Mihály, *A magyarok története* [A History of Magyars], Geibel Károly bizománya, Pest, 1842, p. 123.

<sup>8</sup> Timon Ákos, *Magyar alkotmány- és jogtörténet* [Hungarian State and Legal History], Hornyánszky Viktor könyvkiadóhivatala, Budapest, 1910, p. 182.; Mezey Barna (ed.), *Magyar alkotmánytörténet, op. cit.*, p. 76.

10. After that point in time, we find numerous pieces of evidence for the continuous existence of a national consultative body, since the role of the national assembly is mentioned in several royal decrees. Thus for example, a decree from 1231, and another one from 1290,<sup>9</sup> stipulates that the king's officials must render an account of their activities before the national assembly.<sup>10</sup> Another decree worth mentioning is that of King Endre (Andrew) III from 1298, which entitled the national assembly to appoint two of the royal counselors. Such decrees show that the functions of national assemblies were continuously extended beyond that of the administration of justice, to cover various "modern" parliamentary activities, including first of all certain functions of controlling and calling to account related to the system of government, as well as some functions concerning the appointment of officials. In these respects, the Hungarian history of public law shows a pattern of development quite similar to the emergence of Western European parliamentary assemblies. Despite the fact that, in some Western European countries, the institution of the parliament evolved during the 12<sup>th</sup> to the 14<sup>th</sup> centuries simply as a body of representation for the estates, the national assemblies of such Western countries resembled that of Hungary, inasmuch as they could also trace their origins back beyond the emergence of a feudal state organization. This is evidenced by the fact that in many countries, consultative bodies similar to the one in Hungary were set up beside the *Curia Regis* (or, alternatively, the *Curia Regis* was itself transformed into a consultative body of sorts), and the establishment of such national assemblies – again in the same manner as in Hungary – took its origins primarily from the decision-making mechanisms of church councils. Such a territorial pattern of organization may very well have signaled the turning point in the development of parliaments, whereby an essentially national institution of power was established beside, or emerged from, the earlier feudal royal council, by integrating into the assembly first the nobility of the entire country, and then all of the estates.<sup>11</sup> The term "parliament", by the way, was supposedly first used in Europe in a chronicle written in 1183,<sup>12</sup> and although it was already widely used in the 13<sup>th</sup> century, only later did it come to replace the various Latin names used for feudal Diets.<sup>13</sup>

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<sup>9</sup> Hungarian legal historians use the *Corpus Juris Hungarici* as the authentic collection of the ancient laws. Nevertheless, it does not comprise all royal decrees, therefore the documentary collection published by Kovachich, Márton György and by his son, Kovachich, József Miklós in the 19<sup>th</sup> century, is used too.

A good collection of royal decrees and laws is available on the Internet, although only in Hungarian: <http://www.1000ev.hu/index.php>.

<sup>10</sup> The latter decree also prescribed that certain high officials of the central government, like the palatine, the lord high treasurer, or the vice-chancellor, may only be appointed with the approval of the national assembly.

<sup>11</sup> Mezey Barna and Sente Zoltán, *Európai alkotmány- és parlamentarizmustörténet* [European Constitutional History] Osiris Kiadó, Budapest, 2003, p. 582.

<sup>12</sup> Hugh McDowall Clockie, *The Origin and Nature of Constitutional Government*, Harrap, London, p. 20.

<sup>13</sup> In Hungary, the earliest written reference to the concept of "parliament" (parlament) is known from the last decade of the 13<sup>th</sup> century, as the denomination of the national assembly of the day (*parlamentum publicum*, *parlamentum generale*). In the ancient charters and documents the

11. As the judicial assembly became more and more of a forum for discussing matters of national importance, the tendency towards strengthening its representational features became increasingly salient. In my view, the last precondition for the emergence of a genuine historical national assembly – beside its institutional consolidation (i.e. it becoming a regularly held event), its nationwide nature, and its function of making rules and discussing national issues – was the development of its representational nature. In some Western European states, legislative assemblies were held fairly regularly as early as in the 12<sup>th</sup> century, and so the notion came to be accepted that certain members of the higher nobility, or certain ecclesiastic and secular dignitaries, must be allowed to participate in the government of the entire country, which required the ruler to consult with them on a regular basis. The first such assembly was quite definitely convened in one of the Spanish kingdoms, although many scholars refer to the parliament summoned in 1265 by Simon de Montfort as the first proper “Parliament”. Yet, according to historical records, assemblies were held in 1162 in the Aragon, in 1169 in Castile, and in 1188 in Leon, where not only specific aristocrats but also the representatives of towns were invited.<sup>14</sup>

12. The Hungarian system of public law was in all probability one of the earliest in Europe to furnish the national consultative body with a representational nature. Prelates were obliged to present themselves at national assemblies from as early as 1231, and a law enacted in 1267 stipulated that each comitat should delegate two or three noblemen to the national assembly. Eventually, the royal decree of 1290 which I have already mentioned obliged all noblemen to attend the assemblies in person. Therefore, national assemblies can be said to have evolved from the outset as “feudal national assemblies”,<sup>15</sup> where all of the estates

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national assembly was designated by several different names, like *conventio*, *congregatio*, *dieta*, *comitia*. But these were not real nationwide assemblies having lawmaking powers in every case, because a number of them were so-called “partial” national assemblies in which only few county communities were represented. Ferdinandy Gejza, *Magyarország közjoga (alkotmányjog)* [Public (Constitutional) Law of Hungary] Politzer Zsigmond és fia kiadása, Budapest, 1902, pp. 434–435. In addition to the partial and general assemblies (*particularia* and *generalia comitia*), until the 15<sup>th</sup> century, sometimes so-called “universal” (*universalia*) assemblies were convened, when the delegates of the territories belonging to the mother country of the Holy Crown (e.g. Croatia or Dalmatia) were also invited (mainly on the occasions of election of the king or coronation ceremony). Récsi Emil, *Magyarország közjoga* [Public Law of Hungary], Kiadja Pfeifer Ferdinánd, Buda-Pest, 1869, p. 398. Some historians argue that certain denominations like *congregatio generalis*, *conventio omnium nobilium et procerum regni*, or *parlamentum regni publicum* already referred to the decision-making character of the nationwide assemblies. Kérészy Zoltán, *A magyar rendi országgyűlés két táblájának kialakulása* [The Establishment of the Two Chambers of the Hungarian Estate Assembly] Budapest, 1925, p. 12.

<sup>14</sup> Mezey Barna and Sente Zoltán, *Európai alkotmány- és parlamentarizmustörténet, op. cit.*, pp. 581–582.

<sup>15</sup> Kovács Kálmán, *A feudális állam a XIII. század derekától 1526-ig*, [The Feudal State from the mid-XIII<sup>th</sup> century to 1526] in Csizmadia Andor – Kovács Kálmán – Asztalos László (eds.), *Magyar állam- és jogtörténet* [Hungarian State and Legal History], Tankönyvkiadó, Budapest,

were represented, because by the time the legislative national assemblies of the end of the 13<sup>th</sup> century were established, society had more or less become firmly divided into estates, and now the privileged estates – the prelates (*praelati*), the aristocrats or barons (*barones*), and the nobility (*nobiles*) – received personal or “collective” letters of invitation from the king to the annual national assemblies.

13. It is particularly interesting to note how these early national assemblies came to have certain other functions which were subsequently also included among the usual tasks of parliaments. Perhaps the most important of these functions was the coronation of kings, which from the second half of the 12<sup>th</sup> century onwards took place in mass national assemblies convened especially for that purpose. In addition, a decree issued in 1231 made it possible for the assembly to request the dismissal of the palatine (the “deputy” of the king) in the event that he was found at fault in managing the affairs of the king and the country; while the right of calling senior royal officials – and especially the bailiffs of the comitats – to account was transferred to the national assembly under Article 25 of the 1290 decree.

14. Thus, by the end of the 13<sup>th</sup> century, national assemblies evolved whose functions were no longer limited to hearing grievances and complaints, or submitting petitions, opinions and recommendations to the king, but had been extended to include legislation. Thereafter, all subsequent assemblies were characterized by a national trait regarding both their function and their composition, since they discussed and deliberated upon matters which concerned the whole nation, and the aristocrats and prelates invited in person to them by the king covered the whole territory of the country (or the whole of the church organization), while the entire nobility of the country was also allowed to participate in them. The organization of these assemblies thus already included an element of representation – although the term “representation” should be understood here in a special medieval sense, since the higher nobility, the prelates and the lesser nobility were all directly represented at the assemblies, as their members all participated in person (theoretically at least). The development of the classical representation of the estates reached its full form in 1445, when the delegates of the towns were also invited to participate in the national assembly.<sup>16</sup>

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1981, p. 111. Contrary to this view, many think that the national assembly can be regarded as being feudal (or estate) assembly only from the 15<sup>th</sup> (Mezey Barna (ed.), *Magyar alkotmánytörténet, op. cit.*, p. 77.), or, from the 16<sup>th</sup> (Ferdinandy Gejza, *Magyarország közzjoga (alkotmányjog), op. cit.*, p. 437.) century.

<sup>16</sup> Although the delegates of the free royal boroughs were invited to the Országgyűlés already in 1405, the nationwide character of that assembly is sometimes argued. Mezey Barna (ed.), *Magyar alkotmánytörténet, op. cit.*, p. 77.

## II. THE STATUS AND HISTORY OF THE FULLY-DEVELOPED FEUDAL NATIONAL ASSEMBLIES

15. In Europe, feudal Diets were organized according to the divisions between the estates, which means that the individual estates held council separately. In the fully developed form of national assemblies, attending members of the higher nobility represented themselves alone, while, conversely, in the case of the other estates – the lesser nobility, the clergy, or the citizens of boroughs –, the attending delegates represented the interests of the whole of their own estate based on a fixed mandate (or “delegate’s instructions”). In England, for example, from 1294 onwards, the royal letters of invitation stipulated that delegates must be vested with full authorization when attending the assembly. At the same time, such early parliaments only had a rather limited and *ad hoc* scope of authority. In other words, the assembly of the estates was convened mostly when new taxes had to be voted, or when an army had to be amassed. Such a legitimated role of the feudal Diet also allowed the representatives of the estates to express their specific interests in the presence of the ruler, for example by reading out a list of their grievances, or by appealing for some kind of compensation. At most feudal Diets in Europe, the three estates of the nobility, the clergy and the citizens of boroughs were represented, but there were also examples of national assemblies consisting of four “chambers” – e.g. in Sweden or in the Aragon – while England developed its bicameral system very early on, the structure of which in many respects resembled the later Hungarian form of feudal representation.
16. As soon as the institution of the early feudal Diet was established in Hungary by the end of the 13<sup>th</sup> century, the national assembly as a regularly convened legislative body practically ceased to function for a few decades with the consolidation of Anjou rule and the commencement of the reign of the Anjou king Charles I of Hungary (also known as Charles Robert). In the first half of the 14<sup>th</sup> century, the national assembly was rarely convened, and its meetings were not legislative. This function of earlier national assemblies was now assumed by the councils of state or royal councils, since the king discussed all important matters only with the prelates and the magnates (*cum consilio Praelatorum et Baronum*). At the end of the century, however, the movement organized among the nobility succeeded in persuading the king to reconvene the national assembly, and from the first half of the 15<sup>th</sup> century this institution regained its role as a fundamental part of the legislative process.<sup>17</sup> With the emergence of the so-called Holy Crown Principle, a doctrine expressing Hungary’s existence as a state on the basis of the divine authorization represented by St. Stephen’s crown, the national assembly

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<sup>17</sup> After 1435 only those royal decrees were regarded as laws which had been issued by the king with the consent of the national assembly. Ferdinandy Gejza, *Magyarország közjoga (alkotmányjog)*, *op. cit.*, p. 434.

was assigned a special role in the realm as a “constituent part” of the Holy Crown, and thus a legislative body equal in rank to the king himself.

17. From the beginnings of the fully developed feudal Diet, the right of personally attending at national assemblies was one of the privileges of the nobility. Because traveling to the assemblies would have been rather costly for the less well-to-do noblemen, by the late 14<sup>th</sup> century they persuaded the king to allow them, at least occasionally, to send one delegate from each comitat (royal county) who would represent them. Even so, the principle and practice both of participation in person and of representation by delegation continued to be altered from time to time. The obligation of attending the assemblies personally was again introduced on several occasions during the 15<sup>th</sup> and 16<sup>th</sup> centuries, and what is more, in some instances severe penalties were specified for those who failed to present themselves at an assembly.<sup>18</sup> But after the devastating Battle of Mohács in 1526,<sup>19</sup> the entire body of the lesser nobility took to participating in the national assemblies by way of their comitats’ delegates only, instead of attending in person. (The assemblies were convened indoors after the practice of holding mass national assemblies was terminated.) The last stage in the development of the national assembly, however, was not signaled by the introduction of recallable delegates (*electi nobiles*), who were provided with fixed mandates or delegate’s instructions and were meant to redeem noblemen from the obligation of attending in person, but by the appearance of representatives for the free royal towns (boroughs) and thus for the urban freemen (citizens).
18. As we have seen, the representational function of national assemblies was brought to fullness in feudal Diets, but its essence remained unchanged in the process. On the other hand, of course, the practical significance of this function increased or decreased from time to time, depending on the prevailing political situation, as the interests of the king, or those of the nobility taking a stand against the king, demanded it. King Matthias (ruled 1458–1490), for example, was successful in employing the support of the lesser nobility in his struggles with the barons, whereby the national assembly was immediately relegated to a position of higher esteem. All royal decrees in that period were issued as laws adopted by the national assembly. In a similar fashion, during the reign of the Jagiello kings (1490–1526), the so-called faction of the lesser nobility engaged the barons in a series of spectacular political battles at the national assemblies. Following the Battle of Mohács, the feudal Diets that were held in the part of the country placed under Habsburg rule served primarily as the main forum for resisting the Viennese court’s attempts at

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<sup>18</sup> For instance, the Act XLV of 1525 qualified the non-attendance as treason.

<sup>19</sup> The military defeat of the Hungarian army against Suleiman I Turkish sultan in 1526 was a turning-point in Hungarian history, since it led to the dismemberment of the country into three parts (Habsburg rule, Osman Empire and Transsylvania) and resulted in a three-century-long Turkish occupation in the central part of Hungary.

centralization and for representing the particular interests of the Hungarian estates.

19. In my opinion, the subsequent division of the feudal Diet into two Houses (or “tables”) did nothing to change the representational nature of the national assembly,<sup>20</sup> although we would be mistaken to claim that the reasons for the division were purely technical. As the representation of the nobility of the comitats was increasingly carried out by way of delegation, a new practice emerged where the magnates, barons and prelates, all of whom were invited to the Diet in person, held council separately from the delegates, and thus the national assembly was divided into two component parts: the “House of the Estates” and the “Upper House”. By the time of the adoption of Act I of 1608, which codified this dual structure of the legislative assembly, the deliberation in two separate chambers and the underlying separation of the aristocracy and the lesser nobility was already an accomplished fact, and the Act merely served to lay the legal foundations for the existing practice.<sup>21</sup>
20. Even in the framework of the feudal state, the national assembly retained among its fundamental functions the right to elect a king when the throne fell vacant. Because of the absence of a ruler, national assemblies for the election of a king were convened by the palatine.<sup>22</sup>
21. Another important function of the feudal Diet was its exclusive competence to vote taxes. Exemption from the obligation of paying taxes was already guaranteed for the nobility and the church in the Golden Bull (Act III of 1222), but the right of the national assembly to vote or veto the imposition of new taxes went far beyond that privilege. This meant that the king could not unilaterally levy any new taxes without the consent of the estates. A resolution adopted by the national assembly in 1504 stated that the imposition of a tax was lawful only if it had been voted by the estates.<sup>23</sup> Raising an army (or “voting recruits”, as it was called) also belonged among the important rights – and, so to speak, functions – vested with the national representative body of the estates. Pursuant to the Golden Bull (Act VII of 1222), the nobility was not obliged to contribute to any “wars conducted in foreign parts” by the king, but all noblemen were required to go to war at the side of the king in the event that the country was attacked from outside.

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<sup>20</sup> In legal terms, the national assembly was always a uniform body having two constituent parts, the higher and the lower “tables” (after the parliament of 1865/68, the upper and lower chambers or houses). Characteristically, if a statutory law conferred a new task only on one chamber, the house could fulfil it as a special body, but not as a parliamentary organ. Polner Ödön, *Tanulmányok a magyar parlamenti jog köréből* [Studies on the Hungarian Parliamentary Law], Singer és Wolfner kiadása, Budapest, 1903, p. 8.

<sup>21</sup> Ferdinandy Gejza, *Magyarország közigazgatása (alkotmányjog), op. cit.*, pp. 436–437.

<sup>22</sup> Act III of 1485.

<sup>23</sup> Balla Antal, *A magyar parlamentárizmus eredete* [The Origin of Hungarian Parliamentarism] in Balla Antal (ed.), *A magyar országgyűlés története 1867–1927* [A History of the Hungarian National Assembly, 1867–1927], Légrády Nyomda és Könyvkiadó Részvénytársaság, Budapest, 1927, p. 10.

22. From the point of view of Hungarian constitutional history, the feudal Diet essentially remained a constitutional factor in the exercise of power throughout its existence, even if no national assemblies were convened in the years between 1662 and 1681, 1687 and 1715, or 1765 and 1790.<sup>24</sup> These periods of intermission are almost as nothing compared with the practice found in some other countries, where the absolutistic power of the monarch resulted in the dismantling of the representation of the estates, or at least the institution of the national assembly of the estates. See, for example, ante-revolutionary France, where the Estates-General were in intermission for 175 years.

### III. WHAT MAKES PARLIAMENTS? THE VARIOUS FUNCTIONS OF HISTORIC NATIONAL ASSEMBLIES

#### 3.1. Legislation

23. While laws were promulgated before mass national assemblies as early as in the 12<sup>th</sup> century, the function of such occasions was merely to inform the nobility of the contents of royal decrees, thereby making their enforcement easier. Authors discussing the Hungarian tradition of public laws usually agree on one point, namely, that the participation of the national assembly in the making of laws was a requirement under the constitution from the first half of the 15<sup>th</sup> century onwards, from around the time when King Sigismund (Zsigmond) ruled the country, even though there were instances as early as the end of the 13<sup>th</sup> century when certain laws were discussed and even passed by the national assembly.

24. According to the historical constitution of Hungary, the national assembly was the vehicle of sovereignty, which it expressed through making laws.<sup>25</sup> Seemingly, the underlying principle behind this notion was that of the sovereignty of parliament, which was developed in its classical form in English constitutional law. According to that principle, the legislation's scope of authority cannot effectively be limited because, expressing as it does the supreme will of the state, a legislative body "may draw any matters under its scope of deliberation, and its operations can only be limited in matters where it imposes restrictions upon itself."<sup>26</sup> However, the principle of the sovereignty of parliament was not allowed to prevail in

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<sup>24</sup> Vutkovich Sándor, *A felsőházak szervezete a főbb államokban* [The Structure of the Upper Houses in the Main Countries] Pozsony, 1896, p. 16.

<sup>25</sup> "The task of the law-maker is to express the will of the Sovereign in a compulsory, legal form." Nagy Ernő, *Magyar közjog* [Hungarian Public Law], Eggenberger-féle könyvkereskedés kiadása, Budapest, 1890, p. 235.; Molnár Kálmán, *Magyar közjog* [Hungarian Public Law], Danubia kiadás, Budapest, 1929, pp. 389-390.

<sup>26</sup> *Ibid.*

Hungary, since the powers of legislation resided jointly with the king, the people, and the national assembly representing the people.<sup>27</sup> If any one of these players was unable to participate in the law-making process in a constitutional manner (i.e., according to the above detailed components of such participation), then the laws that were adopted could not be regarded as having a legal effect.<sup>28</sup>

25. Thus in the Hungarian constitutional tradition, the national assembly was a participant in the process of sovereign legislation, wherein its direct supremacy consisted in its powers of legislation being unlimited with regard to their object (meaning that the assembly was free to make laws concerning any matters of the state), and also in its being unrestricted and unaccountable in the exercise of those powers: for example, it was not subject to any limitations imposed by a written constitution. The national assembly's powers of legislation – which included the rights of passing, amending and revoking laws – were restricted only by the institutional limitations imposed by the monarch's right to initiate, and to give royal assent to, laws.<sup>29</sup>

26. The legislative bodies of power, including the national assembly, were required to act jointly also in the authoritative interpretation (*interpretatio authentica*), amendment and abolishment of laws. Although it seems only natural to modern minds to regard these functions as being necessarily incorporated in the power of legislation itself, yet practically ever since legislative powers were officially granted to the national assembly, such obligations of acting jointly were viewed as constitutional guarantees that

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<sup>27</sup> *Werbőczy István Hármaskönyve* [Werbőczy István's Tripartitum], Franklin-Társulat, Budapest, 1897, p. 229. Récsi Emil, *Magyarország közjoga, op. cit.*, pp. 451–452.; Polner Ödön, *Tanulmányok a magyar parlamenti jog köréből, op. cit.*, p. 18. In this aspect, there is a general agreement in the literature of the interwar period. See e.g.: Molnár Kálmán, *Magyar közjog, op. cit.*, pp. 389–390., or Tomcsányi Móric, *Magyarország közjoga* [The Public Law of Hungary] Budapest, 1943, p. 455.

<sup>28</sup> Act XVIII of 1635. It was reinforced during the reign of Joseph II in the Act XII of 1791: "His Majesty recognizes that the enactment, the interpretation and the annulment of the laws of Hungary and the attached parts may not be exercised without the National Assembly, since these are the common powers and duties of the king who has been lawfully crowned and the orders and estates crowded in the National Assembly." Actually this principle had been centuries-old constitutional convention already at the time when it was enacted. It can be demonstrated by the fact that those decrees which had been consented by the king before his or her coronation, were seen as extraordinary, irregular actions. In addition to this, the ordinance of Ferdinand V in 1848 was also controversial, in which the king, for the time of his illness, transferred his power to consent the laws to the palatine, because the Act III of 1848 empowered the palatine to substitute the king only in the field of the executive powers, not as a part of the legislature. See Nagy, *op. cit.* 9. It is another question, of course, that following strictly this rigid convention, how this power could have been exercised in this particular situation, when the king was not able to act.

<sup>29</sup> Declared expressis verbis in the Act XII of 1791. Whereas a law can be modified and annulled only by passing a new one, the so-called authentic interpretation can be issued by the coincident declarations of the king and the national assembly, or by their common usages and customs. Récsi Emil, *Magyarország közjoga, op. cit.*, p. 459. and Ferdinandy Gejza, *Magyarország közjoga (alkotmányjog), op. cit.*, p. 69.

could prevent the ruler from unilaterally changing the nation's will after it had been expressed by the national assembly.<sup>30</sup>

27. In Hungarian historic public law, the constituent function of the national assembly must be regarded as a part of its more general legislative function. In this regard, the development of Hungarian constitutional history from the early 19<sup>th</sup> century more closely resembled English constitutionalism than continental tradition. This was because in Hungary, none of the European constitutional movements of the end of the 18<sup>th</sup> century<sup>31</sup> led to the adoption of a written constitution to replace, or at least to codify, the unwritten historical constitution of the country. Therefore, according to Hungarian constitutional traditions, the legislative powers of the national assembly and the king were not limited by any higher legal norms. Even so, certain laws were sometimes referred to as cardinal or fundamental laws because of their content, but these were no different as to their legal nature from the ordinary laws passed by the national assembly. In addition, some laws were occasionally declared to be unalterable<sup>32</sup> – but of course they were never acknowledged as such by the later monarchs and national assemblies.

### 3.2. Representation

28. From the emergence of the national assembly to the 16<sup>th</sup> century, when the right of the nobility of the comitats to send delegates to the assembly became firmly established, all noblemen were entitled to participate in person in the legislation, and – as we have mentioned earlier – during some periods of the 15<sup>th</sup> and 16<sup>th</sup> centuries it was even compulsory for them to attend the assemblies in person. Thus, in the first few centuries of the history of the national assembly, the members of the lesser nobility practically represented themselves, just as the magnates or the barons did. Conversely, representation by delegation was present from the very beginning in the case of the Catholic Church (the state church), and also in the case of towns that were granted the right of sending delegates, i.e. the church was represented by its prelates, the highest ecclesiastic dignitaries, and towns were represented by their delegates.

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<sup>30</sup> Sometimes, (and last, in 1604) it occurred in the 16<sup>th</sup> century, that the king amended one-sidedly, ex post facto the text of a law as it was passed by the national assembly. After the repeated protests of the national assembly, in order to avoid such situations, a new practice was used, according to which the final text of the law had to be based on the agreement of the king and the national assembly (*concertatio*). Eckhart Ferenc, *Magyar alkotmány- és jogtörténet* [Hungarian Constitutional and Legal History] Politzer Zsigmond és fia, Budapest, 1946, p. 267.

<sup>31</sup> See in details in John A. Hawgood, *Modern constitutions since 1787*, MacMillan and Co. Ltd., London, 1939, and Mezey Barna and Szente Zoltán, *Európai alkotmány- és parlamentarizmustörténet, op. cit.*

<sup>32</sup> Thus, the Act VIII of 1741 on the liberties and privileges of noblemen was claimed to be unalterable, as it was declared by the so-called Tripartitum, the 15<sup>th</sup> collection of ancient laws and conventions.

29. The prelates of the Catholic Church constituted an essential component of the Upper House of the Diet; detailed lists specified the ecclesiastic dignitaries to be invited to the assemblies, and this circle seldom changed. Still, the ruler had some degree of influence over the composition of the prelaty by the exercise of his royal right of patronage, and thus he also had a limited capacity of determining who the ecclesiastic members of the Upper House would be. It should be noted at the same time that the lower orders of the clergy were also represented in the national assembly (as was the case in the French *États Generaux* or in England's House of Commons), since the Lower House of the Diet was partly composed of the delegates of cathedral and collegiate chapters, as well as the abbots and provosts who were raised to noble rank by the king.
30. Among the secular dignitaries of the Upper House of the Diet were the magnates, or lesser and higher knight-bannerets or barons, whose membership in the Upper House was due to the leading positions they held in state administration (they included, among others, the palatine, the Lord Chief Justice, the members of the royal council, and later the guardians of the Crown); the hereditary and appointed Lord Lieutenants of the counties also came to be included among the members of the Upper House of the Diet under Act X of 1687.
31. The Lower House consisted of the members and delegates of the lesser nobility, and the delegates of the free royal towns (and other territorial units), besides the estate of the clergy mentioned above. Various state dignitaries were also included in the Lower House. Like the Upper House, this chamber also had several members whose membership was based on the office they held (for example the judges of the Royal Court of Appeal). But the comitats still predominated over the Lower House because, according to the traditional interpretation of public laws, the delegates of the free royal towns represented only one noble person each, while the delegates of the comitats represented the entire nobility of their respective comitat. Therefore, in passing its resolutions, the Lower House always based its decisions on the opinion of the majority of the comitats.
32. The representative national assembly, which brought about enormous changes compared to the representational characteristics of feudal Diets, was introduced in Hungary in 1848, as an expression of the sovereignty of the people, in line with the mainstream ideas of contemporary European constitutionalism, which held that the national assembly was the representative body of the nation's citizens – but it is already the beginnings of the age of “modern” Parliaments. Before this cornerstone of the Hungarian constitutional history, the system of fixed (or “imperative”) mandates was used in the feudal Diet, which means that

the estates furnished their delegates with letters of commission (*creditiva*) and detailed instructions (*instructiones*) in all important matters, prescribing what opinions the delegates (*ablegatus*) were to express in the national assembly and what sort of votes they were to cast.<sup>33</sup> Delegates were under an obligation to report on their activities, and if the community of noblemen commissioning a delegate was dissatisfied with that delegate's activities, it could revoke his commission.

### 3.3. Control over the Executive Power

33. From the very beginning, one of the central ambitions of national assemblies was to secure acceptance of some sort of a general right of supervision over the executive power of the king. Some of the decrees issued in the 13<sup>th</sup> and 14<sup>th</sup> centuries were indeed forced or voluntary "promises" from the king to cease from his despotic rule. Following from the same ambition, the national assembly was also vested with certain rights of appointing, or approving of, various public dignitaries. Another natural balance delimiting the executive power of the king was the national assembly's exclusive right to raise an army and to vote taxes.

34. The national assembly's right to hold royal counselors legally responsible for their actions was also introduced very early in Hungarian public law: Act VII of 1507 already stipulated that the national assembly was entitled to administer "pecuniary and personal" punishment to "traitors to the country" and "those who encroach upon the freedom of the realm". The right of jurisdiction over the members of the royal council was important to the national assembly partly because the person of the king was sacred and intangible (just as in other European systems of public law), and consequently could not be kept under any kind of control. It was therefore necessary first to urge the king to make his decisions only after consulting with his counselors,<sup>34</sup> and then to ensure that counselors would be legally responsible before the national assembly (this process, by the way, was similar to the development of the English system of public law).

35. The laws passed by the legislation in 1848 constitute an important landmark in this respect as well, because they not only ensured that the members of the Ministry (the contemporary term for the government, which at that time became independent of the monarch's personal rule) would be legally accountable before the two chambers of parliament, but also added certain competences to their powers of control over the executive branch – such as the right to call ministers to account – which were characteristic already of parliamentary monarchies.

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<sup>33</sup> Eckhart Ferenc, *Magyar alkotmány- és jogtörténet, op. cit.*, p. 259.

<sup>34</sup> As it was requested by the Act V of 1507.

36. An important supervisory right of parliament was that of approving of the state budget, together with its related right of accepting the Appropriation Accounts, which latter was regarded as the performance guarantee of the budget. By approving of the budget, the national assembly ensured the availability of funds for the work of the government, but at the same time also exerted control over government organizations and their activities. Another component of the national assembly's budgetary competence was its right of voting taxes, which incorporated a variety of tasks, from approving the imposition of new taxes to establishing the amount of customs duties and determining the conditions for exemption.
37. One of the oldest forms of exercising control over the executive branch was the elective function, whereby the national assembly exercised its right of appointing or electing various officials. The single most important elective competence of Hungarian national assemblies before 1848 was the election of a king in the event that the order of succession was disrupted. This involved the right to elect a king (as well as a co-regent (*corregens*) in special cases) and the right of coronation.<sup>35</sup> Historic evidence shows that national assemblies for the election of kings were held as early as in the 14<sup>th</sup> century, and we also know from documents that the legal foundations, order and preconditions of succession were incorporated in laws on several occasions by the national assemblies, as were the procedural rules of king-making assemblies.<sup>36</sup> The election of a king to the throne, however, was not only a means of ensuring the performance of the highest state function or the continuity of royal power. It also carried with it several constitutional guarantees relating to the manner of the ruler's exercise of his power. Such guarantees, for example the act of coronation, or the institution of the "royal diploma" (a charter issued by the king upon his coronation) and the king's oath, all involved the king making a solemn promise to abide by the provisions of Hungary's historical constitution, therefore they can be regarded as restrictions imposed upon the executive powers of the ruler.
38. The appointment of officials to certain state positions connected to the executive power – including the appointment and dismissal of ministers and the delegation and reception of ambassadors – was traditionally a royal privilege, yet the national assembly managed to influence the monarch's decisions on several occasions, even if only indirectly and by political means. During the period of the Habsburg monarchy, the national assembly's opportunities in this field were narrowed down somewhat: even though it had been responsible for appointing some of the royal counselors from as early as 1298, now it could not exert the

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<sup>35</sup> Kmety Kálmán, *A magyar közjog tankönyve* [The Manual of the Hungarian Public Law], Budapest, 1905, p. 359.

<sup>36</sup> For example, the Act XLV of 1498, Act II and III of 1688, or the provisions of the so-called Pragmatica Sanctio of 1723 (Act I, II, III of 1723).

desired amount of influence over the dicastrial government.<sup>37</sup> The traditional right of electing a palatine still remained with the national assembly,<sup>38</sup> but it was not entitled to appoint people to the traditional positions of court officials.<sup>39</sup>

### **3.4. Concluding Peace Treaties, Declaring War, and Signing International Covenants**

39. The rights of declaring war and concluding peace were among the classical royal prerogatives. The king, in his capacity as the supreme commander of the army, disposed freely over the troops. Later, that prerogative was modified, so that while the king retained his right of disposing over the army, the right of raising armies was relegated to the national assembly's competence. The Golden Bull of 1222 already declared that the nobility was under no obligation to contribute troops to wars conducted abroad by the king.

40. The national assembly's "right to vote recruits" was regarded as an important constitutional safeguard. For example, Act XIX of 1790–91 stipulated that new recruits could not be enlisted without the consent of the national assembly, not even by the so-called "free offer" method (which could perhaps be best described in modern terms as raising a voluntary army). Act VIII of 1715 introduced the long-enduring practice whereby the number of troops "voted" by the national assembly as a *subsidiium* – i.e. offered to the king as reserve troops – was exactly the number of troops actually existing at the time. The assembly then also determined the costs of raising and provisioning that army. The above-mentioned right of the national assembly was reinforced following the creation of a standing army in 1715, although it must be noted that the parallel obligation of the nobility to "rise" in defense of the realm was maintained right up to 1848.

### **3.5. The Self-Governing Function of the National Assembly**

41. The self-government tasks related to the internal affairs of the national assembly constitute a special function. Certain aspects of this power of the national assembly were safeguarded by special parliamentary privileges in order to guarantee the freedom of the parliament, which meant more specifically that the national assembly, in administering its own affairs, could exercise certain rights – of an administrative or a

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<sup>37</sup> Molnár Kálmán, *Magyar közjog, op. cit.*, p. 649.

<sup>38</sup> As it was prescribed by the so-called palatine provisions of 1485.

<sup>39</sup> One of its reasons was that after the dismemberment of the country into three different parts (1526), the separate Hungarian royal court was ceased.

quasi-judicial nature, for example – which otherwise were reserved for other state bodies.

42. One of the important parliamentary privileges established at the earliest times was the *salvus conductus*, the personal immunity for noblemen, extending to the delegates already in 1507 and confirming this privilege in the 17<sup>th</sup> century as well.<sup>40</sup> The modern immunity and inviolability were rooted in these regulations, like the recess of curial jurisprudence under the sessions of national assembly and others.
43. Another guarantee of the independence of the Diet was the incompatibility which institution appeared among the earliest ones in Europe. Already the Act XLIV of 1649 excluded the advocates and tax collectors from the Diet and prohibited the delegates from accepting any gifts (*munera*), including pecuniary rewards and office.
44. A fundamental aspect of the parliamentary right for self-government was that the national assembly could establish its own internal organizational structure and rules of operation. The first standing orders were adopted by the national assembly of 1790–91, but it was under Article 10 of the Act IV of 1848 that the two Houses of the Diet were first expressly authorized to create their own standing orders. (Incidentally, the pattern was most probably borrowed from French legislation).<sup>41</sup>

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<sup>40</sup> Act XII of 1507, Act IL of 1655 and Act XXIX of 1723.

<sup>41</sup> Búza László, *A képviselőház házszabályai. Államjogi tanulmány* [The Standing Orders of the House of Representatives. A Study on Law of State], Sáropatak, 1916, pp. 7–8., and Sente Zoltán, *Bevezetés a parlamenti jogba, op. cit.*, pp. 23–28.