

# FUNCTIONS OF THE NATIONAL ASSEMBLY WITHIN THE CONSTITUTIONAL TRADITION OF HUNGARY

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## I. Introduction

When faced with the task of staking out the conceptual lines of division between the various functions of parliament, it seems expedient to 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> Bagehot, Walter: *The English Constitution*. Collins/Fontana, London and Glasgow, 1971. 150–153.

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

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

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 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. 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 functional alterations in early national assemblies as well.

In the following then, the term „historic national assembly” will be used as meaning 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.

## II. The Development and Original Functions of Historic National Assemblies

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 handle those claims with caution, and be prudent in viewing such 11<sup>th</sup> century assemblages as only the „antece-dents” to the Hungarian national assembly. These early forms of the 11<sup>th</sup> and 12<sup>th</sup> centuries, which demonstrably served as direct predecessors and perhaps even preliminary conditions of the institution type defined above, and were the

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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, Budapest, 1995. 76.

prototypical vehicle of its activities, are best regarded as the precedents of the institution of national assemblies, if we are to adopt the above definition of the „historic national assembly”.

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>

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. Still, the assemblies 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.

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> stipulate that the king’s officials must

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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. 123.

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

<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.

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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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, Budapest, 2003. 582.

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

As the judicial assembly became more and more 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>

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 we 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 es-

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Budapest, 1902. 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. 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. 12.

<sup>14</sup> Mezey and Szente, op. cit. 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, 1981. 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, op. cit. 77.), or from the 16<sup>th</sup> (Ferdinandy, op. cit. 437.) century.

tates 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.

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.

Thus, by the end of the 13<sup>th</sup> century national assemblies evolved, the functions of which 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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<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, op.cit. 77.

### III. The Functions of the Fully-developed Feudal National Assemblies

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 legitimitative 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, the structure of which in many respects resembled the later Hungarian form of feudal representation.

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

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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, op. cit. 434.

state on the basis of the divine authorization represented by St. Stephen's crown, the national assembly 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.

From the beginnings of the fully developed feudal Diet, the right of personally attending 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, furthermore, 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).

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 promoted 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.

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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.

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

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>

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>

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

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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. 8.

<sup>21</sup> Ferdinandy, op. cit. 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*. [The History of the Hungarian National Assembly, 1867–1927.] Légrády Nyomda és Könyvkiadó Részvénytársaság, Budapest, 1927. 10.

was called) also belonged to the important rights – and, so to speak, functions – with which the national representative body of the estates was vested. 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.

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 nothing compared to 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.

#### **IV. From the Functions of Feudal Representation to Representative National Assemblies**

Although no national assemblies were convened in the years between 1812 and 1825, the national assemblies of the subsequent Reform Period were highly significant from the point of view of the development of parliamentary functions among other things, as they paved the way for the emergence of the modern representative national assembly. This not only meant a reinforcement of the national assembly’s role as a national institution (e.g. by introducing Hungarian as the exclusive language used in national assemblies), but also led, among other things, to an attempt to make the proceedings of the parliament public.

The laws adopted in 1848, the year of the Hungarian Revolution, at once transformed the political and constitutional features and functions of the Hungarian national assembly, raising the institution of the parliament to the highest level reached by the constitutional development of other contemporary European nations. The most important change of all was the introduction of the representative national assembly elected in parliamentary elections, which replaced the earlier representation of the estates based on fixed mandates. Namely, Act V of 1848 stipulated that „delegates (representatives) to the national assembly shall be elected based on the principle of popular representation”, and ordered that the national assembly’s House of Representatives be composed of repre-

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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. 16.

sentatives elected through a voting right that was based on a rating of voters according to their property qualification, gender, employment, and whether they lived permanently in the area where they wished to vote. The Act regarded counties, districts and free royal towns as constituencies. The national assembly's representational function was thus fundamentally transformed, as now the assembly represented the entire nation, including all free Hungarian citizens without regard to any privileges.

Act III of 1848 also had major impact on the functions of the national assembly, because it not only introduced key changes in the relationship between the government („*ministerium*”) and the ruler of the country, but also led to an important revision of the relations between the government and the national assembly. The Act stipulated that the members of the Ministry (the contemporary term for the government) were accountable to the national assembly. Thus, the members of the executive body of power were legally responsible for their actions before the legislative body. Ministers could be impeached in certain cases by a majority vote in the House of Representatives, and brought to trial before a court of arbitration, whose members were elected by the Upper House from its own ranks. Both the prominent political movements of the time and the constitutional and historical works written in Hungary since then have interpreted these provisions of Act III of 1848 as encompassing – by implication – the political accountability of ministers before the national assembly. However, this interpretation is highly questionable in the light of the activities of the dual monarchy's Hungarian governments.

Other forms of exercising control over the executive power also developed, or were reinforced compared to earlier traditions. For example, novel features which fostered the evolution of political responsibility of ministers included the obligation of ministers to present themselves in person and report on their activities before either of the Houses upon request, as well as their obligation of presenting their official documents before the national assembly, also upon the request of either chamber.

The year 1848 marks the beginning of a highly significant era in the evolution of the national assembly's control over the financial affairs of the state. Although succeeding national assemblies had adopted a series of laws over the centuries concerning the forms, degrees and limitations of royal (state) revenues, disposal over such revenues had essentially remained one of the royal prerogatives until, following 1848, the entire issue of public funds was practically relegated under the control of parliament. Act IV of 1848, for example, stipulated that the annual budget of the state had to be prepared and endorsed by the national assembly. The right of preparing and consenting to the state budget is essentially a part of exercising control over the executive branch. At

the same time, the legislative body's scope of activities was further extended to include the establishment of the system of taxes, the management of state debts and loans, the levying of customs duties, and the management of the state's assets, as well as other forms of state revenues, such as those acquired from the operation of the railway and postal services, or the government monopolies on mining, salt production and tobacco.

Certain appointments and elections – both to positions created before and after 1848 – still had to be incorporated in law, which meant that the national assembly was required to ratify them. One such position, the origins of which can be traced back to the period when the national assembly of the estates first emerged, was the office of the palatine, but the approval of the national assembly was also needed for the taking office of such „new” constitutional dignitaries as the president of the Court of Accounts or the presiding judges of the courts of appeal.

A special function of the national assembly was the administration of justice in cases concerning the parliamentary elections, as well as jurisdiction over impeached ministers.

As we have seen, the representative national assembly's scope of functions was extended following 1848 – even though the assembly could formally only exercise these new functions through its legislative activities. From then on the national assembly became a continuously operating body of legislation, convened – pursuant to Act IV of 1848 – by the monarch annually during its three-year mandate in Pest, „in the months of winter if the circumstances so allow”. Beginning with 1848, the rules regulating the operation of the two chambers of the assembly were laid down regularly in standing orders – although it must be noted that attention had been paid earlier to the establishment and improvement of operational rules as well – and the national assembly was provided with an advanced internal order of operation that was well up to the standards of the era.

But after the establishment of the representative system a period of intermission in the operation of the Hungarian national assembly followed again, similar to that experienced following the full development of the institution of the feudal Diet (i.e. the national assembly itself), as the Hungarian Revolution and War of Independence of 1848–49 was defeated by the combined forces of the Habsburg Empire and Russian troops, the national assembly was not convened again until 1861. In addition, the legislative body that *was* convened in 1861 did not last very long either, and the continuous operation of the parliament was finally restored only in 1865, which means that the national assembly could in fact only exercise the functions described above from that date onwards.

## V. The Various Functions of Historic National Assemblies

### 1. Legislation

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.

According to the historical constitution of Hungary, the national assembly was the vehicle of sovereignty, what 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 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>

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<sup>25</sup> „The task of the law-maker is to express the will of the Sovereign in a compulsory, legal form.” Nagy, op. cit. 235.; Molnár, Kálmán: *Magyar közjog*. [Hungarian Public Law.] Danubia kiadás, Budapest, 1929. 389-390.

<sup>26</sup> Ibid.

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

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>

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

It was not uncommon that various laws had different territorial effects; for example Hungary and Transylvania were governed by separate laws before 1848, while from 1868 „the lands of Croatia, Slavonia and Dalmatia” had a separate national assembly of their own. At the same time, such territorially restricted

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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 this ordinance 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, op. cit. 459. and Ferdinandy, op. cit. 69.

<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. 267.

laws were not allowed to contradict the laws passed by the Hungarian national assembly concerning the entire kingdom. A rather specific constitutional restriction was imposed on the national assembly's law-making competences by the so-called Compromise of 1867 between Austria and Hungary, when it was enacted in Act XII of 1867 that in order to create legally valid laws in matters of common importance for both countries, similar acts had to be passed by both the Hungarian and the Austrian parliament.

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 their legal nature was not different from that of 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.

## 2. Representation

From the emergence of the national assembly in 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>31</sup> See in details in Hawgood, John A.: *Modern constitutions since 1787*. MacMillan and Co. Ltd., London, 1939. and Mezey and Szenté, 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.

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 prelacy 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.

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.

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.

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. Afterwards, the estates were no longer represented in the national assembly in their own right, since the members of the Lower House were now elected by voters with suffrage on a territorial basis (in constituencies), instead of being delegated with fixed mandates by the comitats or the free royal towns

under their special legal status as legal persons. Additionally, those who had become members of the Lower House based on the offices they held, now also lost their *sui generis* membership along with the pre-defined circle of ecclesiastic dignitaries previously included in the Lower House.

The system of fixed (or „imperative”) mandates used in the feudal Diet was now replaced by the principle and the institution of free representative mandates. Previously, 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. Conversely, the members of the representative national assembly were furnished with a free mandate, which meant that they were not bound by the instructions of their voters, and were free to act in their office as representatives as they deemed appropriate. They were not under an obligation to report to their voters, and they could not be recalled either.

### 3. Control over the Executive Power

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.

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 of 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 for 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

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<sup>33</sup> Eckhart, op. cit. 259.

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).

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.

As far as control over the executive power was concerned, the legislation of 1848 was one of the most modern constitutional regulations of the era, creating several institutions – from the accountability of ministers to the right of countersigning royal decrees – which pointed beyond the constitutionally limited monarchy and towards a genuine parliamentary monarchy, even if such a form of government could never be established in practice because of the defeat of the War of Independence in 1849.

An important supervisory right of the 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. It is important to note that from 1870 onwards, the national assembly received help in the exercise of its budgetary functions from the state audit office. This body was established for that special purpose, and was accountable before the parliament; its main function was to control state revenues and expenditures and to supervise the management of state assets and debts.<sup>35</sup>

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

<sup>35</sup> Act XVIII of 1870.

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, when 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>36</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>37</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 itself 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.

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 decision 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 somewhat narrowed down: even though it had been responsible for appointing some of the royal counselors from as early as 1298, now it could not exert the desired amount of influence over the dicastrial government.<sup>38</sup> The traditional right of electing a palatine still remained with the national assembly,<sup>39</sup> but it was not entitled to appoint people to the traditional positions of court officials.<sup>40</sup>

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<sup>36</sup> Kmety, Kálmán: *A magyar közjog tankönyve*. [The Manual of the Hungarian Public Law.], Budapest, 1905. 359.

<sup>37</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).

<sup>38</sup> Molnár, op. cit. 649.

<sup>39</sup> As it was prescribed by the so-called palatine provisions of 1485.

<sup>40</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.

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

The rights of declaring war and concluding peace were among the classical royal prerogatives. The king, in his capacity of 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.

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 *subsidium* – 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 has to be noted that the parallel obligation of the nobility to „rise” in defense of the realm was maintained right up to 1848.

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

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

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>

Parliament's self-government rights included the right to establish the authenticity of the representatives' mandates. Pursuant to this parliamentary privilege, the national assembly was entitled to check whether representatives were properly entitled to their membership in parliament, and also to administer justice in cases related to the parliamentary elections. This latter right was then relegated to the competence of the High Court of Justice in 1874, even though the law which carried that relegation into effect was passed only twenty-five years later, in 1899.

The national assembly's right of self-government also included, from 1875 onwards, the right of passing judgments in cases of incompatibility and the title to resolve on immunity and disciplinary matters.

## SUMMARY

### **Functions of the National Assembly within the Constitutional Tradition of Hungary**

ZOLTÁN SZENTE

The article examines the development of functions of the early Hungarian national assembly. To discuss the changes of functions from the establishment of the feudal Diet up to the modern, representative Parliament, 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 control over the Executive Power.

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<sup>41</sup> Búza, László: *A képviselőház házszabályai. Államjogi tanulmány.* [The Standing Orders of the House of Representatives. A Study on Law of State.] Sárospatak, 1916. 7–8., and Szente, op. cit. 23–28.

## RESÜMEE

**Die Rolle der Nationalversammlung  
in der ungarischen Verfassungstradition**

ZOLTÁN SZENTE

Der Artikel untersucht die Entwicklung der Funktion der frühen ungarischen Nationalversammlung. Um die Veränderungen zu erörtern, die in der Zeitspanne von der feudalen Diät bis zum heutigen modernen, repräsentativen Parlament in bezug auf die ausgeübte Funktion vonstatten gingen, schlägt der Autor einen Konzeptrahmen für die „historischen“ Nationalversammlungen vor. Er argumentiert damit, dass die Wurzeln des modernen Parlaments auf jene Nationalversammlungen zurückgehen, die nicht mehr nur als gelegentliche Treffen der kirchlichen und säkularen Aristokratie dienten, sondern einmal jährlich vom König zum Zwecke der Erörterung und Entscheidung von öffentlichen Angelegenheiten einberufen wurden, und die für die ganze Nation von Bedeutung waren. Obwohl die gleichen Unterschiede zwischen der Funktion der frühen, der voll entwickelten feudalen Diäten und dem modernen repräsentativen Parlament beobachtet werden können, doch war in ihrer Entwicklung eine bestimmte Logik eigen, nämlich die allmähliche, laufende Stärkung der legislativen Funktion, sowie der Kontrolle der Exekutivmacht.