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## ESTABLISHING A MORE DIFFERENTIATED SYSTEM OF POWER-SHARING

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*This study assesses the significance of Zoltán Magyary’s work and confirms his place in the history of science. As a key figure in public administration in Hungary, he combined the study of public administration and administrative law into a single, uniform discipline. The study also presents an historiographical overview of his work and examines the impacts of his rich oeuvre on contemporary practice, touching upon various issues of the European Union and the global world order as well as on the future of nation states, which are the embodiments of sovereignty.*

### KEYWORDS

Zoltán Magyary, public administration, administrative law

“In order to make public administration more effective, it is not the executive that must be strengthened, but the influence of politics on professional administration must be reduced, regardless of whether this influence is threatened by the legislature or the executive” (István Bibó citing Zoltán Magyary in BIBÓ 2013: 2.)

### THE ACADEMIC SIGNIFICANCE OF ZOLTÁN MAGYARY

The academic literature is unanimous in its assertion that the theoretical foundations of the history of the executive branch in Hungary in the first half of the 20<sup>th</sup> century can be grouped into three categories. These are public administration, administrative law and the uniform discipline of the science of public administration.

At the outset, it is necessary to draw attention to the fact that Zoltán Magyary’s significance as one of the leading scholars in the history of Hungarian public administration is primarily

due to the fact that he combined the two main strands of public administration since 1850, administrative law and administrative policy, with public administration, which had not previously been represented in university education. Backed by the research results of rationalisation, he formed this into a single synthesis, Hungarian public administration.

In the foreword to his classic synthesis, a monograph summarising his life's work, Magyary declared: "This work is an attempt to create a new synthesis of the science of public administration, encompassing both administrative law and public administration."<sup>1</sup> He also stressed that there are periods in the history of nations in which the ideas and institutions which are involved in the general development of nations themselves undergo a particular transformation.

"Whether we like it or not, there is every indication that the fundamental concepts which have been the basis of our legal institutions in the past are being dismantled and replaced by others, (and) that the legal system on which the life of our modern society has hitherto rested is being dissolved and a new system is being built on the basis of entirely new ideas."<sup>2</sup>

### ***Public administration and administrative law***

Although it would be beyond the scope of this article to mention all the eminent scholars of Hungarian public administration, it is definitely worth highlighting the work of Gyula Kautz in the fields of national economics and finance as well as Professor Győző Concha, with his encyclopaedic knowledge, who made a lasting contribution with his analysis of the real structure and performance of public administration. Perhaps the most noteworthy contributor to the field of legal doctrine was Móric Tomcsányi, who advanced the study of administrative law in three key areas: the public law of Hungary, the basic institutions of Hungarian administrative law, and Hungarian administrative and financial law, also known as the special – specialised – administrative part.<sup>3</sup> Moreover, the theory of the legal relationship between public administration and private law has been fundamental in the legalisation of the functioning of public administration.

The premise that public bodies must also be required to comply with the law, and that legal decisions of administrative bodies may be subject to judicial review, confirmed the validity of extending the powers of the Administrative Court, underlined the fundamental principle of the rule of law, and was crucial for the organisational development of this judicial forum.

<sup>1</sup> MAGYARY 1942: VI.

<sup>2</sup> MAGYARY 1942: V.

<sup>3</sup> TOMCSÁNYI 1940; cf. TOMCSÁNYI 1933.

## *Public administration – science*

In the period between the two world wars in Hungary, from the 1930s onwards, the aspects of legality in its public administration were undermined by the economic crisis, and the impact of this crisis, mostly of foreign origin, brought into focus the aspects of utility and efficiency, while the increasing demands placed on public administration and the quantitative and qualitative growth of tasks made it clear that these challenges could no longer be met by legal means alone. The recognition of this situation and its resolution – as we alluded to in the introduction – is linked to Professor Magyary, Head of the Science Policy Division of the Ministry of Culture and Government Commissioner for Rationalisation, who held the post of Government Commissioner from 1931 (until March 1933) at the request of the Prime Minister.

It is worth briefly quoting from Magyary's socio-political assessment of the situation in his lecture advocating the rapid introduction of scientific management in Hungary, which he gave in 1936 as part of the regular Public Administration Training Course. Magyary pinpointed the root of the problem in the late recognition by the 19<sup>th</sup> century state organisation of the needs of the post-Industrial Revolution state. This crisis of the state was also a crisis of public administration.

“The growth of public administration over the last 100 years has led to a huge shift in the functions of the state. The liberal state has subordinated the separation of the legislature, judiciary and public administration, (divided) according to the three main functions, to the supremacy of the legislature. However, its development since then has been almost exclusively the development of the public administrative function. Thus, there has been a major shift in favour of public administration, with the result that the separation of the main functions is forced and even unsustainable. Evidence of this is the increasingly broad regulation-making powers the legislature is giving to the government in each state. The state apparatus of the early nineteenth century therefore had to take into account the enormous economic development, the Industrial Revolution and the social transformation. The old administrative apparatus is not able to deal with the tasks of today, even though the country has a responsibility to deal with them. The legal aspect is absolutely necessary, because no system can do without it, but its exclusivity does not guarantee economic efficiency and effectiveness.”<sup>4</sup>

It should be noted, however, that Magyary's application of the legal approach in the unification ought to be understood from an administrative and scientific perspective; it was descriptive,

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<sup>4</sup> MAGYARY 1936.

and completely lacked the legal dogmatic methodology applied earlier. Professor Lajos Lőrincz, who played a decisive role in shaping public administration in Hungary, this peculiarity:

“However, it is clear to our eyes today, even in our country: the science of public administration denotes the research trend that Magyary calls public administration, so it is not necessary to include the approach that jurisprudence applies, therefore, contrary to the whims of his time, we can rightly and without reservation call Zoltán Magyary a classic of Hungarian public administration science.”<sup>5</sup>

Magyary’s work and intellectual legacy are also decisive because he clearly saw that to meet the needs of the times, the reform of public administration is an empirically verifiable methodological issue, not a matter of establishing eternal dogmas, but a reasonable procedure that can always be changed, using the available qualified personnel and material means to ensure the security of justice and to serve the public.

As an expert on the development of the Hungarian public administration, he noted that its history is partly a history of failed and incomplete reforms. The Hungarian public administration system of the last century was founded on two principles of the 19<sup>th</sup> century liberal state. It was based on a system of government that is accountable to parliament and a peculiar system of territorial–local government. The former was gradually eroded, as has been pointed out, by the inexorable expansion of public administration and what remained a dual administrative model, with the “constitutional protection” function of local government, which also gave rise to the specific principles of the organisation and operation of the civil state. He was therefore convinced that reforms could only be carried out by means of inductive methods, accurate data collection, fact-finding and the involvement of experienced professionals with theoretical rigour. Rationalisation, as he rightly put it, does not equate to a reduction in staff. He warned against the dilettantism of the very simple-minded man: against the model of a state with few bodies, few officials, and which is therefore efficient, and what is more, cheap – against *sancta simplicitas*.

### ***Public administration institute – The Magyary school***

The special value of Magyary’s work lies in the fact that he not only assessed the problems of public administration realistically, but was also an excellent diagnostician, and was always able to prescribe the appropriate therapy.

A professor of great character, he not only taught, but also produced, in later years from among his students, very successful colleagues. He considered proper training to be a fundamental issue, constantly stressing that good administration can only be based on scientific foundations. His conviction that an academic institute should be organised ‘from

<sup>5</sup> LŐRINCZ 2010: 45.

the outside' is proof of his objectivity and real politics, but in the case of the Hungarian Institute of Public Administration, founded in 1931, he advocated that it function within the framework of university autonomy, with the special Hungarian reason of ensuring that its operation should be free from government influence. Moreover, the research priorities of the Hungarian Institute of Public Administration were also able to serve as the basic principles of the operation of the National Institute of Public Administration as it was reorganised in the present day, thus:

- the cultivation of a multidisciplinary public administration science in order to create a national scientific management team
- to ensure meaningful cooperation between theory and practice
- adaptively taking into account the results of legal developments abroad.

Furthermore, these goals, as István Kiss, one of the outstanding researchers of the Magyar Working Group aptly put it, were pursued through “a threefold approach: by examining public administration from above, from below and from within”.<sup>6</sup> Particular attention should be paid in this context to the issues of public administration and leadership, public service pragmatics, material needs, and the relationship between public administration and the people. The conclusions of these studies are quite telling. For example: public administration is not a matter of argument, but of will and action. In matters of government the will comes first, followed by the development of an organisation that will make that will happen. The organisation is a combination of will, initiative and responsibility. Vigour and initiative do not mean that reason can be sidelined by power, but that wisdom prevails over “the communication gaggle”. Public administration is therefore for the community: for the parish, the town, the county, the whole nation. Public administration must therefore always be geared towards the completion of tasks.

A well-known anecdote in Hungarian academia tells how Ereky wrote of Győző Concha that he wanted to be the Lőrinc Stein (Lorenz von Stein) of the Hungarian administration. Concha, a leading figure in the study of Hungarian public administration, dismissed this, arguing that Lőrinc Stein's ostensible lack of stature was no different from that of an ordinary man – in other words, Stein's ideas were too grandiose for average men. The undisputed leader of Hungarian public administration science of the 20<sup>th</sup> century thereby proclaimed in this spirit and grounded in research and practical experience that the practice of specialised administrations requires separate specialists. Accordingly, the activities of his research organisation were directed towards the creation and integration of such a team.

The Magyar School, which was an effective, practical, highly experienced and theoretically demanding body of professionals, comprising nearly 100 people and directly linked to the Hungarian Institute of Public Administration, must therefore be regarded as an institution of exceptional effectiveness. The working group thus laid the foundations for a comprehensive administrative discipline through numerous participatory studies and a considerable body of

<sup>6</sup> MÁTHÉ 2011: 47.

empirical research by eminent experts in each field. This workshop produced such achievements as the draft law on administrative procedure, the organisation, functioning and legal regulation of municipalities, the attempt to settle the farm question, and the methodological tools and models for achieving efficiency and economy, among many other new results. A particular focus of the school was the legality of public administration. This centred on three dominant elements: the system of legislation in force, the administrative procedure and, in turn, the administrative judiciary. The latter is particularly relevant today, as Magyary considered the independent Administrative Court to be the most important guarantee of legality, calling for a further extension of its powers and, eventually, for the establishment of a two-tier system. This is a subject that deserves special attention, because the contemporary world was not receptive to the establishment of an independent Administrative Court. In the present day, administrative adjudication has been incorporated into the ordinary court system, breaking with the historical Austro–German legislative method, and seeking to impose the Anglo-Saxon model on our legal system, even though it has a completely different legal philosophy. This dominant institution of the rule of law is the only guarantee of the substantive rule of law, i.e. the ‘full’ legal binding of the operation of state bodies.

To take this idea further, it is necessary to follow the still valid “catechism” of the Magyary School on legality and effectiveness, enshrined in the thesis that effectiveness and legality are not alternatives to each other but are instead symbiotic. Moreover, efficiency and professionalism go hand in hand when decisions are taken with specialised expertise and empathy, following a legal and rapid procedure. If the administrative authority acts in a different way, the decision of the Administrative Court may also constitute a precedent that would be binding in further proceedings.

Another key element of Zoltán Magyary’s professional legacy is the need to reform the constitution in order to bring our public administration up to the standards of the times. These constitutional reforms have two components, according to Magyary: a vertical and a horizontal one.

“There are epochs that involve broad sections of humanity. In the same way, there are international solutions to ubiquitous needs that are invented in one place and used elsewhere. These include parliamentarianism, the cabinet system, and the emancipation of serfs, all of which we did not invent but adopted from the West. Similar effects were the earlier adoption of the professional army, the professional public service, and even earlier the adoption of Christianity and the institution of kingship. This is the horizontal factor. And the vertical development is the role of national assimilation and constitutional continuity in the adoption of the prevailing norms and their incorporation into the historical constitution. Such progress is needed now, and to be aware of it is part of the knowledge of Hungarian public administration.”<sup>7</sup>

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<sup>7</sup> MAGYARY 1942.

## THE IMPACT OF MAGYARY'S OEUVRE ON THE PRESENT

### *The public administration development programme*

Is it really a state-of-the-art question to ask what kind of progress is needed now in the 21<sup>st</sup> century?

It is well known that Zoltán Magyary's intellectual heritage was the basis for the public administration development programme of 2011, the preamble of which states its aims for the complete reorganisation of the Hungarian state and the Hungarian public administration. This process includes, in particular, the adaptation to the new fundamental law (constitution), the application of international experience and, last but not least, the regular, multifaceted training of public administration officials.<sup>8</sup>

The institutional system for the implementation of the programme was set up with the Ministry of Public Administration and Justice at its centre, as provided for in the Statute. In this spirit of coherence, the National Institute of Public Administration, the Ludovika University of Public Service, the ECOSTAT Centre for Government Impact Assessment and the Institute for Public Policy Research were also established. As the Minister responsible for implementing these developments stressed, this structure was a model to be followed "in line with Magyary's legacy. He drew on a wide range of experiences at home and abroad, which he sought to apply to the practical workings of governance. His main aim was to grasp and depict complex issues and complex systems in an accessible way."<sup>9</sup>

### *Economic and scholarly approaches*

Apart from outlining the programme itself, we will focus on one aspect, namely the analysis of the foreign trends in the development of public administration. At the turn of the millennium, a change of approach in Hungary – driven by a series of financial crises – led to the adoption of a neo-Weberian concept of the state and a strengthening of state involvement. This trend was all the more marked given that globalisation has dismantled welfare state governance through increased competition. In a similar vein, the post-industrial state abandoned the "night watchman" conception of the state by expanding its role in the economy during the 1929–1933 crisis.

Despite these parallels, they do not imply the dismantling of the state itself, as Professor Béla Kádár, for example, made it clear in his academic inaugural address:

"Despite its role in the neoliberal global doctrine, the state's average share of gross domestic product concentrated in the budgets of the European Union member states increased from 33% to 40% between 1978 and 2000. At the same time, it went from 27% to 28% in

<sup>8</sup> Magyary Zoltán Public Administration Development Programme, version 11.0 (MP 11.0); see also Magyary Zoltán Public Administration Development Programme, version 12.0 (MP 12.0).

<sup>9</sup> NAVRACSICS 2011.

the United States and from 21% to 28% in Japan. Far from disappearing, the economic role of the state, which is integrating into international and regional organisations and has relinquished part of its former role, has been transformed from a welfare function to a training and education function.”<sup>10</sup>

Finally, he points out that in countries with a high level of development and a knowledge-intensive development path, the complexity and interconnectedness of the various socio-economic processes entail such a wide range of stimulating and coordinating tasks that they can only be performed at the level of state organisation.

The same line of thought is exemplified by another academic, Tamás Szentes, who emphasises the responsibility of the government. In his view, our global age (our “postmodern world”) is only the beginning of the transformation of the world economy into an organic system (reproduction of factors of production, consumption, information flows, financial and monetary processes) of transnationalism. By denying the policy of delinking, it advocates a more symmetrical interdependence between countries, a more targeted localisation of local advantages (with the aim of becoming the home of transnational corporations or the home base of multinationals established elsewhere), and the creation of competitive advantages as priorities for national economic policy. It recommends the development of human capital as a key instrument to achieve this.

“Investment in the development of intellectual capital and human capital has perhaps never been more productive, and in the longer term and from the point of view of the national economy, more productive and more profitable than it is today, on the threshold of the 21<sup>st</sup> century.”<sup>11</sup>

As well as justifying the strengthening of the role of the state and highlighting its priority tasks, this financial forecast is also significant in the context of public administration development. Sándor (Alexandre) Lámfalussy, a noted European economist, compared the European and American financial systems, highlighting the dominant role of banks in Europe. In simple terms, he argued that European financial structures have remained ‘bank-centric’, while the United States has moved towards the implementation of a ‘market-centric’ system. Lámfalussy predicted that the new structure will be three-tiered. They will be “geographically (i.e. between countries of the global world) between markets (e.g. between bond and equity markets) and between different segments of the financial sector, and will lead to the creation of a highly competitive environment across national borders between groups of financial intermediaries”.<sup>12</sup> Thus, if international regrouping becomes a reality, megabanks covering the full range of financial services could be created in Europe, which could then compete with the “big league” U.S. investment banks. At the other pole, there could be local banks to meet

<sup>10</sup> KÁDÁR 2005.

<sup>11</sup> SZENTES 2000.

<sup>12</sup> LÁMFALUSSY 2000: 6.

the service needs of households, while regional banks could emerge to meet real needs that remain difficult to define. The impact of this process on public administration, particularly with the expansion of ‘remote’ banking, is highly problematic, as it leads to a reduction of the traditional branch network and new interbank arrangements, not to mention an expanded scope for banking and financial services supervision within the Euro area. A development that could also cause extreme difficulties for the Hungarian banking system and financial sector is the need to meet “relevant Western standards, (which are) moving targets”, and the fact that regroupings and new mergers cannot be avoided, as some of the large owners of Hungarian banks will have merged with each other by then, Lámfalussy noted. As he astutely observed: in the present and in the coming decades, “this is in fact the universal challenge facing the Hungarian economy: to integrate itself into a European economy which, with all its parts and aspects of its functioning, has embarked on a radical structural change”.<sup>13</sup>

### ***Rechtsstaat – The Rule of Law***

According to Lámfalussy’s vision sovereignty is not only a term imbued with the Enlightenment and its belief in reason, but a concept that links the state, law, identity and politics into a functioning whole. When considering the relationship between the democratic rule of law, state intervention and the militarised state, it becomes clear that we continually move between law and war. Contemporary global experience likewise confirms that the categories of the sacred and the victim cannot be abandoned. The first decades of the new century further confirm that the world of sovereignty is not about to disappear, despite renewed attempts to advance new projects of power.

In jurisprudence, it is an axiom that a state is considered lawful when its powers and activities are grounded in law. In the ideal of the *Rechtsstaat*, all activities are legally expressible. The rule of law seeks to achieve its ends through comprehensive and all-embracing regulation, erecting the guarantees it seeks to protect by enforcing its rules. *Hic et nunc*, it is worth noting the version of the rule of law that prevails beyond the Continent. The central idea of the Anglo-American ideal is justiciability, institutionalised so that any question with legal relevance can be referred to a judicial forum for a binding decision. The two systems also reflect two distinct legal cultures. Law which is based on the rule of law is underpinned by historicity, German dogmatics, codification and rabbinic procedural law, and embodies the classical doctrine of the separation of powers.

The Anglo-American model of the Rule of Law, in contrast to the continental approach, emphasises case law (precedent) by redefining principles in order to find a just solution to a given dispute. “Here, then, the general does not dominate the particular, yet the particular is not chaotic either. The particular gains its general formulation in relation to the various generalisations.”<sup>14</sup>

<sup>13</sup> LÁMFALUSSY 2000: 12.

<sup>14</sup> For a detailed analysis of the issue see VARGA 1993: 941–950.

The two systems also differ in the way they deal with the division of power. The rule of law implements the traditional division of power, favouring a model based on parliamentary supremacy, while the American founding fathers were influenced by Montesquieu, who prioritised a different element in his seminal work on the theory of power, *The Spirit of Laws*. He stressed that the executive must have the means to stop, or limit, the legislature. The aim, therefore, is to ensure a socially desirable equilibrium. Ergo: the principle here is the organisational and personal separation of government bodies. Professor János Sári presented this difference between the two systems with crystal clear reasoning as an outstanding expert on the subject. It is worth paying attention to discussions on this topic, because in the EU's practice and communication there is an increasing call to follow the U.S. example. While it is true that the U.S. Constitution provides for the separation of bodies performing state functions, it does not, however, provide for state functions in this way, but in the opposite way. Contrary to popular belief, the founders did not build a system of government based on a separation of powers, but instead created separate institutions that share in each other's power. Without a mutual organisational sharing of functions, power-sharing cannot achieve its goal. To summarise the professor's basic monograph,

“the U.S. Constitution did not create a system of checks and balances, but a system of checks and balances in government. [...] Checks and balances as a constitutional arrangement differs from separation of powers in that it includes the element that political power must and can be checked by political power.”<sup>15</sup>

### ***The concept of the rule of law and the means to achieve its goals***

In Europe, in 1813, Carl Theodor Welcker described the rule of law as “the Reason state leading to the highest stage of development of the advancing Enlightenment”. The nation states of the 19<sup>th</sup> century were thus intended to be expressions of the rule of law in which free, democratic law and statecraft are requirements. Moreover, the constitutional constitutions that emerged sought to ensure legal certainty by guaranteeing liberty and property, human–civil rights. It became clear that these constitutions were worth “as much as the administration whose strength and honesty they guarantee”, as the admonition of the time had it. It is no coincidence that the establishment of judicial control of a *contra legem* administration became the ultimate goal of the rule of law. In the words of Otto Mayer: “The rule of law is a state of well-organised administrative law.”

While it would be extremely instructive to trace the history of the concept of the rule of law up to the present day, a summary of its status today would also be a good starting point and comparison for assessing the much-touted “rule of law”.

<sup>15</sup> SÁRI 1995.

The rule of law as it is generally understood today is a state whose guiding principle is certainty of law and in which law is therefore the measure of the functioning of the state.

Thus, the rule of law is:

- a constitutional state which regulates the legislative process
- a legal state, which regulates the behaviour of individuals, setting up state bodies and prescribing their structure and competence
- a state that protects the law, ensuring compliance with the constitution and with the law through appropriate institutions

As Professor Werner Ogris wittily and astutely put it:

“The elements and instruments that achieve these ends do not constitute a closed canon, they are not *numerus clausus*, but their absence results in the emptying out of the rule of law. The decisive elements are: separation of powers, the linking of the legislature to the constitution; the linking of the executive and the judiciary to the law; fundamental rights, the guarantee of legal protection by independent (public) courts; the responsibility of public bodies for the observance of the law, the prohibition of retroactivity, the prohibition of disproportionality, the protection of legitimate expectations, the clarity of the drafting and promulgation of legal provisions.”<sup>16</sup>

### ***The emerging legal space – The need for a new legal doctrinal system***

The integration of the nation states has created an eclectic and very extensive body of EU law, based on the national legal systems of the Member States, which has been significantly supplemented and then modified, but whose theory is arguably still undeveloped.

The law of the entity that integrates the Member States, which becomes a *sui generis* legal entity, is therefore defined in relation to national law. Importantly, the reference to the rule of law can only ever concern the Member States.

The Union can also be regarded as a system linked to allied Member States, organised along the lines of international law, combining the competences conferred by the Member States on certain elements of their sovereignty with the competences they have been granted. A legal system has been created which is integrated into the legal system of the Member States and essentially functions as a federal state, where the democratic deficit is complemented by a constitutional deficit. This is coupled with the aforementioned fiscal treaty, which, by introducing supranational control, may call into question one of the attributes of the rule of law – the power of the national parliament to approve the budget and to authorise appropriations. These phenomena have convinced many experts in this field that the European Union needs

<sup>16</sup> OGRIS 2010; see also KIS–MÁTHÉ 2024.

a new legal doctrinal framework. In addition to new constitutional concepts, it is essential to foster a new spirit to guide the demarcation of parallel competences.

It was therefore particularly welcome that Professor Armin von Bogdandy, called for the construction of a new dogmatic system in his work *National Legal Scholarship in the European Legal Area – A Manifesto*.

He defined the European legal area, as it already exists, as an area delineated into national legal systems, but also stressed that supranational norms already strongly influence national legal systems. Accordingly, EU membership is becoming an essential feature of the statehood of the participating states, and their previously self-contained legal systems are becoming part of a wider legal framework.<sup>17</sup> The initiative is certainly a welcome one – particularly given the EU’s institutional turmoil – but now the legal system of thought needs to be applied to this new context in a different way, and new concepts and meanings must be introduced that go beyond the previous nation-state, rule-of-law model.

An elegant motto for the development of a common European legal area is also included in the call for scholarship in von Bogdandy’s “manifesto”:

“The law of another Member State, although part of the shared European legal area, is a different part thereof and the result of a dissimilar path taken [...]. The diversity within the European legal area, in general, requires accepting foreign law as foreign and counteracting the tendency to interpret these other legal systems purely through the prism of one’s own system. [...] It is necessary to study the basic structure of other European legal systems, but also to respect their decisive historical experiences, stages of development, and their legal as well as their scholarly styles in the perspective of the forming European legal area, and to then develop one’s specific tradition in that light.”<sup>18</sup>

This methodology aligns with the fact that Europe is a multicultural entity. The coexistence and flourishing of cultural identities are widely recognised as the key to Europe’s prosperity. If the economy, whose absolute priority is growth, cannot guarantee this, then this culture and civilisation are doomed.

## GLOBAL ORDER – SOVEREIGNTY

American scholar Jeremy Rabkin, albeit in the face of criticism, has argued convincingly that “the global order in the 21<sup>st</sup> century must be based on the sovereignty of states”, as the only international factor that (at least potentially) combines democratic legitimacy with the ability to enforce law. In his view, international cooperation is a legitimate goal and activity, but it

<sup>17</sup> Cf. TAMÁS 2009.

<sup>18</sup> VON BOGDANDY 2012: 622.

can only take place under conditions where there is a precise and limited transfer of power to an international territory and where states ultimately retain control.<sup>19</sup>

The permanence of sovereignty is important because it is the only guarantee of the conditions for democratic legitimacy, of which the promotion of good governance is an essential element. This makes it possible to create institutions that can better maintain the balance between the requirements of legitimacy and effectiveness.

### *A differentiated system of power-sharing*

The sovereign-state and rule-of-law formula of the past nearly two and a half centuries is a model that should continue to be followed in the 21<sup>st</sup> century, but it is necessary to develop a more differentiated system of power sharing – making good use of the lessons of the post-industrial era, including the work of Magyary – in a world that is experiencing constant crises of the global order.

Sovereignty and the rule of law are complementary categories. Indeed, the existence of the rule of law is a prerequisite for civilisation. Following the logical sequence of interactions, it is clear that civilisation constitutes the defining feature of world order and that the leading states within a civilisation are the wellsprings of that order.

According to the prophecy of Carroll Quigley, who produced the most useful periodisation of the evolution of historical civilisations, “civilisations begin to decline when they no longer innovate. In modern terminology, the rate of investment declines.”<sup>20</sup> Experience shows that the economy must follow culture. A cultural community is a prerequisite for meaningful economic integration, which can give rise to new structures and institutions, provided that the states concerned share sufficient cultural homogeneity. It cannot be overlooked that in the past, in the classical sovereign state model, patterns of international trade were fundamentally determined by cultural patterns. Two things necessarily follow from this. First, viable regional organisations will only emerge if a cultural community exists that can sustain them; economic cooperation is rooted in common cultural traits. Second, and more seriously: without sufficient cultural cohesion, the coherence of the country itself may be at risk.<sup>21</sup>

### *Administrative efficiency and legality of implementation*

The aspiration to develop a more differentiated system of power-sharing is by no means a new one. In his work, Magyary condemned the imbalance in the post-industrial state, arguing that the principle cannot be restored because of the changes in the legislative–executive functions and the proportions and the requirements of professionalism. In the early decades of the liberal

<sup>19</sup> RABKIN 2004; cf. FUKUYAMA 2006.

<sup>20</sup> HUNTINGTON 1996.

<sup>21</sup> HUNTINGTON 1996: 209–214.

era, it was sufficient to deepen the spirit of service and objectivity. By the 20<sup>th</sup> century, however, a duality had emerged: the rule of law had achieved results, and the requirement to extend the legality of enforcement to the greatest extent possible was becoming a requirement that rivalled the need for public administration to be effective. Bibó's axiom is an eloquent description of the situation: "Legality is one of the most essential factors of service, professionalism and reliability."<sup>22</sup> He also stressed that the pursuit of legality cannot be a never-ending process, because alongside the assumption of new tasks, "new inventions must be made to ensure that new forms of power are placed under the guarantees of justice". This is because the relationship between the two branches of power is also primarily a matter of defining and managing the different ways in which the two branches of power are perceived in terms of their social value-bearing role. In other words, administrative effectiveness is only of value as long as it is itself subject to value considerations. According to Bibó, the parliament representing the people is not suitable for judging this, and therefore the existence of a value-regulating apparatus that sets guidelines is necessary. In the modern age, the invention of such an instrument is a precondition, unlike in the Christian Middle Ages, when there was already a body for value preservation and value regulation: the ecclesiastical order.

As a parallel, it is instructive to note Magyary's statement that "in order to make public administration more effective, it is not the executive that must be strengthened, but the influence of politics on professional administration must be reduced, regardless of whether this influence is threatened by the legislature or the executive".<sup>23</sup>

Likewise, Bibó's 1944 statement in *Jogszerű közigazgatás* [Legitimate Public Administration], "the internal needs of modern state development [...] point towards new forms of the division of state power", can be read as a programme or recommendation for today. Parallel to the extension of the sphere of effective public administration is the growing need for guarantees of legality, and parallel to the increasing scope for the executive to exercise its powers is the tendency to enhance the bodies of public opinion and to subordinate the executive to the values represented by these bodies.<sup>24</sup>

In his rationalisation programme, Zoltán Magyary mentioned among the tasks of academia the "constant monitoring" of international legal developments and the provision of information to the public and professional circles on the "state of progress" in the field, as there are many areas of our public administration which are difficult to compare. This warning is particularly true in our time.

### ***Balance: Legitimacy versus competition***

Francis Fukuyama, in his recently published book *America at the Crossroads. Democracy, Power, and the Neoconservative Legacy*, attempts to develop a multilateral agenda for the United States

<sup>22</sup> BIBÓ 1986.

<sup>23</sup> BIBÓ 2013: 2.; MÁRTONFFY 1940: 280–291.

<sup>24</sup> BIBÓ 1986.

that is more realistic than pre-emptive war, and to develop a differential relationship with the global world. By rethinking the institutions of the new world order, he argues that there are not enough international institutions today to afford legitimacy to collective action. This is because, horizontally, there is a lack of accountable institutions that meet the needs of states.

The effectiveness of the formal traditional treaty-based structures (UN, World Bank, NATO) is questionable, according to Fukuyama. The author argues that informal, flexible, rapid but weakly legitimised and unaccountable forms of international cooperation can be built to overcome this, in the framework of the legitimacy versus effectiveness model. It is true that the new formations are uncertain in terms of legitimacy, accountability and transparency, and that a balance between legitimacy and effective competition has not yet been achieved, although the latter is a precondition of globalisation.

The problem is that the contradiction cannot be resolved by theoretical arguments, while military interventions are particularly difficult to justify.

At the same time, the situation is clearer for the EU core countries, which previously rejected the European Constitution with a 'no' vote, in favour of looser alliances based on national sovereignty and diversity.

However, examining the Rabkinian position on sovereignty, it can be concluded that if a sovereign state with the capacity to uphold democratic legitimacy and to enforce the law voluntarily cedes certain competences to a body which is also accepted by another sovereign, this does not violate its legitimacy, provided it retains the right of substantive control. Thus, for example, in the EU relationship, economic regions, regional centres and areas of reciprocity within and across borders can be created between individual sovereigns by a unanimous decision of will. Structures born from the use of the full range of sovereignty can correspond to the economic integration promoted by the cultural communities mentioned above. The aim of this, the so-called "integration of the social and economic MacDougall report", is to redistribute more income from richer regions to poorer ones in order to develop them.

This seems to us to be the only experimental model that can be used, unlike those proposed by Fukuyama and other observers, who prefer shared sovereignty, for example, in cases where one state offers longer-term government and other forms of assistance to another in exchange for certain uncontrollable services.

However, the current final assessment of alternative proposals for solutions is reassuring, with the eminent researcher arguing that "there is no legitimate expropriation system at present, and to have one, one must be devised."<sup>25</sup>

It is clear from our review that national administrations face extraordinary challenges in the global world order. New approaches from political science are needed, and this requires thorough and systematic institutional research, and at least the kind of professional cooperation that Zoltán Magyary and his team have developed. After all, the "temptations of this world" are great, and it is perhaps no coincidence that the Italian Professor Francesco Galgano is

<sup>25</sup> FUKUYAMA 2006.

of the opinion that the administration organised on the basis of the nation state is no more than a historical relic.<sup>26</sup>

The historiography of Hungarian public administration – the achievements of contemporary public administrators and of domestic and foreign theoreticians and practitioners – should suffice to belie this negative opinion.

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<sup>26</sup> GALGANO 2005.

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