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1867 as the Year of Constitutional Changes Around the World

I Introduction and Methodology

The composite jubilee of the year 1867 provides the topic for this paper. We will see how 1867 influenced both international relationships and constitutional changes through the world. The apparent and evident parallelism between Canada and Hungary because of the jubilee of 1867 gave the hint to examine other events of constitutional history. The significant changes in the form of government or constitution of a country have a great impact on the neighbouring countries and politics. This phenomenon was the root of our examination; namely to analyse the corresponding events and the constitutional changes closely relating to the Canadian and Hungarian changes with an eye to other determining and / or neighbouring countries in the international relationship. Our objective is therefore to describe the process of the changes of 1867, or more precisely, the second half of the 1860's, mostly in a descriptive way, since Hungarian and / or other foreign readers may not be so well-read on the history of the other side of the world, as they are on their own history. After that, our other incentive is to make a comparison of the detailed processes of the constitutional development of the examined countries, with an eye to the formation of the alliances of the First World War, as the end of the old world order started in 1867.

The combination of these incentives, namely the description of the events and the internal developments, and placing of these developments into the external, foreign relationships basically determines which countries are to be analysed. Since Canada was a colony of the British Empire, and the English did not want to wage war against her as they did with the US, it is evident that apart from the Canadian internal development, we examine 'the host country' i.e. England from inside. This means the examination of the constitutional changes of England. Meanwhile, Canada's neighbouring country, the US that had some interests in the Canadian territory allowed both Canada to acquire autonomy, and England to let Canada autonomous. This is the reason why we shall examine the US constitutional

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developments of that epoch. The net and frame are always the international relationships of the relating countries.

Another part of this paper that comes from the Canadian-Hungarian constitutional jubilee, is the examination of the counterpart, the Hungarian constitutional development in its status of 1867. That is why we have chosen to examine the Austro-Hungarian Compromise, with an eye to the Croatian-Hungarian Compromise of 1868. Since this paper has an Anglo-Saxon, mainly Canadian orientation, we are just referring that we are aware of the other constitutional changes in Serbia, Romania, North-German Confederation *(Norddeutscher Bund)* and Prussia, but the examination would exceed the limits of this paper.

The third country that we are examining is Japan. All the great powers had commercial interests in Japan. The international relationships were very 'harmonic' between them, because they coerced unequal commercial treaties to Japan in mutual understanding. Yet, this colonising expansion gave the birth of modern Japan. Since practically Japan did not take part in World War I, her regime from 1868 lasted until World War II, thus functionally the war waged for new colonies or recolonization of the world was the Second for Japan. The other reason for examining Japan is that the Constitution of 1868 is very unique, though a bit neglected by literature, in the sense that it was a true and very transitional document between feudalism and modernity. Therefore, the path from the feudal society to the modern, capitalist one can be detected.

We have therefore chosen to scrutinise the constitutional changes in Canada, the USA, Great Britain, Austria–Hungary and Japan. This spectrum may seem too broad at first; however, their mutual dependence requires even a schematic or orientating examination of all these countries. Constitutional changes are always embedded in the international relations and policies of the countries, as they are the net or frame that makes the changes either possible or, to the contrary, hinders the countries from realising them.

We are aware of the fact that each of the chosen countries had their own way in history. Their developments had different roots and their constitutional solutions had different consequences. Therefore the questions emerged in the second half of the 1860's, differ from country to country. That is why we cannot have the same field of examination in 1867 in all the countries. Certainly, the historic events emerged in those years, created several different problems to solve. Among others, the problems were for Canada autonomy and self-governance, for Hungary independence, for England suffrage, for the US the reunion of the nation and the abolition of slavery, for Japan to avoid colonisation etc. Thus, it is almost impossible to find the greatest common denominator of the constitutional changes of these countries, not even speaking of the ones that are omitted from the paper. The scope of the paper is to give an overall picture of the constitutional changes of the second half of the 1860's and to reveal the net and the frame of the international relationships that were decisive in the constitutional settlements. Thus the evaluation of the historical phenomena and the constitutional developments may be done together with the international relationships. This combined and complex net constitutes the frame of all the changes, and since it lasted for five decades it is worth to analyse them in their complexity.

This complexity and the limits of comparability explains the 'changes' word in the title. Since the constitutional developments differed from country to country, and even they were described and evaluated differently both by the contemporaries at that time and the scholars later, we have chosen the neutral word 'changes'. Furthermore, we will with the terminology of the changes in each country in another chapter in this paper. Thus, let's see the international relationships of the epoch as the sine qua non of the changes.

II International Relationships in the 1860's

In 1848, in the year of revolutions or the spring of nations, all Europe rebelled against the regime of the Holy Alliance. These revolutions were combined with wars of independence. The objective of the revolutions differed from country to country. Italy and Germany intended their own unification, though they could only succeed in 1861[1] and 1870, respectively. The French expelled Louis Philippe; the 'bourgeois monarch' abdicated or was expelled from the throne, yet after the second republic, Napoleon III became the emperor. The revolutions in Eastern-Central Europe were defeated by the Habsburgs with the help of the army of the Tsar, Nicholas I. However, several social achievements of the revolutions were preserved. England and Russia remained out of the revolutions, but both empires had to face the strength of their people. England pre-empted the turmoil with the First Reform Bill, and the Chartists were not strong enough to start any revolution. Russia, on the other hand, was defeated in the Crimean War (1853–1856) and in 1861 she had to abolish serfdom.

In the 1860's, mainly in 1867–1868, the whole world rose up against the old regimes and, unlike the events of 1848, these two years were the dates of the establishment of regimes that lasted until World War I. The constitutional frameworks were settled in those two years, yet, in Meiji Japan, for example, the new constitution was only issued in 1889. In Europe, Bismarck's policy determined the changes and gave the potential and impetus for new institutions. Austria had to compromise because of her defeat in 1866 and Croatia could make her own one with Hungary for the same reason. Italy could deepen her unification more because Austria was preoccupied with Hungary.

France was busy preparing for the world expo, held in Paris in 1867, and having no allies she was isolated as Bismarck's main objective but in 1870, after a brief and hopeless war with Prussia, the Second French Empire collapsed, and gave way to the Paris Commune and to the Third Republic. In Spain, there was civil war and continuous regime changes and mass executions for six years (1868–1874). In 1867, England had to deal with the Second Reform Bill and the Chartist Movement, not to mention the Fenians in Ireland. The USA threatened the British North American Border and the North put the South under military administra-

[1] The last phase of the unification *(Risorgimento)* was when Rome became part of Italy after the Capture of Rome *(Presa di Roma)* in 1870.

tion and forced the Amendment of the era by a simple law in Congress. Moreover, the US purchased Alaska from Russia in 1867. As a result, Canada had only one very powerful neighbour left. Mexico executed her emperor, and became a republic. In the Far East, Japan was successfully transformed from the threat of colonization to the most powerful nation of the region by the Meiji reforms. The powers of emperor were restored and Japan was ready to wage war at the end of the era.[2]

The common feature was that in all regions, apart from some marginal events, domestic affairs were the main focus. None of the countries could pay attention to foreign affairs, or intervene if a civil war broke out in a neighbouring state. The only exception was Prussia, which thanks only to this potential, could lead German unification. Russia and France were isolated and too weak to intervene. The US government tried to reconstruct the nation, while the Habsburgs finally realised that, without Hungary's participation, the realm was far too weak. Canada therefore had a real opportunity and time to form a federation; moreover, owing to the historic and geopolitical environment, she could even have declared independence, apart from the unlikely consequence that the US and the British could have united their forces against the colony.

Nonetheless, these conditions did not create a hostile environment. The countries turned to internal renewal, though the influence of nationalism cannot be forgotten.[3] The methods of all these reforms, restorations and compromises were constitutional, although sometimes preceded by civil wars. The aim of this paper is to reveal both the external and, more commonly, the internal evolution of the constitutional institutions of each of the countries and to show that the world was not the same after 1867–1868 as before. Institutionally, the relevance of 1867–1868 as a whole is that all the regimes lasted at least until World War I. Furthermore, the pieces of the word order, i.e. the countries, underwent only reformatory changes; none declared themselves to be revolutionary, yet regarding the whole globe, 1867 was a year of revolution for constitutional institutions.

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[2] See Majoros István, 'Nemzetközi kapcsolatok 1789–1914' in Vadász Sándor (ed), *19. századi egyetemes történelem 1789–1914* (Osiris 2011, Budapest) 43–58; Ormos Mária, Majoros István, *Európa a nemzetközi küzdőtéren* (Osiris 1999, Budapest) 97–106, 117–145; Kincses László, *Diplomáciatörténet* (HVG-Orac 2005, Budapest) 95–108; Henry Kissinger, *Világrend* (Antall József Tudásközpont 2016, Budapest) 67–89.

[3] For the development of nationalism and citizenship and their connection in Europe and Hungary see further Károly Kisteleki, *Az állampolgárság fogalmának és jogi szabályozásának történeti fejlődése – Koncepciók és alapmodellek Európában és Magyarországon* (Martin Opitz 2011, Budapest) 27–50; Kisteleki Károly, 'Magyar nemzet – magyar állampolgárság' in Máthé Gábor, Menyhárd Attila, Mezey Barna (eds), *A kettős monarchia. Die Doppelmonarchie* (ELTE Eötvös 2018, Budapest) 79–114; E. J. Hobsbawm, *A birodalmak kora 1875–1914* (Pannonica 2004, Budapest) 147–169.

III Changes in Central Europe. The Compromise of 1867 between Austria and Hungary

1 Neo-absolutism in Hungary

The Revolution and War of Independence in 1848–49 ended with the Russian intervention that maintained the Habsburg rule over Hungary. Though several social changes were kept, such as the abolition of serfdom, the core of the legal reforms (mostly the 'April Laws' of 1848) was overruled in favour of the Austrian law.[4] Hungary even lost her sovereignty under the so called 'forced' imperial 'Constitution of Olmütz' in 1849. The *'Silvesterpatent'* went even further introducing open neo-absolutism. This document preserved the principle of equal justice before the law and the abolition of serfdom only. The 'October Diploma' in 1860 purported to ease the level of centralisation, and was open to introduce federalist elements into the imperial settlement. It even differentiated between imperial and provincial affairs, thus the fields of internal administration, jurisdiction, religion and education were declared Hungarian affairs. However, the territorial integrity of the country was not restored; Transylvania, Croatia and the Croatian Military Frontier were treated as separate territories of the Austrian Empire.[5] Furthermore, the foreign and the military affairs belonged to the power of the Emperor, while in finance, banking, tax and customs, trade etc. the imperial government could act only in agreement with the *Reichsrat* (Imperial Council).[6] However, the council did not gain legislative powers at this time. The 'February Patent' in 1861 was the last document that intended some consolidation. Though the Patent introduced constitutionalism, it aimed for a much centralised state in comparison with the federalised vision of the 'October Diploma'. After that, the Hungarian statesmen rejected the Patent unanimously, and the Emperor reinstated the absolutistic regime in Hungary provisionally.[7]

2 The Compromise of 1867

After the overwhelming Prussian victory at Königgrätz in 1866 and the economic crisis, both the political elite of Austria and Hungary and the Emperor were willing to make the

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[4] See further Ruszoly József, '„Egy új alkotmány Magyarországnak." Az 1848:III. tc. létrejötte' in Ruszoly József, *Újabb magyar alkotmánytörténet 1848–1949* (Püski 2002, Budapest) 7–25. Idem: '„Évenkinti országgyűlést Pesten". Az 1848:IV. tc. létrejötte' in ibid 26–37. Idem: 'Az országgyűlési népképviselet bevezetése Magyarországon. Az 1848:V. tc. létrejötte' in ibid. 38–66. Képessy Imre, '1848 alkotmányos forradalma – előzmények és kontextus' in Fazekas Marianna (ed), *Jogi Tanulmányok, Jogtudományi előadások az Eötvös Loránd Tudományegyetem Állam- és Jogtudományi Kar Doktori Iskoláinak konferenciáján* (ELTE ÁJK 2016, Budapest) 242–253.

[5] See 'A magyar országgyűlés képviselőházának válaszfelirata a legmagasb trónbeszédre' (1865) 1 (2) Képviselőházi irományok (see: Válaszfelirat) 33.

[6] See Válaszfelirat 36.

[7] See Révész T. Mihály, 'Felemás polgárosodás: A neoabszolutizmus évei' in Mezey Barna (ed), *Magyar alkotmánytörténet* (Osiris 2003, Budapest) 254–259.

compromise. Bismarck urged it as well, because he needed a defeated Empire, yet one that was not sullen but strong at Prussia's back against the Russians.

Based on the legal framework created by the Pragmatica Sanctio,[8] the Compromise established the dual monarchy of Austria–Hungary which is generally regarded as a real union of two monarchies, where the head of state was the Emperor *(Kaiser)* of Austria and the King *(König)* of Hungary in one person.[9] Afterwards, this *K. und K.* nomination was in effect reflecting the equal realms of the Monarchy. The Hungarian Kingdom re-acquired its sovereignty. The most significant powers were in the hands of the Emperor-King; for example, he was the commander in chief of the armed forces.

The Compromise joined three fields of interests. These were the interests of the ruling elites of both Austria and Hungary and the Emperor as the representative of the dynastic aims of the Habsburgs. Austria had a much more industrial and developed bourgeois society and economy as well as a modern legal system; meanwhile Hungary intended to re-establish the liberal legislation of the Revolution. Besides regaining the traditional status of the country upon the natural development of the 'historic constitution',[10] which was identical to the 'ancient constitution' in the English development. In 1848, the question arose particularly by the Viennese Government, whether the enactment of the April Laws was equalled to the adoption of a new constitution for Hungary.[11] It was argued, that with the promulgation of the act on the responsible government, the ancient constitution was abolished. From the Hungarian statesmen's point of view, the changes enacted in 1848 meant only an evolutionary step in the Hungarian constitutional settlement.[12] Furthermore, the April Laws were treated as inseparable parts of the 'historic constitution' by the 1860s.[13] Moreover, the Habsburgs had just been expelled from the unification of Germany, so their ambitions towards the Balkans needed a strong hinterland.

The settlement of Austria–Hungary established parliamentarianism with elected representatives by the people,[14] the executive responsible to the parliament and finally a modern legal system and administration. It introduced some fundamental rights as well, like equality before the law, burden sharing in taxation, right to property, habeas corpus etc.

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[8] Hanák Péter, *1867 európai térben és időben* (MTA Történettudományi Intézete 2001, Budapest) 87.

[9] The question whether this legal relationship should be based on personal or real union of the states created high tensions. The political sentiments of the question is represented in the preliminary debates of the Compromise where even Kálmán Ghyczy a member of the opposition argued heavily that the reaction to this question should be taken and presented in the response to the so called Franz Jopseph's speech from the throne. See Képviselőházi napló, 1865, Volume I, national session XXVII, 259, in 20 February 1866.

[10] Hanák quotes: HHStA, Deák Franz. Augusz's report of 28 February 1865.

[11] See Ruszoly József, 'Parlamentarizmus és népképviselet 1848-ban' Rubicon Online, http://www.rubicon.hu/magyar/nyomtathato_verzio/parlamentarizmus_es_nepkepviselet_1848_ban/ accessed 05 July 2018; Pölöskei Ferenc, *A magyar parlamentarizmus a századfordulón* (MTA Történettudományi Intézete 2001, Budapest) 141–142.

[12] See Egyed István, *A mi alkotmányunk* (Magyar Szemle Társaság 1943, Budapest) 44.

[13] See Képviselőházi napló, 1865, Volume I, national session XXIV, 180, 187.

[14] The suffrage cannot be regarded general, though it was a broad one in contemporary Europe.

This latter and the compromise itself were based upon the theory of legal continuity, which was the natural constitutional development of the historic constitution of Hungary. This theory created the grounds and legitimacy for the Compromise.

As for the legal structure of the realms, the monarch was the emperor and the king in one person. There were common affairs of the realms, the military (defence) and foreign affairs, with each having a common ministry (department). The third one was finance; however, it only covered those financial aspects that supported the two others. A common ministry was created as the main executive, with the Emperor-King and with the common ministers as members. The authority of the two separate parliaments of Austria and Hungary did not affect this common ministry. A delegation, constituted from each of the two parliaments, was the only representative body of the interests of the people. A common parliament of the whole empire was never formed, though it would have meant a real balance to and control of and over the common ministry. On the other hand, such institution would have reduced the Hungarian Parliament to a provincial legislative body.[15] Furthermore, this delegation became increasingly powerless while the emperor regained his influence and power. Hence, the control of the parliaments and the delegations turned into a formality.[16]

After the Hungarian–Austrian Compromise, Hungary made another with Croatia in 1868. Croatia, Dalmatia and Slavonia delegated 40+3 members (representatives and peers) to the Hungarian parliament and that body had authority over the military, finance, legislation and administration. The head of state was the Hungarian King; the Crown, the boundary and citizenship remained common, i.e. due to earlier Hungarian settlement. Common affairs were under Hungarian authority as they affected the whole country of the Holy Crown. These were the Hungarian Royal Court, foreign affairs, finance, customs and trade, the railway, post offices and shipping. Internal affairs, religion and education, and jurisdiction belonged to the Croatian authority.[17]

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15 See Válaszfelirat 36–37.

16 See Máthé Gábor, Mezey Barna, Révész T. Mihály, 'A parlamentáris monarchia' in Mezey (n 7) 260–266; and Csorba László, 'A dualizmus rendszerének kiépülése és konszolidált időszaka (1867–1890)' in Gergely András (ed), *Magyarország története a 19. században* (Osiris 2005, Budapest) 360–362. See further Képessy Imre, 'Az út a Kiegyezéshez' in (ACTA FORVM 2018, Szeged) [manuscript, under being published]. The most recent work on the anniversary of the Compromise is. Máthé Gábor, Menyhárd Attila, Mezey Barna (eds), *A kettős monarchia. Die Doppelmonarchie* (ELTE Eötvös 2018, Budapest), for this chapter see especially Máthé Gábor, 'Deák Ferenc közjogi dogmatikai remeke' (39–64) and Stipta István, 'A közös elvek szerint kezelt ügyek és a közigazgatási bíráskodás' (65–78). Szente Zoltán, *Kormányzás a dualizmus korában* (Atlantisz 2011, Budapest) 171–314.

17 See Mezey (n 7) 266; and Heka László, *A magyar–horvát államközösség alkotmány- és jogtörténete* (Bába kiadó 2004, Szeged) 155–166.

IV The Reform of Parliament in the United Kingdom

1 The Reform Bill of 1832

Until 1832, Parliament was still summoned according to the old customs. The constituencies originated in the Middle Ages. There were even uninhabited districts or some that were in the private possession of landowners. These constituencies could not represent any public interest but their owners,' who obviously intended to maintain their property and their MP status as well. These were the so-called rotten boroughs. Moreover, there were large towns without any representation at all, for example Birmingham, Manchester, Leeds and Sheffield, so both the population and the territory of the constituencies were disproportionate.[18]

Apart from the unequal distribution of parliamentary seats, the right to vote was in the hands of a few because it demanded having an amount of property that was quite rare to possess. However, these qualifications were not strict measures for one to be entitled to vote. These were only qualifications to be on the register of electors. Furthermore, the rules regulating the right to vote altered from borough to borough. The main old qualifications were to have a forty-shilling freehold or an estate worth £10 a year. These requirements of enfranchise ment and the economic and demographic changes, accompanied by an internal political crisis, led to the introduction of the Reform Bill in 1832.

The new qualifications broadened the number of voters, since the Act created a uniform franchise in the boroughs and enfranchised all householders who paid a yearly rental of £10 or more. It also extended the franchise's property qualification in the counties to include small landowners, tenant farmers and shopkeepers. The number of constituencies also changed and there were several where the number of MPs was reduced.[19] '45 boroughs lost both their members and 30 more lost one. 42 new constituencies were created in London and the large towns and 65 new members were given to the counties.'[20]

The significance of the Reform Bill of 1832 was to give a uniform franchise and power was therefore transferred from the agricultural to the manufacturing districts. The equal franchise gave the main power to house-holders and destroyed to a great extent the influence of the aristocracy in the boroughs.[21] The number of eligible voters increased only from 220,000 to 670,000, though in another aspect, it tripled. The other consequence was for unskilled workers. Being excluded from all the benefits of the Reform Act 'and the Poor Law Act of 1834 convinced them that the Whigs were at least as indifferent to their interests as the Tories had been'.[22]

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18 See Cyril Ransome, *A Short History of England from the Earliest Times to the Death of Queen Victoria* (Longmans, Green & Co. 1905, London – New York – Bombay) 425; and S. B. Chrimes, *English Consitutional History* (Oxford University Press 1967, London – New York – Toronto) 128.

19 See F.W. Maitland, *The Constitutional History of England* (Cambridge 1961, Cambridge) 355–360.

20 See A.L. Morton, *A People's History of England* (Lawrence & Wishart 1979, London) 390.

21 See Ransome (n 18) 425.

22 See Morton (n 20) 392–393.

The fall of the rotten boroughs involved the fall of the Municipal rotten boroughs in the field of local government. 'The Municipal Corporations Act of 1835 was more democratic than the Reform Bill, for it gave all ratepayers the right to vote for the new Municipalities. At last the ice-age English institutional and corporate life had come to an end, and the life of the community began to be remodelled according to the actual needs of the new economic society.'[23]

2 The Reform Bill of 1867

The United Kingdom survived the turmoil of the revolutions of 1848 intact apart from a rebellion in Ireland, but that was put down without any difficulty due to the Great Famine. Even the Catholic Church was against the rebellion.[24] Though, the constitutional settlement faced the challenges of the Chartists, there were no reforms as a result, not to mention a lack of any revolutionary movements. However, the demand for the extension of the franchise became stronger. Still, 'the governing and conservative classes had grown accustomed to change as a normal condition of political life'.[25]

After the death of Lord Palmerston in 1865, the Liberals were in crisis, though they had a majority in the House of Commons. In 1866, the Liberal leader Gladstone introduced a Bill which only reduced the £10 qualifications in the boroughs to £7. This Bill had its opponents even among the Liberals, and the so-called 'Adullamites', who were collaborating with the Conservatives, left the Liberal Party, and this way the Liberal Party escaped from their own faction of internal opposition, the so-called Radicals, the overlap between the two groups is great and they are common in that they were the opposition inside the Liberal Party.[26] Yet, later, most of the Adullamites returned to the Liberal Party.

However, the Parliament accepted Disraeli's Bill in 1867. He was the leader of the Conservative Party, though the Conservatives were in a minority in the House of Commons under Lord Derby's third Ministry in that year. Disraeli's Bill extended the franchise to those with property worth £5, more than the previous Bill intended (£10).[27] 'At the same time, the franchise in the counties was given to all £12 householders, and a partial redistribution of seats was effected, by which, following the method of 1832, many members were taken from ancient but small boroughs and given to rising towns or to populous counties'[28] However, 'the agricultural labourer and the miner in country constituencies were indeed still left without a franchise, but household suffrage in the boroughs was in effect the principle of the Second Reform Act. Being the measure of a Conservative government it easily passed the Lords'.[29]

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23 See G.M. Trevelyan, *A Shortened History of England* (15th edn, Penguin Books 1981, New York) 476.
24 See David Ross, *Ireland. History of a Nation* (Geddes &Crosset 2009, New Lanark) 228–229.
25 See Trevelyan (n 23) 490.
26 See Morton (n 20) 415.
27 See Maitland (n 19) 360.
28 See Ransome (n 18) 446–447.
29 See Trevelyan (n 23) 490.

The significance of the Act was that 'a million new voters were enfranchised and nearly doubled the size of the electorate'[30] up to 2 million; thus while the demand for universal male suffrage was not introduced, the working men of the towns basically, gained a parliamentary franchise. Nevertheless, the consequence of this doubling in size was that the House of Commons began to act like the forum of political parties, where the party is responsible to its electorate for carrying out its programme and its members should act like the delegates of their constituencies.[31] Although the Conservative objective and belief was that the new electorate would vote for them, Disraeli and the Conservative Party lost the general election of 1868.

Gladstone's first Ministry (1868–1874) was the term when 'the universities were opened to men of all creeds, a national system of Primary Education was established, Army Reform was initiated, the throwing open of the Civil Service was completed'.[32] As a continuation of the reform acts, the Act of 1873 introduced the secret ballot, and finally, Gladstone's Act of 1884 (the Third Reform Bill) 'reduced the occupation of premises qualification almost but not quite to vanishing point, increased the electorate by nearly a further 70 per cent bringing it up to rather more than four and a quarter millions'[33] so agricultural workers and miners could also vote.

Britain had another significant issue that initiated constitutional changes in the settlement of the Empire, though the final result partially arrived in the 20th century. That was the Home Rule for Ireland. In 1867, there was a notorious criminal trial where three people were sentenced to death. They were the 'Manchester Martyrs' for the Irish, and bandits for the British. Nonetheless, the Fenian movement, in whose name they were fighting for Home Rule, was strong and had a significant base in North America near the Canadian border.[34] The British Government and the North American British had great fears that, although the Fenians had been defeated in Britain, they would take revenge in America. The cause of the fear was that the Fenians had discovered two weapons against the government, 'the terror tactics in Britain, and the cult of the sacrificial hero in Ireland'.[35]

30 See Chrimes (n 18) 128.
31 Ibid.
32 See Trevelyan (n 23) 513.
33 See Chrimes (n 18) 129.
34 See Paul Rose, *A manchesteri mártírok* (Kossuth 1975, Budapest) 110–142.
35 See Ross (n 24) 236.

V Changes in North America

1 Canada

a) Canada's Road to Dominion

In 1763, after the Seven Years' War, which is called the French-Indian War in North America, the former French colony named New France was ceded to the United Kingdom. This territory was renamed as the British Province of Quebec by the Royal Proclamation of 1763. This provided representative assemblies and the introduction of English law, which was very unjust for the Catholic French. The Quebec Act of 1774 gave a compromise and annulled the former proclamation. It recognised the Roman Catholic religion, and except for English criminal law, it restored the French law and custom. The Act was an expedient to save Canada for the British. Meanwhile, it offended the sensitive Americans, mostly in New England, but it could not gain the help of French-Canadians who remained sullenly neutral in the American war of independence.[36]

Though, the Americans counted on an uprising in Canada, they were mistaken. Furthermore, about seven thousand British Loyalists entered Canada via the Upper St Lawrence River as refugee immigrants.[37] Due to the conflicts between the newcomers and the French settlers on questions of religion, self-government and customs, the Quebec Act of 1774 'was to be recognised as the bastion of French-Canadian liberties and the foundation of French-Canadian nationalism.' [38]

In 1791 the British divided the territory into Lower and Upper Canada and granted them a 'model' of the English constitution. The head was the governor with subordinate lieutenant-governors in each province. Similarly to the House of Lords, there were two small legislative councils appointed for life by the crown, and, similarly to the House of Commons, there were two legislative assemblies elected every four years.[39]

Nonetheless, the power was in the hands of the executive authority, and it was guarded against the hazards of popular intervention. The demand was therefore to give political control to the assembly and in this way the government would be responsible for the representatives of the people. This issue was of course how to reconcile self-government with imperial supremacy, besides the obvious economic grievances. The War of 1812, which purported to defend American agricultural interests and at the same time occupy the British

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[36] See Gerald S. Graham, *A Concise History of the British Empire* (Thames and Hudson 1970, London) 99–103. For the very details in Hungarian see the most recent monography about the events, Molnár István János, *Kanada története – A kezdetektől a konföderációig* (Patrocinium 2017, Budapest). However, the publication of Molnár's work was after the deadline of the manuscript, so here we can refer only to the existence of that work.

[37] Contrary to Graham, Morton claims a number of 40 000. Morton (n 20) 470.

[38] See Graham (n 36) 104.

[39] Ibid.

territories in Canada, was a complete failure for the United States and ended with no changes to the boundaries.[40]

In 1837, rebellions broke out against the British colonial government in both Upper and Lower Canada. The British Parliament sent Lord Durham, who was both an imperialist and a democrat at a time when hardly any other person in the Cabinet rank was either the one or the other,[41] to examine the state of the colonies. 'He had the peculiar merit of regarding freedom as the means of preserving the Imperial connection, and not as a step towards separation, which most Whig and Conservative statesmen in that era believed to be inevitable.'[42] However, it was an inappropriate time to discuss the mother country's obligations to her colonies. The Durham Report of 1839 recommended that some colonies were mature enough for self-government; moreover, it would be more effective than governing the colonies from the opposite shore of the ocean. It also advised that 'the Cabinet be made responsible to the majority in the assembly on issues of colonial concern, and it insisted on the compatibility of this notion with the imperial connection'[43] The Report therefore left the regulation of trade and foreign affairs in British hands; likewise, the form of government, the disposal of public lands and the determination of immigration policy. Nonetheless, 'the Report presented the alternative to revolution, namely, evolution towards dominion status through the grant of internal self-government.'[44] Durham's other 'bold' proposal was the union of Upper and Lower Canada under 'a single Assembly with full power over the executive, which thus be in the hands of the English-speaking majority.'[45] This came true in 1840 by an Act of Union, and the responsible government was realised in 1848. Although 1848 was the year of revolutions in Europe, in Canada self-government was established without any disorder, 'because Canadian leaders, disdaining republican models, turned towards British parliamentary procedures.'[46]

b) The Dominion of Canada and the Constitution of 1867

After the Civil War in the United States and the belligerent military rule over the Southern states, the British realised finally and unequivocally that they could neither defend Canada nor hinder US hegemony and dominance of the continent.[47] Graham emphasizes that the British fear was doubled after the American acquisition of Alaska and the demand for the territory between them. Furthermore, a united federative Canada was more likely to resist to the piecemeal consumption by the US.[48]

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[40] See Charles Sellers, Henry May, Neil R. McMillen, *Az Egyesült Államok története* (Maecenas 1996, Budapest) 100–106.
[41] See Trevelyan (n 23) 49.
[42] Ibid.
[43] See Graham (n 36) 152.
[44] See Graham (n 36) 153.
[45] See Trevelyan (n 23) 494.
[46] See Graham (n 36) 155.
[47] See Trevelyan (n 23) 494 and 498.
[48] See Graham (n 36) 168–170.

The British North American Act of 1867 (also called Constitution Act of 1867) created the Dominion of Canada with a constitution similar in principles to the constitutional principles of the United Kingdom. The dominion consisted of the Province of Canada (Upper and Lower Canada) and New Brunswick and Nova Scotia.[49] The dominion became a federation under the single name of Canada[50] and remained a part of the British Empire, so the Head of State was the Queen (Victoria). The Queen held the executive powers, but was represented by the governor general or an administrator of the government.[51] Furthermore, the executive was supported with the help of the Queen's Privy Council for Canada.[52] The executive branches of the provinces continued to exist and their power was exercised through the lieutenant governors. The federal government exercised its powers through the governor general, either with the advice of the privy council or alone.[53] The Parliament of Canada was composed of the Queen and the House of Commons of Canada and the Canadian Senate.[54] Although the powers and privileges of the parliament were no greater than those of the British parliament,[55] the Parliament of Canada had the right to 'make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces'.[56] Parliament also created the Supreme Court as general court of appeal for Canada and lower federal courts.[57]

The Act fulfilled its political role, namely to protect Canada from an American invasion and safeguard British interests as well.[58] Nonetheless, constitutionally and politico-culturally, the brightest diamond of the British Empire was Canada and not India. The origin of this assessment was that the Canadians gave their loyalty to the British in exchange for their autonomy and self-governance. As such, the Atlantic Ocean did not just protect the English but the Canadians as well; in other words, the ocean can protect England, but it can also insulate her colonies. Thus, the legal frame between Britain and Canada constituted a role model for other dominions, and maintained the integrity of the Empire by its liberal principle, i.e. self-governance versus oppression. Therefore, the legal role of the Act was fulfilled similarly.

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49 Preamble. The Source and all citations are from http://www.legislation.gov.uk/ukpga/Vict/30-31/3/contents accessed 14 June 2017.
50 Section 4.
51 Sections 9–10.
52 Section 11.
53 Section 12.
54 Section 17.
55 Section 18.
56 Section 91.
57 Section 101.
58 See Trevelyan (n 23) 498–499.

2 Constitutional Challenges in the United States in the Reconstruction Era

a) The Reconstruction Era

After the convulsion of the American civil war (1861–1865), the main objective was to reunite the states and the nation, though the Southern states wanted to retain the old socio-economic order by enacting the Black Codes. These laws meant to maintain the former slaves in a sort of disenfranchised status and under white supremacy; in other words to put them outside the law.[59] This legislation of the Reconstruction Era was the legal manifestation of the Civil War.[60] The response to such regulation was the establishment of the Freedmen's Bureau in 1865, the Civil Rights Act of 1866 and the 13th, 14th and 15th Amendments to the constitution which were just as decisive as the victory at Gettysburg.[61]

After the election of 1866, the South was placed under military administration by the Reconstruction Acts and this rule was not withdrawn until 1877. We have to emphasise that Congress enacted these Reconstruction Acts just in order to ratify the Amendments, i.e. until the Northern States ratified the Amendments, the South would be under military rule. As such, the North altered the Constitution under the impetus of the Civil Rights Act, by the 14th and 15th Amendments while the South was under military administration by the North.[62]

This military rule over civil authorities even led to the first impeachment against the presidents in US history, because President Johnson debated the right of the Congress to enact and enforce such regulation and administration. Finally, he was acquitted by only one vote in the Senate. [63] Nevertheless, legal race discrimination continued as a crucial issue after 1877 with the Jim Crow laws, which enforced racial segregation in the Southern states until the 1960's.[64] This election had other significant consequences. The Republican Party, which was formed in 1854, mainly by anti-slavery activists, won a 2/3 majority in Congress and even overruled president Johnson's veto on the Civil Rights Act. In this way, the Northern Republican radicals gained the key positions both in legislation and the in reconstruction.[65]

US foreign affairs in 1867 were of little importance, since all attention was paid to reconstruction. However, the Russian Empire, attempting to eliminate its fiscal deficit, sold Russian America (Alaska) to the US in that year. The other objective of the Russians, besides the increase in national revenue, was to weaken the British Empire with the threat of the annexation of British Columbia. This thought was not far even from the public sentiment of

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59 See Carl N. Degler, *Az élő múlt. Milyen erők formálták Amerika mai képét?* (Európa 1993, Budapest) 220–222.

60 See Fred W. Friendly, Martha J.H. Elliott, *The Constitution: That Delicate Balance. Landmark Cases that Shaped the Constitution* (McGraw-Hill 1984, New York) 22–23.

61 See Nagyné Szegvári Katalin, *Fejezetek az Amerikai Alkotmány történetéből* (HVG-Orac 2002, Budapest) 61–63.

62 See Michael K. Curtis: *The Fourteenth Amendment and the Bill of Rights* (Duke University Press 1986, Durham) 152–153.

63 See Howard Cincotta (ed), *Amerika rövid történelme* (Egyesült Államok Információs Hivatala, Amerikai Nagykövetség, Vienna) 171–175.

64 See Degler (n 59) 238–245.

65 See Sellers, May, McMillen (n 40) 192–194.

the US. Furthermore, Russia could easily have lost Alaska if there had been war with the British later, and could have never been able to reacquire it, but with the purchase she gained 7.2 million dollars. Moreover, it was very unlikely that the US and the British would have waged war for the possession of Alaska, though the future status of British Columbia was not so evident.[66]

On the Southern border, the US demand for the withdrawal of the French intervention from Mexico in 1866 led to the collapse of the French regime, and in 1867 Emperor Maximilian from the Habsburg dynasty was executed and the Republic was restored under the third presidency of Benito Juarez. Mexico's secular reforms were continued and the power of the Church was curtailed. The legislature as a branch of power became more important, and although land reform and ending debt slavery were not resolved, Mexico stepped onto the path of being a modern constitutional state.[67]

b) The Civil Rights Act of 1866 and the 13th, 14th and 15th Amendments

The aim of the 13th Amendment was to clarify the post-war status of former slaves because Lincoln's Emancipation Proclamation of 1863 was issued during the Civil War and therefore it was legally dubious. The Amendment abolished slavery in the US and the Three-fifth Compromise at the same time.

Though the Civil Rights Act of 1866[68] wanted to overrule the legislation of the Southern states that claimed white supremacy, it created constitutional controversy. However, President Johnson's veto was overridden. The first article guaranteed the same rights and declared the same citizenship for the freed Afro-Americans 'as the white persons without regard any previous condition of slavery or involuntary servitude' in every State and Territory in the United States.

The act also purported that former slaves had right 'to make and enforce contracts, to sue, be parties, and give evidence, to inherit, and purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.'[69]

The controversy and the cause of Johnson's veto[70] was that the act 'does not purport to give these classes of persons any status as citizens of States, except that which may result from their status as citizens of the United States. The power to confer the right of State citizenship is just as exclusively with the several States as the power to confer the right of Federal

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66 For either the American or the Russian primary sources see: <http://www.loc.gov/rr/program/bibourdocs/Alaska.html> accessed 08 June 2017.

67 Lynn V. Foster, *Mexikó története* (Pannonica 1999, Budapest) 123–126.

68 Source: <http://legisworks.org/sal/14/stats/STATUTE-14-Pg27.pdf> accessed 09 June 2017.

69 Ibid.

70 Source: <https://en.wikisource.org/wiki/Civil_Rights_Act_of_1866> accessed 09 June 2017.

citizenship is with Congress. […] Hitherto every subject embraced in the enumeration of rights contained in this bill has been considered as exclusively belonging to the States. They all relate to the internal police and economy of the respective States. They are matters which in each State concern the domestic condition of its people, varying in each according to its own peculiar circumstances and the safety and well-being of its own citizens.'[71]

Johnson's most important argument was self-evidently that the norms of the act 'interfere with the municipal legislation of the States, with the relations existing exclusively between a State and its citizens, or between inhabitants of the same State – an absorption and assumption of power by the General Government which, if acquiesced in, must sap and destroy our federative system of limited powers and break down the barriers which preserve the rights of the States. It is another step, or rather stride, toward centralization and the concentration of all legislative powers in the National Government.'[72]

However, both the Senate and the House of Representatives overrode the veto by the majority of 2/3, so it became law. Congress also wanted to place this act at the constitutional level so, as we have seen, they forced through the 14th Amendment, which guaranteed privileges and immunities of citizenship, due process and equal protection, with the help of the military administration. Article 1 of the Amendment claimed the fundamental guarantees. 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

In the second article, the Amendment protects the citizens' right to vote, because, if it were to be limited in any way, the basis of representation, i.e. the size of the population according to the Great Compromise (by which three-fifths of the former slave population were added to the white population), would be reduced by the proportion of the population deprived of their rights to vote. In this way, the Southern states either denied the freed male population of their right to vote and lost representatives in Congress, or provided that right and could outnumber the Northern states.

This increase in the population and therefore in the number of seats created a relevant threat to radical and moderate Republicans as well, and was another cause for Johnson's veto. However, in 1868 the Republicans won a strong majority in the elections and Ulysses S. Grant became the president.

Though the Civil Rights Act and the 14th Amendment overruled the Supreme Court's decision in the Dred Scott case (1857), which had held that slaves could not 'become a member of the political community'[73] i.e. citizens of the United States, the various Republican factions were discontented.[74] Hence, they forced the 15th Amendment, which

[71] Ibid.
[72] Ibid.
[73] See Friendly, Elliott (n 60) 21.
[74] See Curtis (n 62) 91.

declared that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, colour, or previous condition of servitude.

Though the primary objective of the 14th Amendment and the Republicans was to protect and guarantee the rights of freed slaves, its legacy was even more revolutionary than its contemporary effect. 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.' The sentence created not just a debate over interpretation but it also had political, constitutional and jurisdictional consequences.

The new idea was that, beyond setting up the federal government and protecting citizens from the abuses of the central government, the federal government could scrutinise the activities of state governments. For many people, the intention of granting the above mentioned protections against the states was absolutely clear. More precisely, the Amendment was to give the federal government the power to apply the Bill of Rights to the states.[75]

The experience of slavery and public opinion against it shaped the 14th Amendment. As such, the opponents of slavery advocated that the guarantees in the Bill of Rights limited both the states and the federal government. However, it took about a century that the Supreme Court obliged the states to apply the Bill of Rights.[76] The other conclusion we can draw is that Congress had the power to overrule the constitution by amending it without the Southern states, so basically against the rules of the constitution itself, or at least questionably. The more serious experience was that even the constitution could not defend the Southern states against military administration.

VI Changes in Asia – The Meiji Restoration and Modernisation

1) Towards 1867 in Japan

In the eyes of the Western empires, Japan's role in the mid-19th century was to be forced to become the same semi-colonial settlement as China had after the Opium Wars (1839–1842, 1856–1860). One of the earliest foreign attempts was a letter from the Dutch king, William II (1840–1849), who tried to make the government of the shogunate[77] *(bakufu)* open its ports for the Western countries.[78] However, it was only commodore of the US. Navy Matthew C. Perry's (1794–1858), visits with his 'black ships' in 1853 and 1854 and the Convention of Kanagawa that opened Japan to world trade.

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75 See Friendly, Elliott (n 60) 26–29.

76 See Curtis (n 62) 25.

77 The shogun, the main military leader who was resident in Yedo (now Tokyo) had the real power as a dictator over the country, while the formal ruler was the Emperor, who was without any mentionable power, settled in Kyoto.

78 See Yamaji Masanori, *Japán: Történelem és hagyományok* (Gondolat 1989, Budapest) 247.

The most significant phase towards the Meiji restoration was the Treaty of Amity and Commerce (Harris Treaty) which Townsend Harris, a merchant and Consul General to Japan, negotiated to secure trade between the US and Japan. The Treaty gave US residents extra-territoriality from Japanese jurisdiction and fixed low import-export duties subject to international control; moreover, it granted 'most favoured nation' status to the US. Shortly after, the Netherlands, the United Kingdom, France, Russia and Prussia made the same treaties *(Ansei Treaties)* with Japan, and the last contracted party was the Austro-Hungarian Monarchy in 1869.[79]

After this mercantile intervention into Japanese politics, the discontented warriors (*bushi* or *samurai*), in order to 'honour the Emperor, and expel the foreigners,' tried to rout out the strangers. However, that was a complete failure, and so they turned their hatred and dissatisfaction towards the shogunate. The main warrior families were from Choushuu and Satsuma, and they were supported by the British; however, the shogunate was given a loan of 6 million dollars by the French. After their inevitable defeat, the Choushuu and Satsuma opposition gathered around the Court of the Emperor.[80]

Finally, after economic crises and peasant revolts and victorious battles, the 15th and last shogun, Tokugawa Yoshinobu (1837–1913), gave back his power *(taisei houkan)* to the Emperor in 1867. The power of the Emperor, Mutsuhito (1868–1912) with the name Meiji, 'Enlightened Rule,' was re-established. The Court declared the restoration and modernization of the Empire, and the abolishment of the regent-counsellor *(sesshou-kampaku)* offices and the other institutions of the shogunate, such as prerogatives and the so-called Japanese feudal system. Japan thus began its journey to westernisation.[81]

2) The Early Constitutional Documents of the Meiji Restoration

The main objective of the restoration was to abolish the unequal mercantile treaties and for Japan to be a full member of the world order. This was reflected in the political slogans such as 'be out of Asia, and to be European' *(datsu a nyuu ou)*[82] or 'Japanese spirit, Western learning' *(wakon yousai)*.[83] The core of these changes and the new regime was the Charter Oath of Five Articles in 1868 *(Gokajou no Goseimon)*. The oath was written by the leading members of the new regime, and the emperor presented it to the people, so these changes were performed from above without any organic legal development.[84]

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[79] See Tamás Csaba Gergely, *A „Jelképes" császárság alkotmánya. Fejezetek a japán alkotmánytörténet köréből* (Pázmány Press 2013, Budapest) 39–41.

[80] See Kenneth Henshall, *A History of Japan, from the Stone Age to Superpower* (Palgrave Macmillan 2004, New York) 67–70.

[81] See R.H.P. Mason, J.G. Caiger, *Japán története* (Püski 2004, Budapest) 182–186.

[82] See Szerdahelyi István, 'Japán és a környező világ az újkorban – Gondolatok Japán geopolitikai helyzetéről' in Yamaji Masanori (ed), *Irodalom, kultúra és társadalom a közép- és kora újkori Japánban* (ELTE Japán-tanulmányok 1997, Budapest) 72.

[83] See Henshall (n 80) 75.

[84] See Tamás (n 79) 42.

The preamble of the oath even declares that 'By this oath we set up as our aim the establishment of the national weal on a broad basis and the framing of a constitution and laws.'

The articles were the following: '1. Deliberative assemblies shall be widely established and all matters decided by public discussion. 2. All classes, high and low, shall unite in vigorously carrying out the administration of affairs of state. 3. The common people, no less than the civil and military officials, shall each be allowed to pursue his own calling so that there may be no discontent. 4. Evil customs of the past shall be broken off and everything based upon the just laws of Nature. 5. Knowledge shall be sought throughout the world so as to strengthen the foundations of imperial rule.'[85]

Though, these articles can be regarded only as a political programme or intent,[86] their significance is beyond any debate. The argument for this is that the wording reflects the need for the abolition of the restrictive feudal class system, i.e. the hierarchy of the warrior, peasant, artisan and merchant classes, which reflected Confucian ethics and values.[87] The oath proclaims the reason of state, i.e. basically the motive of the governmental actions or the justification of the interest and requirement of the political state, with the state's supremacy, meanwhile it argues for the individual pursuit of careers, as well as for there being just and natural laws. The last article highlights what became a very typical Japanese characteristic, namely the adoption of any efficient political, legal, economic, educational etc. system in order to improve the country, although it might be adjusted to the local environment later. All articles make an attempt to breach the strict order of life, in which social mobility was seen as a threat that could destroy the whole regime.

Since both its contemporaries and the scholars of the present day regard the oath as a message, declaration, programme, indication or statement of willingness[88] toward the Western countries, its content had to be put into precise legal terms.[89] The Emperor therefore issued the 'Document on the Government System' *(Seitaisho)* two months after the Oath. This Document of 1868 is hardly known in the literature and 'was a surprisingly low-profile affair.'[90]

However, this Document is also called the Constitution of 1868, which is not identical to the Meiji Constitution that was issued on 11 February 1889 and was overshadowed by the later one. Even so, the Document 'did provide in theory for a national assembly, public ballot, and a Grand Council of State *[Dajoukan]*. The Grand Council was the only item to be put into

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85 Source and translation: Ryusaku Tsunoda, William Theodore de Bary and Donald Keene, *Sources of Japanese Tradition,* Volume II (Columbia University Press 1958, New York) 137.

86 See Wilhelm Röhl, 'Public Law: Constitutional Law' in Wilhelm Röhl (ed), *History of Law in Japan since 1868* (Brill 2005, Leiden–Boston) 31.

87 See Farkas Ildikó, 'Állandóság és változás: A japán történelem vázlata' in Farkas Ildikó (ed), *Ismerjük meg Japánt! Bevezetés a japanisztika alapjaiba* (ELTE Eötvös 2009, Budapest) 20.

88 See Tamás (n 79) 42.

89 See Röhl (n 86) 31.

90 See Henshall (n 80) 76.

effect at the time, and its various ministries and offices further conferred legitimacy upon the young leaders of the government,' as Kenneth Henshall put it.[91]

Since the Document is generally regarded as the first Constitution of Eastern legal culture, and it is either forgotten or not even widely known, we ought to cite and examine it. Furthermore, it gave the impetus for the further constitutional changes.[92] Another reason for citing the terms is that we can see the development from a feudal state towards a modern one, in a phase where the first phase is the adapting of the forms of Western legal institutions officially. We can see similarities between the new Japanese structures and even with the early European one, namely the British constitutional system of the late 17th century, when the Cabinet was being formed, and the executive and legislative branches of power and the party system were in their embryonic state.[93]

Kevin Doak questions the relevance of the Document, and argues that the 'Seitaishou is best considered a working memorandum for several competing groups with de facto power over how their authority would be allocated in the immediate future. Japan was still far from having a state, and the Seitaishou did not carry anything like the legal or public authority of a modern national constitution.' However, he himself continues that 'even in name, the document itself echoed the 'debates over a government based on public consultation', and indeed it tried to incorporate these arguments for a broader 'public' form of government. […] The Seitaishou moved government closer towards a pluralistic political system than the earlier system of Departments and Offices. It invested this pluralism in the Dajoukan, the political structure that would survive as the governing apparatus of Japan until 1885. The Seitaishou reflected a growing consensus among those who held power that modern Japan could not survive as a government of courtiers who served only the Court, and it even secured imperial legitimacy for the demands to open the corridors of power to new talent outside traditional channels of authority and hierarchy. In this limited sense, the Seitaishou worked as a solution to the national tensions opened up by the Restoration.'[94]

Nonetheless, considering Kevin Doak's critiques of Japanese legal development until June 1868 and the very short period in which the Document was in effect, we still underline the importance of this document as a peculiar one of the transitional period between feudalism and the modern age. Since the Document is not so known, but because of the reasons mentioned above, we intend to cite it in details, article by article.

The Document[95] restated the Charter Oath in its first article. The following ten articles established the new administration that was a structure of a central government. 'All power

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91 Ibid.

92 The analysis of the Meiji Constitution of 1889 is out of our scope and does not belong to the topic and the period of this paper. However, it has a great quantity of literature, so the reader may easily find information about it.

93 Kontler László, 'Királyság, rendiség és alkotmányosság: korona, tanácsok, bíróságok, parlamentek Angliában és Nagy-Britanniában' in Poór János (ed), *A kora újkor története* (Osiris 2009, Budapest) 211–234.

94 See Kevin Doak, *A History of Nationalism in Modern Japan: Placing the People* (Brill 2007, Leiden) 51.

95 Source and translation from William Theodore de Bary (ed), *Sources of East Asian Tradition: The modern period* Volume 2, (Columbia University Press 2008, New York) 474.

and authority in the empire shall be vested in a Council of the State, thus the grievances of divided government shall be done away with. The power and the authority of the Council of State shall be threefold; legislative, executive, and judicial. Thus, the imbalance of authority between the different branches of the government shall be avoided.' Contrary to this centralised government mentioned in article 2, the division of powers by the separation of functions and tasks is emphasized in article 3. 'The legislative organ shall not be permitted to perform executive functions, nor shall the executive organ be permitted to perform legislative functions. However, on extraordinary occasions, the legislative organ may still perform such functions as tours of inspection of cities and the conduct of foreign affairs.' As such, the division of the branches of power is ambiguous, because it is in the context of the Grand Council of State, yet the roots of it can be detected.

Articles 4 and 6 describe the human policy of the administration. 'Attainment of offices of the first rank shall be limited to princes of the blood, court nobles, and territorial lords, and shall be by virtue of [the sovereign's] intimate trust in the great ministers of state. A law governing ministers summoned from the provinces shall be adopted; clan officials of whatever status may attain offices of the second rank on the basis of worth and talent.' […] 'A system of official ranks shall be instituted so that each [official] may know the importance of his office and not dare to hold it in contempt.' These articles contain both the feudal type of acquisition of positions and meritocracy for ordinary offices. This can be understood easily if we consider that, in the early modern age or even in the feudal age, administration was carried out by the nobility, because social rank assumed the person's capability for such offices. Moreover, at the ordinary level, the regulations overruled the former restrictive class system.

However, article 7 maintains some feudal elements since 'princes of the blood, court nobles, and territorial lords shall be accompanied by [no more than] two-sworded men and one commoner, so that the appearance of pomp and grandeur may be done away with and the evils of class barriers may be avoided.'

According to article 5 'each great city, clan, and imperial prefecture shall furnish qualified men to be members of the assembly. A deliberative body shall be instituted so that the views of the people may be discussed openly.' The importance of this article is the relationship between open debate and the legislature. Open debate and the legislature are complemented by the right to petition as in article 8. 'Officers shall not discuss the affairs of the government in their own houses with persons without office. If any persons desire interviews with them in order to give expression to their own opinions, they shall be sent to the office of the appropriate department and the matter shall be discussed openly.'

Article 9 combines the election of the members of the official bodies with professionalism, so that no hiatus in the competency shall occur. 'All officials shall be changed after four years' service. They shall be selected by means of public balloting. However, upon the first expiration of terms hereafter, half of the officials shall retain office for two additional years, after which their terms shall expire, so that [the government] may be caused to continue without interruption. Those whose relief is undesirable because they enjoy the approval of the people may be retained for an additional period of years.'

The last two articles are about establishing 'a system for levying taxes on territorial lords, farmers, artisans, and merchants, so that government revenue may be supplemented, military installations strengthened, and public security maintained. For this purpose, even persons with rank or office shall have taxes levied upon them equivalent to one thirtieth of their income or salaries.' Feudal privileges were therefore overruled in taxation as well.

Finally, 'each large city, clan, and imperial prefecture shall promulgate regulations, and these shall comply with the Charter Oath. The laws peculiar to one locality shall not be generalised to apply to other localities. There shall be no private conferral of titles or rank, no private coinage, no private employment of foreigners, and no conclusion of alliances with neighbouring clans or with foreign countries, lest inferior authorities be confounded with superior ones and the government be thrown into confusion.' In this way, both the local autonomy and centralisation, with the monopolies of coinage, employment etc., are stated.

In conclusion although the Document is not a developed modern constitution, it has some main elements of one, at least in its form. Nevertheless the Dajoukan, the executive branch of powers that was established by this Document, enabled the modernisation of Japan and had significantly strong authority. This organ abolished the feudal privileges of the warriors, the feudal class system, and settled the national army, a modern bureaucracy and jurisdiction.[96] As a result, the slogan 'rich country, strong army' *(bunmei kaika)* and Meiji's own name came true.

VII The Characteristics of the Changes

Regarding the form of the legal instruments of the changes, in every region the legislative bodies passed acts to realise them. It was the case in the relation between Austria and Hungary, Croatia and Hungary as well as within Japan. While the Acts passed by the British Parliament were also important, the literatureemphasises the process of the legislature and the debates over the proposals; therefore the expression 'Reform Bills', reflecting the level of contemporary English democracy, are used instead of the Reform Acts of 1867. In the US the Civil Rights Act and the three amendments to the constitution were enacted. Even in Canada, the instrument was an act, the British North America Act. Moreover, in the cases of Austria–Hungary and Canada, these acts became part of their constitutions. In Hungary, which had a historic (ancient) constitution, the political theorists even incorporated the act of 1867 into the frame of the ancient constitution by a very creative and broad interpretation of the extension of the ancient constitution and the 'April Laws' of 1848, thereby legitimising the act of 1867 and maintaining the continuity of legality at the same time. In Canada and in the USA which both had codified constitutions, the amendments and the Act of 1867 are still in effect, though the Canadian one was patriated in 1982 (transferring ultimate authority from the

[96] See Jany János, *Jogi kultúrák Ázsiában: Kultúrtörténet, jogtudomány, mindennapok* (Typotex–PPKE 2016, Budapest) 505–506.

British Parliament to Canada's federal and provincial legislatures) and a new act was formally issued. As we have seen, the Meiji constitution of 1867 is merely a document regarding the constitutional settlement, and does not fit the criteria of a modern constitution.

The terminology describing these changes is also relevant. Compromise was used because there was an agreement by mutual concessions from Austria, Hungary and the Emperor. In England it was Reform, because it altered the settlement and, contrary to the revolutions on the continent, it occurred in the Parliament and not in the streets. Canada declared the British North America Act as a Constitution, because it established the Federation of Canada. In the US, the instrument of the changes were the Amendments, while finally, in Japan the Emperor was restored to power in the Restoration. The peculiarity is that since monarchs and the ruling elite were all afraid of the experiences of 1848 in continental Europe, the terminology was nowhere one of revolution, though the extent of the changes would have vindicated it.

The role of the emperor was described precisely in the acts and as head of the executive power; they had strong authority in Austria–Hungary and Japan. According to the Compromise of 1867, Franz Joseph became the legitimate Hungarian sovereign upon his enthronement and coronation. In the Restoration, Meiji was restored to the throne after the defeat of the shogunate. The common feature and consequence in both cases was that the executive branch acquired (also de lege lata) the strongest, even overwhelming power, yet Meiji could not participate in the real governance and rule, while Franz Joseph could even somewhat strengthen his power. The acts were settled in Japan in Meiji's name, but without his actual influence, while Franz Joseph personally enforced acts and took measures during the Dual Monarchy (1867–1916).

The changes in North America and in the United Kingdom broadened the entitlement to civil and natural rights, especially the right to vote and the equality before the law. The role of popular sovereignty and legislation hence became stronger and as a consequence, it entailed the enlargement and deepening of the responsibility of the executive power. Even the president of the United States was impeached during the changes. Evidently, the role of the parties and, in the long term, even the party system changed in the US, while in the Hungarian and Japanese regimes the party systems remained basically intact and were placed under the control of the executive power. In these two parliamentary settlements, the parliamentary parties were relevant but the question of who was the ruling party was beyond doubt, which also made the executive more powerful.

As for the external relationships of the parties, Hungary became equal to Austria and independent after the years of so-called neo-absolutism (1849–1867). Croatia and Canada gained autonomy, but the former had only relative autonomy while the latter's was almost entire. The Confederacy of southern states in the US lost their independence while Japan succeeded in maintaining it. Canada became a federation while the US strengthened federation by readmitting the separatist Southern States. In all cases, the political system was characterised by the constant presence of a strong and a weak party, though the strong had to refrain from intervention and war. Of course the Northern United States was an exception, as we have seen.

As it is habitual in history, aggression was the key initiator of the changes. Austria was defeated by Prussia, and the Hungarians were indignant, which forced Franz Joseph, the emperor and Ferenc Deák, the leader of the Hungarian opposition, to compromise. As such, the changes were mainly carried out from above with a relevant external impetus. The existence of the Austro-Hungarian Compromise made the Croatian-Hungarian Compromise possible. In this case, we can observe a kind of derivation in terms of comparative law. In the United Kingdom there was a threat of internal uprisings due to the Fenians and the Chartists. Russia, as an enemy to Britain's colonial interests, was out of the spheres of changes. Hence, the changes emerged from the society, i.e. from below. In Canada and therefore for British rule, there was the threat of invasion from the US and a constant quarrel between the French and the English part of the colony. In this way, the changes outlined above were carried out on the one hand by external influence and on the other hand by influence from above. In the US there was no external threat of aggression but the Americans fought a bloody civil war lasting for 5 years and that placed the South under military rule until 1877. The course of the changes was thus in the hands of the Congress. In Japan, the whole restoration began with the foreign invasion of merchants and diplomats; however, the shogunate and the opposition waged a short civil war with some battles against each other, but later Japan was relieved from foreign invasion. Implementing the changes was in the hands of the opposition and the emperor. Comparing these developments, we can ascertain that it was only the English Reform Bill which emerged from internal elements, i.e. from the dissatisfaction of the people. Globally examining, the main characteristics of the changes were that all the countries faced the external threat of each other, as well as of wars, and yet they turned towards internal reforms. The only country that had already made her reforms in the period in question, and was therefore the engine of the international relationships for the whole period, was Germany.

VIII Conclusions

We have seen how international relationships and especially wars could accelerate changes of regimes, whether civil wars (Japan, US), or foreign defeats (Austria–Hungary, Croatia). We also uncovered the net of mutual dependency between countries that could lead to constitutional changes (Britain, US, Canada). It has also become apparent that, although the changes relied upon entirely different direct internal developments (the Chartist Movement has nothing in common with the historic constitution of Hungary or with the Japanese Emperor), the world order as a whole was dependent on internal events having external effects to and from its members, so it depended on the indirect external threats to the neighbouring countries.

Due to the complexity of international relations in 1867, the coloniser states were therefore in stalemate and keen to take any opportunity if there was any internal crisis in their enemies. Hence, any internal change could be regarded as a chance for the external expansion of opponent states. The inverse of that is also true. Any stalemates in the international field

of politics were to be regarded as a chance for internal changes. That is why there were constitutional changes in North America, Asia and the European continent as well. These stalemates of the great powers created the vacuum of either internal or external political power and thus made the opposite field moving respectively. Thus, the political vacuum in foreign affairs made the internal affairs moving in homeland, and vice versa, the political vacuum of the internal affairs made the foreign policy and the international relationship acting. So a constant and mutual action and reaction occurred in the foreign and internal politics.

Furthermore the changes, ranging from issuing reform bills, making compromises, restoring the emperor back to its power, to transferring a colony into federation etc., dramatically altered the world order and the political settlements as living and moving entities in a revolutionary way. These constitutional changes finished the turmoil of 1848 and preserved the power of social elites but undeniably eliminated the chances of any revolutions. So, constitutionally speaking, 1867 was the year of the revolutions rather than 1848, because the former was the determining constitutional milestone in the world order and not 1848, which was the year of social changes, marking the end of feudalism in Central Europe and the start of the modern age.

The peculiarity of the settlements is that, although the alliances in World War I were formed by separate political events, accidents and incidents, if we inspect the main belligerents, we find that the countries of the Triple Alliance and Japan, that did not take part in World War I though, had a strong executive power, while the Allied Forces had a strong representative body (Russia was the great exception, as it was an alliance based on military and political interests). To some degree, though it is very difficult to prove and requires more research, the core and the formation of the alliances can be traced back to the socio-political systems and even to the legal-constitutional institutions. As we are all aware that autocratic regimes tend to find solace in each other's company, we can give a historic answer to the conference's question, 'What can Eastern-Central Europe learn from the Canadian Constitution?' If a nation is a colony, it would have been better to be one in the British or French Empire (especially in the age of Victoria) rather than under the Habsburgs, Hohenzollerns or Romanovs. Moreover, we can state that the legal guarantee provided by constitutional institutions can be safer and more reliable for the people than the divine will of an emperor. The other conclusion having edifying purpose lies in the logic of solving internal problems. Namely, in 1867 the countries solved them by turning into legal-constitutional methods, so the internal affairs and constitutional law overruled the temptation of acting by foreign affairs i.e. waging war. However, the countries forgot that lesson in 1914.