

# Democracy and Violence: Political Justice in Post-War Hungary

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Questions of political violence are of particular relevance in transitional periods such as the one after the Second World War in Europe where, especially in the countries of the former Axis Powers and on territories of German occupation, retribution was at the top of the political agenda.<sup>1</sup> Displacement, internment, political verification, and political justice were the main instruments of post-war retribution in Hungary<sup>2</sup>, where the new regime intended to legitimately differentiate itself from both the national socialist rule of 1944 and the autocratic kingless kingdom of the interwar period. The new political elite of 1945 was composed of political forces that formed an anti-fascist coalition during the war years, which, when coming to power with the support of the Allied Powers, most importantly the Red Army, strove to establish a new pluralist democratic order against the background of the horrific past system. Though the institutionalisation of the Cold War, together with the concomitant communist takeover, prevented the completion of the great task of national recovery through democratisation, it is worth examining the short historical period of the so-called coalition era, in which questions of democracy and political violence arose sharply in the context of post-war reconstruction.

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<sup>1</sup> This research project was supported by the János Bolyai Scholarship of the Hungarian Academy of Sciences and the National Research, Development and Innovation Office (NKFIH, PD 115 736); Further information can be obtained from [Zombory.mate@tk.mta.hu](mailto:Zombory.mate@tk.mta.hu).

<sup>2</sup> Tibor Zinner, 'Háborús bűnösök perci. Internálások, kitelepítések és igazoló eljárások 1945-1949', *Történelmi Szemle* 28(1) (1985), 118-141.

This paper discusses post-war political violence through the case of the so-called people's courts, institutions of political and legal retribution, between 1945 and 1947.<sup>3</sup> It aims to uncover the social conditions of possibility in which the question of legitimate political violence was raised in the post-war and pre-Cold-War era. Instead of judging the people's courts' role according to the present-day regime of historicity<sup>4</sup> and normative order (with the memory of the Holocaust as its universal reference point), it focuses on how justice, transmission of the past and political emancipation were related in the post-war discursive setting. This study, inspired by Jury Lotman's prospective approach<sup>5</sup> and Reinhart Koselleck's conceptual history<sup>6</sup>, is not justified by the self-interest of producing historical knowledge. In the manner of Foucault's 'history of the present'<sup>7</sup>, it intends to provide potential for the critical understanding of the social conditions of legitimate political violence in the present-day normative order.

Post-war European justice was established on two separate, yet connected levels: international legislation (connected to the Nuremberg Trials), and national people's tribunals. The first dealt with crimes which were not linked to specific geographical locations, the other treated cases linked to national-local contexts. While the first type of crime required new forms of international legislation, the second entailed new forms of national justice. The two levels were connected in several ways: countries had to extradite individuals to the

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<sup>3</sup> Some people's courts functioned even until 1950. In total, people's prosecution examined 90,551 individuals, of which 59,429 were put on trial; from these, 26,997 individuals were convicted (45.42%), 14,727 discharged (24.78%). 477 people were executed (1.76%). 46.77% were sentenced to a maximum of one year of imprisonment, and 36.69% to 1-5 years of imprisonment. Zinner, 1985.

<sup>4</sup> François Hartog, *Regimes of Historicity. Presentism and Experiences of Time*, (New York: Columbia Univ. Press, 2015).

<sup>5</sup> Yuri Lotman, *Universe of the Mind. A Semiotic Theory of Culture* (New York: I. B. Tauris and Co, 1990).

<sup>6</sup> Reinhart Koselleck, *Futures Past. On the Semantics of Historical Time* (Cambridge: MIT Press, 1985).

<sup>7</sup> David Garland, 'What is a 'history of the present'? On Foucault's genealogies and their critical preconditions' *Punishment & Society* 16(4),(2014), 365-384.

international court if needed, and the international legal proceedings certainly influenced the way national courts delivered their verdicts.<sup>8</sup>

In Hungary, the system of people's courts was created in the context of the national work of post-war reconstruction. Beyond retribution, the main roles attributed to this institution were 1) the definition of the political community on the basis of the newly constructed categories of political crime; 2) political emancipation, that is, making 'the people' the subject of historical justice through the organisation and composition of the people's courts' councils, and the regulation of the proceeding; 3) the production of historical truth by way of presenting original documents and providing testimonies of defendants and witnesses; and finally 4) the imposition of moral values of the new regime. In what follows, I discuss these points in detail.

### Defining the *Demos*

The preamble of the PM Decree of the People's Jurisdiction no. 81/1945, adopted on 25 January 1945, declares that all those 'who caused or participated in the historical catastrophe which happened to the Hungarian people' should be punished as soon as possible. The jurisdiction and the actual practice of people's courts<sup>9</sup> can be

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<sup>8</sup> See Imre Szabó, *A nürnbergi per és a nemzetközi büntetőjog*, (Budapest: Officina, 1946).

<sup>9</sup> Although several studies discuss the famous cases of the principle war criminals in Hungary, until today there has been no exhaustive and systematic analysis on the functioning of the 24 people's courts in Hungary between 1945 and 1950. Studies on the subject usually provide data categorised according to type of judgement; there are no nationally representative data available on judgements categorised according to types of cases. The work of Barna and Pető is an exception since they acquired data by probability sampling (n=500), which is supposedly representative of the 22,000 cases of the People's Court of Budapest. Differentiating between five types of trials, the authors reveal that 81 per cent of the cases were concerned with acts committed during the Second World War, and 'ideological cases' became dominant (with 18 per cent) only in 1948. From this they draw the conclusion that people's jurisdiction cannot be treated merely as the instrument of class struggle in the hands of the Communist Party. Anyway, the spring of 1948 marks the end of the first phase of the operation of people's courts in Hungary, when 15 out of the original 24 people's courts ceased to function (see Zinner 1985). There have been

interpreted as a specific state-level institutional answer of the Hungarian legislative and judicatory practice to acute problems of the post-war era, resulting from the ‘historical catastrophe’: eliminating the remnants of the unjust past in order to establish the new democratic order. The idea of democracy, it is important to note, was not restricted to its Western liberal model, and was closely related to the need of social transformation. The necessary social transformation aimed at the legitimate definition of the political community: from the outside, the boundaries of the nation from other nations, most importantly in relation to the Germans, and the inclusion of those Hungarians excluded by the former regime as anti-Hungarians, the Jews; from the inside, it referred to the inclusion of ‘the people’ into the political community, and the exclusion of the proponents of the former regimes. The left had the inclination to call this transformation revolution, but the meaning of the term was also open and contested. Not restricted to the Marxist interpretation, on the political right revolution also meant radical change.

One of the few consensuses of Hungarian post-1945 politics was that the democratic political community should be, temporarily or definitively, restricted in order to make democratic institutionalisation possible. The principles of legitimate social exclusion were created by way of the categorisation of past political crimes. The Hungarian decree on people’s courts defined two new types of political crime in order to, as the Minister of Justice put it, ‘provide the possibility of retaliation to all those acts that directly or indirectly put Hungary into

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neither systematic nor profound international comparisons of legal retribution on the national level (see Deák 2015). According to István Deák, the Hungarian system was in accordance with other national cases of post-war historical justice (Deák 2001). Ildikó Barna and Andrea Pető, *Political Justice in Budapest after WWII* (Budapest: Central European University Press, 2015); István Deák, ‘War-Crimes Trials in Post-World War II Hungary: Retribution or Revenge?’ in *Hungary and the Holocaust. Confrontation with the Past* (Washington D.C.: Center for Advanced Holocaust Studies, US Holocaust Memorial Museum, 2001); István Deák, *Europe on Trial. The Story of Collaboration, Resistance and Retribution during World War II* (Boulder: Westview Press, 2015). On legal aspects see László Nánási, A magyarországi népbírászkodás joganyaga 1945-1950. In: Gyenesi József (szerk.): *Pártatlan igazságszolgáltatás vagy megtorlás. Népbíróság-történeti tanulmányok* (Kecskemét: Bács-Kiskun Megyei Önkormányzat Levéltára, 2011), 6-55.

this terrible catastrophe'.<sup>10</sup> These were war crimes, including both what the international legislation called crimes against peace and war crimes<sup>11</sup>, and crimes against the people (*népellenes bűn*), a criminal category that was absent in Nuremberg.<sup>12</sup> Hungarian legislators categorised past political crimes by substantial law, that is, by defining the object of the crime: while war crime referred to making offensive war, breaking the conventions of waging war, war propaganda and collaboration with the German military and security forces, crimes against the people included mainly persecution of social groups (the decree speaks of 'certain layers of the people', 'layers of society', and 'racial and denominational hatred'), fostering fascist and antidemocratic ideas in public, and collaboration with anti-popular state forces and organisations. After its first modification in April 1945, the text of the ministerial decree on people's jurisdiction was published and distributed together with the expositional interpretation of the Minister of Justice. István Ries defined crimes against the people as 'acts that were not connected to the war, did not serve

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<sup>10</sup> István Ries (1945a), 'A népbíróság védelmében' *Népbírósági Közlöny*, 8 November 1945.

<sup>11</sup> Any act of a person in a post of responsibility fostering Hungary's participation in the war, or preventing the armistice agreement, or promoting war, was qualified as a war crime. Participation in the Arrow Cross takeover on 15 October 1944 and in state administration afterwards was also considered a war crime since the Arrow Cross system extended the country's war participation and deepened the alliance with the Axis Powers, especially with Nazi Germany. Helping armed forces in violent acts against people or property, joining the German army or security services (e.g. SS, Gestapo), or collaboration with German corps were also heard as war crimes before the people's courts. The category of war crime also consisted of acts against the conventions and international agreements of waging war, the treatment of POWs, and the atrocities committed against the civilian population. All those who 'took part in people's illegal execution and torture' were brought to justice as war criminals.

<sup>12</sup> Crimes against the people pertained primarily to the following acts: initiating 'laws going seriously against the interests of the [Hungarian] people', cruel treatment by the authorities after 1 September 1939 in 'executing laws and decrees against certain layers of the [Hungarian] people', public distribution of 'fascist and antidemocratic trends', arousing and supporting 'racial and denominational hatred', collaboration with organisations serving the 'persecution of certain layers of [Hungarian] society', voluntary function or membership in the *Volksbund* and in antidemocratic parties or organisations, and public promotion and support of anti-popular and antidemocratic measures.

Hungary's involvement, and more intense participation in the war, or the prevention of the armistice agreement, but were realised against "some groups of the Hungarian people, namely either the Jews or the democratic elements".<sup>13</sup>

In the post-war political imagery there was a causal relation between the two types of political crimes. The historical catastrophe did not commence with the war in 1939; it was 'rooted in the counterrevolution following the 1919 revolution', that is, in the so-called Horthy-regime under which 'Hungarian soil was mined, and the seeds of hatred were scattered'.<sup>14</sup> Consequently, war crimes were connected directly to the Second World War, while crimes against the people were related to the politics leading Hungary into the war.<sup>15</sup> In parallel to the causal relation between the two types of political crime, in general the possible punishments for crimes against the people were less severe than those for war crimes. Even though people's legislation neither applied the category of genocide nor mentioned the Jews, it allowed the punishment of deeds committed on racial grounds. It also made possible the prosecution of non-racial persecution.

### Emancipating 'the People'

What the legislators meant by 'the people' (*nép*) is central to our interpretation. In a political sense, the concept referred to the Hungarians to whom, according to the preamble of the decree, the catastrophe happened. So the victim of crimes against the people were 'the Hungarian people', whom the ruling forces, themselves, also Hungarians in a way, drove into the national catastrophe. If the Hungarian people were the victims, then who were the perpetrators? In post-war Hungary, this 'national paradox' was solved in different ways by various discursive strategies, all differentiating between the

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<sup>13</sup> István Ries (1945b), *A népbíráskodásról szóló 81/1945. M. E. számú és az ezt kiegészítő 1440/1845 M. E. számú rendelet szövege és magyarázata*, magy. ell. Ries István (Budapest: Politzer, 1945), 33.

<sup>14</sup> Ries, 1945a.

<sup>15</sup> Szabó, 1947. See also Tibor Lukács, *A magyar népbírói jog és a népbíróságok (1945-1950)* (Budapest: Közgazdasági és Jogi Könyvkiadó, Zrínyi Kiadó, 1979).

Hungarians. People's courts typically drew this intra-national boundary by representing only democratic Hungarians, and by convicting Hungarians as anti-democratic.

At the same time there was a sociological conceptualisation of 'the people': it referred to the previously ruled social categories, deprived of political rights in the former regime - basically the peasantry and the working class, but also Jews and left-wing politicians. Beyond retribution, in the eyes of the legislators it was equally important to make the people the subject of historical justice who, stepping on the stage of history, now had the possibility to decide on those responsible for the national catastrophe.<sup>16</sup> The ministerial decree explicitly declared that people's courts 'return a verdict "*In the name of the Hungarian people*"',<sup>17</sup>

Making the people the sovereign political subject - turning the people into *demos* - this ultimate goal was supposed to be realised by the people's courts' organisational structure and principles of operation. Most importantly, these tribunals were primarily laic juridical institutions. Judgement was passed by the clear majority of the votes of the five (later six) members of the people's court councils, each a non-expert delegated by one of the coalition parties, and by the Trade Union. Each council was chaired by one trained professional judge who, until 1948 at least, did not have the right to vote. Their role was to keep the legal frames of the procedure, and if asked by one of the laic people's judges, to inform the council about legal aspects of the case - without telling how they in the given case would judge the accused and why. By putting the 'laic element' in the centre of the procedure, legislators intended to assure that it was really 'the people' who called to account those responsible to their own suffering. As one of the articles in the booklet of the Budapest People's Court put it: 'According to the principle of active democracy, [the people's court] does not really cooperate with the people but here it is the people themselves who are the court by way of delegates

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<sup>16</sup> The saying 'ruling the people against the people' well exemplifies this conceptualisation of the catastrophe, which of course enabled the responsibility of the everyday Hungarians not to be raised.

<sup>17</sup> Hogyan működik a Népbíróság sajtóosztálya? *Ítélt a nép... népbíróságkiadvány*, 1945. május 4. Paragraph 51.

chosen from their own'.<sup>18</sup> It is more precise to say, however, that it was not the people themselves but only the political parties of the ruling coalition who could delegate people's judges. Legal expert Imre Szabó, who argued for a reformed and permanent system of people's courts, proposed to delegate the judges according to public registers, thus abandoning the 'mechanical party composition of the councils'.<sup>19</sup>

The role of the supposedly liberating 'laic element' was not confined to the procedure of returning verdicts - it also determined the work of the prosecution. The decree on people's jurisdiction gave orders about the function of the people's prosecutors, who had to be professional judges, counsels, or at least legal experts, appointed by the Minister of Justice. However, on the basis of the ministerial decree's preamble, actual judicial practice created the role of the political prosecutor, assumed by non-expert persons. 'The practice of people's courts regularised specifically the representation of indictment because, concerning also the prosecution, it intended to enforce the formulation [of the preamble] that the plaintiffs of the crimes of war and crimes against the people are the Hungarian people'.<sup>20</sup> The political prosecutor embodied the Hungarian people as the plaintiff of political crimes, and their task, among others, was to 'clarify the actual trial's historical, social and political relevance'.<sup>21</sup> In legal terms, the political prosecutor was not part of the prosecution, since he only disposed of the rights of the plaintiff. While the people's prosecutor proceeded in the name of the Hungarian state, the institution of political prosecutor was destined to make the Hungarian people part of the process. In some cases, political prosecutors had a considerable role in the proceedings: either they cooperated with the people's prosecutor in writing the indictment, or they made the process continue even if the individual plaintiff had withdrawn her accusation.<sup>22</sup>

By making the 'laic element' central in the functioning of people's jurisdiction, Hungarian legislators attempted to assure that it

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<sup>18</sup> *Ítélt a nép...*, 1945. május 4.

<sup>19</sup> Szabó 1947.

<sup>20</sup> Lukács, 1979: 272-3.

<sup>21</sup> *Ibid.*

<sup>22</sup> See *Ibid.*, 274-281.



was really ‘the people’ who were the political subject of post-war historical justice. The revolutionary aspect lay in this characteristic of people’s jurisdiction: the political and social emancipation of the people, that is, their transformation into a collective political agent. Professional control was included in the system, though. Not only did the head of the people’s court’s council have to be professional, but also the members of the National Council of People’s Courts delegated by the coalition parties. This court of second instance was supposed to correct the decisions of the people’s courts and, since there was no precedent for the application of the decree and actual interpretations considerably varied in the 24 people’s court councils, to give guiding principles of juridical practice, to lay down the common interpretation of the ministerial decree’s orders.

### **Documenting Historical Truth**

Besides legal retribution and political emancipation, people’s jurisdiction was intended to contribute to the production of historical truth. In the immediate aftermath of the war, the truth about the ‘historical catastrophe’ was highly contested because of the ideological views and propaganda of the previous regimes and the lack of authentic information. This is why the problem of documentation was of particular importance after the war ended. Also, since the catastrophe was conceived as a logical outcome in a historical reason-consequence consecution, it was essential to explore its causes in order to ensure that the past catastrophe would never return in the future.

Historical truth was established in various ways during the proceedings, most importantly by the work of the people’s prosecution, which included the collection of sources and interrogation during the interrogative phase, and by testimonies during the trial. As one of the people’s prosecutors put it: ‘the people’s prosecution [...] every time when it impleads, it discloses in a reason-consequence manner to the people’s court how the actual defendant’s crime affected the final catastrophe’.<sup>23</sup> The procedure of

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<sup>23</sup> Ferenc Fontány Dr., 1 nemzetvezető, 4 miniszterelnök, 21 miniszter, 6 államtitkár a népítélőszékeelőtt, *Népbírósi Közlöny*, 1946. január 5.

people's courts, with such practices as interrogation, confrontation of the defendant with documents and victims, the opposition of prosecution and defence, and decision-making in the council, provided institutional conditions of producing historical truth, what Foucault called *regime de vérité*. As the article in the first issue of People's Courts' Bulletin put it, informing the readers about the system of political justice, 'Beyond the retribution of criminal acts, in people's courts it is history which is written day by day.'<sup>24</sup>

According to the post-war Hungarian social imagery, people's jurisdiction would serve as the laboratory of historical records, available to the public. The Minister of Justice even proposed (in vain) to integrate the memorials of trials of the principal war criminals into the school curriculum since 'the witnesses of historical times, written documents, and even the testimonies of the defendants, all explore before the whole public of the country what happened during 25 years in Hungary'.<sup>25</sup> Contemporary intellectuals, historians and journalists, attended the trials in order to attain otherwise inaccessible historical records. In November 1945 the Ministry of Justice launched its own weekly journal, People's Court's Bulletin, which published the sentences of the people's courts and of the National Council of People's Courts, as well as the decisions on appealation of the justification committees which, from May 1945, were an additional role of the people's courts; it also published the calendar of trials, and in some important cases they made the indictments available to the public.

### **Moral Rebirth**

It is beyond doubt that the constitution of reason-consequence narratives of the historical catastrophe had a strong ideological aspect. By discursively inscribing what was right and wrong in relation to the old regime, people's courts were supposed to repair the moral order and legitimate the would-be democratic system. Their role in giving moral examples was never questioned;<sup>26</sup> if contemporaries criticised

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<sup>24</sup> Népbírószági Közlöny, 8 Nov 1945.

<sup>25</sup> Ries, 1946.

<sup>26</sup> See e.g. Berend, 1946, 28.

the practice of people's courts, they pointed to their failure to clearly trace the boundary between crimes that have to be punished and acts that need to be morally condemned rather than criminalised.<sup>27</sup>

Another enlightening role attributed to people's courts was a sort of 'learning by doing' - that is, establishing democracy through direct popular participation in historical justice by way of the 'laic element'.<sup>28</sup> In a sense, the National Council of People's Courts was meant to operate as a 'national super-ego', because its judgements and statements of principle functioned as a practical interpretation of past deeds based on the text of the law, and as the just differentiation between right and wrong. These decisions were supposed to serve as guidance in knowing who merited pardon and against whom democratic Hungary must be defended. Through the decisions of the courts of first and second instance people could, in principle at least, refer the new categories of political crime to their own past and thus account for their own deeds before and during the 'historical catastrophe'.

## Conclusion

What makes the post-war era peculiar is the fact that the new regime did not exclusively attribute political violence to the representatives of the past. Reconstructing the political subject, for which people's courts were one of the most important institutions, also included violence to the Self, that is, retaliation against the previous political system's deeds, and the political exclusion of adversaries from political life. This is why the problem of legitimate political violence, of the principles of difference between revenge and justice, was of central importance in the would-be Hungarian democracy after the war.

As one of the main institutions of post-war retribution, people's courts were meant to inscribe the criteria of legitimate political violence exercised by the new regime. Their principle of operation was inseparable from the broader sense of history. The recent past was conceived as a historical catastrophe that had

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<sup>27</sup> Eg. István Bibó, A magyar demomrácia válsága, *Valóság* 2-4 (1945), 5-43.

<sup>28</sup> Imre Szabó, 'A népbíráskodás időszerű kérdései', *Fórum* .1 (1947), 54-62.

happened to the Hungarian people, and the present was experienced as transitional where the material, mental and moral remnants of the past impeded the establishment of a politically, socially and economically democratic society. In this complex social imagery where the ideas of democracy and revolution were deeply associated, calling to account those who had been responsible for the national catastrophe was considered a precondition of post-war recovery. The system of people's jurisdiction served this collective task in several additional ways. Beyond mere retribution of political crimes, other important functions were attributed to it, of which this paper has discussed four. First, by the legal construction of past political crimes, people's jurisdiction contributed to the legitimate definition of the political community. The differentiation between democratic and anti-democratic elements was supposed to solve the national paradox according to which both the victim and the perpetrator of the catastrophe was Hungarian. Second, people's jurisdiction was meant to serve political emancipation: the legal discourse constructed the plaintiff in such a way that the people as a whole were an active and collective agent in the trials, and the procedural regulations made historical justice democratically accessible by the 'laic element'. Third, people's tribunals were conceived as sites of documentation where authentic historical records would be produced. Fourth, they were supposed to contribute to the moral rebirth of the nation by inscribing what was wrong and right in the recent past.

The above study in historical sociology focused on the changing social conditions of legitimate political violence. Instead of writing the history of the people's courts in Hungary, its aim was to provide resources for possible critical positions toward the present day normative order. Even if the great effort of building democracy was doomed to failure after the war, the way democracy, political emancipation and historical justice were relied upon is far from being irrelevant today.