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CHURCH-STATE RELATIONS AND CIVIL SOCIETY IN HUNGARY: A HISTORICAL PERSPECTIVE

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The need for an historical perspective

The past offers perspectives on what is permanent and what has changed. If political analysis confines itself to the present it will breed a myopic view of society and its prospects. In the history of modern Hungary the past and the present are brought together by the endeavour to create a west European type of civil society. Nineteenth-century Hungarian politicians and intellectuals strived to attain that social order and a century later their successors are still groping for it.

The reform of church-state relations in the nineteenth century was just as important a part of the endeavour to create a civil society as it is now after the collapse of Communism. It would be wrong to assume that the Communist system of church-state relations was entirely the product of the post-war regime. The system had a good deal less to do with the Communist form of government and ideology and a good deal more affinity with the legal and political traditions of eastern Europe than is generally assumed. Before the Second World War most of the Churches in Hungary had enjoyed privileges, legal rights and internal autonomy on a far wider scale than that to which they were reduced after 1948. The ideological conflict between nineteenth-century liberalism and religion was trifling compared with that between Marxism–Leninism and religion. Living under the barrage of fierce anti-religious propaganda, the Churches were subject to the sternest restrictions even after the 1956 revolution when the regime had become more tolerant towards its ideological enemies. Differences in the treatment of the Churches before and after the Communist takeover, though fundamental, should not obscure the fact that important principles on which church-state relations rested after 1948 were similar to those on which they had rested in the past.

The turning point came with the collapse of the Communist system. In 1989-1990 church-state relations were not restored to what they had been before 1949. The significance of Law IV of 1990 "On the Freedom of

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Conscience and Religion and On the Churches" can be established only by looking at how church-state relations have evolved to become what they are today. We need not move back further than the nineteenth century, the age in which liberal politicians regulated the position of the Churches. It provides a most instructive historical perspective.

A historical perspective sheds light on the similarities between the aspirations of nineteenth-century Hungarian liberals and the country's recent liberal transformation. Politicians today, as in the last century, aspire to create a west European type of civil society in which the individuals, endowed with the same rights and duties, are equal and are subject to a single system of statute laws. Politicians today insist, as they did in the nineteenth century, that the law should treat all religions equally. Today the chances of accomplishing equality in church-state relations are better than they were a century ago. For, as we shall presently see, there were great differences in the position of the Churches and religions towards the state in Hungary as there were elsewhere. Until quite recently differences between the eastern and the western half of the Continent in this, as in many other respects, were considerable.[1]

In west European civil society relationships between the state authorities and organised social groups were largely governed by statute laws and other legal norms, which applied equally to all. In Hungary and other east European countries customary laws predominated. Here the motley of government ordinances, instructions, prohibitions, licences as well as agreements and *ad hoc* arrangements – the product of bargaining between the civil authorities and individual Churches – generated a diversity of administrative practices and insecurely held privileges. These permitted each Church to function within its own circumscribed area of religious life. In order to explain church-state relations, first a general feature of the legal system, the autocratic principle of the law should be examined.

The autocratic principle of the law

The right of the government to issue decrees on its own authority (*motu et potestate proprio*), which I call the autocratic principle, informed the relationship between the subject (later citizen), on the one hand, and the political authorities in Germany and the Habsburg Monarchy, on the other, before and during the nineteenth century. As we shall presently see, the autocratic principle, which rested on a presumption of the law, obstructed the freedom of the subject. Liberals in central Europe, however, found an effective remedy to counteract the consequences of the autocratic principle. A convenient way

to examine the autocratic principle is to contrast the presumption of the law as regards the citizen's rights in western Europe with the presumption of the law on the eastern side of the Rhine.

In the law of evidence, the rebuttable presumption of law (*presumptio juris*) is either on the side of the citizen (and the group of citizens) or on that of the state authority. In the liberal states of western Europe, where the enforcement of civil rights was concerned, the presumption was on the side of the citizen. In conflicts between state officials, on the one hand, and the citizen and the group, on the other, the onus rested on the official to demonstrate that his action was authorised by statute law.[2] In the Habsburg Monarchy, in Imperial Germany and elsewhere, the presumption of the law was on the side of the state authorities: in case of conflict, the burden of proof did not rest with the official but with the opposite side. The citizen (or the group), seeking legal redress against an alleged wrong done by the state official, had to produce evidence that the law expressly protected his interests on the point at issue. This difference in the presumption of the law between the two parts of Europe had momentous consequences.

In western Europe, where the law was silent, the citizen was said to be free. In the legal systems beyond the Rhine, the opposite prevailed: where the law was silent, the individual and the social group were not expressly protected by laws, it was the state authorities who were 'free'.[3] We have now reached the heart of the matter. The state authorities in central and eastern Europe could *lawfully* issue decrees and act at their own discretion in matters which interfered with the individual and the group. Enacted statute law restricted the area in which the authorities could lawfully act. And beyond the restrictions which statute law imposed on the official lay the sphere in which the authorities were either free from any legal restrictions in their dealings with the citizen (*freie Verwaltung*) or the government reduced the discretionary powers of the subordinate official by issuing a decree or order, an action to which it had a *prima facie* right.[4]

This right, the autocratic principle of the law, recognised by jurists before as well as after 1848,[5] was an accepted part of the Hungarian legal system. In Art. XII of 1790 the monarch promised to issue edicts only when the law was otherwise unaffected[6] and to exercise 'executive power' *in sensu legum*. Law III of 1848 enacted that the executive power was to be exercised by the monarch through an 'independent Hungarian ministry in the sense of the law'.[7] The wording allowed the survival of the autocratic principle. Para. 19 Law IV of 1869 ordained that judges had to proceed on the basis of statute law, *rendelet* (government decree), 'based on statute law',[8] and lawful custom. The debate in the House over the paragraph was instructive in that it clearly revealed that

the phrase 'based on statute law' merely required that the decree should not contravene statute law.[9] The judge, before application, had to establish whether or not the *rendelet* was lawful and he invariably applied government *rendelet* whenever in his view it did not conflict with *consvetudo*,[10] the enactments of *decreta*, or statute law. Under this legal system, based on the autocratic principle, individual rights were in essence 'concessions' from the state made either through independent executive action or by legislation. Thus the old question of *sed quis custodiet ipsos custodes* acquired special significance.

The German and Austrian liberals' remedy against the consequences of the autocratic principle was the *Rechtsstaat*, the State based on the rule of law. Liberals demanded formal declarations and entrenched civil rights as constitutional guarantees. They also insisted on detailed and comprehensive statutory provisions that covered every conceivable situation in order to establish freedom for the individual. Local self-government, participation in the administration of the commune, was another guarantee, and liberals were especially eager to institute administrative courts – effective instruments of redress for the individual and the group against state interference. These were the liberal remedies in central Europe whose realisation in the late nineteenth century mitigated the dangers to liberal freedom inherent in the autocratic presumption of the law.

Hungarian constitutionalists applied some of the liberal remedies to counterbalance the effects of the autocratic principle. They introduced equality before the law. Also, they passed a few short laws which protected the right to private property, freedom of movement, work and contract, and other personal freedoms. Their record on civil rights, however, turned out to be patchy. Above all, they failed to create a statutory framework and provide sufficient institutional guarantees to protect civil rights in order to mitigate the effects both of the autocratic presumption of the law and of the overwhelming social power of the landowners over the rest of the population.

The legal position of the Churches

The autocratic principle obtained a powerful, although by no means exclusive, influence on the legal position of the Churches. The liberal objective was the creation of a legal order which safeguarded liberty of conscience and equality of religions. Yet liberal efforts led to unexpected results. As regards religion the customary rights of society interacted with the customary laws of the state: the enforced ministerial and local *rendelet*s. In addition, statute laws

protected religious rights as they had done for centuries under the ancient constitution. The interaction of these three legal sources after 1867, paradoxically in the liberal age, did not create equality but a hierarchy of religious classes.

In multidenominational[11] and polyglot Hungary religion, nationality and social class sometimes coincided. The coincidence reinforced cultural differences and created in parts of the country what J. S. Furnivall described as 'plural society'.[12] The coexistence of religions was regulated by the crown and by statute law. The monarch's powers in religious matters were wide, were partly outside parliament's control and, being largely customary, were undefined. The Roman Catholic Church was firmly tied to the crown through the *ius patronatus*, the monarch's claim to make church appointments.[13] The Church enjoyed the full protection of the monarch at the expense of its independence which was eroded in the late eighteenth century through the Erastian, Josephist, as they were called, policies of the civil government. The Protestant Churches, though in the past hemmed in by restrictions, were self-governing communities, whose pastors and elders were elected by the congregations. The Calvinist Church was as closely associated with the national cause as the Roman Catholic Church was held to be a promoter of Habsburg interests.[14]

The degree of autonomy the various Churches attained differed widely, although their ultimate control by the crown and their supervision by the civil authorities invariably set limits to their self-government. For the monarch had, since the eighteenth century, claimed *ius supremae inspectionis* and for a much longer time, *iura circa sacra* which, like the *ius supremae patronatus*, exercised over the Roman Catholic Church, amounted to a collection of autocratic practices.[15] Most of the Church synods and congresses deliberated in the presence of a royal commissar or an inspector and their more important decisions were implemented only after they had been approved by the monarch or his minister. The crown approved the appointments of the prelates in the Orthodox Church[16] and 'confirmed' the appointment of Transylvania's Calvinist bishop.[17] No Church was ever separated from the state. The Churches themselves did not want separation. They wished to be legally recognised, to be endowed with church statutes, to be entitled to legal and administrative protection by the state, including the right to seek help from the civil authorities to enforce their own regulations and to maintain internal discipline.[18] Above all, Churches expected subsidies from the government to pay their clergy and support their schools. The system, which liberals were set to reform, with its highly fragmented and *ad hoc* arrangements, was the product of the Churches' evolving customary rights combined with direct ministerial intervention based on the autocratic principle.

Equality of religion in legislation

Liberty of conscience and the protection of free worship by statute law were indispensable parts of the liberal agenda. Furthermore, a distinguishing mark of Hungarian constitutionalism was the belief in the legal equality of religions. In contrast to nationality, this principle included the granting of autonomy by law equally to all the established Churches of multidenominational Hungary. Two attitudes, anticlericalism and the equality of Jews, were most closely associated with what liberals stood for. Anticlericals – particularly of the Protestant liberal opposition – demanded after 1867 that the Roman Catholic Church be stripped of its privileges, that its property be secularized or, at least, the Roman Catholic funds[19] be absorbed into state revenues and be shared out equally among the other Churches. But there were Roman Catholic liberals – mostly on the government side – who, instead of antagonising their Church, hoped to reform it from the inside. Their aim was Church autonomy: the introduction of lay participation in the Catholic Church which would then administer Church funds. Jewish equality in 1867 had a more general appeal to the literate public and to parliament than anticlericalism. It concerned first the demand that Jews' civil and political disabilities be removed and in these respects Jews were emancipated in 1867 by Law XVII. The two short paragraphs declared that the Jews 'in respect of civil and political rights are equal' to Christians and that 'all contrary law, custom and *rendelet* are thereby abolished'.[20] Hungarian liberals also understood by the equality of the Jews that their religion should be recognised by law and that antisemitism in politics should be resisted.

These attitudes came naturally to politicians in Hungary where Protestants had demanded freedom for their religion for well over two centuries before the liberal age. The Diet of 1790 reaffirmed the Protestants' 'liberties'; it also established the civil and political rights of the Orthodox Christians and recognised the privileges of their Church.[21] These and other measures had been antecedents to the introduction of the liberal principle of religious freedom which was proclaimed (if, for the moment, one disregards the small print) by Law XX of 1848:

> Complete equality and reciprocity without any discrimination are hereby declared among all the lawfully received religious denominations of the fatherland (para. 2).

Nineteen years later the minister in charge of religion (the so-called *kultusz*) and public education was, as he had been in 1848, József Eötvös. The minister and parliament were as committed to religious freedom and equality after 1867

as they had been in 1848. As we find from the Journal, the slogan which invariably won 'general approval' in the House – perhaps because it was hardly ever used in any specific sense – was 'free church in a free state'.[22] The House on all sides expected the government to act 'in the spirit of 1848' and Eötvös needed no urging. He had been a champion of the liberty of conscience and of the equality of all religions for decades, insisting that these principles should be realised through generally applicable enacted statute law.[23] In June 1868 Eötvös, speaking in the House for the Cabinet, gave a commitment to bring in legislation to implement what Law XX of 1848 had already promulgated. But the reform of the Roman Catholic Church had to come first, comprehensive legislation should come only afterwards. Meanwhile temporary measures would be introduced.[24] The Preamble of Eötvös's bill (Law LIII of 1868) On Reciprocity Between the Lawfully Received Christian Religions declared that:

> Until the equal rights of religions[25] are regulated in general, as regards the reciprocity between the Christian religions, by virtue of Law XX of 1848, the following are enacted.

The Law provided a few regulations dealing with the conversions normally attending mixed marriages between Christians.[26] The measure was small beer after the bold principles pronounced in 1848 and the House accepted the Central Committee's plea to instruct the ministry to bring in legislation during the following parliament in order to 'establish the equal rights of religious denominations in general' and to 'remove all the [legal] obstacles' to the realisation of the principle.[27] The Andrássy Cabinet and its successors, however, dodged this obligation[28] partly because the attempt to reform the Catholic Church ran into the sand.[29] After a long interval Law XXXI of 1894, then, established civil marriage and Law XLIII of 1895, On the Free Exercise of Religion, enacted general principles and tacitly allowed the citizen to adhere to no religious denomination. The first paragraph clearly proclaimed the liberty of conscience with great aplomb: everyone was free to profess and follow any creed or religion, and practise it within the limits of the law and of public morality: no one was to be obstructed in practising his religion as long as it did not contravene the law, or public morality. And no one was to be compelled to perform religious acts against his beliefs. The rest of the law, however, as we shall presently see, did not establish the statutory framework of church-state relations. Instead it whittled away at the very principles the first paragraph had been at pains to establish: it systematised the hierarchy of religions – the motley of privileges based on customary law, royal decree and ministerial ordinance.

Thus the law after 1867 was, in some respects, moving towards the ideal of confessional *egyenjogúság* (equality of rights). But Hungarian liberals at no

time established either liberty of conscience or the equality of religions. Moreover, unwittingly, for it was not quite understood at the time, liberals created a discriminatory class system for religion which was an affront to the very principles they professed. A striking fact which characterised the system was the limited role that legislation played in shaping church-state relations except in the mid-1890s. Instead, the customary rights of the Church and of the civil authorities appear to be the decisive factors. The growing importance of ministerial *rendelet*s – the customary law of the ministry – was a significant part of this pattern.[30] By the end of the century, the Roman Catholic Church was more dependent on the government than it had been in the 1860s;[31] its dependence grew through episcopal appointments.[32] Church funds were handled by the officials of the *kultusz* ministry, a tutelage which diminished the Church's ability to resist the government's intervention in its affairs.

Eötvös and his successors, as the crown's *kultusz* ministers, were more successful with the Protestant and the Eastern Orthodox Churches in setting them on the course towards internal self-government. The powers were there in 1867 for Eötvös to turn to liberal purposes: they were vested in the crown by custom and exercised through the *kultusz* minister who either countersigned the royal enactments or acted with the monarch's prior approval.[33] Only exceptionally did Eötvös turn to parliament in order to enact measures. Parliament never saw most of the enactments and even the Cabinet did not discuss many of them. Some measures had been countersigned by the minister after consultations with the Churches and promulgated by the monarch as royal decrees. A royal decree – a kind of contract between the crown and a Church as distinct from statute law or ministerial *rendelet* – guaranteed security to the Church. Other measures appeared as ministerial ordinances or rescripts, with express reference to the monarch's authorisation in the Preamble. But frequently the *kultusz* minister introduced measures through ministerial ordinance after consultation with religious leaders and normally with the king's prior approval.

The three classes of religion

With one hand, the law began to remove the legal disabilities of the Lutheran, the Calvinist and the Orthodox Christian Churches in 1790 and later, of the Unitarians in 1848, and of the Jews in 1867, and again in 1895. This was a process of equalisation: it did not establish equality and reciprocity among the Churches; it did, however, point in that direction. With the other hand, however, the law introduced a graduated system of privileges. Inequal-

ities in the civil and political rights of Churches were created by *kultusz* ministry *rendelet*s and statute laws as well as by royal rescripts and by social custom – which remained a potent source of law.

The state offered the Churches protection, recognised their old rights, conferred new rights on them, including that of self-government, and brought them under control by extending the scope of ministerial tutelage. Liberals justified ministerial tutelage over the Churches on the grounds that they received subsidies in order to carry out 'state tasks'. Churches kept the birth, death and marriage registers after 1867, some of the Churches administered marriage law in their own courts and Churches ran most of the elementary and grammar schools in the country. Yet church-state relations were not brought within a common statutory framework after 1867 except in a sense so broad as to be meaningless. In fact, the Churches fell, perforce, into a hierarchy of three legal classes as a consequence of the evolution of customary law and of independent executive action – the customary law of the state. Subsequently, this process was, in part, recognised by statute law. By the end of the nineteenth century, under the auspices of the Liberal governments, an extra-ordinary system had come into existence which was founded on rigid legal classes of 'received', 'recognised' and 'tolerated' religions.[34] Statues nowhere defined these classes but merely recognised them as products of customary law.

Received religions

The class of received religions was generated by nineteenth-century customary law; statute law took cognizance of it, and used it for its own purposes. Article XXVI of 1790 referred to the Lutheran and the Calvinist Churches as *in sensu pacificationum receptis*.[35] 'Received religion' was, then, used by the legislator in the nineteenth century. Law IV of 1844 declared that non-nobles of 'any of the lawfully received religions' could possess 'noble property' (i.e. land) and Law V established the principle that non-nobles of 'any of the lawfully received religions' were capable of holding public office. Significantly, the law did not say which religions belonged to the class of received religions.[36] Para. 2, Law V of 1848 established parliamentary franchise for (male) persons of 'the lawfully received religions without restriction', yet again, the law did not say which Churches.

The above cases speak loudly of the prominent place that received religion, as a legal class, acquired in the Hungarian social order. Yet a search through the *Corpus Juris Hungarici* would fail to disclose either the meaning of the term, or the rights that belonging to a received religion conferred on a person, or provide a list of the Churches to which the class applied. There were only

two cases in which statute law 'received' a particular religion: the Unitarians were received by Law XX of 1848, and the Jewish religion by Law XLII of 1895. The Orthodox Church was habitually accorded the status of received religion in the nineteenth century on the strength of the autonomous rights recognised by statute law in 1790 and 1792,[37] without ever being declared by statute law to be 'received'. Again, Law XX of 1848 declared 'complete equality' among the 'lawfully received religious denominations' without any explanation as to which religions were to be included.[38] Nor did Eötvös feel any need to enlighten the House in this regard when in the autumn of 1868 he submitted the bill which became Law LIII of 1868 'On Reciprocity Between the Lawfully Received Christian Religions'. It was common knowledge that at the time the Catholics of all rites, Orthodox Christians, the two large Protestant Churches, and the Unitarians qualified; it was not quite (or not yet) *communis opinio*. For the Catholic Church never expressly abandoned its claim to be the *avita* and *haereditaria religio* rather than just one of the received religions.[39] *Communis opinio*, court rulings, and the *kultusz* ministry together, as makers of customary law, shaped the views on received religion. In a long-forgotten yet illuminating ministerial *rendelet* to the town of Pest as regards the status of the Nazarenes, Eötvös pointed out that the Nazarenes had not been lawfully received, and that 'our laws concede [engednek] rights only to received religions and only with them can the government communicate officially'.[40] Eötvös's successor, Trefort, in 1887, insisting that the Roman Catholic Church *was* a received religion, explained that

> The term 'received religion' in public law means that the religion is placed under the protection of the law:[41] it receives legal protection and guarantee of its rights; furthermore it means that those professing that religion are endowed with certain religious and political rights.[42]

This definition was too loose and it had to be; any other stipulative definition would have run into difficulties. A typical product of customay law, the position of each of the received religions differed from the rest.[43] We might well say that a religion was 'received' if the public and the authorities regarded it as such – something that the minister obviously would not state.

For constitutional lawyers and historians, the discrepancies – so far as they noticed them at all – appeared as anomalies which were sooner or later rectified. But far from being the anomalies of a statutory system, they were the haphazard arrangements which one would expect to see in a partly customary legal order in which the effects of the autocratic presumption of the law were not mitigated by general yet detailed statutory provisions.

Tolerated religions

Religions which customary law in 1867 did not treat as being received were merely tolerated by the authorities, largely at their discretion. This was the obverse of the Hungarian liberal record, which Eötvös' ordinance on the Nazarenes exposed. This course followed from the autocratic principle of the law towards which the liberals' attitude was ambivalent. Eötvös and Deák sometimes clearly asserted the liberal principle that an executive order was lawful only if it was expressly authorised by statute law;[44] at other times, at least implicitly, they endorsed the autocratic principle. In office, the liberals were flexible: they tried to circumvent the autocratic principle by conferring 'recognition' on non-received religions as a 'concession' by the State.

But the class of recognised religion did not yet exist in 1867. Nor did any general statutory enactment, like fundamental laws, secure personal freedom in Hungary. There was not even a law of association that might have been applied to Churches. The local authorities and the *kultusz* ministry issued, without statutory authorisation on the basis of established administrative practice, the so-called *úzus, rendelet*s which regulated and controlled associations, including religious groups. A different treatment was meted out to each of the various confessions. When the Nazarenes approached the town of Pest in 1868 to ask for their own registers, Eötvös issued the *rendelet* already quoted:[45] as 'our laws concede rights only to received religions' of which the Nazarene was not one, wrote Eötvös, the government could not recognise their actions as authoritative;[46] and they could not, therefore, keep their own registers 'as yet'. The government did not wish, however, to compel anybody to register with one of the received religions against his conviction. Eötvös instructed the Nazarenes to report births and deaths to the civil authorities who would arrange registration on their behalf with the office of the received religion 'to which the Nazarene had formerly belonged'. Furthermore, until legislation was introduced, 'the government and the authorities would be compelled' to treat children born into Nazarene marriages as illegitimate, with all the consequences of such treatment for the inheritance of property.

Legislation was not, however, forthcoming from the government. Instead, the *úzus* towards the Nazarenes and other 'sects' was developed further by the authorities. Minister Trefort drew the anti-liberal conclusions implicit in Eötvös' 1868 order: there was a need, the minister declared in a *rendelet* issued in 1875,[47] to extend 'police supervision' to confessions 'which are not regularly organised'. The Nazarenes, 'and other similar sects not lawfully received, whatever they called themselves' were to fulfil their legal obligations towards the received religons. Trefort's ordinance took the 'concessionary' view of

religious rights to extreme lengths in order to argue that members of the Nazarene Church and other sects were in law still members of the lawfully received religion from which they (or their parents) had defected. They were to pay all the church taxes due to the received religion that they had left.

Recognised religions

Because the presumption of the law was on the side of state authority, conferring privileges on particular Churches could, arguably, secure freedom of worship more effectively than statutory declarations of general principles (unless, of course, the declaration was supported by detailed provisions). The monarch's approval was also easier to obtain for conferring particular privileges than for blanket legislation of freedom of worship. But in 1867, the government could not arrange the legislative 'reception' of particular religions without opening the door to sectarian strife. It possessed, however, the customary right to 'recognise' particular Churches by *rendelet*. Just as the class of received religion was a product of society's customary law, the class of recognised religion was generated by the *kultusz* ministry after 1867 to fill the gap between the received churches and the tolerated sects.

There was growing political support in parliament for some form of recognition for the Jewish religion, which in law was still 'merely tolerated'.[48] From the early nineteenth century immigration from Galicia was swelling the country's Jewish population. Jews fought in Kossuth's army in 1848–49, were rapidly 'Magyarising' and accepted the gentry's leadership of society, as well as the programme of building a Hungarian civil society, more easily than did the intelligentsia of the nationalities.[49] A growing proportion of the professions had become Jewish, especially in the capital. Eötvös held discussions with Jewish leaders and a congress convened by royal rescript drafted statutes which the monarch approved in June 1869. The Statutes of the 'orthodox' Jewish congregations were issued as a *kultusz* ministry *rendelet* by Eötvös's successor in 1871.[50]

The position of the Jewish religion still differed from that of the received Christian confessions: there was no reciprocity in matters of marriage and conversions, for instance. But Jewish registration of births, deaths and marriages was recognised by civil law, while such recognition was denied 'the sects', and the Jewish religion acquired security and limited protection by the authorities.[51] Statute law soon took cognisance of this change. Whenever a statutory provision was meant to apply to the Jewish as well as to the received religions, the term 'recognised religion' was used.[52] Two other religions attained recognition during the Dualist era: the Baptist Church was recognised

by ministerial *rendelet* in 1905[53] and the Muslim religion was, unconventionally, recognised by statute law in 1916.[54]

Recognition of religions by ministerial *rendelet* was standardised by Law XLIII of 1895 On the Free Exercise of Religion. This law should have been the crowning achievement of liberal legislation. Instead, in its second chapter it established the standard rules 'On Religious Denominations To Be Lawfully Recognised in the Future'. Applicants wishing to form a recognised religion were to submit all the regulations of their proposed Church to the *kultusz* minister for approval.[55] The minister would have to refuse approval if the applicants represented 'anti-state or anti-national tendencies', if the doctrines submitted contravened either civil laws or public morality, if the applicants had seceded from a 'lawfully received or recognised religion' only because they wished to use a different language, and also if the name of the proposed Church was either 'racial or national'[56] in character, or 'damaged a religion which has already been received or lawfully recognised'.[57] The grounds on which the minister could refuse recognition were so vague that the Law might as well have left the matter entirely to the discretion of the minister. Recognised Churches, under the protection of the state, were to enjoy limited autonomy. In contrast with the received Churches, they were not entitled to administrative help in collecting church taxes which they did, however, have the right to impose. They were under the administrative tutelage of the local authorities, to whom they had to submit the minutes of all Church meetings and whose permission they had to obtain to acquire property.[58] The civil authorities approved the appointments of their Church officials 'if their moral conduct and attitude as citizens of the state did not give rise to objections'.[59] Should their conduct be 'hostile to the state',[60] the *kultusz* minister could demand their removal from office. These stern stipulations protected the discretionary powers of the civil authorities rather than the rights of dissenting minorities.

The balance sheet of church-state relations

Notwithstanding the egalitarian liberal rhetoric of statute law, the two agencies of the crown's and of society's customary laws generated a motley of privileges and practices within a hierarchy of three broad classes of religions. In fact one could not find two Churches in Hungary whose position with respect to civil law and the state authorities was identical.[61] Statute law all too frequently merely recognised the diverse changes that had already come about in the legal position of the individual Churches and had acquired social

acceptance. Custom proved stronger than parliament-made law when the latter tried to settle contentious points of the sectarian conflict between Catholics and Protestants. This is demonstrated by the long saga of para. 12, Law LIII of 1868 on the religion of children born to parents in mixed marriages.[62]

Short of a statutory system, what in fact evolved might still have been the best remedy available against the direct intervention by the executive branch of the state in church affairs. It was a considerable achievement that the overwhelming majority of the citizens belonged to received Churches most of which enjoyed either influence or self-government and, occasionally, both. Furthermore, the individual was able to surmount the difficulties he faced in changing religion and after 1895 even to be without any.

But the system as such had little in common with the ideals that liberals cherished. Quite plainly, it was not based on the conception of civil society in which every member had basic rights. The faults of a graduated system of privileges, as opposed to a system based on common statutory rights to all, were obvious.[63] Under a system in which customary rights, backed by *communis opinio*, could progress within a hierarchy, rights could also regress. The Jewish religion, merely tolerated before 1869, became recognised in 1871. The Tiszaeszlár case in 1883, a Jewish ritual murder trial, was (notwithstanding the bad press which Hungary incurred abroad) a triumph of the liberal principle of the rule of law.[64] The Jewish religion, moving up in the hierarchy, was declared to have been received in 1895 by statute law. It could, and was, however demoted a few decades later in 1942 to the rank of a recognised religion by another statute law.[65] The system of graded privileges turned the Churches on each other rather than induced them to co-operate, and society's sense of justice was not violated when the state withdrew some privileges.[66] Under a liberal statutory system, a right taken away from one is an attack on all; under a hierarchy of privileges, it is not.

The system made all religions more dependent on the goodwill of the civil authorities than they would have been under a liberal statutory system. Churches coexisted on the basis of a variety of different, insufficiently defined, rights. Imbued with envious sectarian spirit, they were competing with each other for government favours. They queued up for 'state benefits',[67] financial help, and for administrative support from the civil authorities. The mentality such a system encouraged was not conducive to the growth of independent, critical social attitudes that one would expect to find in civil society.[68] Further, the system could not cope with social change. The hallmark of a Western liberal system is its ability to tolerate dissent and secession from established social institutions. The Hungarian system never developed that ability. Religious freedoms were confined to a 'closed shop', a rigid set of received religions.

The class of recognised religion, a product of ministerial *úzus*, turned out to be a failure. The security it offered was insufficient. Created by ordinance, a recognised Church could lose its status by another ordinance.[69]A recognised Church's dependence on the local authorities, without any compensating 'state benefits', was nearly complete. Apart from the Jewish and the Muslim religions, both special cases, only the Baptist religion ever attained legal recognition.

All in all, it was the government which turned out to be the true beneficiary of the system of privileges and of the sectarian strife that the system exacerbated. The spectacular increase in the discretionary powers of the ministry shifted the balance of power further towards the overweening authority of the state at the expense of the received and non-received Churches, whose ability to act as foci of independent social centres of power had diminished by the end of the nineteenth century.

In the first four decades of the twentieth century the system of church-state relations did not substantially change. Institutional continuity was ruptured during and after the Second World War.

Church-state relations under the Communist system

The Communists rejected the principles of civil society, and their rejection was complete. They abolished private property as well as civil rights and did not tolerate the existence of autonomous social institutions. Political power was to be undivided.[70] The new rulers preached 'democratic centralism'. It meant the arbitrary power of the single autocratic party and its state officials in the name of the 'working class'.

All the Churches were placed under the strict administrative control of the civil authorities. Marxists professed the principle of the 'separation of Church and State' which they understood to mean the separation of the State from the Church but not vice versa.[71] Church autonomy was uniformly denied. Appointments and even daily pastoral work came under the control of the government and of the State Office for Church Affairs created in 1951.[72] Associations under church patronage were disbanded, religious publishing houses closed down, and the population subjected to harsh anti-religious propaganda. Furthermore, the clergy were for many years ordered to participate in political campaigns. Nevertheless, the regime disingenuously claimed that it realised the principles of the liberty of conscience and of the free exercise of religion, both being enshrined in the country's constitution.[73]

Oddly enough, the regime also made another claim which takes us back to the subject of the Churches' legal position during the pre-Communist era. It

was held that Law XXXIII of 1947, which had abolished the division between the so-called 'received' and the 'lawfully recognised' religions,[74] had established equality among the country's religions.[75]

A cursory glance at the legal and institutional arrangements of the regime, however, reveals a surprising degree of diversity in acquired rights and duties and even in the legal status of the different Churches. This is not surprising; there were no general regulations which set out the rights and obligations to be applied to all the Churches. In order to exist lawfully a Church needed *permission* from the state authorities to function. This was the so-called recognition that the State Office for Church Affairs had the right to grant to each Church community. The most common form of permission was the agreement drawn up between the church leaders and the civil authorities acting as two unequal parties. The Calvinist (Reformed) Church was the first of the larger denominations to sign an agreement, under pressure and intimidation, with the government, and did so on 7 October 1948.[76] The small Unitarian Church followed suit on the same day. The Jewish leaders signed an agreement on 7 December and the Lutheran bishops on 14 December in the same year. The Roman Catholic and Uniate Church, to which well over half of the country's population adhered, held out longer and signed a *megállapodás* (agreement) on 30 August 1950 – after protracted crises, intimidation, arrests and imprisonments.[77]

Most of these agreements were confiscatory in character: religious orders were dispersed, property taken away and the vast majority of church schools closed, in return for the 'recognition' of the Church by the state, the right of worship (largely confined to church buildings) and some financial subsidy to pay the salaries of church personnel and building maintenance.[78] The treatment meted out to one recognised Church differed from the next. The Catholic Church was, for example, allowed to keep only eight of its grammar schools – a considerable restriction on its earlier endowments. The Calvinists ended up, however, with keeping a single grammar school while the Lutheran Church had none.

Moreover, the position of the smaller religious communities, the so-called sects, differed from that of the larger, so-called historic, Churches and it showed particularly great diversity. Of the smaller religions only the Baptist Church attained 'lawful recognition' before 1945. Some of the communities, notably the Baptists, the Seventh Day Adventists, the Methodists, the Free Christian Brethren and the Salvation Army, formed the Free Church Alliance in 1944. All had grievances against the *ancien regime*, the 'historic Churches' as well as the government, and co-operated with the post-war regime. The government gave permission (*engedély*) to the Alliance to function in July

1945[79] and recognised its member-churches by ministerial *rendelet* in 1947 without any formal agreement.[80] In the following year the Alliance was reorganised to become the Free Church Council which was eventually placed under the authority of the State Office for Church Affairs.

Not even the smaller Churches escaped the confiscation and persecution which affected all religions throughout the 1950s.[81] Furthermore, government policy maintained many of the disadvantages under which most of the pacifist 'sects' had earlier existed. For example, while the Catholic, Calvinist, Lutheran and Unitarian Churches received regular state subsidies, the member-churches of the Free Church Council (also the Orthodox Church) did not receive any regular aid.[82] Again, the 'historic' Churches were allowed to keep a few seminaries in the 1950s while the smaller Churches were not allowed to have access to any. An arrangement was finally worked out in 1966.[83] Nor could the Council protect its member-churches before 1956: the Salvation Army was dissolved by a ministerial *rendelet* in 1949 and the Adventists left the Council in 1950, thus losing their recognised status, which they regained only in 1958.[84] On the other hand, the Council, authorised by the State Office, exercised supervision over those small Churches that had not yet attained recognition.[85] Among others, the Pentecostals, the Nazarenes and the Methodist Community of Evangelical Brethren had been in this position before they secured recognition in 1958, 1971 and 1981 respectively.[86] But several unrecognised sects functioned 'unregulated' even in the 1980s. The largest was the Jehovah's Witnesses.[87] Independent Pentecostal groups and unofficial Adventists also existed unlawfully, that is without permission secured from the State Office for Church Affairs. Refusal to do military service was the intractable problem. A further source of diversity was that individual preachers of some unrecognised sects were from time to time granted a licence (*engedély*) to operate.

The diversity was clearly recognised by József Szakács, president of the Free Church Council, who declared a couple of years before the collapse of the regime that as regards their legal status there were three classes of religious communities in Hungary:

1. legally regulated communities
2. communities whose status was under review and
3. legally unregulated communities.[88]

As the regime settled down, it became less repressive; the worst forms of discrimination against believers diminished.[89] Churches, still expected to support government policy in general, were no longer forced to participate in political campaigns. They acquired a few concessions in their pastoral work. In church-state relations co-operation largely replaced antagonism and suspicion although the process did not lessen the Churches' dependence on the state

authorities.[90] The Catholic hierarchy did the bidding for the regime in October 1986 by reprimanding members of the 'basis communities' for refusal of military service.[91]

As church-state relations improved, the legal inequality grew among the Churches, which the system of permission-recognition had necessarily generated. The Catholic Church and the other 'historic Churches', through the policy of 'small steps forward', acquired minor concessions and secured more advantageous *megállapodások*[92] concerning religious instruction in schools, seminaries and publishing.[93] Likewise the smaller communities, most of which operated on the basis of their own recognised Church Statutes. The Free Church Council consolidated its position as a *quasi* governmental body. As a unique privilege, it had since 1971 taken over the authority of the State Office to approve all Church appointments of the smaller religious communities. The election of the Council's president, though, required the prior approval of the head of the State Office.[94]

Church-state relations in crisis

It is a paradox of history that the Communists, who had pushed the autocratic principle of law to extremes when they acquired power in the 1940s, started the dismantling of the very system of church-state relations based on the traditional autocratic principle forty years later, when their regime entered into terminal decline. The growing economic crisis, Gorbachev's policy of *glasnost*, the influence of the reform Communists and pressure from the democratic Opposition brought political reform to the fore.

After 1987 the regime could no longer count on the automatic co-operation of the bishops and leaders of the recognised Churches. The lower clergy of the Catholic Church and Protestant ministers, dissatisfied with the policy of 'small steps', put pressure on their superiors to be bolder. By the influx of new bishops in the Catholic Church and the appointment of a new Archbishop of Esztergom, László Paskai, in April 1987,[95] the regime had to face a less elderly and ineffective Catholic hierarchy.[96] The process of change was increased when János Kádár was replaced by a new party leader, Károly Grósz, in May 1988. Soon the Bishop's Conference, largely bypassing the State Office for Church Affairs, began a dialogue with the government which from the autumn of 1988 was in the hands of reform Communists headed by Miklós Németh.[97] The Catholic Church now demanded a 'new contemporary agreement' to replace the one imposed on it in 1950.[98]

The development of church-state relations, however, took a different turn. Instead of new agreements with individual Churches, the comprehensive

reform of church-state relations emerged as the new political agenda. This was a part of the process to reform the country's political system by the revision of Hungary's 1949 (ineffective) Constitution. Even before Kádár was replaced in March 1988 the government had announced in parliament that legislation concerning church-state relations was being prepared.[99] In July the Central Committee of the party approved a plan to establish the rights of association and of assembly, and in August two draft Bills were published in the press for public discussion.[100] The Bill on associations was to make the courts, rather than the administrative authorities, competent in disputes concerning the exercise of the right.[101] This was a significant shift in policy towards the *Rechtsstaat*, the establishment of the rule of law, which by then had become an accepted part of political discourse, and contained obvious implications for the position of the Churches.

The working out of the general principles of legislation for church-state relations was, however, left in the hands of the State Office for Church Affairs. (Herod was entrusted with the protection of small children.) The first draft of the 'Guidelines'[102] prepared in the State Office on the legal position of the Churches accepted the principle that the exercise of religious rights should be limited only by statute law.[103] Undoubtedly a breach in the autocratic principle of law as regards church-state relations,[104] the significance of this shift was nevertheless limited; the authoritarian State was not to lie down or not just yet. The 'Guidelines' underlying principle was the traditional 'concessionary view' of rights. It treated religious freedom as 'self-limitation' on the part of the State[105], which was to 'permit' (*megengedi*) the profession of religious faith as a right.[106] The State was to 'recognise' (*elismeri*) the legal personality, independence and authonomy of the Churches[107], which were to possess equal rights (*egyenjogúság*).[108] The 'Guidelines' maintained the system of 'central and local offices of Church administration' which the law was now to identify (*nevesít*), define and place under constitutional authority.[109] Thus state supervision was not to be abandoned. The 'recognition' of the Churches was, however, to be administered by the Constitutional Court through a system of registration.[110] With the Catholic Church in mind the 'Guidelines' stipulated that church leaders could be appointed by their foreign superior authority only after the approval of the head of the Hungarian State. All elected and appointed leaders of the recognised Churches had to take a 'State oath'.[111] A revised draft of the 'Guidelines', prepared in the spring of 1989,[112] weeded out some of the authoritarian terms of the text.[113] The State was still to confer 'recognition' on religious groups, but the necessity of establishing 'legal guarantees' for the Churches appeared as a new principle.[114]

The critical question at this stage was the future of the State Office. And the Office, supported by the party headquarters, put up a vigorous fight for

its survival in some form.[115] At a press conference on 5 April 1989 Sarkadi Nagy announced that the Office would be replaced by a new one which would be without the right to issue *rendelet* and would work under the supervision of a new consultative council that was to include church leaders.[116]

The Németh government had different ideas: it was prepared to dispense with the generally hated State Office altogether. Kálmán Kulcsár, Minister of Justice, interviewed by John Eibner of Keston College in January 1989, plainly stated that he did not see the need for a special institution for church-state affairs. 'If there is any such business', he went on, the Ministry for Culture and Education could handle it.[117] The Council of Ministers, largely disregarding the revised 'Guidelines' prepared by the State Office, drafted its own 'Principles' of legislation on the 'Freedom of Conscience and Religion'[118] and published it for debate in June.[119]

An impeccably Western liberal statement of 14 sections, the 'Principles' abandoned the authoritarian view of church-state relations. It did not 'recognise' the Churches as a 'concession' by the State. The starting point of the 'Principles' was the liberty of conscience as a basic human right, set out under eight clearly drafted principles. The rest of the document was also clear, specific and contained procedural rules. The ordinary courts were to register Churches and religious associations if they wished to become legal persons. Section 14 stipulated that it should be declared illegal to impose special duties on Churches by the civil authorities and likewise to 'maintain or create institutions, other than specified in statute law, in order to administer and supervise church affairs'. Shortly after the publication of the 'Principles' the Presidential Council abolished the State Office for Church Affairs[120] and the Council of Ministers decided to create the National Council for Religious Affairs – a consultative body for negotiations between the government and the Churches.[121]

The reconstruction of church-state relations

Meanwhile the Churches were in turmoil. They now understood (along with everybody else in the country) that a regime change, rather than mere reform, was about to take place. Church leaders who had hitherto co-operated with the outgoing regime lost much of their authority. The public letter from József Szendi, the Bishop of Veszprém, to Cardinal Primate Páskai amounted to an unprecedented rebuke of the head of the Catholic hierarchy by an ordinary.[122] The establishment of the National Council for Religious Affairs on 20 October in the parliament building marked a public reconciliation between Church and

State.[123] Prime Minister Németh led the government side.[124] The leaders of the larger Churches and most of the smaller communities were present.[125] Németh described the previous forty years' government policy toward the Churches as wicked. The task at hand, he explained, was not the 'recognition' of religious rights but the protection of religion by legal guarantees. Then Kálmán Kulcsár, Minister of Justice, spoke of the Bill which his ministry had meanwhile prepared. He was well received: Church leaders welcomed the legal guarantees offered by the draft. A notable upshot of the debate concerned the system of appointment of Catholic bishops which the draft Bill left open. Primate Páskai observed that the Vatican would never accept that the appointment of bishops should require the approval of the head of the state. There and then Németh and Kulcsár accepted the Catholic Church's position. The renunciation by the civil authority of the claim, which used to be called *ius patronatus*, put an end to a centuries' old source of conflict.

On the anniversary day of the 1956 revolution, the country's revised Constitution was promulgated.[126] Its paragraph 60 defined the liberty of conscience as an individual right and declared that 'the Church functions in separation from the State'. The Bill, prepared by the Németh government with the consent of the Churches, 'On the Liberty of Conscience and of Religion and the Churches', passed by parliament on 24 January and promulgated as Law IV of 1990, is a basic law whose revision requires a two-thirds parliamentary majority.[127]

Law IV does not entirely separate State and Church from each other. In Hungary the Churches have never demanded that in Hungary. It is undoubtedly with the history of church-state relations in mind that paragraph 16 (1–2) of the Law stipulates that although the Churches operate under the law, 'the State cannot set up offices to guide or supervise the Churches'. Also, the State is not to help the Church to enforce internal regulations (paragraph 15, 2). With this rule the practice called *brachium* in the Middle Ages came to an end. The courts can register a religious association if it is to become a legal person.[128] As such, the Church can apply for state subsidies to carry out educational, charitable and other tasks. The funds are shared out by parliament in the course of the annual budget debate.[129]

Law IV of 1990 rescinded the Laws of XLIII 1895 and XXXIII of 1947 as well as the *rendelet*s issued during the Communist regime, including even No. 14 of 1989 by the Presidential Council.[130] Also, upon the enactment of the Law, the 'agreements' imposed on the Churches after 1947 were by common consent declared void.[131] Since 1990, for the first time in Hungarian history, church-state relations have been governed by parliament-made laws which apply equally to all religions. The Communists were wont to boast that they

took power in order to accomplish, together with the socialist transformation of society, 'bourgeois democratic' tasks. Nothing was further from the truth. Communists in power stretched the inherited autocratic principle of law as far as it could possibly go. It is true, however, that when the world was about to collapse around them, under pressure from their opponents, the reform Communists were prepared to introduce laws, like Law IV 1990 on church-state relations, which laid the foundations of civil society and established basic institutions of the *Rechtsstaat*. Today freedom of conscience is guaranteed by adequate statutory provisions which include procedural rules for judicial review by independent courts and by the democratic control of a freely elected parliament.

To sum up, as long as the autocratic principle of the law operates withouth the mitigating effects of *Rechtsstaat* institutions it tends to generate diversity and growing inequality in the legal position of the Churches – as it undoubtedly did after 1867 and again after 1956. In contrast, the principle of civil society and the institutions of the *Rechtsstaat*, partly realized after 1867 and more extensively after 1989, help to reduce the diversity between and increase the equality in the treatment of the Churches by the law. This contrast is likely to be seen in other spheres of social life.

Notes

1. Only the western parts of eastern Europe have so far demonstrably moved away from the traditional patterns of church–state relations although the aspiration to do so exists in the whole region.
2. This was common ground among West European natural-law school philosophers. The principle went into the 1789 Declaration of the Rights of Man and Citizen: 'All that is not forbidden by law cannot be prevented, and no one can be forced to do what the law does not prescribe', *Western Liberalism*, E. K. Bramsted and K. J. Melhuish (eds), London, 1978, p. 228. This was the presumption of the law on which justice was administered in the liberal states of western Europe in the nineteenth century.
3. The widely-known *bon mot*, which originated among German law students in the nineteenth century, had more than an element of truth in it: 'In England ist alles erlaubt, was nicht verboten ist. In Deutschland ist alles verboten, was nicht erlaubt ist.' The intellectual setting of the authoritarian state in Germany and the corresponding social attitudes associated with the 'ostelbische Mentalität' were discussed by Hans-Ulrich Wahler, *Das Deutsche Kaiserreich (1871–1918)*, Göttingen, 1973, esp. pp. 105–07 and 133–34.
4. Georg Jellinek, *Gesetz und Verordnung*, Freiburg, 1887, pp. 255–56. Jellinek discussed the right in the context of the distinction between formal and substantive law, Pt. II, Section ii, ch. 1, pp. 226 ff.
5. Anton Virozsil, like others, argued that the *praesumptio juris* (*die rechtliche Vermuthung*) was, in doubtful cases, on the side of the king and that the monarch's government possessed the right to issue decrees as long as it did not conflict with statute law, *Das Staats-Recht des*

Königreichs Ungarn, Pest, 1865, II, paras 36 (esp. p. 5) and 46; Antal Cziráky, less clear on the question of *presumptio juris*, stoutly endorsed the monarch's right to issue decrees, *Juris publici regni Hungariae*, Buda, 1851, Tom II, paras 323 and 442. Pál Szlemenics listed some ordinances enacted under 'special royal powers' which, 'without ever being accepted by the diet have become a part of judicial practice and have been continuously in force', *Törvényeink története*, Buda, 1860, p. 136. On the attitudes of jurists after 1867 see below note 10.

6. *in rebus legi conformibus*
7. Paras. 2 and 3.
8. *a törvény alapján keletkezett*
9. The Central Committee of the House replaced the ministerial draft with the requirement that the *rendelet* was 'issued on the basis of specific authorisation by the legislature'. The House, however, restored the ministerial draft, *Képviselőházi irományok*, I, pp. 59, 121 and *Napló*, 9 July 1869, II, pp. 486–91.
10. *Consuetudo*, as Béni Grosschmid argued, in addition to statute law set limits to the enforceability of a royal ordinance but where those limits lay was left entirely unclear. *Magánjogi előadások*, Budapest, 1905, pp. 125–29. Győző Concha considered even the government decree which had been challenged by an adverse resolution of parliament to be valid law for the law courts, *Hatvan év tudományos mozgalmai között*, Budapest, 1928, I, pp. 405 and 416f, and see Kálmán Molnár, *Kormányrendeletek*, Eger, 1911, esp. 34–43.
11. Half of the kingdom's population belonged to the Roman Catholic Church. The rest were Uniate, Eastern Orthodox, Calvinist, Lutheran and Jewish. There were also Unitarians and a large number of small religious communities, the so-called 'sects', see statistics in Moritz Csáky 'Die römisch-katholische Kirche in Ungarn' in Adam Wandruszka and Peter Urbanitsch, *Die Habsburgermonarchie 1848–1918*. IV, p. 302 and 282–83.
12. In many districts elements of a 'plural society' existed in J. S. Furnivall's sense of the term. For instance, in parts of the Highland Slovak Roman Catholic peasants, German Lutheran burghers and Hungarian Calvinist gentry lived together; cf. J. S. Furnivall, *Colonial Policy and Practice*, Cambridge, 1948, pp. 117–18 and esp. 303–06.
13. According to Werbőczy the pope had the right only to confirm the appointment made by the king, *Tripartitum*, para. 1, Tit. XI, Pt. I; Ferenc Eckhart, *Magyar alkotmány- és jogtörténet*, pp. 166–67, 297f; Andor Csizmadia, *Rechtliche Beziehungen von Staat und Kirche in Ungarn vor 1944*, Budapest, 1971, pp. 48–50. After 1867, next to foreign policy and army affairs, it was in regard to the Roman Catholic Church that the monarch's autocratic rights were best preserved. The appointment of prelates was the very first item on the list of subjects compiled in 1867 which required the monarch's 'preliminary sanction' so called. See Emma Iványi, *Magyar miniszteri tanácsi jegyzőkönyvek az első világháború korából 1914–1918*, Budapest, 1960, pp. 531–32.
14. The stereotype of the Catholic Church being indifferent to the national cause was largely false; see László Péter, 'Hungarian Liberals and Church–State Relations (1867–1900)' in *Hungary and European Civilisation*, ed. György Ránki, Bloomington, 1989, pp. 85–86.
15. Sándor Konek, *Egyházjogtan kézikönyve*, Pest, 1867, pp. 141–47; Andor Csizmadia, *A magyar állam és az egyházak jogi kapcsolatainak kialakulása és gyakorlata a Horthy-korszakban*, Budapest, 1968, pp. 93–94.
16. Maria Theresa's Systema consistoriale (1779), summary by János Prodán, 'Az államfő legfelsőbb felügyeleti joga a magyarországi autokefális görögkeleti egyházban', in *Notter Antal emlékkönyv*, Budapest, 1941, pp. 949f. The approval of appointments did not become a mere formality after 1867. When the monarch, on the advice of the government, refused to approve the elected prelate, Congress was forced to select another instead. See László Katus in *Magyarország története 1848–1890*, ed. Endre Kovács *et al*, Budapest, 1979, VI, p. 1339.

17. Also, the Bishop of the Calvinist Church in Transylvania had to take an oath of allegiance to the crown: Church Statutes, para. 178, Sándor Dárday, *Közigazgatási törvénytár*, Budapest, 1893, II, p. 174 (30).
18. The *ius advocatiae*, applied to the Protestant Churches, was comparable to the *brachium* granted to the Catholic (and to the Eastern Orthodox?) Church; see para. 4 of the Statutes of the Calvinist Church, *ibid.*, p. 174 (1).
19. The 'funds' accrued from *intercalaris* revenues, private donations, as well as from the confiscated properties of former religious orders, were administered under *ius patronatus* by the government as a trustee, so to speak, for the purposes of paying the clergy and the maintenance of Church schools. After 1867, the funds were managed, in co-operation with the hierarchy, by the Ministry of Religion (the *kultusz*) and Public Education; Moritz Csáky, *Die röm.-kath. Kirche*, pp. 272–75; László Csorba, 'A katolikus autonómia és a közalapok problémája a századforduló Magyarországán', *Protestáns Szemle*, 1992 April–June, pp. 116–36.
20. The Bill, passed by the House *egyhangúlag* (nem. con.), on 20 Dec. 1867 (*Képv. jkv.*, III, no. 1524), after the proposal of the House's Senior Chairman, the Protestant Zsigmond Bernáth (21 June 1867, *Képv. irom*, II, p. 230) had been approved by the House. Deák had urged the ministers to act on 26 June 1867; Manó Kónyi, ed., *Deák Ferencz beszédei*, V, pp. 114–15. On the significance and the limits of Law XVII of 1867 see László Gonda, *A zsidóság Magyarországon 1526–1945* (hereafter *A zsidóság*), Budapest 1992, pp. 116–19.
21. Arts. XXVI and XXVII of 1790.
22. The liberal slogan, which appeared in Hungary in the 1840s, was equivocal; some understood by it the Church's freedom from the State, others the State's freedom from the Church.
23. In 1843; Eötvös was already an ardent promoter of a *general* enactment on religious freedom and equality in his speech in the Upper House on 11 July 1843; József Eötvös, *Kultúra és nevelés*, Budapest, 1976, pp. 85–86 and 512.
24. Eötvös's answer to a question set out government policy on 24 June 1868, *Képv. napló*, VIII, pp. 137–39.
25. *a vallásfelekezetek egyenjogúsága*
26. Christians had the obligation to be members of a received Church (para. 20).
27. *Képv. irom*, VII, pp. 3–7.
28. Eötvös himself never abandoned the plan to secure the equality of all religions by the enactment of a comprehensive statute law. He said so repeatedly in the House in November 1869. *Képv. napló*, III, pp. 181–82, 187–88, and 198, and on 7 April 1870 he brought in a new Bill which, however, never got further, *ibid.*, VII, p. 388; see also his letter to Prince Primate Simor on 19 Decembwer 1869 in József Eötvös, *Levelek*, Budapest, 1976, esp. p. 634; also Andor Csizmadia, *A m. állam és egyh.*, p. 84. Eötvös's efforts to bring in legislation on the freedom of religion was carried on in the House by the '48er leader Dániel Irányi who submitted a 12-paragraph bill (6 July 1869), *Képv. irom*, I, pp. 292–93, and subsequently demanded the introduction of civil marriage and the enactment of the freedom of worship at the beginning of each parliament. A most articulate promoter of religious toleration, Irányi spoke up in the House for the so-called sects, see László Kardos and Jenő Szigeti, *Boldog emberek közössége, A magyarországi nazarénusok*, Budapest, 1988, p. 203 and *passim*.
29. László Péter, *Hung. Liberals*, pp. 85–91; on the other political obstacles of comprehensive liberal church reform, pp. 82–85.
30. After the proclamation of papal infallibility in July 1870 Eötvös, as *kultusz* minister, in order to ban the promulgation of the papal bull in Hungary, bypassed parliament and declared by *rendelet* that the *ius placetum* (a legal dinosaur) was in force; László Péter, *Hung. Liberals*, pp. 90–91. Another example was the *elkeresztelés* (coined on *wegtaufen*) crisis which grew out of

the interpretation of Eötvös's law on mixed marriages in the 1880s. Eötvös's successor Ágoston Trefort issued a *rendelet* which gave a new, widening, interpretation of para. 12 of the Law concerning sanctions against *elkeresztelés* which conflicted with court rulings. And when the courts did not heed the ministerial pronouncement another *kultusz rendelet* transferred all *elkeresztelés* cases to the administrative authorities. The minister of the Interior then fined and sent to prison Catholic priests for *elkeresztelés*, *ibid.*, pp. 93–102.

31. While the anticlericals – noted a Catholic historian – hoped to 'separate the State from the Church, they would not allow the Church to separate from the State but wished to make it more subordinate to it than ever'. Gábor Salacz, *Egyház és állam Magyarországon a dualizmus korában 1867–1918*, München, 1974, pp. 53–54.
32. Minister Trefort used political muscle in the 1880s to hoist government supporters into episcopal sees especially for dioceses in the nationalities' districts; cases discussed by Ferenc Eckhardt, *A püspöki székek és a káptalani javadalmak betöltése Mária Terézia korától 1918ig*, Budapest, 1935, pp. 55–63. *Episcopi hungarici sunt magis politici quam catholici* was apparently a general view in the Curia of the Hungarian prelates in the late 19th century, quoted by Gábor Salacz, *Egyház*, p. 75; see also Gyula Szekfű, *Magyar tört.*, V, pp. 522–23 (similar points).
33. Eötvös, in responding to a question, frankly admitted in the House on 23 February 1869 that, authorised by the monarch, he had settled a large number of important matters without any instruction from parliament on the sole authority of the monarch: József Eötvös, *Kultúra*, pp. 229–36. On the background of the distinction between those enactments which were signed by the king (rescripts) and those which were not (decrees), see Antal Cziráky, *op. cit.*, para. 656.
34. *bevett* (*recepta religio*), *elismert* and *megtűrt*.
35. Para. 13, the context implies the Lutheran and the Calvinist Churches which are contrasted with the Catholic Church. The paragraph alludes to the Vienna Peace of 1606. (*Ad primum art.*), Art. 1. of 1608 *ante cor.* and to para. 5 Art of 1647. The influence of the Transylvanian legal term *recepta religio* is very probable.
36. The Roman Catholic Church claimed to be *avita* rather than *recepta religio*, yet the Law did not, of course, mean to leave out Catholics.
37. Art. 27 of 1790 and Art. 10 of 1792.
38. Opposition to the emancipation of the Jews (the *Judenkrawalle* in the larger towns) was probably the chief reason why *egyenjogúság* was confined to the received religions; see Lajos Venetianer, *A magyar zsidóság története*, Budapest, 1986, pp. 166f.
39. Sándor Konek, a leading jurist on Church Law, claimed in 1867 that the Roman Catholic Church 'could be described as the state church', which he distinguished from the 'received religions'; *op. cit.*, para. 52. A decanal meeting in Veszprém County passed a resolution in October 1887 to the effect that the Catholic Church was still *avita religio* rather than *recepta religio*, and other districts expressed support for the resolution. Trefort then issued an ordinance on 28 December 1887 in which the minister insisted that the Catholic Church was a received religion, Ernő Nagy, *Közjog*, 1891, pp. 100–01.
40. On 13 August 1868, Sándor Dárday, *op. cit.*, II, p. 27.
41. *törvényes oltalom*
42. See note 39 above.
43. Jewish religion between 1871 and 1895 and the Muslim religion after 1916 were protected by the law without being received. Recognition by statute law rather than by *rendelet* does not work as a criterion, nor does the possession of self-government (some non-received Churches had it while the Catholic Church did not). Nor did a necessary link ever exist between

received status and political representation. The law never received the Roman Catholic and the Eastern Orthodox Churches yet they possessed political representation in the Upper House, whereas the three Protestant Churches before 1885 did not (although the Unitarian Church had been received for centuries in Transylvania). Jewish church leaders had been personally appointed members of the Upper House after 1895. The Jewish religion was given representation by Law XXII of 1926 when the Upper House was restored. Law XXVII of 1940 rescinded the provision of Jewish representation, though the Jewish religion was deprived of its received status two years later by Law VIII of 1942. Received religions were given administrative assistance by the state authorities in the collection of church taxes (frequently lumped together with the state tax) and in enforcing internal discipline in the Church. These rights and practices developed out of the ancient *brachium saeculare* and the *ius advicatiae* and were, to a different extent in each case, extended to the received Churches in the nineteenth century. The government supplemented the salaries of the clergy, where this seemed necessary, and provided subsidies to maintain schools. The *kultusz* ministry handled all the disputes arising out of these arrangements, without the participation of the courts. These privileges and practices were the consequences of a Church's received status rather than the reasons for a particular religion being included in the class.

44. Eötvös used liberal statutory argument in the House on 9 December 1869 in his answer to the Serbian member Miletić, who had complained that the government had allowed the Patriarch to dissolve the Congress of the Serbian Orthodox Church. The government, Eötvös said, had proceeded on the basis of Law IX of 1868 and had refrained from interfering in the matter 'because it is not called upon and authorised to do so by law', *Képv. napló*, IV, pp. 63–65. For another example, see Eötvös's letter to Primate Simor on 19 December 1869 in Eötvös, *Levelek*, p. 630. Moreover, Eötvös was a firm adherent of the liberal principle that the minister could not lawfully *impose* a legal obligation on the citizen without being authorised by statute law; e.g. his attitude to compulsory education: speech in the House on 23 June 1868, *Képv. napló*, VIII, p. 128. As regards the property of the subject Eötvös unequivocally rejected the idea that the minister had administrative power at his disposal without statute law, although he himself had to arbitrate sometimes between the rival claims of townships and Churches over school property; see his answers to questions in the House on 28 October 1869 and on 14 March 1870. József Eötvös, *Kultúra*, pp. 418–24.
45. Cf. note 40 above. The VKM *rendelet*, No. 12548, was issued on 13 August 1868. The Nazarenes appeared in Hungary in 1840 and spread among the Calvinist Hungarian peasants and urban poor. Eötvös sent the *rendelet* to Pest, which had passed on to the *kultusz* ministry an application of József Sollársch, a cobbler. He had asked whether the Nazarene Church would be permitted to run its own register of births, etc. or whether the authorities would administer it. See László Kardos, et al, *op. cit.*, pp. 196f, 201f.
46. The word used was *hiteleseknek*. Sándor Dárday, *op. cit.*, II, p. 27.
47. On 13 June 1875, see Sándor Dárday, *op. cit., II, pp. 27–28*. Trefort expressly invoked Eötvös' authority in his 1875 and also in his 1891 rendelet.
48. '*Blos tolerirt, oder geduldet*', wrote Anton Virozsil in 1865, *Staats-Recht*, I, p. 225.
49. Liberals in all political parties resisted popular pressure to restrict the advance of Jews in public life. The government, in contrast with Austria, could stem the spilling over of the antisemitic tide into parliamentary politics. Győző Istóczy's Antisemitic party, established in 1883, was driven out of parliament by government pressure within a decade. On the Antisemitic party see Gyula Mérei, *Magyar politikai pártprogrammok*, 1867–1914, Budapest, 1934, pp. 149–55.

50. 15 November 1871, VKM *rendelet*, No. 26915 in Sándor Dárday, *op. cit.*, II, pp. 298–303. On the complex issues concerning the position of the Jewish religion towards the government see László Gonda, *A zsidóság*, pp. 120–46. Internal divisions among the congregations allowed the civil authorities to exercise power over many aspects of Jewish relations even after the Jewish religion was declared received in 1895. The creation of administrative courts in 1896 did not help: they were given hardly any competence in civil rights.
51. A leading jurist of the period argued in 1907, however, that the recognised status of a religion could be cancelled by ministerial *rendelet* because recognition was attained by *rendelet* in the first place. Ernő Nagy, *Közjog*, 1907, p. 148.
52. *elismert vallás*, coined on the German *anerkannte Religion*.
53. VKM *rendelet*: 77092/1905. Ernő Nagy, *op. cit.*, 1907, p. 141.
54. Law XVII of 1916. See Andor Csizmadia on possible reasons for the statutory rather than ministerial recognition, *A m. állam és egyh.*, p. 90 n33.
55. Para. 7.
56. *faji vagy nemzetiségi.*
57. Para. 8.
58. Paragraphs 9–12 and 19.
59. Para. 13, *erkölcsi és állampolgári magatartása kifogás alá nem esik.*
60. Para. 15, *államellenes magatartást tanúsít.*
61. In October 1905, the Fejérváry government promised, with qualifications, that 'complete equality and reciprocity among the received religions would be made effective in every respect'; Bertalan Lányi, *A Fejérvári-kormány*, Budapest, 1909, p. 118.
62. The so-called *elkeresztelés* crisis, following the attempt by the legislator in 1868 (Law LIII) to determine the religion of children from mixed marriages which opened the Pandora's box of sectarian strife between Protestants and Catholics, Gábor Salacz, *A magyar kultúrharc története 1890–1895*, Vienna, 1938, chs. 1 and 2; and see note 30 above.
63. However, leading jurists like Győző Concha supported the system of 'constitutional privileges', *Politika*, Budapest, 1905, II, p. 344.
64. The court procedure in a small town in eastern Hungary, including the state attorney's, was impeccable; all defendants were acquitted. Meanwhile the authorities, using vigorously their discretionary powers, suppressed the antisemitic movement.
65. Law VIII of 1942 On the Regulation of the Legal Status of the Jewish Religion. Paragraph 1 rescinded Law XLII of 1895 and accorded 'recognition' to the Jewish religion. On the reception of the Jewish religion in 1895 and its demotion in the 1940s, see László Gonda, *A zsidóság*, pp. 158–62 and 209–20.
66. In order to justify the demotion of the Jewish religion in 1942, a leading jurist pointed out that even after 1895 the rights of the Jewish religion had remained less extensive than those of the Christian received religions. István Egyed, *A mi alkotmányunk*, Budapest, 1943, p. 158; see also Andor Csizmadia, *Rechtl. Beziehungen*, pp. 24–25.
67. A key term in modern Hungarian social history which would deserve a separate study, *állami juttatások* is mentioned occasionally in the literature. E.g. Andor Csizmadia, *A m. állam és egyh.*, p. 93.
68. Gyula Szekfű, himself a pious Roman Catholic, criticised his Church for lack of interest in social questions and even in pastoral work; Catholic prelates opposed social reforms of any kind. *Magyar tört.*, V, pp. 521–26.
69. See note 51 above.
70. See László Péter, Montesquieu's Paradox on Freedom and Hungary's Constitutions, 1790–1900, *The New Hungarian Quarterly*, vol. XXXII, No. 123, 1991, p. 10.

71. Although the Constitution declared the opposite, para. 54 (2) Law XX of 1949, see *A Magyar Népköztársaság Alkotmánya* (hereafter Law XX of 1949), Budapest, 1959 edn.
72. A *rendelet* issued in 1951 stipulated, with retrospective force, that all Church appointments required the prior approval of the State authorities. See Sándor Orbán, 'Az állam és a katolikus egyház megállapodása', *Történelmi Szemle* (hereafter *Az állam és egyh.*), 1960, p. 307. Law V of 1953 had rescinded the requirement which, however, was restored by ministerial *rendelet* in 1957, József Éliás, 'Az egyházak és az egyháziak szabadsága', *Magyar Füzetek*, 14–15, (hereafter *Az egyházak*), Paris 1984, pp. 208–09; Pál Fónyad, 'A magyarországi protestántizmus rövid története, 1948–1978', in *Magyar változások 1948–1978* (hereafter *A magy. prot.*), Vienna, 1979, pp. 116–17; on the breaking of the spirit of the Lutheran Church's resistance see John Eibner 'Lajos Ordass: Prophet, Patriot or Reactionary', *Religion in Communist Lands* (hereafter RCL), Keston College, England, Summer 1983, pp. 178–87; Imre András, 'A II. világháború utáni magyar katolikus egyház', in *Magyar változások 1948–1978*, ed. Ernő Deák (hereafter *A kat. egyház*), Vienna, 1979, p. 131. On the unsavoury methods of the State Office see Konrád Szabó OFM, *Az egyházügyi hivatal titkai*, Budapest, 1990.
73. Paragraph 54 (1), Law XX, 1949.
74. The badly phrased nine-paragraph Law rescinded all the differences between the two classes which were disadvantageous to the recognised religions (para. 1). Para. 2 maintained, however, the very stiff stipulations of paragraphs 7, 8 and 18 of XLIII, 1895, concerning the recognition of new religions, see above note 55 and after.
75. As late as 1987 (!) József Lukács, who had prepared his work with the help of the State Office for Church Affairs, made this claim, *Vallás és vallásosság a mai Magyarországon* (hereafter *Vallás*), Budapest, 1987. p. 104, cf. p. 8. See also László Kardos et al. *Boldog emberek*, pp. 309–10 and 321.
76. Pál Fónyad, *A magy. prot.*, pp. 113–16. Catholics were critical of the Protestants for rushing into agreements with the Communist government. The regime did not keep the agreements; see on the Calvinist Church, József Éliás, *Az egyházak*, pp. 207–08.
77. On the *megállapodás* – a 'partial agreement' – see detailed but distorted accounts by Sándor Orbán, *Az állam és egyh.*, pp. 280–308, and Jenő Gergely, *A katolikus egyház Magyarországon, 1944–1971* (hereafter *A kat. egyh.*), Budapest, 1985, pp. 97f, 111; *Idem, Katolikus egyház, magyar társadalom 1890–1986* (hereafter *Kat. egyh. m. társ.*), Budapest, 1989, pp. 124–46 (better than the earlier work but still biased against the Church). The Vatican never approved the agreement; Imre András, *A kat. egyház*, p. 132; John Eibner, 'Hungary: overview', in: Philip Walters (ed.) *World Christianity: Eastern Europe* (hereafter *Hungary*), Eastbourne, 1988, p. 152. On the showtrial of Cardinal József Mindszenty see his *Memoirs*, 1974, N. Y., p. 83, his *Emlékirataim*, 1974, Toronto, p. 223; *A Mindszenty-per*, intr. Gellért Békés (republication of the 'Fekete Könyv', the official record of the show-trial), I.U.S., 1986, Paris. Béla Szász, 'A Mindszenty-per', *Irodalmi Újság*, 1986, 4, pp. 3–4. Gyula Havasi's *A magyar katolikusok szenvedései 1944–1989*, Budapest, 1990, is a substantial collection of documents concerning the suppression of the Roman Catholic Church for the whole period.
78. Sándor Orbán, *Az állam és egyh.*, pp. 291–92 and 304f. Over the last twenty years the value of the regular state subsidies has considerably diminished, József Lukács, *Vallás*, pp. 62–3. Jenő Gergely, *A kat. egyh.*, pp. 99f, 164.
79. Ministry of the Interior ordinance of 30 July 1945. József Fodor, *Vallási kisközösségek Magyarországon* (hereafter *Vallási*), Budapest [1987], p. 106, and see a critical review of Fodor's Marxist work by John Eibner in *RCL*, 1988, No. 1, pp. 57–59.
80. 1200/1947. II VKM *rendelet*, József Fodor, *Vallási*, pp. 52, 113 and esp. 125.

81. Examples given by József Fodor, *Vallási*, p. 112. The pejorative term 'sect' survived in official language. Barna Sarkadi Nagy, vice chairman of the State Office for Church Affairs, declared in 1988 that sects were those religious groups which operated without permission from the state authorities. Éva Árokszállási, 'Az állam és az egyházak', *Magyar Hírek*, 8 April 1988, p. 11.
82. John Eibner, *Hungary*, pp. 147–48.
83. József Fodor, *Vallási*, p. 130, cf. József Lukács, *Vallás*, p. 80.
84. József Fodor, *Vallási*, p. 46; though József Lukács gives 1957 as the year of recognition, *Vallás*, p. 92.
85. József Fodor, *Vallási*, p. 116.
86. *Tájékoztató a Magyarországon működő egyházakról és felekezetekről*, State Office for Church Affairs (hereafter *Tájékoztató*), Budapest, 1987, pp. 70, 78–79. The persecution of Methodist groups in 1977 is described in 'A 12 metodista lelkész nyilatkozatának háttere', in: *Magyar Füzetek*, Paris, 1978 (hereafter *A 12 metodista*), pp. 109f. On the Nazarenes see László Kardos et al. *Boldog emberek*, pp. 324ff and 481ff.
87. In April 1988, 146 Jehova's Witnesses were in prison for refusing to perform military service, wrote John Eibner, the most knowledgeable foreign expert on the position of the Churches in Hungary, *Hungary*, p. 163. See also József Fodor, *Vallási*, pp. 84f, and József Lukács, *Vallás*, p. 95. 'Recognition' by the state authorities of a Church frequently involved the suppression of a dissenting group within that Church; see esp. *A 12 metodista*, p. 114.
88. Postscript to József Fodor's *Vallási*, p. 145, also pp. 10 and 36. A confidential *rendelet* in 1976 allowed members of some of the small communities to do unarmed military service. This privilege did not apply to the historical religions. On 22 April 1988 a government spokesman announced that 158 men were in prison for refusal of military service. Tamás Csapody '«Békés békétlenek» – Magyarországon', *Századvég* (hereafter *Békés*) 6–7, Budapest, 1988, p. 234.
89. But for many a year after the 1956 revolution the Kádár regime, only slightly less intolerant towards religion than its predecessor, carried out fierce propaganda against 'the clerical reaction' and 'the religious world view'. The politbureau's resolution of 22 July 1958, published in English, makes instructive reading. *RCL*, Summer 1988, pp. 180–86; see also Jenő Gergely, *A kat. egyh.*; pp. 161f; *Idem*, *Kat. egyh. m. társ.*, p. 160 (terror methods in 1959–1961); József Lukács, *Vallás*, pp. 106f.
90. The state authorities claimed that they did not interfere with the internal matters of the Church but, complained a Roman Catholic priest, they reserved the right to define what counted as 'internal'; Mihály János (pseud.) 'Egyház és totalitárius állam', *Magyar Füzetek* (hereafter *Egyház*), Paris, 1984, pp. 169 and 173. See also -tl-, 'Magyar egyház, merre tartasz?' *Magyar Füzetek*, 18, Paris, 1987, esp. p. 44.
91. Tamás Csapody, *Békés*, p. 234. The Catholic hierarchy and the state co-operated against the 'basis communities', especially against a Piarist group led by Father Bulányi. János Wildmann, 'A magyar katolikus hierarchia és a báziscsoportok', *Magyar Füzetek*, 14–15, Paris, 1984, pp. 175f; Imre András, 'Kompromisszumos javaslat a bázisközösségek ügyében', *Katolikus Szemle*, 1983, 3 pp. 288f; László Kasza, 'A Bulányi-ügy', *Irodalmi Újság*, 1982, 3, pp. 1–2; Lajos Szakolczay, *Páter Bulányi*, Debrecen, 1989: a long interview with Páter Bulányi and documents concerning his conflicts with the hierarchy between 1976 and 1987. In contrast with the 1960s, wrote a former member of a monastic order in 1984, there were no priests in prison but many former monks were still without state licence to work; Mihály János (pseud.), 'Egyház és totalitárius állam', *Magyar Füzetek*, 14–15, (hereafter *Egyház*), Paris, 1984, p. 171. The best short account in English: 'Controversy in the Hungarian Church: Fr. Bulányi on trial', *The Month*, April 1987, pp. 150–54.

92. John Eibner, *Hungary*, pp. 152 (the 1964 'partial agreement' with the Vatican), 164f, 169, 171; *RCL*, Summer 1988, p. 166; József Lukács, *Vallás*, pp. 63–65, 94; Pál Fónyad, *A magy. prot.*, pp. 117–18; Imre András, *A kat. egyház*, pp. 133–35.
93. The publications were still meagre. There were approximately 20 Catholic publishing houses in 1946. In 1988 there were only two (John Eibner, *Hungary*, p. 166) which in the 1970s published 15–18 books annually. Imre András, *A kat. egyház*, p. 136; and about 20–25 books annually in the 1980s, *Tájékoztató*, p. 31.
94. József Fodor, *Vallási*, pp. 92, 127, 131–32.
95. Seven dioceses received their new heads at one go. A very old custom, appointments were made in a cluster to help the civil authorities and the Vatican to come to compromises (although the Holy See never recognised the *ius patronatus* which monarchs and later the Hungarian State had claimed).
96. See John Eibner, 'A New Primate: A New Policy', *RCL* (hereafter *A New Primate*), *RCL*, Summer 1988, pp. 164–68.
97. The new government, appointed on 23 November 1988, gradually distanced itself from the party.
98. Károly Grósz, Party leader, proposed to the Roman Catholic bishops in August 1988 'that the Church and state should sign a provisional "Protocol" which would lay down the rights and responsibilities of the Church until the Hungarian parliament enacts a new law on religious affairs'. *Keston News Service* (hereafter *KNS*), 6 October 1988, p. 9; and see John Eibner, 'A New Deal in Hungary', *The Tablet*, London, 11 March 1989, pp. 272–73.
99. See John Eibner, *A New Primate*, p. 167. After Károly Grósz had become General Secretary, in a letter to Primate Paskai in August 1988, he promised legislation on religious affairs in 1990. *KNS*, 6 October 1988, p. 9.
100. *Népszabadság* and *Magyar Nemzet*, 27 August 1988.
101. Para. 22 of the draft Bill in *Ibid.*
102. The first draft of the *Irányelvek*, 'Guidelines', was prepared in late 1988. I am grateful to John Eibner for passing a copy of this document to me.
103. Pt. I of the Guidelines.
104. Barna Sarkadi Nagy, deputy chairman of the State Office (soon to become its chairman) stated in a lecture in Keston College (England) that the principle of religious freedom in the new Law will be 'whatever is not forbidden [by statute Law] will be permitted'; *KNS*, 6 October 1988, p. 9.
105. Pt. II.
106. Pt. III, 1.
107. Pt. III, 2, 5.
108. Pt. III, 3.
109. Pt. IV, 1. The State Office was never regulated by statute law. The Guidelines maintained the State Office in a new form. A 'Church Policy Council' and an independently organised Secretariat were to work either under the Head of State or under the prime minister.
110. Pt. IV, 2. The principles of the procedural rules concerning the refusal of 'recognition' were vague.
111. Pt. IV, 3.
112. No. 27–1 (d) 1989, State Office for Church affairs.
113. The Church Policy Secretariat, a 'co-ordinating body', was to be placed under the prime minister.
114. *Ibid.*, pp. 2, 3.
115. See interview with Ernő Andics, Director of the Central Committee's Social Policy Department, summarised in *KNS*, 13 April 1989, p. 14.

116. *Ibid.*, p. 13.
117. Kulcsár did not like the idea of a separate office because 'every organisation is ready to enlarge its own competence'. If the Churches wanted subsidies for schools, the ministry would deal with it. His aim was the establishment of the rule of law: 'I have never been able to understand the concept of «socialist legality». Legality either exists, or it does not ... [and further] whatever is not explicitly forbidden by the law is legal'; John Eibner, 'The Rule of Law in Hungary', *RCL*, Summer, 1989, pp. 140–47, esp. 141 and 146; *KNS*, 16 February 1989, pp. 13–14.
118. Notably 'and Church Affairs' was dropped from the title.
119. Decision of the Ministerial Council, No. 1072, 15 June 1989, *Magyar Közlöny*, No. 39, pp. 724–25.
120. Paragraph 2, 1989, No. 14. The *rendelet* also regulated Church appointments in so far as the appointing authority was foreign (para. 1) and authorised the government to determine the 'state tasks' concerning religion; *Magyar Közlöny*, No. 43, p. 771. although the State Office was disbanded in 1989, in some counties the secretaries for church affairs were functioning even a year later; see *Magyar Nemzet*, 12 July 1990.
121. 1092/1989 (June 30). In order to service the new National Council a Church Policy Secretariat was organised as a part of the Cabinet Office (*Magyar Közlöny*, No. 43, p. 779). Another decision transferred the administration of church-state relations to the ministry of Culture by *rendelet* (*ibid*). The Opposition (Free Democrats) attacked these moves as attempts preempting the task of parliament, *Felhívás* (leaflet), 5 July 1989. See also Miklós Tomka, 'Vallás és közélet 1989-ben', *Magyarország politikai évkönyve* (hereafer *MPÉ*), 1990, p. 115. (Were these changes transitory? – the Opposition wanted to know.)
122. Bishop Szendi's demand that the Bishops Conference should be chaired by an *ordinarius*, elected for five years rather than automatically by the Primate, was a direct challenge to Paskai's authority. On 26 May 1989, see *Hírlevél*, 1989, No. 8, pp. 6–7 (and elsewhere in the press).
123. Detailed report in the *Magyar Kurír*, 23 October 1989, 79, No. 242, pp. 1–4. The proceedings were public. Four annual meetings were planned.
124. The meeting was chaired by the Prime Minister as president of the Council; Ferenc Glatz, Minister for Culture became vice president and Barna Sarkadi Nagy its secretary.
125. The Nazarenes and the Jehova's Witnesses, for religious reasons, stayed away.
126. *Magyar Közlöny*, 23 October 1989, No. 74, pp. 1219f.
127. The main subject of the 24 paragraph Law (further subdivided) was registration of the Churches; the text together with the ministerial motivation in *Magyar Közlöny*, No. 12, 12 February 1990, pp. 205–14.
128. Paragraphs 9–13 and the ministerial motivation contain basic procedural rules. By 1993 over fifty Churches and religious communities registered with the courts.
129. Paragraph 19 (1–2). In 1993 thirty-five Churches received subsidies. The resolution of parliament (14/1993, 19 March) with the allocation of funds in *Magyar Közlöny*, 1993, No. 31, pp. 1614–16.
130. See above note 120.
131. Miklós Tomka, 'Vallás és politikai szerkezet: 1990. évi változások', *MPÉ*, 1991, p. 250.