BARNABÁS KISS

ÖDÖN POLNER*

(1865–1961)

I. Biography[1]

Ödön *Polner* was born on 15th March 1865 in Fürjes-puszta, which is near to Békéscsaba. He spent his early childhood in a mansion there. His ancestors were mostly German craftsmen, several of them became part of the Hungarian nobility. In 1873, as he turned eight, he was sent to Budapest to his uncle's house to start learning in the third grade. After finishing the fourth grade in the Evangelical Primary School, he continued his studies in the Evangelical Secondary School of the Deák Square, it was an eight-year-term school in his time.

He began his university studies at the University of Technology, but after a semester he matriculated to the Faculty of Law. He was promoted to the Doctor of Law in 1889.

He started his professional career in the Royal Regional Court of Budapest on 30th October 1889. We know from his memoirs that his real professional purpose was to become a university professor. His interest and knowledge in public law was proved as he wrote a paper about the Public Law Relations between Austria and Hungary in 1890 for the Royal Hungarian University of Budapest for which he received 200 Forints of the shared prize. His work was printed at his own expense in the summer of 1891.[2]

Polner thought that joining the Ministry of Justice will be fruitful for his ambitions of becoming a professor. His wish came true with the help of Dezső *Szilágyi*, the current Minister of Justice as he was appointed for further duty in the Ministry of Justice after he was released from the service in the district court in August 1891. In the ministry he participated in the preparations of several significant government bills and intergovernmental treaties, and he continued his academic work as well. He was strengthening his intent to achieve teaching authorization; he published another paper while

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[1] We relied on the book of Ödön *Polner* about his life in this part of the paper, which was edited by his grandson. POLNER 2008. The recollections of his grandson in the book of the scientific meeting organised by the University of Szeged, Faculty of Law also helped. HAVASS 2008, 57.

[2] POLNER 1891, 218.

he was a ministry trainee. He was encouraged by Ágoston *Lechner*, who was a professor of public law and one of the reviewers of his prize-winning paper. In 1893, he wrote the paper called '*The Executive Power in the Hungarian Constitution*'[3] and it was published in the new journal called *'Jogi Szemle'*. In his curriculum he reviewed this paper as the highest level of quality from all his work. He achieved his teaching authorisation in 1895 based on this work and became the private professor of public law at the University of Budapest. He was appointed as extraordinary university professor in 1905.

In 1908 he became a corresponding member of the Hungarian Academy of Sciences. In his inaugural address he analysed again the legal base of the relations between Austria and Hungary in 1912. The paper also was published in the book *'Ünnepi Dolgozatok'* celebrating the 40th anniversary of Győző *Concha's* appointment as a university professor.[4]

The Act XXXV of 1912 established two new universities in Pozsony and Debrecen. (Szeged also applied to become a university seat but failed.) In Pozsony firstly only the Faculty of Law was established in 1912. Here, in the Elizabeth University *Polner* became an ordinary university professor of public law and politics in 1914. He became the dean with the given powers of the rector of the Faculty of Law in 1915-1916. He was the rector of the university in its last year, in 1918-1919 during the Czech occupation (1.1.1919). The Czech authorities suspended the university operations, and the professors were placed under police surveillance. *Polner* was arrested for a short time on 4th February 1919. Later he was interned in Moravia for about six weeks.

After the Treaty of Trianon, he taught in Budapest, then in Pécs. The University of Pécs is the successor of the University of Pozsony. *Polner* played a key role in the relocation to Pécs.

Ödön Polner accepted the invitation of the University of Szeged, and he became the Head of the Department of Public Law in 1923 to live closer to his birthplace, Fürjes. He was the Head of the Department until his retirement in 1935. During his years as a Head of Department, he was vice dean twice, 1926-1927 and 1929-1930, prorector in 1927-1928 and he was the dean of the Faculty of Law and Political Sciences in 1928-1929. From 1931 until his retirement, he was the coeditor of the *Acta Juridico – Politica,* the scientifical journal of the Faculty of Law. He was the leading university professor of the *'Student Protection Office'* between 1935 and 1938.

A great celebration was organised for the 70th birthday of Professor Ödön *Polner* by the Faculty of Law and Political Sciences in 1935. A two-volume book was written by the eminent experts of the legal studies of the time. Some of the authors of the first Volume: László *Buza,* István *Csekey*, István *Ereky*, Ferenc *Finkey* and Barna *Horváth.* The *Luther Association of the University of Szeged* published a book on the 70th birthday and the 10th anniversary of high patronage of Ödön *Polner*. The foreword stated: 'in the name of his blessed extensive work.'[5]

The peak of his academic career was when the Hungarian Academy of Sciences elected him as an ordinary member. His inaugural address was about *'Some Important*

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[3] POLNER 1893, 94.
[4] POLNER 1912, 19.
[5] The book was edited by president László *Benkő*.

Issues of the State Life' which was published in 1935.[6] From 1945 he was an honorary member of the Hungarian Academy of Sciences, albeit he was downgraded to a conferring member in 1949. He became the Doctor of Sciences according to the 'socialist classification system' in 1952. The General Assembly of the Hungarian Academy of Sciences restored his ordinary membership only after his death in 1989.

After his retirement, Ödön *Polner* did not ignore his connection with the University of Szeged. He was the director of the abovementioned Student Protection Office where he received student requests for assistance daily. He continued his work on the actual issues of public law and the work of the eminent Hungarian public lawyers with great intensity. Most of these were published, but some of them were kept as manuscripts. *Polner* mentions his book *'The Upper Part of the Holy Crown of Hungary'* which was published in 1943,[7] and a 49 pages long critique about the history of awards and medals which he wrote in 1943.

The once celebrated academic was in a very undignified situation during and after the second world war. He lost almost everything of importance apart from his family. After the normalisation of the circumstances of the war, he was the lecturer of comparative constitutional law at the University of Szeged until 1950-1951. He stayed in contact with some of his faculty members and students. László *Buza* and Sen. János *Martonyi*, who offered the eulogy at his funereal as the dean, should be mentioned among them.[8] One of his late students, György *Antalffy* also respected the ignored professor, and supported some of his requests.

Ödön *Polner* died at the age of 96 on 7 February 1961 in Szeged. His grave in the Inner Cemetery was declared to be protected by the National Committee of Memorial and Piety.

After the death of Ödön *Polner* the University of Szeged held a memorial conference for the 100th birthday of the late professor in 1965. The Polner family and the Faculty of Law and Political Sciences of the University of Szeged placed a plaque on his late apartment at 5 Klauzál Square 10th October 2008. A scientific conference was held, and a memorial book was published on this afternoon.[9]

II. Academic work

The science of Hungarian public law was dominated by the historical school, which was based on describing and glorifying the instruments of the feudal public law institutions like the 'national resistance' in the second half of the 19th century.[10]

The start of the scientific career of Ödön *Polner* was in the last decade of the 19th century when the dogmatic school became dominant in the Hungarian public law theory. This new direction of public law was rooted in Germany. Paul *Laband's* (1838-1921) Public Law of the German Empire -which was published in 1876 - is the classic

[6] POLNER 1935.
[7] POLNER 1943, 150.
[8] János *Martonyi* also wrote a short memorial which was published in 1961 in the *Jogtudományi Közlöny*.
[9] KISS 2008.
[10] TAKÁCS 1959, 56. ACZÉL-PARTOS, 2008.

work of the school. Ernő *Nagy* (1853-1921), who was a Hungarian student of *Laband*, opposed the dominant historical school in his book in 1887,[11] playing a determinant role in integrating the dogmatic school in Hungary. "I am not alone with the thought that the usage of the so-called historical method while analysing the public law is not enough anymore. Life and the science of public law are also urging the dogmatic examination." the Professor of the Judicial Academy in Nagyvárad wrote in the foreword of his book. He demanded the understanding of Hungarian public law in force as legal science.

The legal dogmatism appeared as the analytical branch of the positivist school in the Hungarian public law. "The Dogmatist School took the leading role in the field of public law using scientifical objectivity, introducing positivist methods, using a great set of data and processing a wide range of legal rules."[12] This approach defined the work of Ödön *Polner* as well.

Some of *Polner's* work did not become public, as several of his papers, letters, and records on the solutions of actual issues of public law ended up in the archives.[13]

The published scientific work of Ödön *Polner* is extensive and comprehensive. Besides writing comprehensive monographs and papers, he was also heavily involved in preparatory legal work and reviewing draft laws. He did these tasks with great professional accuracy and scientific professionalism. He wrote 73 original or individually printed papers, 12 newspaper articles and 70 headings in the 6 volumes of the *Magyar Jogi Enciklopédia* published between 1898-1907 (His literary work can be found in part III.).

If one aims to summarise the work of Professor *Polner* per topic, the following list can be formed:[14]

1. The public law relations between Hungary and Austria (the definition and classification of the state relations in detail, the legal nature of the constitutional treaties, the public law characteristics of the *Pragmatic Sanction*, the legal view on the Austro-Hungarian Compromise and common portfolio).
2. The executive power in the Hungarian constitution, functions, and organisation of the government.
3. Laws of election, the nature of suffrage and voting arbitration.
4. Issues of the law of the parliament, functions and organisation of the parliament and the conditions of becoming a member of the parliament.
5. The public law between the two world wars, the question of the throne and the solution of the question of the king in Hungary.
6. The public aspects of the exceptional powers decreed in war situations.
7. Great historical figures (Ferenc *Deák*, Lajos *Kossuth*, II. Ferenc *Rákóczi*), and the work of illustrious public lawyers (Győző *Concha*, István *Ereky*, Geysa *Ferdinandy*, Ernő *Nagy*).

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[11] NAGY 1887.
[12] TAKÁCS 1959, 56.
[13] The author of this paper gave the documents which were found in the library of the Department of Constitutional Law to the Library of the University of Szeged in 2011.
[14] KISS 2008, 11–12.

The varied subjects of the list demonstrate the impossibility his life's work's detailed presentation in a short paper. Therefore, only the first four topics which are better linked to the current public law issues will be examined from *Polner's* work.

The first significant area is the issue of state relations, the analysis of the relations of Hungary and Austria from the public law viewpoint. The first scientifical work of *Polner*, the *'Public Law Relations between Hungary and Austria'*, published in 1891, represents the growing influence of the public law dogmatism in Hungary.[15] According to László *Buza*, the young author successfully eliminated the untrust regarding the dogmatic method and provided a significant contribution in the process of the method becoming exclusive in the Hungarian literature of public law. Ödön *Polner* established his vast historical, political and legal knowledge, his nimble-witted legal thought and his fine use of the dogmatic legal method with this paper that he became one of our best public lawyers - *Buza* wrote.[16]

His work contains three parts. In the first part he examined the state relations in general, analysing the modern state relations individually. The second part studied the historical development of the relations between Hungary and Austria until 1867. The third part examined the current (1891) situation of the two states by studying the public law bases and the common portfolio. The starting point of his observation was the following issue: is the entity one state with different organisation in some questions or two or more separate states?

His classification of the state relations was more detailed as the classification used nowadays. The three-part division of the state relations, federation, confederation, and alliance, are necessarily crossed by the so-called unions, the personal union and the real union in his system of definitions.

He deduced clearly that the relations between Hungary and Austria were a personal union from 1723, from the *Pragmatic Sanction* until the Austro-Hungarian Compromise, so the states were independent. The relations of the two states are international and based on an international treaty, not an internal state treaty which is between the monarch and the nation. The *Pragmatic Sanction* and the Act XII of 1867 as well is an international treaty externally and an ordinary law internally.[17] He proved that the relations between Hungary and Austria were a personal union after the Austro-Hungarian Compromise as well because, the nowadays generally used, real union only exists if the common monarch unifies the two state powers. The so-called common portfolio does not mean the unification of the state powers.

Polner examined the public law relations of Hungary and Austria several times for decades. Our short review of these works is based on László *Buza*.[18]

One of the topics was the legal nature of the constituent contracts, internal state treaties. In his paper published in 1902,[19] he opposed Ágost *Lechner* and Geysa *Ferdinandy*, stating that the theory of the internal, between the nation and the monarch, state treaties is outdated and alien to the spirit of our public law and the public law view of

[15] POLNER 1891, 218.
[16] BUZA 1935, 5–6.
[17] KISS 2008, 12.
[18] BUZA 1935, 11–19.
[19] POLNER 1902, 52.

the constitution. He supported the view that the *Pragmatic Sanction* created a confederation as it only established a common order of succession in the two states. In his inaugural address given as the corresponding member of the Hungarian Academy of Sciences in 1912,[20] he maintained his view that the *Pragmatic Sanction* is an international treaty. He said that the statement of the Act XXII. of 1867 about the *Pragmatic Sanction* being a 'base contract' which is 'between the royal monarchy and Hungary' is not contradictory with his stand. The definition by law cannot be decisive about the scientific and theoretical qualification of the legal nature of the provisions. That is the reason why the *Pragmatic Sanction* is an international treaty in the view of the Austro-Hungarian Compromise Act as well, which was concluded between two international entities, two states, the Hungarian state, and the Austrian royal house - according to *Polner*.

Ödön *Polner* examined the material questions of the relations between Hungary and Austria in detail, so he analysed the common portfolio comprehensively. He wrote every heading about the common portfolio in Volume 5. of the *Magyar Jogi Lexikon* which was edited by Dezső *Márkus*, published in 1904. In these writings he always supported the whole sovereignty and independent statehood of Hungary. He stated that both the external relations and the defense relations only partly common, or to be more precise and clearer: only *'decided with common understanding'*.

The issue of succession emerged in *Polner's* work in 1916 with the accession to the throne of Charles IV. in connection with the relations of Hungary and Austria. According to his memoir, he actively participated in the preparations of the coronation as a public law expert.[21] During the process, he phrased the royal pledge and oath, the precise title of the king and the definition of the participating dignitaries in the coronation. He examined the conditions of the Hungarian order of succession in a special issue of the *Jogtudományi Közlöny*, which was published for the coronation of Charles VI.[22] In two earlier issues of the *Közlöny*, he proposed solutions to the name and the title of the new king, which can show the independent statehood of Hungary, meaning that the monarch is the head of state of two sovereign states.[23]

Another significant part of the work of Ödön *Polner* is related to the scientifical definition of the executive power. The author's aim was to define the executive power without classifying this expression appropriate or correct in his fine work in 1893.[24] The reason for choosing this title was that the Hungarian laws and the constitution used this expression and accepted the division of powers for legislative, executive, and judicial powers. In his opinion, the conclusion which can be made is the following: *'what is not legislation and not judicial activity is a power of the executive. Albeit defining is not enough.'*[25] Therefore, there is also a need to define the executive power in a *'positive direction'*.

Chapter V. of Ödön *Polner's* work has three main parts. Firstly, he tried to define the executive power with a theoretical depiction. He rejected the classical theory of the

[20] POLNER 1912.
[21] POLNER 2008, 363–364.
[22] POLNER 1916a.
[23] POLNER 1916b.
[24] POLNER 1893, 1.
[25] POLNER 1893, 2.

division of powers into three branches. He divided the exercise of governmental authority into two parts, the legislative power, and the executive power. He saw the judicial power as a part of the executive power. That was the reason for examining judicial issues in his work.

Afterwards, he analysed the forms of governmental actions and their classification. He distinguished four different forms of governmental action based on a quite formal categorisation. The first is the rulemaking, which is a legislative function if it becomes a law. The second is the *'administrating'*, which is the direct exercise of power on the individuals. The two forms of the *'administrating'* are the justice and the administration. The third branch of the governmental action is the '*right-granting action'*. According to *Polner*, these are the actions which will influence the relations between the individuals or the relations between the individual and the state, as an example: land registration, appointment of a custodian etc. The fourth form is *'administration without authority'* which is a governmental action without expressed power. The last three governmental actions are part of the executive power in *Polner's* understanding.

In the third part of the paper about the executive power, the organisational framework of the executive power and the legal position of the examined institutions were analysed with great precision and multi-faceted scientific integrity by the young scholar.

The issue of the legislation on the voting system had outstanding importance in the work of Ödön *Polner*. It can be concluded from his publications that his interest was based on the codificator's point of view. It must be said that his views in this area were not very progressive even in his own time. In his defense: his opinion was based on solid theoretical aspects which can be seen as logically using his point of view as a starting point.

He created the base for his work about the suffrage in the paper *'The Nature of the Suffrage',* which was published in the *Jogtudományi Közlöny* issue 37 in 1901.[26] This paper *'[...] is not about just the suffrage, moreover, for the most part it is about the human rights in general and especially his public law rights and their place in the classification of human rights*.' he wrote.

In the introduction of the paper, he contradicted the widespread view that the elections are an exercise of an individual right, the right to vote. In his opinion, the voting is not an exercise of a right, suffrage is not a human right. He agreed with *Laband* and *Jellinek* that the election is a governmental action which creates a public body. Through the elections a defined group of citizens contribute in 'giving life to a public body'.

The ability to vote is the *'voting authority'* according to *Polner*. *'The voting authority is a possibility for someone participating in a state action called the elections and his will to be taken into consideration when choosing the head of a state institution. The voting authority is nor a human right, neither an individual right, so it is not appropriate to call the voting authority the right to vote and view it as a right.'*

Polner did not only view the right to vote as a human right, but also the political rights in general. *'These political rights are not human rights, but the power of the public authority.'*

According to *Polner*, there is a genuine difference between the political rights and other human rights. *Polner* was against the natural law theory of human rights and

[26] This work was published with additional part as a separate paper called 'The Nature of Suffrage'.

excluded the political rights from the group of human rights. In his view, the political rights are not subjective rights but the rules of the exercise of governmental authority in essence. The only common feature between the political rights and the other human rights is that *both 'are the freedom of action given by the legal order of the state.'.*

He gave a specific explanation for the limitation of political rights against the movements of the time with aim to widen the range and subjects of political rights. Different aspects must be taken into consideration during the distribution of rights and the distribution of powers - he wrote. The sense of justice would not allow for not enjoying the same rights during the division of rights for everyone. On the contrary, it is acceptable to give different powers to the state institutions as *'defined only for the public interest'* expediency dictates. According to Polner, *'the only guideline for deciding who is capable of exercising power is the fact whose power is beneficial for the state.'*

He has two preliminary principles while examining human rights. The first is that *'human rights exist only in a state, only as a reason of state measures.'* The other theorem of *Polner: 'the main type of human rights nowadays are the property rights',* so the property rights are the most perfect, the most well-defined parts of the system of human rights. Then he analysed the general, *absolut*, and the *relative* property rights of the man in the level of principle.

He not just created theoretical works about the suffrage, but also examined several laws and bills and published his critiques mostly. Among others, he analysed the bill on the right to vote in 1918,[27] which, with the ideas of *Polner*, became the Act XVII of 1918 with several modifications, albeit it did not enter into force. I would only like to note as a matter of interest that the original bill, for the first time in Hungary, aimed to give the right, with certain conditions, for women to vote as well, but this opportunity was abandoned by the Special Suffrage Commission.

He made no attempt to hide his opinion against the widening of the political rights. While he did not aim to examine this political trend *'sympathetic for the freedom-loving people'*, his *'codificator's opinion'* was against the widening of the right to vote. *'State function, and the right to vote as well, can be trusted with only the people who has the needed moral, intellectual and material guarantees to use this power for the people properly.'*[28] *Polner* wrote in the introduction of his paper. *Polner* examined the provisions of the bill with the absolute precision of a lawyer. These were drafted with the Act XIV of 1913 in mind. As this law was a positive step for *'regularity and legal accuracy'* in the field of election laws in his view, he thought that an amendment would be enough instead of adopting a whole new text of a law to spare time, energy, and money.

Polner firstly analysed the most significant provision of the new bill, the material side of the suffrage. More importantly, his objection was that the base of the suffrage is not the citizenship, as it was in the earlier laws (1848, 1874, 1913), but the fact of being a man or a woman. He suggested a change to make citizenship an essential component and as an inseparable part of the right to vote in Hungary.

Without examining the technical details, the paper sheds light on another important principle, the issue of the cultural census, the *'intellectual qualification'*. According to

[27] POLNER 1918, 35.
[28] Ibid. 65.

Polner, one of the most significant type of *'intellectual collaterals'* was the educational attainment. In his view, the *'educational attainment is capable of being moral collateral'* in relation to its educational value.[29] He was against the widening of the right to vote, he suggested that the condition for the right to vote should be not four, but six school grades successfully finished, which was the limit of the compulsory education.

Polner criticized very strictly the whole evolution of the Hungarian legislation on the elections from the codificational point of view in his presentation at the Law Department of the Group of Friends of the Royal Hungarian Franz Joseph University in 22 March 1933.[30] He harshly criticized the earlier laws, albeit the Act XXVI of 1925, which was in force at the time, received especially detailed review. He thought that the Act XIV of 1913 is the best from the codificational point of view. However, no elections were held based on the rules of this law. In his opinion, the laws and regulations adopted after 1913 show continuous deterioration. The lowest point was the Act XXVI of 1925 in his opinion. The law used voting definitions incorrectly, misunderstood the legal nature of some provisions or contained contradictory or even unenforceable measures as a reason of superficiality. In his presentation, he explained again his theory that the right to vote is not an individual right won by private interest, but a public authority given by the public interest.

The following can be stated about the views of *Polner* related to the general characteristics of the right to vote from his works: He supported the secrecy of the ballot and the plural suffrage. He thought that plural suffrage is amenable to protect public interest where universal suffrage is used.

He strictly opposed the demand of universal suffrage again and again. In his view, the widening of political rights cannot be an end in itself. 'State function, and the right to vote as well, can be trusted with only the people who has the needed moral, intellectual and material guarantees to use this power for the people properly.' *Polner* wrote in the introduction of his paper.

On the issue of women's suffrage, he thought that this right should be given to the self-financing women to compensate their *'sorrowful situation'* as a reason of the social and economic circumstances they must work instead of living only their women's avocation.

Ödön *Polner* opposed the proportional electoral system. He supported this view in his paper called *'Suffrage and Governance at Parliamentary Level'* which was published in the journal *Jogtudományi Közlöny* issue 23. in 1934. According to Polner, the proportional electoral system neglects the public interest totally to give space to the struggle between the party interests. The members of the parliament are not elected by the people but appointed by the party leaders. In his opinion, the proportional electoral system excessively hinders the possibility of governance at the parliamentary level. The governance at the parliamentary level is in danger from two sides: the one-sided party monopoly, generally if the suffrage is limited, and the case of too many parties, mostly if the suffrage is widened, with the fragmentation of the party relations. Ödön *Polner* concluded: the healthy operation of the governance at parliamentary level could only

[29] Ibid. 66.

[30] The presentation was published in the 8. *'Booklet of the Group of Friends'* presentations in Szeged.

happen in a two-party system. His sympathy for the two-party system could be traced back to his interest in the English constitutional history, which he analysed in detail several times from his years of adolescence, according to his curriculum.

The fourth examined topic of the work of Professor *Polner* is parliamentary law. He wrote the '*Studies in the Field of Hungarian Parliamentary Law*' in 1902, when he still was an extraordinary university professor in Budapest.[31] The extensive work contains three main chapters:

– I. The parliament as a state organ
– II. The conditions of becoming a member of the parliament
– III. The authority of the members of the parliament and its expiration

The volume also has an Appendix called the *House of Magnates and the Magnates.*

The author analysed the *'legal status of the parliament'* in the A) subchapter of the first chapter. He stated in the introduction that the importance of the parliament increased due to the usage of the governance and the parliamentary level principle. He did not want to examine this political question but aimed to analyse the parliament as a state organ from the legal standpoint.

The parliament is one institution with two parts in the system of the state institutions, this is one of the Professor's key ideas. *Polner* stated, against the typical view of the foreign scholars, *'the Hungarian Parliament is not an identical name for two institutions but one institution with two independent parts which are parts of the whole. The two chambers of the parliament are the House of Representatives and the House of Magnates, the two parts together constitute the parliament.'*.[32]

The unity of the parliament was undisputed before 1848, as the functions developed uniformly, the two chambers were usually united. The two chambers combatted the king as one institution and the contacts were based on the unity of the parliament. The laws of 1848/1849 have not changed this structure, however, the connection in the relations of the two chambers loosened but did not ceased to exist. The two chambers united less frequently, they contacted the king independently and the two chambers did not have a common president like the Palatine of Hungary had been until 1848. The main evidence for *Polner* concerning the unity of the parliament was the fact that the king must call, open, and dismiss the two chambers in a uniform manner. If one of the chambers has a special, independent function, in this part the chamber 'is an institution existing and functioning as an independent institution from the parliament.' As an example, the House of Magnates had a function based on the Act VIII of 1871 and the Act XXVI of 1896 to have disciplinary public authority over the judges of the Curia and the administrative courts. The Act VII of 1885 made the House of Magnates a continuous institution with everlasting elements. The House of Magnates was an independently existing institution from the parliament albeit only in the view of the special functions.

In *Polner's* opinion, it has a constitutional and political significance that the parliament is one institution containing two parts and the operations of the two parts are

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[31] POLNER 1902, 123.
[32] Ibid. 6-7.

intertwined, despite that this connection cannot be defined in the laws.[33] The parliament is the representative of the nation's interest against the other constituent factor of the state, the king. It could be more capable for the task if the two institutions consider themselves as one. Thus, if there would be a conflict, it could be solved more efficiently. The chambers are capable of not just supporting, but also controlling each other as their aim should be to achieve *'the proper, lawful and unabated functioning.'* Therefore, there is a need for the possibility of criticizing and disputing the functioning of each other as this method will lead for self-restriction and self-policing among the chambers and their members. According to the author: *'without self-restrictions and self-policing, there could be no governance at parliamentary level.'*[34]

Polner continued his work with stating that the discussion of the proceedings of a chamber does not mean a dispute between the two chambers as a debate on the speakers or what was said. *'Because while the parliament is a unit, the two parts are legally independent from each other, so there is no subordination in between: one chamber is not answerable to the other.'*[35] Due to the characteristics of both chambers, the House of Representatives can be seen as the chamber with hegemony as it is the institution representing the nation. Thus, only this chamber can have initiatives. The House of Magnates evolved from the old committee of the high dignitaries of the churches and the peers, and it was rather the advisory body of the king during the justification of the laws.

In the next subchapter, *Polner* analysed the relations between the parliament as the representative of the nation in the political sense and the king as the other factor of the state. He distinguished between three eras based on these aspects.

During the Late Middle Ages, in the first era of the parliament, the king attended to the parliament, and he chaired it himself. Therefore, the king was part of the definition of the parliament. *'The parliament was the whole nation with the king as the leader of the nation, meaning the whole state, the whole body of the Holy Crown of Hungary in these times.'*[36]

During the times of the Habsburg kings, after foreign kings were coronated, this relation ceased to exist. The parliament was seen as a separate institution from the king in accordance with the spirit of the classic estate constitutionalism, there has been a duality. From this time, the king is not part of the parliament, the king is outside of the parliament. It was customary for the king to chair the parliament until 1848. If the king has not been in the parliament, he sent proxies instead of himself. The personal presence ceased to exist in the Habsburg times, the king attended the assemblies very rarely or not at all. The written contact became general instead of personal contact, using humble petitions (*humillima repraesentatio*) and lenient royal answers (*rescriptum*).

The third era in *Polner's* work is the end of the 19th. century and the beginning of the 20th. century, his own time period. He criticized the *'current theories'*, the basic point of the 'modern' state law of his time. The general theory was to see the parliament as an independent institution from the king using the system of the classic estate constitutionalism. The only contradicting example can be found in England, which was

[33] Ibid. 9.
[34] Ibid. 10.
[35] Ibid. 11.
[36] Ibid. 12.

Polner's favorite model, where the power of the king was decreased in practice. That was the reason why the king was seen as a part of the parliament. The formula '*King in Parliament*' expressed that the parliament, and the king as a part, can do anything. *Polner* quoted from *Concha's* work on the English constitution, as 'The king is the head, beginning and end of the parliament.'[37]

Polner did not oppose openly the 'spirit of the age' which accepted the distinguished powers of the parliament and the king. However, he tried to 'put back' his opinion about the united power of the parliament and the king in his work about the sovereignty. This principle is the parliamentary sovereignty in the classical constitutional law theory created on the model of the English constitutional monarchy. He summarized the fundamental points:

'The highest, greatest power in Hungary is the legislative power as the law is the strongest decision of a state, which can change any other decisions, but no other decision can contradict it. Only the king and the parliament together has the power to legislate. The greatest power can be wielded only by the king and the parliament together. Therefore, the parliament and the king are sovereigns together if they are acting together. However, the king is a sovereign in himself, while the parliament is not.'[38]

Hereunder the author stated that the parliament is not on the same level as the king. As the king has more power than the parliament because he is not only part of the legislative power, but he also has the executive power. Moreover, the king has the power to cancel the parliament under certain conditions. The king has greater independence from the parliament like the parliament has from the king. The parliament does not have as strong influence over the king as the king has over the parliament because the parliament which elects the king cannot take away his power. In the question of the legislative power, the two parties are dividing the power, albeit it will not show externally. On one hand, the *'enactment of laws'* is a right of the king. On the other hand, formally the laws are the *'decisions of the king'*. *Polner* ends this idea with a *'seemingly small circumstance'*. He aimed to prove that the parliament is not a sovereign itself, it is not *'on the same shelf as the king'* with the customary expressions: the parliament sends *'propositions'* to the king and the king sends *'resolutions'* to the parliament.

In the following, the author examined the relationship between the parliament and the citizens, and their totality, the nation, as the parliament gains its origins from the actions of the king and the votes of the people as well. *Polner* strongly supported the idea that the parliament is not the legal representative of the nation. What is representation from a legal point of view? the author asked.

'The representative, who is present in the place of someone else, as if they were someone else. The representative has the power to act as the client would act or should act. The representation is a strict relationship between the representative and the client, as there could be different types of relations between the client and the representative: it could be authorisation, representation or no kind of relation.'[39]

The author demonstrated the evolution of the legal relations with the history of the parliament. In the beginning, when the personal attendance of the peers was the rule,

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[37] Ibid. 14.
[38] Ibid. 17.
[39] Ibid. 19.

they were '*authorised'* by their clients, substituting them. This connection turned to a *'posting and intermediary'* relation later. The earlier characteristics of the envoys ceased in 1848. The possibility of commending, answerability and revocation ceased to exist. The elections, *Polner* wrote about his own era, *'[...] are a simple choice of who should be the Member of the Parliament with the power of law, albeit without authorisation. The election will not give any power to the representative, it is only the process of choosing a person who will have the proper power later.'.*[40]

In the B) subchapter of Chapter I., Ödön *Polner* precisely analyses the influence of the king on the establishment, existence, and operation of the parliament. In his reasoning, he distinguished clearly between the close-knitted phenomena and defined the meaning and legal nature of the king's functions. The analysed sub-questions were the following:

– the periodicity of the parliament (it is not a continuously existing institution);
– the difference between *'the announcement and the summoning'* of the parliament;
– the opening of the parliament as the customary precedent of the inauguration of the parliament;
– the inauguration of the parliament;
– the duration of parliament, which ceases from time to time according to the decision of the king,;
– the termination of parliament;
– the limitations on the dissolving of the parliament;
– the intervals of the parliament; and finally,
– the periods of parliament.

In Chapter II. the author analysed the conditions for membership in the House of Representatives and in the House of Magnates. With his preciousness, he distinguished between the ability to be elected as a representative and the capacity to become a representative. It must be mentioned that he examined in detail the question of incompatibility later. He wrote a separate paper about the incompatibility bill in 1933.[41] In his paper he distinguished the incompatibility from the incapability to be elected and from the reason terminating the representative's term of office as well. He stated correctly that the incompatibility can be used as a condition for other functionaries as they cannot hold certain positions, cannot have certain occupations, cannot act in certain manners, and cannot take certain actions. In a situation of incompatibility, the representative always has a choice: he could resign from the position or terminate the incompatible circumstance.

Professor *Polner's* outstanding and rich work and the situation of the public law in his time cannot and must not be assessed from the viewpoint of todays constitutional law after several decades. One thing is certain: Ödön *Polner* has taken seriously the task of the scientists, which was defined by László Buza in 1935 as the following: '*The role of science is the same in every field; to state the objective truth without taking into consideration any side aspect [...] However, the public lawyer should never forget that the impact of his theories could influence the life of the nation. This requirement is the national understanding of the public law theory. It cannot be a task of a public lawyer*

[40] Ibid. 24.
[41] POLNER 1933, 17.

to showcase political party programs as whole laws or to flatter the national vanity with a statement of academic look.[42]

Ödön *Polner* always stood for values of the Hungarian historical constitutionalism, the independence of the nation and the parliamentarism, basing his work on scientifical professionalism and professional correctness. A good example: there was a constitutional law meeting in February 1922, where he stood against *Horthy, Bethlen, Klebersberg*, the Minister of Interior, and *Tomcsányi,* the Minister of Justice, and stated his professional opinion against the government's point of view: the suffrage cannot be ruled in a regulation.

Instead of a summary: Ödön *Polner's* attitude, professional accuracy and competence can be an example for contemporary public lawyers.

III. His selected works

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