

István Hegedűs

Does Hungary Need a New Constitution?¹

Dear Friends,

My answer is no.

a. What is wrong with the old constitution? At the beginning, let me mention an alleged reason why we should give place to a new one. The current constitution is a bastion, a fortress, and some politicians regularly broke out from behind its bund ditch to attack their own Hungarian fellow-citizens (men and women) with a neoliberal program.

If anyone believes in the room that this claim made by Imre Pozsgay, member of the group of wise men working on the initiatives for the coming constitution, is right, I will argue against his provocative statement later.

b. And what sort of new constitution would we need? We know almost nothing about the plans of the ruling party, Fidesz, which did not mention in its election campaign at all that it would change the constitution in case receiving the two-third of the mandates in the parliament. It was a hidden agenda. And do we really believe today that the text of the constitution will be written following a wide social dialogue?

(As you see, I am not such a splendid speaker like Tony Blair. English is my second, or, maybe, third language behind German. You will see.)

1. When does a country need a new constitution?

Is there a historic momentum for a new basic law which determines what is good and bad in our life? Can we believe that we simply had twenty years of turbulence (sort of taxi) since the regime-change and during the long political and economic transformation which concluded into NATO as well as EU membership with no border controls towards west, north, and, from next year on, south-east, whilst having five democratically elected full-time governments (including two conservative coalitions)? Did we have a revolution at, or, inside the polling booths this year? Or was it a traditional revolution of the oppressed social classes?

¹ This is the edited and longer version of the speech held at the Constitutional Debate: Does Hungary need a new Constitution? organised by the Common Sense Society on 29 September 2010 in Ybl Palace, Budapest

As you see, I am talking about Hungarian politics, and not constitutional affairs. This is because of the division of labour between the two of us, between Tamás Szigeti and myself, who speak against a new constitution and, more importantly, it expresses my personal limits on the subject matter. On the other hand, talking about politics is very risky: I might look like an extremist. And who knows, to criticise the government might become really risky sooner or later according to a worst case scenario.

But I have to talk about the political context because I am sure that (as the well-educated Englishman says) “*Da liegt der Hund begraben*”.

I would say what really happened this year can be described as an overwhelming, landslide victory of a party following the catastrophic economic and political failures of a government which was in office before. Yes, morality played an important role in this change. But this often happens everywhere when ruling political forces lose credibility in the eyes of the electorate because of weak government performance, corruption and missed promises. (I do not have more time to elaborate this.)

Now Fidesz has a two-third majority in the parliament. What we need is definitely not to weaken, but to strengthen the constitutional regime of checks and balances in order to control the party with such an unprecedentedly huge political power and to defend it from itself, and to maintain the liberal democracy by strengthening its independent institutions as well as to affirm civil society.

Actually, the current tendency is just on the opposite track. We called the political manoeuvres of the Orbán-government “*pressing*” between 1998 and 2002. Now we do not have a word for this new era, yet. Nevertheless, since April the public institutions have become less independent from the state than before – just mentioning public media or the state audit office. Partisan loyalty has become more important than ever before in the selection process of the personnel to high and medium positions.

And they have been appointed for what a terrific long period of time! I think many of us understand this logic. The ruling party actually received 52 percent of the votes this spring and has its two-third majority because of the electoral system, which is totally appropriate. But at one point, this (huge) support might evaporate and Fidesz can lose its political power sooner or later.

2. Do we need a transcendent constitution?

Well, there was a phenomenal period for constitutionalisation in 1989-90. In 1990, the Hungarian Parliament which amended the constitution with a majority that included the major opposition party had full legitimacy after the first free election. Certainly.

There were many symbolic changes in those days. The debate on the new Hungarian coat of arms in 1990 seemed to be a fight between the followers of Lajos Kossuth and the supporters of the Holy Crown.... That was really transcendent... However, the public mood was very different. People asked angrily: what on earth are they struggling about? Especially the over-pathetic, lofty attitudes of the ruling conservative coalition about its own mission zeal have rapidly become ridiculous. Actually, personally, I voted for Lajos Kossuth and the symbol of the 1956 revolution, not for the kings, but 20 years later I can accept that there is the Hungarian crown on our coat of arms - and we do not need a new constitution for revenge.

Do we have a Stalinist constitution? The numbering of the constitution is a technical problem: someone should ask László Salamon, yes, the same person with the same task twenty years ago, why it happened. Well, we simply amended the constitution - and nothing remained the same. I remember in the early nineties it was József Torgyán who first said that we still had a Stalinist constitution - everybody began to laugh, including him.

3. What do we know about the new constitution?

As far as we know, nobody has started to prepare a text. But some very strange ideas have been leaked until now by a few members of the group of wise men and the new president of the republic. There are many negative scenarios about the potential radical concentration of power in the hands of the ruling party and its charismatic leader. It is evident that many have fears of these (probably realistic) rumours – just remember the words of Péter Boross about the necessity of strengthening the competencies of the prime minister, who actually already has a very strong mandate in European comparison. And we have no idea what is in the mind of the Fidesz leaders: just think about the changes they introduced recently regarding the law on the election of local governments and making it much more difficult for smaller parties and civil groups to run in the competition at all.

4. How much support does a new constitution need?

The government enjoys a long honeymoon period. We have a weak and divided opposition. But simple voluntarism (*we do it because we have the power to do so*) would kill the most significant changes on the long run if other political

elites do not want to adjust to the current trends and are simply incapable of incorporating the spirit and soul of the new constitution into their own political norms and beliefs.

Instead of a smooth process of constitutionalisation what we see today is a false debate as an instrument in a well-known political game. The outcome will be probably a preamble reflecting a very traditionalist world view with the Holy Crown and Christianity. Instead of transcending the long-lasting polarisation of Hungarian political-intellectual elites as the consequence of a real *velvet* revolution, the new constitution will simply re-launch the old-fashioned *Kulturkampf*.