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The Family as a Site of Cultural Autonomy and Freedom: anxieties in legal debates over state regulation of marriage in Hungary, 1867-1895
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In the late nineteenth century, a new category of law—‘the family’—spread across and beyond Europe via new legal codes and scholarship. These made explicit the relationship between marriage, the family and the state and emphasised the interiority of the family as a ‘protective’ enclave. Yet the incoherence of this position as it played out in legislative debate is often overlooked. This article examines parliamentary debates over mixed marriages in Hungary, as an interesting window on the state’s inability to clarify political priorities vis-à-vis the family. Catholic factions and anti-clerical opposition alike were troubled by the idea of state intervention in any form, in a century characterised by a general tendency towards state legislation as a primary source of law. This ambiguity revealed itself as a series of oscillations that were located squarely within the deep ambiguities of modern European legal culture concerning the family as a site of cultural freedom and as a (necessary) target of state intervention. These oscillations undermined what might be described as a straightforward patriarchal approach to gender order in family law.
Introduction: a ‘special’ domain

*Cultural Interiority, National Autonomy, and the Birth of Hungarian Family Law*

The family did not exist as an autonomous institution in European law or as an object of inquiry in social theory until the mid nineteenth century. The natural law codes of the late eighteenth and early nineteenth centuries, such as the Prussian *Landrecht* (1794), the French *Code civil* (1804) and the Austrian *Allgemeines Bürgerliches Gesetzbuch* (1811), contained laws ‘of persons’ not of families.¹ It was only in the second half of the nineteenth century that the institution of ‘the family’ acquired a history, status, and subsequently a great deal of politicisation in social theory.² In legal scholarship, the publication of Friedrich Carl von Savigny, *System des heutigen Römischen Rechts* (8 vols, Berlin, 1840–49), heralded the birth of ‘the family’ as a unified legal concept, but the term ‘Familienrecht’ was born later, during the course of national unification and legal codification in Germany and Switzerland in the late nineteenth century.³ Like the ‘laws of persons’ to be found in the natural law theories of the seventeenth century, family law sought to identify ideal types of spousal, parental, and ward–guardian relationships. What was different about family law was that these ideal types acquired a reified existence that was distinct from other legal spheres: ‘an enclave of relationships that were in virtually every respect determined by the state’.⁴ The new category spread across and beyond Europe via the new legal codes of the dawning twentieth century.⁵ Hungary did not go unaffected. In the second half of the nineteenth century, the Austrian civil code of 1811 was the most geographically proximate legal model for Hungary, which was then in the process of constructing a unified legal system along national lines. Codified Austrian law was, however, by then considered out of date as it lacked a separate ‘Family Part’.⁶ Gusztav Wenzel’s influential 1863 study, *A magyar és erdélyi magánjog rendszere* (The Hungarian and Transylvanian system of private law) utilised a new five-part system, modelled on the code of Saxony that was completed in the same year as Wenzel’s study.⁷ Wenzel divided civil law into a general part, followed by parts on property, contract, family and inheritance. Family law was thus created as a distinct sphere of private law. Furthermore, Wenzel’s study marked the formal separation in Hungarian legal scholarship of family and inheritance law (the latter having been the original basis of the legal family in feudal and natural law).⁸ Thus in Hungary, as across Europe, the 1860s marked the birth of family law as a distinct sphere of private law. This development marked the emergence of what I have elsewhere described as the legal construction of the family as an interior sphere of the social.⁹ The emergence of family law accompanied the nationalisation of law and the rise to dominance of a legal vision of the family as a special interior sphere of national life that had to be ‘protected’ from external influence by the state.¹⁰ Later, the construction of the family as an interior sphere of the social was a striking feature of the new Hungarian-language scholarship of the 1870s and 1880s specialising in the new legal discipline of family law. This scholarship made explicit the relationship between marriage, the family and the state, and, at the same time, emphasised the *interiority* of the family as a
‘protective’ enclave within the state that enabled ‘the multiplication of the human species amid the struggles of life’, and therefore represented the hub of the social operation: ‘the workings of the inner life of society and its socio-historical development’.

It is important to note that the legal vision of the family as a distinct ‘inner sphere’, forming the heart and base of the nation, must be contextualised in the political milieu of the 1860s—a decade which saw the construction of an autonomous Hungarian judicial system, the granting of partial autonomy from Austria, the establishment of the Austro-Hungarian ‘Dual Monarchy’, and the intensified promotion of the national idea as the basis of all social and cultural life. Thus, while the development of Hungarian family law as a practical specialist field was a reflection of a broader emphasis in European legal culture on the nuclear family as an interior realm of personal rights and obligations—facilitating the reproduction and strengthening of national, social, legal and cultural life—Hungarian family law was first and foremost a discursive construction based on the principles of national sovereignty, cultural autonomy and political freedom. Essential to this very modern narrative of legitimation was the rejection of the nuclear family as a modern social unit, and the presentation of familial rights and obligations as a set of ancient national traditions, again constituting an ‘inner developmental force’ of society and described by Mihály Herczegh in 1885 as the ‘most important’ branch of Hungarian civil law, reflecting ‘more faithfully than any other branch ‘our unique national character, spirit and customs’.

To conclude, by the late nineteenth century, legal discourses flourished in Hungary which presented a vision of the family as a separate enclave within the state—a vision completely compatible with a vision of the state-regulated family. These discourses emphasised a cultural essence shared by the family and the nation-state as extensions of one another. This essence was a strange construction: it rested on the assumption of a state-regulated familial domain that was at the same time a completely autonomous space in which relations were private, contractual and free. In an 1899 volume of the Encyclopaedia of Hungarian Law, the potential contradictions of such an assumption were formulated as the problem of the ‘non-absolute nature of family law’: since family laws were ‘private laws in which state intervention occurs in greater measure than in other kinds of private law’, there was a need to ‘tear’ the family from private law and transfer it to public law—a proposition then being discussed at great length in the German legal scholarship of the period.

The Ambiguity of Autonomy: gender dimensions

Across Europe, late nineteenth-century uncertainties over family law, arising from its ambiguous location at the crossroads of public and private law, represented a legacy of uncertainty over the family inherited from older legal orders and traditions. The natural law ‘codes of the Enlightenment’ (Prussian: 1794, French: 1804 and Austrian: 1811) had treated the marital relation as a political relation that ultimately made the patriarchal family, under the authority of the male
head of household, the basis of stability in the state. The assumption of a link between patriarchal authority and state stability was a striking feature of nationalising legal culture across Europe: all the Enlightenment codes gave husbands a special, state-sanctioned ‘marital authority over the person of a wife’ (French: ‘puissance maritale sur la personne de la femme’) or rights ‘to the entire sum of a person’ (German: ‘auf das gesamte Betragen einer Person’). In English Common Law a husband’s authority over his wife was similarly recognised, for which the legal term was ‘coverture’. Condemned by some for effectively creating the symbolic ‘civil death’ of wives upon marriage, coverture meant that the legal personalities of married women were almost entirely subsumed under those of their husbands.

In her celebrated 1988 study, *The Sexual Contract*, Carole Pateman explores the tradition, in modern ‘social contract’ theory, of disguising this political relation of subordination as a set of natural and therefore non-exploitative (private) relations in the form of a ‘marriage contract’ (or ‘sexual contract’) between husband and wife. Pateman’s work brings out the ideological dimension of patriarchal state law, and points to an important area for consideration: that the success of the patriarchal idea in modern times was dependent on the success of state interventionist policies vis-à-vis the family, which in turn had to be justified without demolishing the myth of the family as a neutral space of freedom and autonomy from state interference. In the pursuit of this slippery objective, the nineteenth century witnessed a proliferation of legal narratives that worked hard to present sexual inequality as a natural fact rather than what Ursula Vogel calls an ‘artificial, state-made order of “husband” and “wife” [derived] from the law itself, not from some independent essence’. In short, legal discourses played down the fact of state intervention in family life to an absolute minimum. Attention to this tiny but far from insignificant detail is perhaps one of the most salient contributions of feminist scholarship to critical legal theory, and it supports a Marxist-feminist reading that focuses on the primarily ideological function of law in gender terms (about which much has been written). Here I merely wish to argue that the success of the patriarchal project in late-nineteenth-century European law depended largely on the overt promotion of a link between public and private stability, but that this supposed link was greatly complicated by the need to uphold the myth of private freedom in law, and the attendant need for legal narratives promoting personal and political autonomy which avoided direct representations of law as state intervention in the private sphere. I now turn to the question of how the ambiguity of this coupling of the state-regulated family with the ideal of private autonomy in law was played out in nineteenth-century debates over marriage law in Hungary, focusing on the political problem of the so-called ‘mixed marriage’ between Catholic and Protestant.

**Legal Debates over Marriage in Hungary**

After 1867, religious pluralism in Hungary was increasingly treated as an obstacle to the ambitions of the Hungarian state, which was embarked on nationalising law
and overhauling older customary jurisdictions. In this climate, religious pluralism and church-regulated marriage represented burning ‘national questions’: in legal scholarship they were evidence of the country’s lack of administrative unity; lack of a ‘common law’; and divisions between citizens.21 At the political level, obstacles to the construction of a strong, unified, national legal state were analysed in the context of the so-called Hungarian Kulturkampf. In this period, Protestantism had come to represent a mode of resistance among the Hungarian nobility to (Catholic) Habsburg rule and, although the majority of the population was Catholic, Protestants were a proportionally larger segment of the nobility and the parliamentary machine than they were in the country as a whole.22

One of the key national issues of the 1860s was the question of which religion to give the children of mixed (Catholic and Protestant) marriages. Representatives at the Diet of 1843–44 discussed the possible introduction of civil marriage in Hungary as a solution to the problem of state regulation of marriage in a multi-religious state, but the social and religious pluralism of the region made this option untenable in the short term.23 Since the Reformation, the mixed marriage between a Protestant and a Catholic had been a contested terrain across Europe for different forms of political and religious authority seeking recognition in, and autonomy from, the state.24 By the early nineteenth century, the main issue in Hungary was the practice of reversales, according to which Papal authorities only acknowledged mixed marriages between Catholics and Protestants if they took place in a Catholic church, and if the Protestant party agreed prior to the marriage to raise any children born to the marriage as Catholics. In the period 1832–40, Catholic hegemony was clearly under attack in Hungary, and the practice of reversales and exclusive Catholic competence in the administration of mixed marriages was subjected to vociferous criticism.25 Under the banner of national progress, a distinct discourse began to emerge that emphasised Hungary’s independence and the need of the state to take a stand against Papal interference in domestic policy. Mixed marriages now occupied centre stage: a battle that was as much about defining the political and spiritual character of Hungarian national identity as it was about the legitimacy of reversales. It was also a battle about defining the limits of state intervention and, therefore, about defining the familial gender order of the state: namely, the right of the state to appoint legal authority within the family. Ursula Vogel has focused on the traditional patriarchal relationship between the husband and the state in nineteenth-century European law, describing the husband as an appointed ‘intermediary power’ between the state and married women.26 I wish to argue that this relationship is more ambiguous and complex than has been traditionally assumed. In the Hungarian context, for example, the state’s policies of patriarchal intervention in the family were mitigated by other power contestations of legal authority in the state.

In 1844, the Diet issued Law III, which permitted Catholic conversion to Protestantism and empowered Protestants to minister mixed marriages but declared that the religion of children of mixed marriages was the ‘free decision’ of their parents.27 The aim was greater religious equality between Catholics and Protestants without overtly challenging the waning supremacy of the Catholic Church.
It was an appeasement which also characterised policy making in the period immediately following the settlement made by Hungary with Austria in 1867. As a result of a bill submitted by József Érvin,28 a law was passed in 1868 (Law LIII. On Reciprocity between the Received Christian Religions). Érvin’s original bill had tried to preserve the spirit of the 1844 law by proposing that parents in mixed marriages be granted the ‘freedom’ to choose the religion of their children.29 Parental freedom was placed above the right of either church or state to interfere. Paragraph 13 of Érvin’s bill read as follows: ‘Married Christian partners of a mixed marriage through a concurrence of will, expressed either in writing or orally in the presence of two trustworthy witnesses, [shall] freely decide the religious education of the children of both sexes’.30 However, in the version of the bill that became law, children of mixed marriages were to follow the religion of their parents on the basis of sex (girls followed their mother’s religion; boys, their father’s—a ruling which followed the model of similar Transylvanian legislation). Any freely-contracted parental agreements regarding the religion of their offspring were declared invalid. A child’s religion could not be changed even in the event of divorce or a parent’s death.31

In the context of the debate—which led to a shift from the original bill’s endorsement of parental ‘freedom to choose’ to the final law’s endorsement of state regulation of mixed marriages, making a child’s religion dependent on sex—highly gendered aspects of the whole mixed marriage debate became more pronounced. Anti-clerical or ‘liberal’ opponents of the bill defended state intervention in the family in the name of religious equality for Protestants. They played down the importance of parental freedom, arguing that it was destructive to the marital relation, would have a negative effect upon the family, and would encourage debate and perhaps conflict between spouses. In this context, the gender of authority within the family was taken up as a pressing issue. A revised version of the bill was submitted to the Lower House of the Hungarian Parliament by Count Albin Csáky,32 paragraph 12 of which stipulated that children of mixed marriages should follow the religion of their parents on the basis of their sex and not on the basis of their parents’ free decision.33 In his justification of Albin Csáky’s revised bill, the chairman of the parliamentary review committee, Imre Csendery, expressed concern over parental freedom ‘in mixed marriages where the mother [was] a Catholic’ (and the father a Protestant)—since in such marriages the right of a father to bring up his children in his own religion was most at risk. Csendery conjured up the horrifying vision of a mother and a father ‘ordered to negotiate with one another’, and cited the ‘successful’ example of Transylvania, where sons followed the religion of their fathers and daughters that of their mothers, and where the law served to protect the stability of both the family and the state: principles which were, he stated, ‘greater’ than freedom.34

Opponents of the ‘liberal camp’ defended the original ‘pro-freedom’/‘anti state interventionism’ of the original bill. They acknowledged the state as a source of law, but insisted that there were ‘fundamental and natural rights’ over which the state had no authority. ‘I respect the power of the state’, stated Érvin supporter, MP (Member of Parliament) János Gál, ‘but not to the extent of such
omnipotence that it rules over the rights of all. Freedom came before the power of the state because the family was a legally autonomous sphere. Eötvös, the author of the original bill, contributed to the debate by emphasising what he called ‘the integrity of the family’ and the right of the family to ‘protection from outside interference’. ‘Who has the right’, János Gáé asked the House, ‘to stop parents choosing a third religion for their children if they so wish?’ ‘Nobody!’ called out Count Ede Károlyi. Of interest is the fact that, in characterising the family as independent of the state, supporters of the original bill tended to speak of parental rather than paternal rights and freedoms. This revealed the Catholic concern for the religious education of mixed marriages in which the mother was Catholic and the father Protestant.

Members of the ‘liberal camp’ who were against the original bill also avoided an outright defence of paternal rights, though clearly they were concerned for Protestant fathers in mixed marriages, subject to what they named the ‘clerical interference’ of the Catholic Church and its potentially ‘family-ravaging power’. Their demand that children follow a parental religion on the basis of sex was justified in the name of protecting the family and securing state stability—an argument which could swing both ways from a woman’s rights perspective. On the one hand, opponents of the pro-freedom position relied heavily upon images of domestic disorder and unhappiness in families where the paternal right of fathers could be contested by the mother. Kálmán Tisza stated that he ‘would have wished that the father’s religion decide the religion of his children’, but this would have appeared too radical, since the proposal that children of mixed marriages take the religion of their father had been rejected by both the Catholic bishops and the monarch himself at the Diet of 1839–40. Thus, Tisza conceded that he was ‘ready to accept the [modified] proposal’, because he did not accept that spouses should be free to quarrel with one another. State intervention ruling that the religion of children of mixed marriages was to be decided on the basis of sex was the only way, as far as Tisza was concerned, of enabling a Catholic mother, obliged to remain true to her faith, to remain a ‘good wife’. On the other hand, defenders of the modified bill in the same ‘liberal’ camp could also leap to the defence of women deprived of their maternal rights, calling for the state to protect them. Thus we have Dominik Teleki, like Tisza, an opponent of Eötvös’s bill, stating that it was necessary to introduce ‘a law that keeps peace within the family’ because of the Christian value that ‘no party within the family be allowed to dominate’. Teleki equated state intervention with sexual equality and parental freedom with patriarchal hierarchy:

When both spouses, men and women, have their own legal spheres, both can equally influence the family. Please consider, gentlemen, what kind of position a woman has in a family where her daughters do not follow her religion. It is obvious that, particularly for girl children, a woman should at least be able to influence their upbringing.

I bring up these examples in order to show that, in spite of supposed religious and political differences regarding the legislation in question, the various
arguments could not settle the issue at hand with recourse to the legal authority of
the husband and father in marriage. This aspect was perhaps most dramatically
highlighted by a Transylvanian MP, Louis Wlád, who remarked upon the insur-
mountable problems that he saw with both the original and the revised bills.
The revised bill was divisive, in Wlád’s view, because it divided family members
into ‘men’ and ‘women’. It would, therefore, create unhappiness within the
family and irreconcilable rifts that would go against the interests of children.
The problem with the original bill was that it was simply inappropriate to
expect young, betrothed couples to discuss the religion of their future children:
’a delicate subject for a groom to broach with a young, chaste girl’. Wlád also
criticised Tisza’s solution that children be raised in their father’s religion, since
men ‘of any social status’ were generally not at home and had very little to do
with their children. Wlád therefore offered the House a ‘brave proposal’:
namely, ‘that children of mixed marriages follow their mother’s religion’. Wlád jus-
tified this proposal on the grounds that ‘a mother is more disposed towards bring-
ing up and educating her children; it is she, more than the children’s father or
anyone else, who will exert the greatest influence over her children and their
future’. Wlád’s ‘brave proposal’ was not debated, and the motion in favour of the revised
bill was carried. Children of mixed marriages would follow the religion of their
parents on the basis of sex. The bill was denounced by Catholic representatives
in the Upper House—namely the Archbishop of Kalocsa, Lajos Haynald, and
the Prince Primate, János Simor—as being an attack on the ‘natural rights’ of
parents, but in vain. The bill became law on 9 December 1868. The Catholic
Church responded with hostility. It demanded an amendment of the law, which
it saw as a Protestant victory, and released statements to the effect that the Catholic
Church would refuse to bless mixed marriages unless parents promised to bring up
the children in the Catholic faith.

Catholic hostility meant that it was difficult to enforce the 1868 law and mixed
marriages continued to be seen as a sign of general political instability. In 1879,
state law was toughened with the passing of a statute making any minor under the
age of eighteen who took up a religion in contravention of the 1868 law punishable
by a fine. However the winds were changing with the emergence of a new pol-
itical movement for the introduction of civil marriage (compulsory civil marriage
was introduced in 1894). In 1892, Albin Csáky, the author of the revised version
of the 1868 bill that had become law, stated that ‘the old battles were done with’.
On 2 December 1893, he submitted a bill ‘On Children’s Religion’ to the Lower House,
giving parents the freedom to choose their children’s religion ‘from any religious
faith accepted in Hungary’.

In the absence of such an agreement [e.g. in mixed marriages] all children
without exception shall follow the religion of their father. If the father is offi-
cially without religion, he is still entitled to choose the child’s religion. Only
in the event that the father does not decide the religion of the child shall children
follow the religion of their mother . . . Illegitimate children shall follow the reli-
gion of their mother.
This approach, taken from ‘German custom’, was ‘practical’ in Csáky’s view, and ‘less awkward than dividing the children of one family between different religions’. The language and orientation of the 1893 bill is indicative of an interesting feature of Hungarian nineteenth-century political and legal discourses on the family, which, in the 1860s, avoided explicit endorsement of any political relation between the state and patriarchal power, the goal of paternal rights being undermined by other political goals then at stake. By the 1890s, however, with the formal privatisation of religion and the withdrawal of the state from religious aspects of family life, ‘paternal right’ was no longer being treated as a political concession to Protestant demands and an intrusion into the autonomous family domain; instead, it was embraced as a secular state-regulatory mechanism for securing ‘domestic governance’ within the family.51

Conclusion

The history of mixed marriages as a target of legislation in Hungary provides an interesting perspective on to another aspect of the patriarchal state: namely, its frequent inability to categorically define male interests in unified and non-compromised terms. In the Hungarian case this had much to do with political struggles for the control of the family in the state. Catholic factions saw ‘parental freedom’ over paternal right as a way of keeping Catholic jurisdiction over mixed marriages in which the mother was a Catholic. The anti-clerical opposition, in the name of greater religious equality, advocated sexual divisions within mixed families as part of their resistance to exclusive Catholic control of mixed marriages (and a desire to protect the paternal right of Protestant fathers to raise their sons in their own religion). Both sides were troubled by the idea of state intervention in any form, in a century characterised by a general tendency towards state legislation as a primary source of law. As religion was increasingly privatised as an autonomous source of spiritual authority, so family roles—e.g. that of parent—began to acquire a new status in positive law as a set of civil-legal rights and duties regulated by the state and quite independent of religious faith.

But even as the old religious battles seemed to be over, the problem of how to rationalise and justify state intervention into religious and cultural life did not disappear. It was also in the sphere of the family that this issue continued to be most intensely felt and debated. In his justification of a bill on civil marriage, submitted to the Hungarian Parliament on 29 November 1893, Justice Minister Dezső Szilágyi observed that:

[T]he legal organisation of marital and family institutions must be an expression of the welded unity of legal institutions and of the political unity of the nation . . . The strength and stability of marriage and the family can be neither secured nor protected unless they come under one set of uniform rules.52

Thus it was, a year later, on 18 December 1894, that the Hungarian Civil Marriage Bill became Law XXXI—in the interest of protecting the marital relation and
securing the greater national stability. The new civil marriage law made two radical changes: (1) ‘neglect of marital obligation’ and ‘immoral behaviour’ became ‘marital offences’ and grounds for divorce (para. 80); (2) the new law made ‘the guilt principle’ the basis of civil divorce, i.e. the principle that marital offences had, by definition, to have been committed by a ‘guilty spouse’ who had made married life ‘unbearable’.

Some critics objected that the law was an attack on the fundamental Catholic principle of the indissolubility of marriage before God; the new civil marriage law was thus evidence of the mounting strength of ‘Protestant elements’ in the state. Others attacked the law on behalf of the Hungarian Protestant and Jewish middle classes, for whom the ‘guilt principle’ represented an intrusion of Catholic canon law into the private sphere of the family. It was also perceived as a cultural assault on ‘personal freedom’; a ‘submission of personal wishes to abstract ideals’; and an undesirable tightening of the more ‘relaxed’ divorce practices of former times, when it had been possible for Jews and Protestants to secure a divorce—without penalising either spouse—on the basis of mutual agreement.

Our Hungarian judges have not tended to ignore the consequences of real life. The dissolution of a marriage on the basis of mutual agreement is in keeping with the dominant moral and legal vision of the Hungarian nation. The welfare of the Hungarian middle class, in which we include the Jews, is threatened by this bill’s demand that a divorce can only be requested from a guilty party. We are not saying that the cult of personal freedom in current legal practice is automatically justified. But we do express concern with regard to the bill’s repressive restrictions. How practical is a law which goes against the people, against their moral legal vision and sense of personal freedom?

Opposition to comprehensive state regulation of the family in the name of cultural autonomy and freedom may well have played a role in ensuring that the civil marriage law resulted in it being as minimalist as it was by comparison with other European laws.

In Dualist Hungary, the apparent contradiction between the existence of a strong legal state alongside protection of private freedoms was particularly acute in the context of the Kulturkampf debates that arose from the 1860s onwards. The latter were embedded in the conflicting political priorities of nationalisation in the period; namely, on the one hand, the construction of a strong state compatible with other advanced European countries and, on the other, the construction of a Hungarian national and legal culture, independent of Catholic Austria’s state control. In this context, there was a double bind. Any form of state intervention in private life could be negatively politicised in Hungary from different perspectives as either a Catholic or Protestant intrusion into ‘Hungarian cultural life, while the lack of state intervention could be taken as evidence of the absence of a strong central administration and Hungary’s weak position in Europe. In legal debates over marriage, this ambiguity revealed itself as a series of oscillations that were located squarely within the deep ambiguities of modern European legal culture between the family as a site of cultural freedom and as a (necessary) target of
state intervention. These oscillations undermined what might be described as a straightforwardly patriarchal approach to gender order in family law.

Notes


[3] The first civil code to contain a ‘family part’ was that of Saxony, completed in 1863 and operative from 1865.


[7] Gusztav Wenzel (1868) *A magyar és erdélyi magánjog rendszere* [The Hungarian and Transylvanian system of private law] (first pub. 1863; Pest) united the geographical territory of Hungary, including the principality of Transylvania, under a ‘common system’ of private law. It became mandatory reading for the country’s legal professional class and university students according to Tamás Vécsey. See Vécsey on the life and work of Wenzel, in *Jogtudományi Közlöny* [Journal of Legal Science], 22 (June 1894), p. 170.


Mihály Herczegh (1885) *Magyar családi és öröklési jog. A vonatkozó újabb törvények; felsőbb rendeletek és döntvényfoglalkékek* [Hungarian family and inheritance law with the most relevant and up-to-date laws, decrees and judicial rulings] (Budapest), pp. iii–vii.


Dezső Márkus (Ed.) (1899) *Magyar Jogi Lexikon* [Encyclopaedia of Hungarian law], vol. 2 (Budapest), p. 740; Engels, *The Origin of the Family, Private Property and the State*. Cf. Ursula Vogel on the general European context in the late nineteenth century: ‘Due to its unique constitution and its direct relevance to the foundations of the state, marriage barred comparison with other legal associations of the private sphere. Indeed, some jurists argued that because marriage and family relations were built on Herrschaft, that is on rights in other persons, they belonged properly in the province of the non-contractual, coercive relations of the public law’ (Vogel, ‘The State and the Making of Gender, p. 41).


French Civil Code, para. 1388; Franz Edler von Zeiller (1811) *Commentar über das allgemeine bürgerliche Gesetzbuchr für die gesamten Deutschen Erbbländer der Oesterrei-


[22] See Loutfi, *Hungarian Family Law and the Struggle for Gender Order*, chapter 3, Table 1.


[27] 1844: Law III, paras 2, 5–11. This law retroactively applied to marriages carried out from 1839.


[29] Para. 13. of Eötvös’s original Bill ‘On Reciprocity between the Received Christian Religions’.


[32] Member of the governing party from 1865 and an advocate of civil marriage and of official acceptance of the Jewish religion. Hungarian Minister of Religion and Education from 1888 to 1894.

[33] The principle endorsed in Csáky’s bill, which regulated children’s religion on the basis of their sex, was taken from an Austrian law on inter-confessional marriages passed in May 1868.

[34] Imre Csengery, Justification of the revised bill, KNI, vol. 7 (1865–1868): 1–2. The reference to ‘Transylvanian law is to 1791: Law LVII.


[36] Ibid., p. 211–212.


[38] The distinction between parental and paternal rights can be traced back to the Diet of 1791, when it was stated that Protestant fathers married to Catholic mothers did not have an unconditional right to bring up their children in their own religion. It was a distinction which was to remain a deliberative point of Hungarian political discourses on family law in the 1870s.


[40] Hungarian Prime Minister from 1875 to 1890 and Minister of the Interior from 1875 to 1887. A critic of the 1867 Compromise with Austria, he campaigned for greater national sovereignty from 1868 onwards.


[42] Ibid.

[43] Ibid.
Law LIII had, from its inception in the form of Eötvös’s original bill, been intended as a temporary solution to the ever more convoluted legal problems surrounding mixed marriages, but, even after the revised bill became law, its provisions were largely unenforceable. After 1868, Protestants continued to report Catholic priests who had ‘illegally’ demanded reversales from Protestant fathers to the Hungarian Culture Ministry, but little was done. Catholic priests justified their actions on the grounds that the law did not specifically oblige children of mixed marriages to take their parents’ religion on the basis of their sex. Rather, it stated that children would do so. No penal sanction was appended to the law. See Salacz, A magyar kultúrharc története, pp. 13–16; see also László Péter (1989) Hungarian Liberals and Church–State Relations, in György Ránki (Ed.) Hungary and European Civilization, pp. 93, 127 (fn 62).


It is important to note here that the arguments used to justify Csáky’s 1893 bill did not win out. The legacy of 1868: Law LIII in late-nineteenth-century Hungarian political discourses ensured that family life remained a matter of public concern, with state intervention prevailing over parental choice. In the words of Jewish governing party MP Ármin Neumann, the job of the legal State was to ‘regulate all relations between its citizens in the interests of the common good, of justice and of the common morality’, and furthermore, that religion, ‘as the most individual property of man, may only be left unregulated by the State as long as it does not come into conflict with the sphere of duty’. This approach appeared in the 1895 law ‘On Freedom of Religious Practice’, which stated that civil and political rights were ‘completely independent of religious faith’ and that ‘no person shall be excused from any legal duty because of their religious or church beliefs’. See minutes of the budgetary meeting of the Ministry of Religion and Public Education of 23 May 1892, in OKN, vol. 3 (1892–1897), pp. 295–296; see also 1895: Law XLIII, paras 2, 3. The version of the bill that became 1894: Law XXXII (On Children’s Religion) was thus a compromise between Csáky’s recommendations and the practices of the past. Para. 1 of the new law ruled that spouses of different religions (on condition that those religions were recognised by state law) should be free to decide whether their children were to follow their father’s or their mother’s religion. Para. 2 stated that, in the absence of parental agreement, children were to follow the religion of their parents on the basis of their sex (1894: Law XXXII, paras 1, 2).


Those who supported the new divorce proposals argued that the proposals were not ‘Protestant’, but rather ‘realistic’: legal grounds for divorce had to ‘evolve in life’ and...
'the anti-divorce camp’ had ‘no knowledge of life’. See Kornél Sztehlo (1894) Törvényjavaslat a házassági jogról [On the Civil Marriage Bill], Jogtudományi Közlöny (19 January 1894), p. 18.

[55] In the pre-1894 system of marital pluralism, Jews, Protestants, or any party converting to Protestantism, could obtain a divorce this way—and many did. See Loutfi, Hungarian Family Law and the Struggle for Gender Order, chapter 3.