

## The Radical Liberal Phase of Ferenc Deák's Career

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*Ferenc Deák* (1803—1876) is best known as the key Hungarian during the negotiation and the conclusion of the *Ausgleich* of 1867. This noted compromise was the crowning act of his political career. Was *Deák*, then, a middle-of-the-road man, a man of compromises, rather than of firm principles? Surely he shrank from any change, the price of which would have been violence. His ideology and his goals in reforming Hungarian society were nonetheless radical liberal ones. *Deák* did not compromise these ideas ever<sup>1</sup>). This ideological radicalism climaxed in his activities as a member of the Diet Committee on the Reform of the Criminal Code, which body held its sessions between December, 1841 and March 19, 1843. The analysis of *Deák's* work in the committee and its repercussions are the subject of this article. Before we study the details of the committee's activities, we shall view the roots of *Deák's* radical liberalism.

*Ferenc Deák* entered national politics on May 1, 1833, when, for the first time in his life, he attended the session of the national legislature (Diet) in Pozsony (Bratislava), in the midst of the debate on the serf reform bill<sup>2</sup>). This problem and related social reforms absorbed most of *Deák's* attention for the subsequent one and a half decades. He was already well informed in the theoretical and political aspects of these issues. So at once he immersed him-

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<sup>1</sup>) After the suppression of the Hungarian revolution of 1848—1849 the emphasis of *Deák's* activities shifted from the field of social reforms to an effort to reestablish constitutional government in Hungary. See the author's book: *Ferenc Deák of Hungary 1803—1876*. Boston 1975. For the evolution of *Ferenc Deák's* political beliefs, see the author's *The Young Ferenc Deák and the Problem of the Serfs 1824—1836*. In: *Südost-Forschungen* 29, 1970, pp. 91—127.

<sup>2</sup>) *Deák Ferenc beszédei* [The Speeches of Ferenc Deák], 6 vols., edited by Manó Kónyi. Budapest 1903, I, pp. 7—10. Zoltán Ferenczi, *Deák élete* [The Life of Deák], 3 vols. Budapest 1904, I, pp. 96—97. See also Márton Sárlos, *Deák Ferenc és az úrbéri földtulajdon az 1832/1836-i országgyűlésen* [Ferenc Deák and the Question of Servile Landownership at the Diet of 1832/1836]. In: *Jogtörténeti tanulmányok*, vol. I, Budapest 1966.

self in the proceedings. His approach was conditioned by three main considerations, all of which require some explanation: the crisis in Hungary's feudal society; Hungary's cultural renaissance; and Hungarian liberalism.

### The Economic Foundations of Deák's Ideology

The decade from the mid-1830s into the 1840s, when *Deák* first entered the national political arena, was a critical period for feudalism in Hungary<sup>3</sup>). The trouble was compounded of Hungary's political domination and economic subjection by a foreign dynasty, an agrarian problem linked with the pauperization of the serfs, a faltering agricultural revolution and scant industrialization, and the impoverishment of the estates, including the gentry to which *Deák* belonged. Hungary's economic subordination to the *Habsburgs'* Cis-Leithan provinces was a phenomenon at least a century old<sup>4</sup>). A series of measures relegated Hungary to be a raw-material producer and a market for finished goods from the increasingly industrialized Western provinces. Like many of his contemporaries, *Ferenc Deák* dubbed this status a „colonial subordination“ of Hungary. Ever since, a protracted debate of historians has posed claims and counterclaims whether it was or was not colonial subjection. Whatever it was, Hungary's economic evolution, in fact, was retarded, while that of the Western provinces was boosted. All strata of Hungary's society, as a consequence, suffered, but the peasants' misery grew so unbearable they started taking matters into their own hands. The peasants often refused to perform their most hated servile obligation, the *robot* (*corvée*); they resisted the expropriation of their land; they obstructed surveys taken with an eye to consolidating manorial holdings at the expense of servile lands; they set upon

<sup>3</sup>) B. G. Iványi, *From Feudalism to Capitalism. The Economic Background to Széchenyi's Reforms in Hungary*. In: *Journal of Central European Affairs*, XX, No. 3, Oct. 1960, pp. 270—288. *Magyarország története 1790—1849* [A History of Hungary 1790—1849], ed. by Gyula Mérei and György Spira, 4 vols., Budapest 1961, III, pp. 206—241. Gyula Mérei, *Magyar iparfejlődés 1790—1848* [Hungarian Industrial Developments 1790—1848]. Budapest 1951, pp. 155—215. Remarkable eyewitness account of *Kossuth* on the proceedings of the diet of 1832—36 can be found in his *Országgyűlési tudósítások* [Reports from the Diet], edited by István Barta, in the series: *Fontes historiae hungaricae aevi recentioris*, 5 vols., Budapest 1948/1961. For the court intrigues see Karl Friedrich von Kübeck, *Tagebücher*. 2 vols., Wien 1919. On the mentality of the radical liberal youth see József Madarász, *Emlékirataim 1831—1881* [My Memoirs 1831—1881]. Budapest 1883. See also László Révész, *Die Anfänge des ungarischen Parlamentarismus*. München 1968, pp. 27—31, 37, 68. Thomas Spira, *Problems of Magyar National Development under Francis I, 1792—1835*. In: *Südost-Forschungen* 30, 1971, pp. 51—73; Thomas Spira, *Historians and the Nation: The Problem of Magyar National Awareness 1790—1836*. In: *Südost-Forschungen*, vol. XXXII, 1973, pp. 91—105.

<sup>4</sup>) Pál Zsigmond Pach, *Az eredeti tőkefelhalmozás gyarmati korlátai Magyarországon 1848 előtt* [The Obstacles of a Colonial Nature that Prevented Original Capital Accumulation in Hungary Prior to 1848]. Budapest 1950. *Magyar iparfejlődés . . .*, op. cit., pp. 1 ff.

the landlords' bailiffs and agents<sup>5</sup>). Though the countryside was not seething with rebellion when *Deák* entered national politics, it was far from tranquil.

The restlessness of the countryside affected the lay and church magnates the least. They resided far away from the danger zone. They had a certain amount of accumulated capital which they could, and some of them indeed did, invest in modernizing their farming, thus escaping the crunch of the economic slump. *Ferenc Deák's* own social group, the lesser nobility, was in a different position<sup>6</sup>). They lived in the countryside, exposed to peasant violence if it occurred. They did not have accumulated capital to modernize their farms, either. The gentry had to look for more substantial changes, in order to survive economically and physically, for that matter. It was dawning on them that they had only two alternatives: to consolidate their political position through agrarian or social reforms, or both, or to be crushed by economic depression and political reaction if the system continued unchanged. They became convinced that their only chance of survival lay in the capitalist transformation of their country and its economy, even though this meant the end of feudalism, including their own cherished privileges. They also realized that Hungary's status vis-à-vis the Cis-Leithanian provinces was an insurmountable obstacle, so that it too would have to be revised. This was the inspiration of *Deák's* social group, the gentry's adherence to liberal reform, but as they inched forward, they hesitated time and again. They felt themselves torn between their awareness of the need for reform and the comforts of their accustomed privileges. Neither the reform movement as a whole nor even *Ferenc Deák*, one of its leaders, was free from these contradictions, from moments of apathy and loss of heart. The sophism that was at the root of the drive for reform was that its leaders, the gentry, for all their profession of respect for freedom and equality, were a privileged group who could attain these goals only at the cost of their own prerogatives.

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<sup>5</sup>) Gyula Mérei, *Mezőgazdaság és agrártársadalom Magyarországon 1790—1848* [Agriculture and Agrarian Society in Hungary 1790—1848]. Budapest 1948, pp. 126—188. István Szabó, *Tanulmányok a magyar parasztság történetéből* [Essays on the History of Hungarian Peasantry]. Budapest 1948, pp. 311 ff. Imre Szántó, *A parasztság kisajátítása és mozgalmi a Gróf Festeticsek keszthelyi ágának birtokain 1711—1850* [The Expropriation and the Movements of the Peasantry at the Estates of the Keszthely Branch of the Festetics Family 1711—1850]. Budapest 1954, pp. 134—183. Ferenc Pulszky, *Életem és korom* [My Life and Time]. 2 vols., Budapest 1958, I, pp. 63—68. See also Lóránt Tilkovszky, *Az 1831. évi paraszt felkelés* [The Peasant Insurrection of 1831]. Budapest 1955. See also Harold Steinacker, *Austro-Hungarica. Ausgewählte Aufsätze und Vorträge zur Geschichte Ungarns und der österreichisch-ungarischen Monarchie*. München 1963, pp. 75—109.

<sup>6</sup>) For the stratification of Hungarian society see the author's: *Hungary in the Late Eighteenth Century. The Decline of Enlightened Despotism*. New York 1969, pp. 15—76.

### The Intellectual Foundations of Deák's Liberalism

As most of the gentry youth, *Ferenc Deák* himself graduated law school<sup>7</sup>). He spent his articled year (1822—23) in Pest, the city which was already the intellectual capital of Hungary. He quickly became friendly with the members of the *Auróra* Circle, the center of gravity for Hungary's literary renaissance<sup>8</sup>). The common philosophy of the members of this Circle, which *Deák* warmly shared, was rooted in the ideas of the French Enlightenment, and central among them was the concept of freedom. At first they saw it exclusively as freedom from foreign domination and produced a number of valuable works on past wars of liberation which Hungary fought against the Habsburg rulers. Their focus, however, was on the future and they used their excursions into the past to project their ideas forward. The most progressive among them then began to discern the interdependence of freedom from foreign domination and servile emancipation. Gradually there took shape the idea of a nation composed of all its inhabitants united in a community of equal rights. Their writings started to portray the peasant for the first time in Hungarian literature as something other than an object of ridicule or condescension. They showed him as a man of dignity, integrity, high moral standards, with ideas, desires and goals of his own, in short, as an entity. Their image of the subject serf still shorn of all rights made a telling contribution to clarifying the ideas of the Reform Era.

The ideas of this elite of Hungary's literary renaissance affected the young *Ferenc Deák* immensely. His friendship with many members of the *Auróra* Circle was based on the most substantial foundation of any friendship, the sharing of ideas, to which each was devoted for life. Among all these friendships *Deák's* attraction to the two contemporary giants of Hungary's literature, *Mihály Vörösmarty* and *Ferenc Kölcsey*<sup>9</sup>), bears particular importance. Under their influence *Ferenc Deák* consolidated his political philosophy, aesthetic tastes and general outlook. In particular, it left its mark on his language. He adopted their linguistic innovations and modernizations, and came to write models of impeccable, stylish prose that high-school students, including this author, were still required to learn by heart in the 1920s. *Deák's* impact on the development of modern Hungarian cannot be overemphasized.

<sup>7</sup>) *Ferenc Deák* completed his high school education in 1817 in the Piarist Gymnasium of Nagykanizsa; he attended law school in Győr between 1817 and 1821; he was declared of age on December 17, 1821. His first act as a man of his own was the emancipation of the serf woman who was his wet nurse. *Deák* was articled in Pest in 1822 and 1823, and was called to the bar on December 23, 1823. The Assembly of Zala Country endorsed his bar certificate on February 16, 1824.

<sup>8</sup>) Antal Szerb, *Magyar irodalomtörténet* [History of Hungarian Literature]. Budapest 1958, pp. 298—332.

<sup>9</sup>) *Mihály Vörösmarty* (1800—1855), the leading representative of Hungarian Romanticism. He wrote lyrical poems, epics and dramas. Member of the Hungarian Academy, a progressive liberal legislator in 1848. *Ferenc Kölcsey* (1790—1838), poet, literary critic and progressive liberal legislator, member of the Hungarian Academy.

Poets are perhaps those most genuinely able to sense their nation's mood, tastes and desires. Throughout his life *Deák* kept in close touch with literary figures who communicated to him his compatriots' attitudes and frame of mind. Those who swarmed around him always included the country's foremost intellectuals, a pattern set during his association with the *Auróra* Circle.

### Ideological Foundations of Deák's Liberalism

By the time *Deák* became a national legislator in 1833, Hungary's Reform Era was already a comprehensive political and intellectual movement which tried to consolidate the nation by demolishing feudalism and establishing a community of rights for all citizens. Such a movement needs an incisive ideology. That it drew from the drafts (*operata*) of the diet's reform committees and the theoretical writings of Count *István Széchenyi*. These legislative reform planks had a long and controversial history of their own. In a flash of reforming zeal, the diet of 1790—91 had appointed diet committees to prepare programs to overhaul the whole of Hungarian society<sup>10</sup>). They were to have been enacted by the next diet. Some of the best scholarly and legislative brains in the country worked in the committees and came up with a series of thoroughgoing reform proposals. Today's Marxist historians in Hungary deny the committees had any progressive intent<sup>11</sup>). Their drafts, it is true, were neither revolutionary nor radical, but they were imbued with the spirit of the French Enlightenment and there can be no doubt about the sincerity of their authors' reformist ideals. After prolonged debate throughout 1792 and 1793, drafts were completed by the nine committees: those on urban and servile affairs; the judiciary; credit and trade; tax and census; political and constitutional affairs; Hungary's colonial status in the Habsburg system; mining; ecclesiastical and educational affairs; and the noblemen's levy (*nemesi felkelés*), which meant their mobilization in time of war. *Deák*, a diligent student of law and of the records of past diets, was highly familiar with these reform drafts.

The ever-increasing radicalism of the revolution in France and the reactionary attitude of *Francis I* and the Hungarian estates, however, were hardly conducive to fundamental reforms in Hungary. The nine committees' draft reforms therefore were allowed to sit in office pigeonholes, gathering dust. When at last the diet of 1825—27 was ready to consider them, they had become obsolete and new diet committees were appointed to review and revise them. The Palatine himself, Archduke *Joseph*, chaired the committee on servile reform. Public hope ran high when the nine new committees' proposals

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<sup>10</sup>) Király, Hungary . . . , op. cit., pp. 178—183. Henrik Marczali, Az 1790/1-diki országgyűlés [The Diet of 1790—91]. 2 vols., Budapest 1907.

<sup>11</sup>) Magyarország története [History of Hungary]. Ed. by Erik Molnár, 2 vols., 2nd ed. Budapest 1967, I, p. 399. Magyarország története . . . Ed. by G. Mérei—G. Spira, op. cit., III, pp. 41—44.

were finally published in late 1830, and especially when they were incorporated in the royal summons to the diet of 1832.

The drafts' publication in 1830 coincided almost exactly with the appearance of *Széchenyi's* first major work, "Hitel" (Credit)<sup>12</sup>). Both at once became the favorite topics of clubs and the county assemblies. Since *Deák* was one of the top officials in Zala county at the time, it was little wonder that he should have been so well versed in local attitudes to the issues of the day when he became a legislator a few months later.

The stir caused by the draft reforms and "Hitel" was a logical consequence of the first wave of Enlightenment that had flowed over Hungary in 1790—95 and produced a remarkable political literature, by which *Deák's* liberalism was shaped. One of these authors, *János Nagyváthy*, had concluded by the turn of the century that the most urgent problem facing Hungary was the obsolescence of feudal society, and *Ferenc Pethe*<sup>13</sup>), the editor of *Nemzeti Gazda* (National Farmer), insisted that the servile system was the source of Hungary's backwardness and urged the landowners to realize that emancipation of the serfs was in their own interest. Both *Nagyváthy* and *Pethe* appreciated that a feudal economy would never be able to produce goods of a competitive quality and that modernization and the substitution of wage labor for servile labor were essential. The man who summed up their ideas and paved the way for *Széchenyi* was *Gergely Berzeviczy*, who did so in his book "De conditione et indole rusticorum in Hungaria" (Leipzig 1806)<sup>14</sup>). What distinguished his work was not only its emphasis on the gentry's enlightened self-interest in achieving the emancipation of the serfs but also the fact that he based his conclusions on statistical and scholarly research. Slowly these ideas gained ground as they were debated in county assemblies and discussed by those who had read them. *Deák* himself was an eager reader of these authors and absorbed their ideas.

To the old discontent with the Habsburg dynasty's absolutist rule and

<sup>12</sup>) For an account of this period of *Széchenyi's* life, see George B á r á n y, *Stephen Széchenyi and the Awakening of Hungarian Nationalism, 1791—1841*. Princeton, N. J. 1968. *Gróf Széchenyi István munkái* [The Works of Count István Széchenyi], ed. by Kálmán Szily. Budapest 1905.

<sup>13</sup>) *János Nagyváthy* (1775—1819), the author of the first Hungarian scholarly book on agriculture, a freemason, author of somewhat utopian treatises, all, however, written in the spirit of the French Enlightenment. His main work was *A szorgalmatos mezei gazda a Magyarországbán gyakoroltatni szokott gazdaságnak rendjén keresztül* [The Diligent Farmer in the Framework of the Agrarian System Applied in Hungary], 2 vols., Pest 1791. *Ferenc Pethe* of Kisszántó (1762—1832), active agronomist and writer, studied in Hungarian colleges and at the University of Utrecht; editor of the first Hungarian professional journal of agriculture, the *Vizsgálódó magyar gazda* [The Inquisitive Hungarian Farmer], 1796, which, however, failed. More successful was his second professional journal, *Magyar gazda* [Hungarian Farmer], published in Vienna (1814—1816) and in Pest (1816—1818).

<sup>14</sup>) Jenő Gaál, *Berzeviczy Gergely élete és művei* [Life and Works of Gergely Berzeviczy]. Budapest 1902.

suppressive economic policies was added now the realization that Hungary's woes were also caused by the prevailing social system. These became the two main currents of the Reform Era. The one advanced by *Berzeviczy* and *Széchenyi* and practiced by *Deák* looked to fundamental social and economic reforms within the Habsburg Empire, while preserving the best possible relationship with the dynasty. The other, which was to culminate with *Lajos Kosuth*, considered the dynasty's economic policies and Hungary's political dependence to be insuperable obstacles to any social or economic progress, so that self-government or even complete national independence was the only solution.

"Hitel", and in 1831 *Széchenyi's* new work "Világ" (Light), synthesized the views that had been taking shape and boldly expanded them into an economic and social program for a now politically aware public. Perhaps influenced by *Hegel*, *Széchenyi* considered that all matters were in a state of constant flux and that human intellect was capable of changing society for the better. He believed that social changes were subject to the laws of nature and that the most potent force behind social activity was not men's desire to be happy in the hereafter but here on earth. Like *Pethe* and *Berzeviczy*, he appealed to the nobility's enlightened self-interest. The nucleus of his philosophy was rational and he was convinced that progress was impossible so long as the existing social system continued unchanged. He was thus in the vanguard of the Hungarian revival, unlike the rest of the aristocracy. He sincerely wished to better the lot of his countrymen, but he wished this to be done under the leadership of the aristocracy. He sought to promote prosperity for all by overhauling the nation's economic system. He was afraid of revolution and hoped that Hungary could achieve through evolution what had taken revolution in France and England. He was aware, however, that for this a dramatic rise was necessary in the general level of education. In *Széchenyi's* vision, the freedom of the individual was an integral part of the commonweal of the Hungarian nation and, by extension, of all of humanity. *Széchenyi* and his followers were cosmopolitan liberals<sup>15</sup>).

The nine diet committees' recommendations for reform and *Széchenyi's* works were the keystones of the reformist Hungarian gentry's ideology, and indeed of *Ferenc Deák's* own. The effects of this ideology and of the Hungarian literary renaissance jointly with the repercussions of the crisis in Hungarian feudalism were keenly apparent in the reform diets of 1832—36 and 1839—40, the period during which *Deák* emerged in the national legislative body as the leader of Hungary's liberal reformers. That was his status when he joined the Diet Committee on the Reform of the Criminal Code.

<sup>15</sup>) Baron Gyula Wlassics, *Deák Ferenc* [Ferenc Deák]. Budapest 1923, pp. 15—35. Ferenc Pulszky, *Deák Ferenc*. Jellemrajz [Ferenc Deák. A Sketch of His Character]. Budapest 1876, p. 8. Hugo Hantsch, *Die Geschichte Österreichs*, 2 vols., Graz 1968, II, p. 300. See Harold Steinacker, *Das Wesen des madjarischen Nationalismus*. In: Friedrich Walter—Harold Steinacker, *Die Nationalitätenfrage im alten Ungarn und die Südostpolitik Wiens*. München 1959, pp. 29—67.

### The Diet Committee on the Reform of the Criminal Code<sup>16)</sup>

The diet of 1839/40 had set up the committee to draft a new criminal code for consideration by the next diet<sup>17)</sup>. The majority of its 45 members were conservatives, but it included a number of liberals, most notably Baron *József Eötvös*, *Ferenc Pulszky*, *Gábor Klauzál*, and *Ferenc Deák* himself. Regardless of their political inclinations, however, all its members were eminent scholars and statesmen. The actual work of deliberation and drafting was shared among three subcommittees: the procedural subcommittee, which dealt mostly with the organization of the courts system, the penal subcommittee, which considered the problems of prisons and correction methods; and the criminal subcommittee, which was concerned with the definition of crimes and the nature of the criminal courts. This last was under the chairmanship of *Deák*<sup>18)</sup>.

The liberals' aim was to turn the committee into an organ for the fundamental reform of the state, an aim the conservatives were well aware of. Had *Deák* and his supporters wanted to draft a thoroughgoing juridical reform, they would have had to contend with little opposition, for the conservatives were not in the least averse to modernizing the obviously obsolete feudal legal system. The conservatives hoped that modernizing the judicial branch of the Hungarian feudal state would reinforce the whole state and give Habsburg despotism a more efficient means of exercising its control. They would not have opposed such reform, not as a first step toward reforming the other branches of government, but for the diametrically opposite reason of thwarting any further social, economic or governmental reforms.

The liberals' working methods under *Deák* were typical. On every topic each of them drafted his own plans, which were then considered at liberal

<sup>16)</sup> For a broader exposition of this subject see the author's. *Ferenc Deák of Hungary 1803—1876*. Boston 1975.

<sup>17)</sup> Act V, 1840, *Corpus Juris Hungarici 1836—1848*, Budapest 1901, pp. 90—91. *Wlassics*, *Deák*, op. cit., pp. 44—45. *Pulszky*, *Deák*, op. cit., p. 14.

<sup>18)</sup> Baron *József Eötvös* (1813—1871), one of the most attractive Hungarian liberal intellectuals, a very prolific writer of historical novels and ideological treatises; Minister of Public Education and Churches in 1848 and again from 1867 to his death. *Ferenc Pulszky* (1814—1897), progressive intellectual, follower of *Kossuth* in 1848—49, and in exile; since 1866 devoted partisan of *Ferenc Deák*. During the sessions of the Committee on the Reform of the Criminal Code, he was one of the closest associates and aides of *Deák*. *Gábor Klauzál* (1804—1866), liberal politician, a partisan of *Deák*; Cabinet minister in 1848. See *Pulszky*, *Életem*, op. cit., I, pp. 184—186. For all the documents of the Committee see *László Fayer*, *Az 1843-iki büntetőjogi javaslatok anyaggyűjteménye* [Document Collection of the Criminal Judiciary Drafts of 1843], 4 vols., Budapest 1896—1902. This remarkable collection will be referred to below as *FLA*. On the public discussion of the problems see: [Anon.], *Vázlatok a büntetőjog köréből* [Sketches from the Field of Criminal Jurisdiction] and "A büntetések erkölcsi hasznairól" [On the Moral Benefits of Punishment]. In: *Tudományos gyűjtemény* [Survey of the Sciences], vol. X, 1841, pp. 93—109 and vol. XI, 1840, pp. 67—73 respectively.



caucuses chaired by *Deák*. Every proposal was discussed in depth, so that all sides of a question were well aired. Throughout, *Deák* would say little, but he would listen to the debate, come to his own conclusions, and then draft a proposal, which was translated into German by his highly trusted young associate *Ferenc Pulszky*. *Pulszky* would mail the translation to *Dr. E. J. Mittermaier*, professor of criminal law at the University of Heidelberg, the acknowledged authority of the day. He would comment on the draft and, once his opinion had been received, *Deák* would pen the final text<sup>19</sup>). The proposals that the conservatives kept on turning down were thus modern and scholarly and incorporated very progressive legal thinking.

The liberals did not bow to these defeats. Instead, *Deák* wrote for them two Minority Reports to be presented with the majority draft to the forthcoming diet.

Three problems stand out among the many the Minority Reports dealt with: the definition of high treason, trial by jury, and the separation of political offenses from the criminal law. These, and everything else in the reports, were set forth in such a way that, were the diet to accept them, they would both modernize the law and move things a step nearer a liberal form of government. They amounted to *Deák's* manifesto for a "legal revolution", which in the absence of political reform was meant to transform the feudal state through a nonviolent process of legal innovation. Such a revolution would have been a revolution by consent of the power holders, the most beautiful and humane man can devise.

The Minority Reports' definition of high treason illustrates the liberals' thinking and tactics clearly. What had been uppermost in *Deák's* mind was revulsion for the Habsburg concept equating the person of the king with the executive branch of government. Violation of the king's person was high treason, but to the dynasty so was spoken or printed criticism of the executive branch of government, the very antithesis of the liberals' cherished principles of the freedom of expression and freedom of the press. *Kossuth*, *Wesselényi*, *Lovassy* and the leaders of the Youth of the Diet<sup>20</sup>) had all been condemned for flouting the Habsburg concept of high treason. The remembrance of what had happened to them during the 1830s guided *Deák* as he prepared his new definition of high treason. His definition naturally encompassed such offenses as an attempt on the monarch's life and conspiracy to depose him, but the key

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<sup>19</sup>) *Pulszky*, *Deák*, op. cit., p. 15.

<sup>20</sup>) *László Lovassy* (1815—1892), radical liberal reformer. Baron *Miklós Wesselényi* (1796—1850), a Transylvanian aristocrat of radical liberal leanings, a close friend of *Deák*. In 1836 *Kossuth*, *Lovassy* and *Wesselényi* were sentenced, unconstitutionally, by a Habsburg court. With them were convicted the leaders of the so-called "Youth of the Diet". The Youth of the Diet were young gentry lawyers or law students who escorted their county's legislators to the diet, where they acted as secretaries of the legislators or pages of the diet. They usually were the leaders of demonstrations supporting progressive legislators outside the diet's halls or from the diet galleries.

phrase declared: "High treason is also committed by anyone who takes arms against the independence of the country and its civic constitution."<sup>21</sup>) Armed uprising was the essential precondition for an accusation of high treason. But *Deák* went further, virtually turning the Habsburg concept upside down. High treason, in his definition, was committed by "anyone who is party by his given counsel or by actual deed to the promulgation and execution of any royal decree that by force subverts any existing constitutional right, . . . who is party to the collection of taxes or any other contribution in money or kind to public expenditure, or to the enlistment of recruits, in the absence of legislative acts for these purposes. . . ." <sup>22</sup>

The Habsburg interpretation of high treason defended illegal acts by the executive branch of the government and hounded the liberal opposition. *Deák's* version lifted executive immunity and made members of the government accountable for their actions whenever they violated the laws of the land or the constitution.

The introduction of trial by jury into Hungary was proposed because in *Deák's* view it was the system best suited to Hungary's present circumstances. But it also fitted in well with his indirect approach to other reforms. Whenever he could, *Deák* always justified his reform proposals by citing old laws and customs and any other precedents that might lend weight to what he was suggesting. In the case of the jury system, however, there was no precedent he could turn to. Consequently he realized that he had to teach his compatriots the advantages of the jury system. He pointed out that the whole nation, not just the government, would exercise juridical power by electing jurors, who would return to the ranks of citizens once they had completed their trial duties; since jury duty was not a permanent office, it could not become the jurors' livelihood, so that they would not tend to become a distinct group separate from the rest of society; since jurors were not officials, they would be immune from interests connected with holding government office; juries were more resistant to government pressure than permanent courts were; and "the jury system would not deteriorate into a tool to be used for political purposes by a tyrannical regime, so the jury system is a more effective guarantee of constitutional liberties than the ordinary permanent courts are"<sup>23</sup>). The degree of these advantages would be determined by the method by which the jurors were elected. *Deák's* proposal was that all males over the age of twenty-four with an annual income of 100 florins or more should be eligible for jury duty. Such a minimum property qualification would have made the bulk of the serfs eligible<sup>24</sup>), but would have excluded some of the

<sup>21</sup>) *FLA*, I/II, p. 95.

<sup>22</sup>) *Ibid.*, p. 139.

<sup>23</sup>) *Ibid.*, pp. 269—270.

<sup>24</sup>) The economic breakdown of the peasantry during the era of the sessions of the Committee was as follows: The figures stand for the number of families. One yoke or *joch* or *hold* is equivalent to 0.57 hectares or 1.42 English acres.

## The Radical Liberal Phase of Ferenc Deák's Career

slipped nobility whose incomes were even less than 100 florins a year. Adoption of this reform would have been a major break in the feudal social system. For serfs to have been able to sit in judgment on the nobility would have amounted to a change of revolutionary proportions. *Deák* was convinced that, were serfs given the passive right of election to serve as jurymen, it would be but a short step for them to be conceded the active right to elect juries, and from there general suffrage could not be far off. It was a characteristic move in his attempt at "legal revolution".

*Deák's* definition of high treason would already have protected many who in the past had fallen victim to the Habsburg judiciary for political reasons. But besides what constitutes a political offense, the nature of the courts hearing political charges affects the outcome of trials. Political cases had hitherto been heard by a division of the *Tabula regia* (King's Bench), all the judges of which were appointed by the crown and held office during the king's pleasure. Such a court could hardly be expected to be objective and had tended to act in accordance with the dynasty's wishes. *Deák* wanted this changed. "In the case of political offenses, neither the indictment nor the verdict should be entrusted to courts dependent on the government, but instead elected juries should be instituted to hear these charges."<sup>25</sup>) His Minority Reports specifically proposed that forty members should be chosen by the parliament to handle all political cases. Each time a charge was made, three of the forty should act as investigators, eight would sit as a jury for indictment, and twelve would form

Working one full session or more (20—100 yokes)	40,380
Working 2/3 of a session (14—15 yokes of land)	6,458
Working half a session (10 yokes of land)	281,264
Working one-quarter of a session (5 yokes)	254,872
Total families producing enough to market a surplus	582,974
Working one-eighth of a session (2.5 yokes of land) — subsistence farming producing no marketable surplus	41,872
Total number of serf families	624,134
Working less than one-eighth of a session (under 2.5 yokes)	32,120
Working no urbarial land but having tenancy of a cottage	773,528
Holding neither land nor cottage	108,314
Total cotter ( <i>inquilini</i> or <i>zsellérek</i> ) families, landless or effectively landless	913,962
Total servant and field-hand families	193,905
Grand total of peasant families	1,732,713

Elek Fényes, Magyarország statisztikája [The Statistics of Hungary]. Pest 1842.

<sup>25</sup>) *FLA*, I/II, p. 333.

a jury to reach a verdict in open trial. These juries would thus be answerable to the people's elected representatives, and not to Vienna.

The legal revolution embodied in *Deák's* two Minority Reports was attacked without quarter by the conservatives who, like the critics of Britain's Second Reform Bill of 1867, saw them as a leap into the unknown darkness. "The whole populace with their wives and children", the conservatives claimed, "will feel the utmost agitation and we can have no idea where all these would lead." They warned of the unseen perils ahead were *Deák's* proposals ever to become law. "For new people to exercise new rights, to allow institutions to be administered by brand new men, certainly belong to the realm of experiments too daring by far."<sup>26</sup>) And the conservatives' panicky denunciations of *Deák's* proposals were not so far off what in fact his aims were, for his Minority Reports really did advocate a daring experiment for his time. Even today's Marxist historians in Hungary, implacably hostile as they are to his role in the *Ausgleich* of 1867, are unexpectedly sympathetic toward his part in the committee on reform of the criminal code and his two Minority Reports. In the words of *Béla Sarlós*: "The two Minority Reports are among the finest products of Hungarian legal literature, they are two of its shining jewels; they are summaries of the principles of modern judicial procedure and jurisdiction that by their content and form as well as their style cannot be surpassed."<sup>27</sup>) No less enthusiastic was *Dr. Mittermaier*, the Hungarian liberals' contemporary idol, who in 1845 wrote of the work of *Deák* and his colleagues: "The Minority Report for its spirit, logic and clarity could be called a masterpiece."<sup>28</sup>) The eminent German's plaudits, interestingly enough, were lost on Hungary's own traditional historians, who, though they could not entirely ignore *Deák's* work on the committee, damned it with faint praise. Not so *Florence Foster-Arnold*, *Deák's* English biographer, who in 1880 could write: "As a piece of legal workmanship the rejected code met with high appreciation from competent judges on the Continent and even in England; *Mittermaier*, the eminent German jurist, declared that he knew no legislative work which satisfied so completely the progress of the age, the requirements of justice, and the latest scientific opinions."<sup>29</sup>)

### **Deák's Impact on the Revolution of 1848—49**

For reasons too complex to be exposed here, *Deák* had decided not to attend the diet of 1843—44. His absence notwithstanding, he still wanted to influence

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<sup>26</sup>) *Ibid.*, p. 347.

<sup>27</sup>) *Béla Sarlós*, *Deák és Vukovics két igazságügyminiszter* [Deák and Vukovics, Two Ministers of Justice]. Budapest 1970, p. 24.

<sup>28</sup>) *G. J. Mittermaier*, *Die Mündlichkeit, das Anklageprinzip, die Öffentlichkeit und das Geschworenengericht in ihrer Durchführung in den verschiedenen Gesetzgebungen*. Stuttgart 1845, p. 165.

<sup>29</sup>) *Francis Deák, Hungarian Statesman: A Memoir*. London 1880, p. 49.

its debates<sup>30</sup>). He wanted to equip it with the most comprehensive legal arguments possible for judicial and constitutional reforms to be achieved by legal rather than violent means. And indeed the diet debates did revolve around *Deák's* reports so that, though he was not present in person, his ideas dominated this last *Vormärz* diet.

Five years to the day after the presentation of *Deák's* Minority Reports, the revolution of 1848 broke out and the noted thirty-one "April Laws" were promulgated on April 11, 1848. The "April Laws" were enacted rapidly because *Kossuth* was able to play very skillfully on the fears inspired at court by the revolutionary upheaval in Europe. But thirty-one fundamental laws could not have been passed in a couple of weeks, even under revolutionary pressure, had not the principles on which they were based been clearly defined in advance. *Deák* was particularly influential in clarifying the liberal ideas behind these laws. Three documents written by him were particularly essential in this clarification of ideas: the two Minority Reports and the "Ellenzéki Nyilatkozat" (Statement of the Opposition) published on June 7, 1847.

*Deák's* Minority Reports, as has been pointed out, were judicial reform proposals in name only. *Deák's* aim, in fact, was to overturn the feudal regime completely and establish a liberal form of government in its stead. His recommendations included equality for all before the law, abolition of capital and corporal punishment, introduction of trial by jury, special jury trials immune to royal interference for political offenses, eligibility of serfs to be jurors in actions against the nobility, redefinition of treason to protect Hungary's constitution and laws, ending executive immunity to the charge of treason, and submission of taxation and the budget to parliamentary control through a ministry responsible to the legislature. These reforms were passed by the Lower House of the Diet of 1843—44 but were vetoed by the House of Lords on instructions from Vienna.

The "Statement of the Opposition" that *Deák* wrote had two results. It was conspicuously successful in welding three liberal factions (the moderate reformers, the centralists, and the radicals) into a single Liberal Opposition Party. At the same time it spelled out the liberal reforms that the party stood for: universal taxation, parliamentary supervision of state finances, a popularly elected legislature, equality for all before the law, compulsory remission of all servile obligations, repeal of entailment, continuation of Hungary's dynastic union with Austria on the basis of the Pragmatic Sanction but with full respect for the independence of its government and for the fact that it was subject to no other land or people and had its own constitution as affirmed by the fundamental Act X of 1790<sup>31</sup>), and coordination of the interests of the Habsburgs' Cis-Leithan and Trans-Leithan provinces by ending Hungary's

<sup>30</sup>) *Deák's* brother *Antal* died in 1842. From then on until 1854, when he sold his estate, *Deák* had to supervise the running of it. Károly Eötvös, *Deák Ferencz és családja* [Ferenc Deák and His Family], 2 vols., Budapest 1905, I, p. 133.

<sup>31</sup>) Act X, *Corpus Juris Hungarici* 1740—1835, p. 159.

economic subordination to Austria. The Statement of the Opposition was in fact the clearest exposition made of the liberals' reform goals. The "April Laws", which put them into effect, were an expression of the most progressive thoughts of the day and, by securing the freedom of the individual regardless of his nationality, came as near as circumstances permitted to coordinating national interests with liberal goals.

When the first popularly elected parliament held its first plenary session in Pest on July 5, 1848, it had to settle two basic domestic issues in Hungary to ensure the survival of the reforms enacted by the "April Laws". The non-Hungarian nationalities had to be pacified and something had to be done to satisfy the newly emancipated former serfs, among whom 57.4 % still owned no land. While *Deák* had little part in the handling of the nationalities question, he took up the cause of the landless peasants and dwarfholders by introducing in the parliament a "Draft Law on the Repeal of the Remnants of Servile Dependence"<sup>32</sup>). Debate on his draft began on September 15, 1848.

The draft sought to delineate more clearly the "April Laws" rather hazy provisions for emancipating the serfs and, a little paradoxically, to extend their benefits as far as possible without encroaching on the landlords' property rights. It divided pasture lands in such a way that the peasants were to receive a fair share; it permitted them to purchase vineyards, tobacco fields and cleared land, in which so much serf labor and capital had been invested but which the "April Laws" had not allocated to the emancipated peasants; it repealed lordly monopolies; and it prescribed the settlement of servitudes so that the peasants should derive maximum benefit. This massive draft was one of the most comprehensive social legislative acts that *Deák* ever prepared. Had it been promulgated in time, it would have given almost all the peasants some property of their own for their own sustenance. It would not have solved all the problems of the peasantry, to be sure, but it would undoubtedly have answered much of the restiveness among Hungary's rural population.

Thus *Ferenc Deák*, both as a legislator and as Minister of Justice, made a substantial contribution to the coordination of national interests with liberal goals, not so much in immediate results but rather in the progressive heritage he left, for, though a reluctant revolutionary, he was not disloyal to the achievements of the revolution. In the September crisis of 1848, he turned his back on the dynasty, not the revolution. When the court let General *Jellačić* loose on the revolutionary government, *Deák* wrote to his brother-in-law explaining his decision not to accept office in a new ministry: "Now how could I be a minister and an instrument of the authority that is waging war on our fatherland and demanding as the price for peace the surrender of the most

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<sup>32</sup>) The full text in: *Az 1848/49. Évi népképviseleti országgyűlés* [The Popularly Represented National Assembly of 1848/49]. Ed. by János Beér. Budapest 1954, pp. 621—632.

important aspects of our national independence and constitutional liberties? In a monarchy a minister is always the king's minister yet responsible to the country. How could I be the king's minister when a war is being fought against our nation with his knowledge and in his behalf and, indeed, with his actual permission? . . . I cannot identify myself with the court's policy even for a single hour."<sup>33</sup>)

Deak's work in the Diet Committee on the Reform of the Criminal Code, his contribution to the shaping of the Statement of the Opposition, and indeed his activities during the revolution of 1848—49 reveal him as a reluctant revolutionary at the least and as a "legal revolutionary" at the most. He acted always within the bounds of his own convictions. If that was not possible, he preferred not to act at all. When he made compromises, as he did in the formulation of the *Ausgleich*, they were tactical and did not infringe upon his principles.

Prior to 1848 *Deák's* prime concern was economic, political and, above all, social reform, in the attainment of which *Deák* never took the middle road but was as radical as it is possible to be without resort to violence. In this quest for radical, social reform *Deák*, a splendid jurist, would attack frontally or from the flank, whatever circumstances prescribed. These tactics were remarkably applied in *Deák's* work within the Diet Committee on the Reform of the Criminal Code, and in his Minority Reports.

To draft laws, write dissenting opinions and put forward proposals that stir the commentators of later generations is one thing. For his work on the committee *Deák* deserves high marks from any objective historian, but as a lawmaker of the 1840s, he was failure. Not one of the committee's recommendations nor any of his suggestions in either of the Minority Reports was adopted and passed by both houses of the diet of 1843—44. What then is the significance of the entire episode? Did it simply reveal *Deák* and his fellow liberals as dreaming utopians? There was a kind of utopianism in all that they did, but after all there never existed a major innovator who did not tend toward some utopian maximalism. But *Deák* also operated on a more pragmatic level.

Though *Deák* not attend the diet of 1843—44 his ideas dominated the debate of the draft reforms. On instructions from Vienna, all the drafts were shelved by the House of Lords, but his Minority Reports had a remarkable impact on liberals and conservatives alike and went far to help crystallize the ideology of the revolution of 1848.

*Deák's* reports also had a more direct impact as well in the longer term. They remained in the files of the diet, available to future legislators. Eventu-

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<sup>33</sup>) *Deák Ferenc Emlékezete. Levelek* [The Memory of Ferenc Deák. Letters]. Budapest 1890, p. 37.

ally the minority report on political offenses with only minor editing became the law of the land as Act III, 1848. The draft on procedural regulation of the criminal code, which was drafted by *Deák*, became the Press Act of 1848 and formed the basis of the executive order establishing juries to hear press offenses issued by *Deák* when he became Minister of Justice. Though the Upper House on Vienna's orders shelved the committee's drafts, it did not alter the fact that the Lower House, the elected representatives of the political nation, endorsed and passed *Deák's* reports in full, indicating that the majority of the legislators accepted *Deák's* ideas for a legal revolution.

*Deák* had correctly sensed the mood of the public and was not an utopian dreamer after all. With a constitutional parliamentary system, *Deák's* drafts would have become law as early as 1844. They were blocked only by Habsburg despotism. Had the House of Lords not obeyed Vienna's instructions, had the wish of the people expressed through its representatives in the Lower House of the diet of 1843—44 been honored, the legal revolution might have settled Hungary's outstanding social and political problems by peaceful, gradual change, and the bloody revolution of 1848 may not have been necessary or have happened at all.