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The Importance of the Doctrine of the Holy Crown in the Hungarian Public Law Thinking with Special Focus on Werbőczy's Tripartitum



Summary

The purpose of this study is to present the doctrine of the Holy Crown and its theses in Hungary. The Crown, originally the symbol of the king, embodies later the power of the king and the nobility, and since 1848 all people of the country are members of it. The Crown embodies also the country's territory. The biggest debate in this issue took place between two legal scholars, Ferenc Eckhart and Ákos Timon; this was the so-called Eckhart-debate. Ákos Timon was a public lawyer with nationalist feelings, according to others someone with feudalistic ideas, whereas Ferenc Eckhart was a historian, representing the methodology of the positivist scientificity. Ferenc Eckhart wrote a book *A szentkorona-eszme története* (The History of the Holy Crown) as well, which has been considered a basic work ever since. The study aims to link the analysis of the concept of the Crown to the, on the occasion of the Werbőczy anniversary, due analysis of the Tripartitum, which includes the first framing of the concept of the Holy Crown to a professional standard.

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INTRODUCTORY THOUGHTS

The purpose of this study is to give an overview of the development of the doctrine of the Holy Crown, of its public law importance in the thinking about the Hungarian statehood and to present what significance can be attached to the doctrine of the Holy Crown after the political transformation in Hungary, i.e. under modern constitutional and economic circumstances. Does the doctrine of the Holy Crown go on living in any form, and if yes, what message can it pass to the modern age? The study aims to link the analysis of the concept of the Crown to the, on the occasion of the Werbőczy anniversary, due analysis of the Tripartitum, which includes the first framing of the concept of the Holy Crown to a professional standard. It was written in connection with the Werbőczy anniversary, and from a constitutional law viewpoint it seems to be obvious, to select and bring this for the Hungarian statehood influential doctrine into focus, as two unique works met in the Tripartitum: the even nowadays existing, and from the Hungarian public law thinking significant principle of the doctrine of the Holy Crown and the from several viewpoint important Triple Book, which had a substantial impact on the legal thinking and the application of law in our country.

Though we do not intend to underestimate the importance of the Tripartitum, this study goes further chronologically, as the presentation of this in the Hungarian legal evolution important doctrine would not be complete, if we failed to continue our streams of thoughts with presentation of the spreading of the idea and its conceptual alterations as well as with its evaluation in our age.

THE FORMATION AND EVOLUTION OF THE DOCTRINE OF THE HOLY CROWN BEFORE THE TRIPARTITUM

The idea of the doctrine of the Holy Crown has been closely connected with the perception of the state in the Hungarian public law thinking. The Holy Crown deriving from St. Stephen is the ultimate owner of the power, the owner of sovereignty. All power derives from it, the ruler and the nation may exercise power only as members of the Crown, “but the Crown/power never rested either with the king or with the nation exclusively. The Crown existed in itself”.¹ The Hungarian public law thinking personifies the Crown, so the Crown is respected like a person. This derives from the holy and mystic character of the Crown, consequently the Crown cannot be substituted or replaced. In Hungary a king could be crowned only with the Crown of St. Stephen, connecting the Crown to a specific king is also a unique Hungarian phenomenon. When the coronation act with the Holy Crown failed to take place, the ruler was not accepted as the legitimate king of the country, an example of such is the reign of Joseph II. The king assumes his power through the Crown, the people confers its power not directly to the king, but to the Crown.² The Crown has been present in the Hungarian political thinking from the 11th century, and from the 14th–19th century it has gradually become the base of a developing public law concept of sover-

eignty. The expression *Sacra Corona*, i.e. referring to the Crown as something holy, was used first in one of the charters of Béla IV in 1256. Based on the work of Zoltán József Tóth³ the basic theses of the Holy Crown can be summarized as follows:

- the ultimate power (legislation and governance) appertains to the Holy Crown;
- all royal prerogatives are enjoyed by the Crown;
- those who exercise power unite in the Holy Crown, in the beginning the king, later the king and the noblemen, followed by the free royal towns, and finally the serfs from 1848;
- the country's territory belongs to the Crown, but areas conquered or inherited, in which the Hungarian king became the ruler of another state did not become parts of the Crown;
- the Crown holds property;
- all rights of possession come from the Crown;
- the Crown embodies the connection between Heaven and Earth.

The latter, mystic meaning of the Crown's concept calls for some explanation: it expresses the idea, that St. Stephen offered his Crown and country to Virgin Mary on Assumption Day. Virgin Mary accepted this offering, thus she established a connection between the Creator and the World Created. That's why Hungary is Mary's country, i.e. *Regnum Marianum*, or in other words *Sacra Pannonia*, i.e. the country of the Saints. All this is a present of God, there is no other crown carrying the same message. The Crown was given to the king by the Pope, which reinforces the divine origin of the power.

“Finally by the grace of God, being worthy of a hundredfold award, he came down with fever, and when his final day seemed to be approaching, he called for the bishops and the prominent members of his castle praising the name of Christ, and he discussed with them whom they should elect to be the next king. Then he advised them fatherly to uphold the faith which they had gained, to love the truth, to like the chains of heavenly love, to practice love, to stay humble, but first of all to guard on the delicate plantation of Christianity. After these words he raised his hands and eyes to heaven and shouted: Queen of Heaven, the excellent re-creator of this world, in my final prayer I place the Holy Church with its bishops, priests, and the land with its people and gentlemen under your patronage; saying a final farewell to them I give my spirit into your hands.”⁴

The cult of St. Stephen was formed by King Ladislaus when he canonized his predecessor. According to Bálint Hóman⁵ his figure was made great by the posterity, when his royal successors met and legislated in Székesfehérvár. His personality as a whole is a symbol of the “eternal Hungarian” standing on the border of the East and the West.

He thinks, that the Holy Crown assumed its public law significance after the extinction of St. Stephen's family. Later when during the reign of Zsigmond the nobility exercised power, the thesis was advanced that power comes from the nation, which criterion could be met only by the king and the nobility for a long time. In Hóman's view, the doctrine of the Holy Crown has not lost its strength, it has been the mystic

symbol of the common will up to now, and the estates resisted the absolutist efforts to limit self-governmental rights as members of the Crown. From the time the estates demanded to share power, we can speak of *corona regni*, i.e. the crown of the land, in contrast with the previously used *corona regia*, which meant the king's crown. But neither the concept nor the respect for St. Stephen has been violated. According to Hóman, each age espouses an important ideal, often deforming the king's person. "In the turmoil of the streams of concepts the traditionalists and the reformers, the evolutionists and the revolutionaries, the legitimists and the free king-electors, the conservatives and the liberals, the constitutionalists and the supporters of the autocracy, each acknowledges and monopolizes the concept of St. Stephen as his own with the highest subjectivity and with lacking all kind of historical sense."⁶

It must be noted that the concept of the Crown does not imply that only Hungarians may belong to it, so it is not a national imperium,⁷ and it does not imply the necessity of the permanent presence of a king either, as it survived the conditions of being without a king as well. The doctrine of the Holy Crown was sometimes suitable for opposing the king, i.e. for gaining independence from the ruler, which happened under the reign of Zsigmond in 1401.⁸ A special date, the year 1381 must be pointed out from this era, when the Venetian Republic entered into contract with the Holy Crown and not with the king, so the crown as public law symbol appears on international level as well.

THE DOCTRINE OF THE HOLY CROWN FROM THE TRIPARTITUM TILL ECKHART

The first scholarly definition of the doctrine of the Holy Crown was provided by István Werbőczy in his work *Tripartitum* (*Triple Codex*, 1514. *Tripartitum opus iuris consuetudinarii inlyti regni Hungariae*). The *Tripartitum* is the first collection of precedents in Latin, its importance lies in the fact that it held the country together even in the period of the partition as several parts of it were in force until 1848, rulings on the inheritance rights of widower until 1946. The work is has been criticized for splitting the society into nobility and commoners.⁹ The *Tripartitum* had an influence in Transylvanien and in Vienna as well. The ruler Vladislas II (*László Dobzse*) known for his modest abilities hired the judge István Werbőczy (legal scholar, later royal judge, palatine) to collect the acts, precedents of the country, and then he had the work scrutinized by 10 legal scholars. As they had considered the work as of high standard, the king proclaimed the *Triple Codex* in an act (*Act LXIII* of 1514).¹⁰ At that time the royal seal was necessary to validate this, which failed to come about because of the *Dózsa Rebellion*, so the Article granting royal assent to the bill did not come into force. It was only in 1517 when Werbőczy decided to travel to Vienna and have the *Tripartitum* printed at his own cost. After returning home he started to distribute the volumes among the counties, which lacking any other comprehensive work, started to apply the *Triple Codex*. So the *Tripartitum* became the cornerstone of the domestic administration of justice. The *Tripartitum* brought

an end to the legal partitioning, the legal particularism, which was present in other European countries as well, namely that different legal practice existed parallel in different parts of the country. The Tripartitum consists of a Prologue (Prologus) and three parts (partes), each part is divided into titles (titulus).¹¹ The Tripartitum includes noble private and procedural law, as well as the rights of serfs and cities. The third part laid down criminal law provisions and the special rights of Slavonia and Transylvania.¹² It repeated the clause on the right to resist of the Golden Bull, and stated that noblemen come within the competence of the royal courts. “After ten years intensive work, on the 18th October 1514, Werbőczy introduced his huge work at the National Assembly in Pest some months after the defeat of the Dózsa Rebellion. The work was written in Latin with the title “Opus Tripartitum juris consuetudinarii inclyti Regni Hungariae, i.e. The Triple Codex of the precedent of the Hungarian Kingdom, its first translation into Hungarian was made in 1565”.¹³ So the Tripartitum is not a public law collection but one on private law so it does not focus on the Holy Crown. The concept of the Holy Crown is included in Section I. part 3.4. In discussing it Werbőczy relied on the Chonicle of Thúrőczy, and Thúrőczy on Simon Kézai (13th century).¹⁴ Werbőczy stressed the mutual confidence realized by others as well, which is typically Hungarian, and exists between the king and the noblemen,¹⁵ namely that the king is elected by the nobility, and the king is the only one who grants a title of nobility. The king and the nation unite in the Crown. In Werbőczy’s work only the king and the nobility are parts of the Crown but not the serfs, they became that in the form of law extension only in 1848. The burghers became earlier parts of the Crown, already in the 1500s, not individually as the noblemen, but collectively as free municipalities under royal privilege. Iván Bertényi points out as well, that the free municipalities under royal privilege are not mentioned by Werbőczy, and even when they became parts of the Crown, not with the full rights and individually, as the noblemen but collectively,¹⁶ so it can be stated that they were not fully excluded. The nation conferred its power not directly to the king, but to the Crown¹⁷ (Jurisdictio Sacrae Regni Coronae) and only through this to the king, that’s why coronation in Hungary had a special public law importance. Legal scholars of the next eras (Eckhart, Timon), agreed, that the concept of the Crown did not derive from Werbőczy, Werbőczy had found the “Crown” ready. According to Ferenc Eckhart the idea linking the organic state-concept to the Crown originates from Werbőczy, though the royal chancellery distinguished clearly between the two concepts even in the 15th century.¹⁸

It is worth lingering over the corpus images of the doctrine of the Holy Crown, over the idea, that the Crown possesses countries, and who the members of the Crown are. In the medieval universalistic thinking similar images, which vividly illustrate the relationship of the Church and God expressively, can be found in considerable number. In the Church Christ is the head, the Pope is the terrestrial head, the believers are the limbs. But according to Emma Bartoniek¹⁹ this concept is not strange to the antique thought, which regards the state as the body. Later in the struggle between the Papacy and the Holy Roman Emperors it was debated who the head was,

the Pope or the secular authority. Corpus images and bizarre medical similes were articulated in different forms, as referred by Emma Bartoniek.

Let's have a closer look at the author of this huge work in this study too. István Werbőczy came from a family of lower nobility, the exact date of his birth is unknown, the semi-millennium of his death is due in 2041.²⁰ He is judged differently, his professional education and language skills have been spoken about to this day. Writings that remained for the following generations describe him as a man of importance, but on the other hand as a noble man of lower rank relentlessly using his abilities for acquiring wealth.

Lower nobility can be characterized by the fact, that they differed from the middle nobility in their lifestyle, which was similar to the lifestyle of craftsmen or peasants, owning a small land, regarded as noble estate, and their house as mansion. Villages of nobility were to be found almost in every part of the country in the 18th –19th century, except for those in the middle and southern parts of the country, which suffered from the Turkish occupation the most.²¹ Contemporary publications mention Werbőczy sometimes as a nobleman of lower rank sometimes as nobleman of middle rank. The doctrine of the Holy Crown is described by Werbőczy as an expression of equality among all nobles, according to which no difference lies between the rights of the middle rank and titled nobility. That's why Gábor Máthé writes that nobility having the same rights is the "populus werbőczyanus".²²

We have to note that critical voices came from the earlier decades; there was a time, when only criticism of Werbőczy was published. In whatever ways he can be characterized as a man, without his enduring work no Hungarian national law would exist.²³ The Triple Codex was published in further 11 and 45 editions in the 16th century, it has acquired an undisputable prestige during the times, and it became an „irrevocable canon” of the noble way of thinking”.²⁴ The Act 18 of 1635 referred to Werbőczy's Tripartitum when it stated that power rested with the king and the National Assembly jointly.²⁵

In the reform age the Crown seemed to stand in the way of development hindering the formation of the capitalist economic order, as every property of land was owned by the Crown,²⁶ as well as blocking the emancipation of serfdom, as the serfs were not members of the Crown. For this reason many contemporary politicians and statesmen criticized the Crown. According to Mihály Táncsics, “the Pragmatica Sanction supresses the happiness of our native country as an awful curse. The same is true for the Crown”.²⁷ He suggested that the Crown should be placed in the National Museum, as a piece of antique. Ferenc Deák avoided using the word Crown, he used the word 'state' instead. The idea of connecting the doctrine of the Holy Crown and that of the evolution were discussed in the works of Kölcsey, Kossuth, Széchenyi and Miklós Wesselényi. Eventually the Crown solved the public law dilemma of the reform age by adding the serfs to the concept of the nation in the form of law extension thus making them parts of the Crown. This idea is not identical with the noble nation of Werbőczy. Zsolt Zétényi²⁸ captured the essence of the doctrine of the Crown in the fact, that it could generalize the idea of freedom for everyone in the form of law extension.

After the Treaty of Trianon the concept of the Crown provided ground for the justification of the territorial revision, the doctrine of the holy Crown became a symbol of the settlement of just territorial claims. The economist Károly Kmetty dealt with this semantic meaning of the Crown, who believed in positive changes in the future, “which will restore the ancient territorial integrity of the body of the Holy Crown”.²⁹ With the dismemberment of the Monarchy the importance of the concept increased, though critical voices emerged in connection with the Crown as well, like the article “Farewell to the Holy Crown” of Oszkár Gellért in the journal “Nyugat” in which he emphasized the public law insignificance of the Crown. From 1930 on even the courts passed their verdicts in the name of the Crown, in terms of Act XXXIV of 1930. “1§ The judicial power shall be exercised in the name of the Holy Crown of Hungary. The procedural rules which define in whose name the verdicts and other decisions are passed shall be amended accordingly.”³⁰ Even Ferenc Szálasi used the Crown in his interest by taking his oath as Leader of the Nation on it.

THE ECKHART-DEBATE

Those who deal with the doctrine of the Holy Crown cannot ignore the analysis of the so called Eckhart-debate, which developed around the historian Ferenc Eckhart relating to his article on the Holy Crown in the 20th century. The scholarly debate raged between members of the school of legal history, especially between Ákos Timon and the representative of the scholar methodology of positivist research, Ferenc Eckhart³¹ and it settled only by the 40s of the 20th century. In the meantime Ferenc Eckhart wrote his summary on the history of the doctrine of Holy Crown in 1941 which can be considered a fundamental work. In the fifties of the 20th century the second Eckhart-debate raged,³² which is said to have contributed to the declining health and the death of Ferenc Eckhart. The third Eckhart-debate took place on the survival and the message of the doctrine of the Holy Crown actually after the political transformation and it has been going on until the present day: in scholarly circles, on the corridors of the parliament and in esoteric circles dealing with the mystery of the Holy Crown. The views of Eckhart conflict at almost every point³³ with the school of legal history, for better understanding the two differing views are listed here in points.

The summary of the views of Ferenc Eckhart:

– The idea of the Crown symbolized the royal power till the end of the 14th century, so it did not symbolize state power of public law character, it expressed the joint power of the king and the estates only from the 16th century (according to Emma Bartoniek from the 13th–14th century already;

– the “faint separation” of the concept of the Crown started in the 13th century in relation to the Crown’s properties;

– he denied that the doctrine of the Holy Crown could be traced back to St. Stephen, the first formation of the doctrine of the Holy Crown could not be identified in his Admonitions;

– the Hungarian constitutional evolution had neither more nor less public law character than any other European one – the concept of the Holy Crown is not Werbőczy's invention;

– he admitted, that the Hungarian way differs from all European evolution due to its “Turkish type”, but he insisted that the Hungarian legal evolution was not isolate, the idea of the Crown emerged by the Czechs and the Polishes, as well as in England and France;

– it appeared in Hungary and by the Czechs at the same time, as a symbol of the state power;³⁴

– the concept of the Hungarian Crown developed under Polish and Czech influence, to compare the Hungarian conditions to the English ones is no more than “a phantasy of national arrogance”;³⁵

– he accused the school of legal history of lacking scholarliness.

Views of the school of legal history and Ákos Timon:

– the concept of the Hungarian Crown is an odd one out in the European evolution because it is connected to a real and Holy Crown, which means a spiritual power independent from the royal power, he stressed the mystery of the Crown, he thought it was the most unique product of the Hungarian constitutional evolution”;³⁶

– the Crown and the person of the king parted from the very beginning, so Timon did not accept the assumption, that the legal development of the Western countries had preceded the Hungarian one by centuries;

– the Hungarian – unlike the Western European – constitutional evolution always had a strong public law character;

– he agreed with Eckhart only on the fact that the doctrine was not Werbőczy's invention;

– he denied that the Hungarian nation had adopted its legal institutions from abroad;³⁷

– the importance of the Hungarian constitutional evolution can be compared only to the English one;

– this kind of personification of the Crown cannot be found anywhere in the world;

– the Hungarian spirit always possessed the strength of the public law attitude³⁸ and this concept (Zsolt Zétényi agrees too);

– his views come near to the national romanticism.

János Zlinszky agreed that the Hungarian state had been characterized by a divided and controlled central power from the very beginning, the feudalism based on private authority did not evolved, but rather the estates of realm with a public law character. Adding that connecting the Holy Crown to St. Stephen was simply a political necessity.³⁹ According to Zoltán József Tóth one cannot speak of a holy character of the Czech crown,⁴⁰ the crown in simply a symbol of the Czech monarch and the state, it is not connected to any kind of a real crown, while we frequently stress the faith i.e. the confidential element between the king and his subjects. This personal relationship was identified by Emma Bartoniek and Ferenc Eckhart as well. Tóth is in

the opinion that the concept of the Hungarian Holy Crown dates back earlier than those of the northern and northern-west Slavic crowns, it differs as to its content too because in the Slavic countries it embodies the relationship of the Crown's properties to the native country,⁴¹ unlike ours the relationship of the subjects to the state. Zoltán József Tóth dates the birth of the symbol representing the state which is independent from the king to the 11th century, Emma Bartoniek in the 13th–14th century, Eckhart to the 15th century. The views of Emma Bartoniek and Ferenc Eckhart have some parallel with each other, as both regarded the Crown as a symbol of the medieval Hungarian Christian state, but they differ as to the dates of the parting of the Crown and the king. Bartoniek puts a stronger stress on the uniqueness of the symbol. According to Emma Bartoniek, historian, bibliographer “the deep roots of this theory, which Timon had only a faint idea of, get back to the Admonitions of our king St. Stephen, and spread into the widest strata of the Hungarian nation at the beginning of the 20th century. For this reason we have not been able to shape our idea of the Hungarian state without the doctrine of the Holy Crown up to now”. The views of Emma Bartoniek are somewhere midway between the views of the school of legal history and those of Ferenc Eckhart. Her findings can be summarized as follows:⁴²

- The Crown appeared in the Admonitions, but it was not called holy;
- in the Admonitions the crown still belonged to the king, but notion of the king and that of the state were identical at that time;
- the royal power was extended by the extension of the concept of the Holy Crown,
- connecting abstractions to concrete objects is common in the culture of other European nations;
- in the 13th century it started to be mentioned as the country's Crown;
- the Crown expresses the faith between the king and his subjects, this idea stands in its focus, while from the 14th century the Crown embodies the relation of the territories to the homeland;
- Crown's superiority over persons has been noticeable from the beginning;
- the idea of the unification (of the king and the estates or of Hungary and its territories) evolved under the universalistic approach of the Middle Ages, when the Pope was thought to be the terrestrial head, the believers the limbs – this image is the image of Christi mysticum, but it could have evolved in the antique scholarship as well, in which the state was seen as a body;⁴³
- the concept the state as a “living organism” is to be found at other places as well;
- the Czech and Polish traditions are similar to the Hungarian ones, the Polish crown is holy as well, but it is perceivable only in the 14th century; the Hungarian doctrine dates back earlier;
- the idea, that the Crown is the heir to all properties, evolved in the 15th;
- as to its content the Hungarian doctrine of the Crown differs from all others.

It is worth lingering a while over the thought, that in contrast to the western evolution the estates of the realm of public law character grew roots here i.e. the characteristics of the Hungarian evolution, which were realized by István Bibó as well. Bibó analysed in his writings the “deformed Hungarian form” and the disorder of the re-

gional historical evolution in the region several times, and he reflected on the question, whether there had been something retarded in the mentality of certain peoples in the eastern region of Europe, or whether an explanation suggested itself to the historical cul-de-sac of some peoples. He dated the beginning of the disorder of the social evolution to the age of Werbőczy and he saw a fatal error in the fact that the lower nobility hated the peasantry. Though he stood very far from the titled nobility, but he saw himself emotionally as one of them. Thus it can be explained that Hungary created a system based on suppressing and rigid estates of the realm, which was capable of hindering the development of civil society and integrated in the Habsburg Empire.⁴⁴ Later the issue of the national independence is the one which redefines everything politically, as Bibó claims in his writings, so everything is subordinate to the national practicability and self-justification, culture and sporting events alike. We keep trying to achieve something as a nation.

PERSISTENCE OF THE DOCTRINE OF THE HOLY CROWN FROM 1946 TILL THE PRESENT TIME

According to Gábor Máthé Act I of 1946 can be regarded as a turning point, because with this act the nation regained its right to self-determination, and it is widely known that we drew on the provisions of this act at the political transformation as well. The republican form of government and the stabilization of democracy made no changes to the fact that the Holy Crown continues to be the public law symbol of the Hungarian state “as the representation of public law character of legal continuity”.⁴⁵

The Crown was moved away from Hungary to the United States during the World War II, and the concept continued to live in exile, until the United States gave it back in 1978.⁴⁶ At that time a two third majority regarded the returning of the Crown as a delightful event and only a small minority thought that the Crown was a symbol of the ‘high-society Hungary’.⁴⁷ In the Hungarian mass media it was mentioned as the Hungarian crown only the Radio of Free Europe spoke of the Holy Crown.

The concept of the Holy Crown got into the focus again after the political transformation in Hungary. From the 1990s, after the political transformation a series of lectures on the Holy Crown was given in the House of the Hungarians, the Foundation for the Country of the Holy Crown was established.⁴⁸ In 1988 a crown-reoffering took place in the Basilica on the occasion of the St. Stephen memorial year and in 1989 a procession was organized with a consecrated replica of the Holy Crown in Budapest *The Act I of 2000 on the memorial of the state foundation by St. Stephen and on the Holy Crown* was passed in 2000,⁴⁹ which stipulated that the Board of the Holy Crown should be established, headed by the President of the Republic, and its members be the Prime Minister, the President of the Parliament, the President of the Curia, the president of the Hungarian Academy of Arts, the President of the Hungarian Academy of Sciences and the President of the Constitutional Court. If the president of the Board is unable to attend the presidential duties are performed by the Board’s president by seniority.

The introduction to this Act reflects the importance of the Crown throughout the ages. “The generation for which the opportunity arises to step from one millennium of history into the other, looks back into the past to reckon the past millennium of the nation and it looks into the future alike to prepare for the forthcoming millennium. “One thousand years ago by crowning out first king St. Stephen the Hungarian nation united with the other nations of Europe in the Christian faith. Since then Hungary has been an organic part of Europe. This has been vital to the survival of the Hungarians and their decisive role over the centuries. Hungary rests on the state-founding work of Saint Stephen. On the basis of the work of Stephen I a flourishing state came into being in the Carpathian Basin. The Hungarian State holding up the attacks against the West over centuries contributed to the development of the Christian world. During the millennium we shaped our unmistakable unique culture, which is a vital part of the colourful community of European nations.” The act stipulates that the holy relic must be placed in the Building of the Parliament instead of the National Museum.⁵⁰ On the national holidays the Crown must be displayed to the public seen free of charge. It has to be mentioned that it is in the competence of the Board to decide on the place where the Holy Crown and the regalia are kept, to initiate measures for the conservation and restoration of the Holy Crown, to check whether instructions for preservation of the Holy Crown and the regalia are followed and to give assent to making a certified replica of the Holy Crown and the regalia as well as to a scientific examination of them. The Board performs its duties by involving the representatives of the relevant disciplines. Motions related to the Act were debated in the decisions 26/2000 and 535/B/1996 by the Constitutional Court and motions attacking the constitutionality of the Acts on the Holy Crown and the National Regalia were rejected.

In the opinions of many the renewal of the legal continuity failed to come about which led to social and moral problems. For this reason intellectual circles held an emergency meeting,⁵¹ in our country on the 8–9th October 2005, at which it was agreed that our country was in serious condition. They found that the legal continuity had to be renewed on the basis of the doctrine of the Holy Crown, so the Union for a New Hungary was created. A reference to the Holy Crown is included in the National Credo of the Fundamental Law as well. “We respect the achievements of our historical constitution and the Holy Crown, which embodies the constitutional continuity of Hungary and the unity of the nation.”

Many have discussed the issue so far, series of presentations have been given and university courses have run in connection with the evocation of the doctrine. Because of the scope of this study the author does not have the opportunity to summarize the message of all authors, which have been written on the topic of the concept of the Crown since the political transformations, but mentioning the most important views cannot be avoided.

Pál Horváth thinks “Ákos Timon made the contemporary Hungarian public thinking aware and made it a conviction in a wider sense, that we do have values measured by European scale, historically consecrated institutions, and we can add,

these becoming parts of the world heritage in a figurative sense ensure our survival in the family of the European legal culture in the 3rd millennium.”⁵² Zsolt Zétényi⁵³ attached such an importance to the doctrine that he suggested establishing the discipline of the Holy Crown. He stressed that the doctrine is not linked to any form of government and it is not simply a legal statement, which could be withdrawn by a parliamentary decision. In his opinion it suits the spirit of the Hungarian nation in every aspect. His statements on the different views of Ferenc Eckhart and Ákos Timon could be agreed on, namely that „Hajnik and Timon were lawyers, devoted supporters and practitioners of the Hungarian public law. They loved and found the public law in history, while Eckhart, the historian looked in public law for the empirically perceptible history living in charters. Where history was not to be found, there he denied the existence of the public law”⁵⁴ Zétényi found the message of the doctrine of the Holy Crown in our days in the fact that it can generalize the communal idea of freedom in the form of right extension.

Lajos Rácz dealing with the role of symbols and heraldry found in his studies that on medieval coats of arms angels are to be found next to the Crown,⁵⁵ which refer to the conferred nature of power originating from God and to their role as mediators between Heaven and Earth. He noted that these are present in the Habsburg symbols of power alike. According to Gábor Máthé legal scholar, who took part in the preparation of Act I of 2000 as an expert, political transformations of 1946 and 1989 seem to reject the doctrine of the Holy Crown and the historical constitution, still those changes can be interpreted as upholding and cherishing of our traditions i.e. the legal continuity can be pointed out. Gábor Máthé stresses the doctrine’s European importance. In his studies he concludes,⁵⁶ that the Hungarian concept of the Holy Crown is one of the sovereignty theories because the nation confers its powers/ to the Crown, this is the first contract to have been made, the second is the fact of the coronation itself. If exercising sovereignty becomes impossible, the nation is entitled to take actions. We can recognize here either the philosophy of the Golden Bull or even the right of resistance established in the Magna Charta. Gábor Máthé refers to the fact that an isolated legal evolution is impossible and the Hungarians changed to its their need what was adopted from abroad, thus there are several independent works, which we can be proud of.⁵⁷

According to András Tamás „the doctrine of the Holy Crown is somewhat older than the sovereignty concept of Bodin. It is minimum such a big public law myth as the one of Bodin, but it assumes a major importance in the preservation of the Hungarian culture and statehood. Liberal minds tend to regard the doctrine of the Holy Crown as a mystery of the estates of the realm. The sovereignty of the estates of the realm enjoyed by the king did not solved the nation’s sovereignty if it did not correspond to the doctrine of the Holy Crown, but rather suppressed it”.⁵⁸

Béla Pokol, legal scholar and judge of the Constitutional Court, a participant of the constitutionalizing process in the 1990s claimed that the doctrine of the crown can be found in the constitutional development of other nations but it did not take on there such importance as in ours. He dates its separation from the crown later

than in other nations because while in the 1300s for other nations it meant the state of the country it meant for us the royal power at that time.⁵⁹ He came up with the idea promoted by others as well that the notion „corpus” is of ecclesiastic origin thus one can draw a parallel between the Church representing Christ and the Crown representing the nation „the Church as the mystic body of Christ and Christ as the head of the mystic body of the Church”.⁶⁰ In his views the Crown has been the symbol of the public law integrity and not of the regional integrity since 1867.

Gábor Pap, art historian, deals with the physical appearance of the Crown with its probable origin because there is a theory existing according to which the Crown was originally made up of two different parts and the upper part was added later to the lower part. The doctrine of the Holy Crown was discovered by the so-called esoteric circles, which dealing with the holy and mysterious nature of the Holy Crown analyse it and the other symbols alike. Domestic representatives of the mysterious and esoteric crown-theories scourge the academic views on the Crown and deal with the spreading of liberalism.

SUMMARY

Every nation has its own constitutional characteristics, which beyond the universal constitutional principles, match their legal theses to their national characteristics. For example the fact that in the American legal evolution the idea of the rule of law evolved parallel with the principle of the separation of power, or what model of constitutional court was established in a certain state, or whether the state interprets the relationship between the central power and the local governments in a centralized or decentralized form. The doctrine of the Crown as analysed above is a unique Hungarian invention, which does not substitute for other doctrines. Neither the sovereignty nor the separation of power, but it appears in a series of principles making the Hungarian constitutionality complete by supplementing these basic democratic criteria.

The tradition of the concept of the Holy Crown continues living in our constitution and it helps us to preserve our national identity in a globalized world order. It is a public law conglomerate, whose many meanings were unified inseparably by the elapse of time and which in its final form does not compare to any other crown doctrines. Werbőczy's Tripartitum was the first, which summarized the doctrine of the Holy Crown to a professional standard, though its content has been modified since then. The greatness of the Tripartitum lies in the fact that it did away with the legal particularism and held the country together in the time of the partition of the power. A summary of the existing laws was urged in that age, several ordinances were issued in this respect, like the Act XXXI of 1504 with the title “Decrees should be collected”, or the Act XX of 1507 bearing the title “A collection of decrees should be assembled”, or the Act LXIII of 1514 bearing the title “The decrees to be collected and amended and sent to the counties”.⁶¹

The doctrine of the Crown can be said to have its own life, independently from king, form of state and government equally. It ensures a place for us among the Euro-

pean Christian countries, and it makes us the owner of such a historical and constitutional past, which with its exceptionally deep roots traces back the concept of the Hungarian statehood to the foundation of the state, representing the sovereignty of the Hungarians in those historical times, when it existed seemingly subjugated under foreign powers. It is just as an important a public law principle as the separation of power and the principle of sovereignty. While the separation of power is about good governance and the ideal form of government carrying the message that individual despotism must be excluded from governance, the sovereignty examines who exercises the main power and it sends the message to other nations, that exercising power in its territory is impossible for any other state, thus meditating certain elements of the concept of the state. The doctrine of the Holy Crown though not a universal but a national myth represents the more than one thousand year old existence of the Hungarian statehood in such a way, that it does not exclude anyone from the Crown's body, who are connected to the historical past or the present in any form. It expresses the conferred and thus limited nature of the power, the integrity and independence of the country's territory. It expresses the need of the people that they want to be attached to a legitimate leader in such a democratic way, which enable to oppose to the "ruler" as well.

NOTES

- ¹ Tóth Zoltán József: *Megmaradásunk alkotmánya. A Szent Korona-eszme a magyar történelemben és közjogban.* Hun-idea, Budapest, 2007, 265. o.
- ² "According to this 15th Century conviction the people confers the king-making power to the Holy Crown, generally all its »effectiveness, importance, strenght«, even »mystery«, and this power comes from the Holy Crown to the ruler by the coronation with the consent of the people." Bartoniek Emma: *A magyar királykoronázások története.* Reprint sorozat, Akadémiai Kiadó, Budapest, 1987, 76. o.; Timon Ákos: *A Szent Korona elmélete.* Magánkiadás, Budapest, 2000, 20. o.
- ³ Tóth: *Megmaradásunk alkotmánya...*, i. m. 100. o.
- ⁴ *Szent István király legendája Hartvik püspöktől.* Eötvös Loránd Tudományegyetem Régi Magyar Irodalomtudományi Intézet. sermones.elte.hu/szovegkiadasok/magyarul/madasszgy/index.php?file=042_055_Hartvik
- ⁵ Hóman Bálint: *Szentkirály és Szentkorona.* 1938. In: Szent István, a Szent István évében megjelent és a királyi egyetemi nyomdában, 1938-ban nyomott kiadás digitális változata, amelynek alapja a Szent István Társulat/Kairosz Kiadó gondozásában 1998-ban megjelent reprint, nyolc darab illusztráció színes változatával. mek.niif.hu/07100/07139/html/0003/0013-22a.html
- ⁶ Uo.
- ⁷ Tóth: *Megmaradásunk alkotmánya...*, i. m. 123. o.
- ⁸ Bartoniek, i. m. 72–73. o.
- ⁹ Babus Endre: *Diszkrét Werbőczy-évforduló: Jogi hiszekegy.* HVG, 2014/33., 22. o.
- ¹⁰ The Act includes the following provision: "Further all decretes must be amended and collected, the rights in written form must be presented to the king, after presenting accepted, sealed and sent to the counties." *1000 év törvényei.* www.1000ev.hu/index.php?a=3¶m=1360
- ¹¹ *500 éves a Tripartitum.* www.ogyk.hu/hu/blog/posts/500-eves-a-tripartitum
- ¹² Babus, i. m. 22. o.
- ¹³ *500 éves a Tripartitum,* i. m.
- ¹⁴ Thúrőczy János krónikája, 1488.

- ¹⁵ Ezt felismeri Bartoniek Emma, Eckhart Ferenc és Tóth Zoltán József is.
- ¹⁶ Bertényi Iván: *A magyar korona története*. Népszerű történelem sorozat, 3. bővített kiadás, Kossuth Könyvkiadó, Budapest, 1986, 164. o.
- ¹⁷ Timon, i. m. 14. o.
- ¹⁸ Eckhart Ferenc: *A Szentkorona-eszme története*. Magyar Tudományos Akadémia, Budapest, 1941, 196. o.
- ¹⁹ Bartoniek, i. m. 77–80. o.
- ²⁰ Babus Endre: *Diszkrét Werbőczy-évforduló: legendás és elátkozott*. HVG, 2014/33., 21. o.
- ²¹ Kis Miklós: *Magyar Néprajzi Lexikon*. Kisnemes fogalma. mek.oszk.hu/02100/02115/html/3-539.html
- ²² Máthé Gábor: *A Szent Korona-eszme. Parafrázis*. In: Eckhart Ferenc emlékkönyv. Szerk.: Mezey Barna, Gondolat Kiadó, Budapest, 2004, 285. o.
- ²³ Babus: *Diszkrét Werbőczy-évforduló: legendás és elátkozott*, i. m. 22–23. o.
- ²⁴ Eckhart Ferenc: *Magyarország története*. Káldor Könyvkiadóvállalat, Budapest, 1933, 144. o.
- ²⁵ Act XVIII. of 1635, the power to make laws and statutes rests with the king and the country, private rulings are null and void. As the power to law and statutes lies in the competence of the king and the nation, rulings issued by individuals in their own interest may not oblige for anyone in the country: I. § It was stated that acts, articles and statutes disregarding title number three of the second part or title number two of the third part of the Triple Book should not be enforceable, and lacking royal approval and assent are null and void. www.1000ev.hu
- ²⁶ The most important feature of the old royal properties e.g. cities is that they are directly subordinated to the Crown, so they cannot be granted to and become the property of landowners, Ferenc Eckhart makes the same statement.
- ²⁷ Táncsics published his views in his own newspaper, The Workers' Paper in 1848.
- ²⁸ Zétényi Zsolt: *A Szentkorona-eszme időszzerűsége*. www.kincseslada.hu/magyarsag/content.php?article. 279
- ²⁹ Kardos József: *A Szent Korona-tan és a legitimizmus*. Gondolat Könyvkiadó, Budapest, 2012, 46. o.
- ³⁰ According to Emma Bartoniek witnesses are obliged by the Holy Crown to tell the truth in the 14th century already.
- ³¹ Veres András: The unconditional respect for facts and causality, the admiration for the well defined method, the almost over-scrupulous denial of competences, the belief in the impossibility of logical and empirical evidences. These criteria are satisfied by the sciences, thus they became the example and the standard. Veres András: *A tudomány fogalmának és szerepének változatai Karinthy prózájában*. Ponticulus Hungaricus, 2011/10. members.iif.hu/visontay/ponticulus/rovatok/hidverok/karintytudomany.html
- ³² Tóth Zoltán József: *Az Eckhart-vita időszzerűsége*. Iustum Aequum Salutare, 2007/1. III. 156. o. ias.jak.ppke.hu/hir/ias/20071sz/ias_153_164.pdf. The second Eckhart debate took place in the 1950s with the purpose of the condemnation of the Hungarian political and constitutional systems before 1945 (except for those which were regarded as revolutionary and progressive).
- ³³ Saying exactly the debate raged between Ferenc Eckhart and the views of school of legal history, because Timon has died in 1925. Another source of conflict between Ferenc Eckhart the school of legal history were their contrasting viewpoints on the Golden Bull, Ferenc Eckhart attached little importance to it as well t. Eckhart's views. In: Tóth: *Megmaradásunk alkotmánya...*, i. m. 175–185. o.
- ³⁴ Kardos, i. m. 58. o.
- ³⁵ Eckhart Ferenc: *Magyar alkotmány és jogtörténet*. Politzer Zsigmond és Fia, Budapest, 1946, 240. o.
- ³⁶ Timon, i. m. 15. o.; Tóth: *Megmaradásunk alkotmánya...*, i. m. 182. o.
- ³⁷ While anointing was used for coronation ceremonies in Europe, the Holy Crown was used for ceremonial blessings. The Crown as the symbol of the state appeared in a contract made with Veneto in 1381.
- ³⁸ Timon, i. m. 10. o.
- ³⁹ Zlinszky János: *Történeti alkotmányunk fejlődése*. Magyar Szemle, Új folyam, 2002/3–4. www.magyar-szemle.hu/cikk/20060815_torteneti_alkotmanyunk_fejlodes_1_resz; Tóth: *Megmaradásunk alkotmánya...*, i. m. 181. o.; Tóth Zoltán József: *Magyar közjogi hagyományok és nemzeti öntudat a 19. század végétől napjainkig*. Adalékok a Szent Korona-eszme történetéhez. ÚtraValó – Pázmány Péter Elektronikus

- Könyvtár, 95. o. www.ppek.hu/konyvek/Toth_Zoltan_Jozsef_Magyar_kozjogi_hagyomanyok_es_nemzeti_ontudat_1.pdf
- ⁴⁰ Tóth: Megmaradásunk alkotmánya..., i. m. 216. o.
- ⁴¹ Bartoniek, i. m. 71. o.
- ⁴² Uo. 67–85., 173. o.
- ⁴³ Uo. 77. o.
- ⁴⁴ Bibó István: *A magyar fejlődés útja a szabadságharcig*. In: Szilágyi Sándor: Bibó István. Új Mandátum Kiadó, Budapest, 2001, 138., 179–180. o.
- ⁴⁵ Máthé, i. m. 295. o.
- ⁴⁶ Return of the Crown on 6th January. “The United States guarded the treasure at eight different places by the American army between 1945 and 1953, then they were stored in a strongroom in Fort Knox in Kentucky. The American leaders had been pondering to give the Crown of St. Stephen back to Hungary from the beginning of the seventies but the conditions were fulfilled only in the second part of the decade.” www.magyaralmas.hu/napok/szentkoronahazaterese
- ⁴⁷ According to the opinion polls the Crown is still the strongest symbolic object for the Hungarian population. www.delmagyar.hu/belfold_hirek/szazadveg_felmeres_szechenyi_es_a_szent_korona_szimbolizalja_magyarorszagot/2214535/
- ⁴⁸ www.szentkoronaorszaga.hu/hun/news.php
- ⁴⁹ The Board meets as necessary but at least once a year. The President convenes the Board. At least the presence of 3 members of the Board is necessary for a quorum, the Board passes its decisions by a simple majority. The members of the Board do not get any remuneration, the Board defines the detailed rules of its operation itself.
- ⁵⁰ The cloak is stored in the Hungarian National Museum.
- ⁵¹ Gréczy Zsolt: *Bajokra Szent-Korona-tan. Értelmiségiek válságtanácskozása*. Népszabadság, 2005. október 12. article.wn.com/view/2005/10/12/Bajokra_Szent_Koronatan/
- ⁵² Horváth Pál: *Horváth Pál beszéde a dr. Timon Ákos-emléktábla avatásán 2000. augusztus 27.* In: Tóth: Magyar közjogi hagyományok..., i. m. 15. o.
- ⁵³ Zétényi, i. m.
- ⁵⁴ Uo.
- ⁵⁵ Rác Lajos: *Hatalmi szimbolika a késő középkori magyar királyságban*. In: Ünnepi tanulmányok Rác Attila 75. születésnapja tiszteletére. Szerk.: Cserny Ákos, Nemzeti Köszolgálati és Tankönyvkiadó Zrt., Budapest, 2013, 425. o.
- ⁵⁶ Máthé, i. m. 282. o.
- ⁵⁷ Uo. 281.
- ⁵⁸ Tamás András: *Közjogi mítoszok*. In: Szuverenitás és alkotmány. Formatori iuris publici. Studia in honorem Geisae Kilényi septuagenarii. Ünnepi kötet Kilényi Géza professzor hetvenedik születésnapjára. Szerk.: Hajas Barnabás, Schanda Balázs, PPKE JÁK – Szent István Társulat, Budapest, 2006, 467–468., 475. o.
- ⁵⁹ Pokol Béla: *Alkotmányozás és a Szent Korona-eszme*. jesz.ajk.elte.hu/pokol43.html
- ⁶⁰ Uo.
- ⁶¹ www.1000ev.hu

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1635. évi XVIII. törvénycikk a törvények és statutumok alkotásának hatalma a királyt és az országot illeti; magánosok rendelkezései semmisek.

1930. évi XXXIV. törvénycikk a törvénykezés egyszerűsítéséről.

2000. évi I. törvény Szent István államalapításának emlékééről és a Szent Koronáról.