

## **Symbol or Concept? An Overview of the Doctrine of the Holy Crown of Hungary**

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**On the occasion** of the fortieth anniversary of the United States returning to Hungary her symbol of enduring constitutionality, the story of the Holy Crown is once again front and center. Our use of the word “symbol” already in the very first sentence is intentional, for in addition to the “visible” manifestation of the crown, an “invisible” aspect surrounds it as well.<sup>1</sup> The invisible crown represents a set of ideas that is embodied in our Holy Crown. Throughout the history of our constitution, the most important of these is the so-called Doctrine of the Holy Crown, which is what we focus on below.

### **How do the Concept of the Holy Crown and the Doctrine of the Holy Crown differ?**

Although the literature often uses the terms interchangeably, we believe that separately defining them is more appropriate.<sup>2</sup> The Concept of the Holy Crown covers the symbolism of the crown (for now let us set aside the point from which we may consider the Hungarian crown as holy). For example in King St. Stephen’s (1001–1038) Admonitions to his son Prince Emeric, the crown appears as both earthly royal authority and as the symbol of heavenly and eternal power.<sup>3</sup> Later, the Holy Crown itself came to symbolize the territory of the state; we often come across the phrase: “Lands of the Holy Crown”. These are, of course, only examples. In our work we do not attempt to provide an overarching analysis of symbology of the crown.

In contrast to the mentioned symbols, the Doctrine of the Holy Crown is a public law (“constitutional law”) tenet whose first phrasing can be traced to legal theorist and statesman István Werbőczy (approximately 1458–1541), who was a judge on the royal high court.

The starting point of the Doctrine is that the Hungarian state is composed of the king and the nation. (At that time, one's status as nobility, rather than what his mother tongue was, determined whether he belong to the nation.) The two main components of the state, the king and the nation, together made up the "whole body of the Holy Crown". The supreme authority of the state thus belonged to the whole body of the Holy Crown. Thus it follows that on the one hand, the members of the nation participate in the wielding of state power through the right of the crown, while on the other hand, the king is not inherently endowed with power, but rather acquires it through the right of the crown. As such, coronation in Hungary was not a formal ceremony, but rather a public law act: through the coronation, royal power passed from the crown to the king.<sup>4</sup> Thus the essential element of the Doctrine is division of power; in Hungary an autocratic monarch or despot (in modern parlance: a dictatorial "President of the Republic") is not recognized.

#### **A short phylogeny on the Doctrine of the Holy Crown**

The progression of symbology is naturally connected to the Doctrine, so from this perspective it is important to note that by the 15th century in Hungary, the Holy Crown no longer represented the power of the king, but rather the authority of the state independent of the king. This had already been the case in 1401, when Hungarian King Sigismund of Luxembourg (1387–1437) was detained and the barons considered his throne abrogated. The royal council metamorphosed into a country-wide council that exercised power in the name of the Holy Crown.<sup>5</sup>

In *Tripartitum* (Triple Codex, *The Customary Law of the Renowned Kingdom of Hungary: A Work in Three Parts*), published in 1514, István Werbőczy created the Doctrine by connecting the notion of division of powers with the Holy Crown, which symbolized the authority of the state, and with organic approach to the state concept. (Organic state concept, which draws a comparison of the state to a living body, had already been made in ancient times. In Ancient Rome, for example, Menenius Agrippa had compared the state to a human body, made up equally of patricians and plebeians.<sup>6</sup> Although the Church conveyed organic state concept in the image of the body of Christ during the Middle Ages, Werbőczy could have been familiar with this symbolism via his studies of Roman law, as evidenced by his

attempts at imparting some Roman legal rules in *Tripartitum*. That these rules were not implemented in jurisprudential practice is another question, however.)

In one of the most often quoted parts of *Tripartitum*, Werbőczy wrote the following about the mutual interdependence between ruler and nobility, a.k.a. division of powers: "...because the prince [ruler] is chosen only by noblemen, who are noblemen by the grace of the prince... [...] And these noblemen [...] are considered as members of the Holy Crown."<sup>7</sup> The latter sentence mirrors organic state concept, in which Werbőczy replaced the human body with the Holy Crown. It is true that Werbőczy tried instead to trace equal participation in legislative power to the principle of sovereignty of the people,<sup>8</sup> but we also do not contend that he formulated a final and comprehensive portrayal of the Doctrine. The Doctrine came to full "maturity" in the 19th century via public law scholars.

By the Habsburg era, Werbőczy's construction had begun to crumble, although in 1553, under Ferdinand I, the *Quadripartitum* (Quaternary Codex) was finished, which still recognized the Doctrine of the Holy Crown,<sup>9</sup> and Baron Péter Révay, Turóc County Lord Lieutenant and Royal Crown Guard,<sup>10</sup> published *De sacra corona regni Hungariae...* in 1613, in which he referred to it as "the law of laws". In 1687, however, the right of election of kings was suspended under Leopold I; thus from the 17th century, the crown reverted to being but an emblem symbolizing the power of the king. Additionally, the symbology had also come to mean continuity in terms of territorial integrity, which could already be well perceived by the 19th century. (In 1848, union between Hungary and Transylvania had to be demanded.)

Constitutional reforms in 1848 had an impact on the Doctrine of the Holy Crown, too, as prior to 1848, only landowning nobility were considered to be members of the Holy Crown. From this point, however, based on the principle of equal rights of citizenship, every commoner, including peasants, became a member. Moreover – in connection to the abolition of Aviticum – main landownership of the Holy Crown ceased, which was related to the territory of the country.<sup>11</sup> (For earlier, the Holy Crown Domain Doctrine considered the Holy Crown as the root of every right of possession.)

The theories of Werbőczy were modernized by the public law scholars and legal historians of the Era of the Dual Monarchy. Legal historian Imre Hajnik<sup>12</sup> (1840–1902) considered the parliament as the body of the crown that unified the king and the “nobility” (i.e. the nation). He was also the originator of the term “Doctrine of the Holy Crown”. According to Hajnik, Hungarians were characterized by their public law thinking, unlike the liege societies of the West. The Doctrine of the Holy Crown also mirrors this public law mentality.<sup>13</sup>

Ákos Timon<sup>14</sup> (1850–1925) was the one, however, who really worked out the Doctrine, enriching it with a singular mysticism. From Timon’s perspective, the Doctrine was no longer limited by time and space, for he believed that the main elements at the time of the Carpathian Conquest still prevailed in his era. He considered the Doctrine of the Holy Crown as a “hungaricum”, as something uniquely belonging to the Hungarians, in the sense that this personification of the crown could not be found anywhere else on Earth. He was convinced that the Doctrine was “the most distinctive creation on the evolution of the constitution of the Hungarian nation”,<sup>15</sup> the significance of which was comparable only to that of the English.

### **Timon’s views and historiography**

By the beginning of the 20th century, Timon’s views had come under fire. Among others, historian Gyula Szekfü<sup>16</sup> (1883–1955) also saw the roots of the Doctrine of the Holy Crown in the emergence of an “estates of the realm” system in Hungarian society, rather than in the Hungarian public law genius that spanned uninterruptedly several different eras. He associated the whole conception of the Doctrine to Werbőczy’s work. However, among the public lawyers of the Horthy Era<sup>17</sup> – chiefly Móric Tomcsányi<sup>18</sup> (1878–1951) and Kálmán Molnár<sup>19</sup> (1881–1961) – Timon’s approach was the decisive winner. The catalyst for the debate, which remains unsettled to this day, was an outline study<sup>20</sup> published by legal historian Ferenc Eckhart<sup>21</sup> (1885–1957) in 1931.

Before we summarize the main points of contention, we must touch upon a few paradoxes. For example, as Timon had died in 1925, Eckhart had to debate the contemporary legal scholars and politicians who shared Timon’s views. While Eckhart lacked a degree in juris-

prudence, neither were the public legal scholars against whom he debated liberal arts historians. Tomcsányi emphatically stated that the history of law was “important as an independent discipline, while at the same time being an auxiliary discipline of public law”.<sup>22</sup> Thus the two sides talked past each other and could not reconcile their intellectual differences. Moreover, the debate scarcely touched on the essence of Doctrine of the Holy Crown. According to historian Elemér Mályusz (1898–1989): “Timon’s explanation barely broached the Doctrine of the Holy Crown”.<sup>23</sup> Eckhart himself declared that the debate added nothing to the history of the Doctrine of the Holy Crown. Only In 1941, ten years after the beginning of the debate, was *The History of the Concept of the Holy Crown* published, which was a book that Eckhart had written in the wake of the debate. Finally, we must emphasize that with his 1931 outline study, Eckhart had wanted to provide a critical approach to legal historiography, but Timon’s views were perfectly suited for the post-Treaty of Trianon<sup>24</sup> emotional atmosphere.<sup>25</sup> His paper generated so much indignation that, for example, Gábor Ugron Jr. demanded that he be stripped of his professorship.

Eckhart denied that the Doctrine of the Holy Crown could be traced back to St. Stephen. According to his view, the early version of the Doctrine could not be found in the Admonitions. Only from the 15th century does the Hungarian crown express the king and the estates’ collective power. We believe that it is not necessarily appropriate to look for symbology of the crown in the Admonitions since the essence of the doctrine is division of power. Different questions entirely are when to consider the concept of division of power coming into association with the Holy Crown, and who shared power (in addition to the king) via the division of power, and to what extent their power extended. If we peruse the Admonitions from this point of view, we can come upon an intriguing passage: “The council installs kings and decides the fate of kings...”<sup>26</sup> In our view, this “rhymes” with the lines quoted by Werbőczy.

Eckhart had a Concept of the Holy Crown that was continuously altered in context, changing in accordance with the significance of the role played by various social groups which shared power with the king. Kálmán Molnár, however, emphasized constitutional-

historical continuity, and that the genius of Hungarian public law did not necessarily shine through the sources.

Eckhart also considered the development of Hungarian law as unique, but not isolated, for in his opinion, the Hungarian doctrine of the crown drew upon Polish and Czech influences. He stated that drawing a parallel between English and Hungarian circumstances was nothing more than “fantasy arising from national hubris”.<sup>27</sup> According to Tomcsányi, other nations, including the English, also employed a state concept based upon a duality of royal authority and individual freedom. However, these lacked a construction as eloquent as our Doctrine of the Holy Crown. In neither England nor France was coronation as significant as in Hungary. For the principle of *rex non moritur* (The king never dies), according to which the throne is never vacated because the rightful heir of the king immediately assumes power the moment the king dies, was alien to Hungarians. Under French public law, this principle was referred to as *le roi est mort, vive le roi* (The king is dead, long live the king!) In contrast, the Holy Crown was the representative of the continuity of royal power in Hungary.<sup>28</sup>

Indicative of this was that prior to the coronation of Vladislaus I (1440–1444), Elizabeth of Luxembourg, daughter of King Sigismund, purloined the Holy Crown in order to have her 3-month-old son Ladislaus the Posthumous (1444–1457) crowned. In response, however, the estates decreed that their will was the source of royal power rather than the crown (1440). Starting from this basis, Tomcsányi determined that in the event of the destruction of the Holy Crown, the nation had the right to substitute for it, and if necessary could also replace the royal body as well. From a public law perspective, this was a(n) (additional) basis for the regency of Miklós Horthy.<sup>29</sup>

Eckhart justifiably stated that the public lawyers had not made use of source criticism. For example, the points of the Etelköz Blood Oath<sup>30</sup> as recorded by Anonymus<sup>31</sup> were considered as authentic sources by Tomcsányi and Molnár. Even though there was no critical historiography during the Middle Ages, proto-historiographers willingly projected the thinking of their time onto the past. Siding with the historians, Emma Bartoniek<sup>32</sup> (1894–1957) also pointed out that Timon had improperly formulated the theory of the Holy Crown in

many respects, for he had relied only on Werbőczy's work and some medieval documents.<sup>33</sup> However, we must reiterate that our view is that emphasis should not be put on the authenticity of the Blood Oath, but rather on whether or not there had been any division of power in ancient Hungarian society. If yes, then it could be considered a precursor of the later Doctrine of the Holy Crown.

### **The debate continues to this day**

The debate did not end in the Horthy Era, but rather subsided. The second debate, which took place in the 1950's, contributed to Eckhart's declining health and eventual death. Because of his participation in the 1956 Hungarian Revolution,<sup>34</sup> he was accused of working on "inappropriate" intellectual history, but death saved him from persecution. The third debate regarding the longevity of the Doctrine of the Holy Crown took place in the wake of the 1989/90 System Change-over,<sup>35</sup> and continues to this day.<sup>36</sup>

It is an undeniable fact, however, that the "invisible crown" played a significant role in the move of the Holy Crown from the Hungarian National Museum to the Hungarian Parliament Building at the turn of the Hungarian Millennium.<sup>37</sup> Recognizing its role in the historic constitution of Hungary, the Fundamental Law of Hungary, passed in 2011, reads as follows: "We honor the achievements of our historical constitution and we honor the Holy Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation."<sup>38</sup>

### NOTES

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<sup>1</sup> This term is used by: PÉTER László: The Holy Crown of Hungary. The visible and invisible. *The Slavonic and East European Review*, 2003/3. pp. 421–510.

<sup>2</sup> The two concepts are also differentiated by László Dávid TÖRŐ in his work "Eckhart Ferenc értelmezése a Szent Korona-eszméről" (Ferenc Eckhart's Interpretation of the Notion of the Holy Crown), *Magyar Szemle*, 2017/7–8.

<sup>3</sup> ECKHART Ferenc: *A szentkorona-eszme története* (The History of the Notion of the Holy Crown), Budapest, Magyar Tudományos Akadémia (Hungarian Academy of Sciences), 1941. – Reprint: Máriabesnyő–Gödöllő, Attraktor, 2003. (Hereafter: ECKHART, [1941] 2003.) – *Szent István Király Dekrétomainak Első Könyve. Intelmek Szent Imre Hercegnek* (The First Book of the Decrees of King St. Stephen. Admonitions to Prince St. Emeric, hereafter: Admonitions.)

<sup>4</sup> TOMCSÁNYI Móric: *Magyarország közjoga* (Public Law of Hungary), Budapest, Királyi Magyar Egyetemi Nyomda (Royal Hungarian University Press), 1942<sup>4</sup>. p. 282. (Hereafter: TOMCSÁNYI, 1942.)

<sup>5</sup> CSIZMADIA Andor – KOVÁCS Kálmán – ASZTALOS László: *Magyar Állam- és Jogtörténet* (History of Hungarian State and Law), Budapest, Nemzeti Tankönyvkiadó, 1998. p. 102.

<sup>6</sup> Titus LIVIUS: *Ab urbe condita*, II. 16.

<sup>7</sup> Quoted in length by: MOLNÁR Kálmán: *A Szent Korona-tan kifejlődése és mai jelentősége. A Magyar Nők Szent Korona Szövetségében 1927. február 2.-án tartott előadás* (Evolution and Significance Today of the Doctrine of the Holy Crown. A presentation made to the Holy Crown Alliance of Hungarian Women on February 2nd, 1927), Pécs, Dunántúl Egyetemi Nyomdája (Transdanubia University Press), 1927. p. 7.

<sup>8</sup> Please see: ECKHART, [1941] 2003. p. 126.

<sup>9</sup> TOMCSÁNYI, 1942. p. 288.

<sup>10</sup> Please see: SZILÁGYI Péter: *Révay Péter és a Szent Korona (1619–1622)* (Péter Révay and the Holy Crown /1619–1622/), Budapest, M. T. Akadémia (Hungarian Academy of Sciences), 1875.

<sup>11</sup> TOMCSÁNYI, 1942. p. 289.

<sup>12</sup> Imre Hajnik was a member of the Hungarian Academy of Sciences (corresponding from 1871, and regular from 1880).

<sup>13</sup> HAJNIK Imre: *Magyarország az Árpád-királyoktól az ősiségnek megállapításáig és a hűbéri Európa. Állam- és jogtörténelmi kísérlet a magyar álladalmi és társadalmi élet alapzatainak és fejlődési irányzatainak feltüntetésére.* (Hungary from the Árpád Kings to the declaration of Aviticum and Liege Europe. A state and law historical attempt for the indication of the foundational and evolutionary trends of Hungarian state and social life), Pest, Heckenast, 1867.

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<sup>14</sup> Timon was appointed to the Department of the History of the Hungarian Constitution and Law at the University of Budapest in 1890, where he taught until his death in 1925.

<sup>15</sup> TIMON Ákos: *A szent korona elmélete és a koronázás* (Theory of the Holy Crown and Coronation), Budapest, Stephaneum Nyomda (Stephaneum Press), 1920. p. 15.

<sup>16</sup> Gyula Szekfű was named professor of the Department of Modern Hungarian History at the University of Budapest in 1925. In that same year, he became a corresponding member of the Hungarian Academy of Sciences, becoming a regular member in 1941.

<sup>17</sup> In Hungarian history, the Horthy Era refers to the Interwar period and is named after Miklós Horthy, Regent of the Kingdom of Hungary.

<sup>18</sup> Between 1922 and 1945, Móric Tomcsányi was a professor of Hungarian public law and administrative law at the University of Budapest. He became a corresponding member of the Hungarian Academy of Sciences in 1928. He was elected as a regular member in 1943.

<sup>19</sup> Between 1925 and 1944, Kálmán Molnár was a professor of Hungarian public law at the University of Pécs. He became a corresponding member of the Hungarian Academy of Sciences in 1942. Following the German occupation of Hungary, the Arrow Cross sent him to an internment camp (in 1944).

<sup>20</sup> ECKHART Ferenc: *Jog- és alkotmánytörténet*. (History of Law and Constitution). In: *A magyar történetírás új útjai* (New Ways of Hungarian Historiography). Ed. HÓMAN Bálint. Budapest, 1931. pp. 269–323.

<sup>21</sup> In 1929, Ferenc Eckhart became a professor in the Department of Law and Constitutional History of the Faculty of Law at the University of Budapest. He became a corresponding member of the Hungarian Academy of Sciences in 1919, and a regular member in 1934.

<sup>22</sup> TOMCSÁNYI Móric: *Magyar közjog. Alkotmányjog* (Hungarian Public Law. Constitutional Law), Budapest, Királyi Magyar Egyetemi Nyomda (Royal Hungarian University Press), 1926. p. 6.

<sup>23</sup> MÁLYUSZ Elemér: *Az Eckhart-vita* (“The Eckhart Debate”, Hungarian language). *Századok* (Centuries), 1931/9–10. p. 415.

<sup>24</sup> In the Treaty of Trianon, signed on June 4th, 1920, Hungary lost two-thirds of her territory.

<sup>25</sup> Concluded by: BÓDI Stefánia: *A Szent Korona-eszme különbségei Eckhart Ferenc, Timon Ákos és Bartoniek Emma felfogásában*. *Polgári*

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*Szemle* (Civil Review), 2015/1–3. – English version: BÓDI Stefánia: Different Concepts on the Doctrine of the Holy Crown in the Works of Ferenc Eckhart, Ákos Timon and Emma Bartoniek. *Jogelméleti Szemle*, 2016/2. 18–31.

<sup>26</sup> Admonitions, VII. Significance of the Council.

<sup>27</sup> ECKHART Ferenc: *Magyar alkotmány- és jogtörténet* (Hungarian Constitutional and Legal History). Budapest, Polizer Zsigmond és fia (Zsigmond Polizer and his son), 1946. p. 240.

<sup>28</sup> TOMCSÁNYI, 1942. pp. 285–286.

<sup>29</sup> *Ibid.* p. 285.

<sup>30</sup> According to Hungarian tradition, the first basic treaty in the history of the Hungarians was the Etelköz Blood Oath. According to Anonymus' *Gesta Hungarorum*, the Oath was taken by the chieftains (Álmos, Előd, Ond, Kond, Tas, Huba and Töhötöm) of the seven tribes (Tarján, Jenő, Kér, Keszi, Nyék, Megyer and Kürtgyarmat) in Etelköz. To reinforce their commitment, they sealed the Oath by cutting themselves, dripping their blood in a pan and mixing it together.

<sup>31</sup> Anonymus (ca late 12th century – early 13th century) was the notary and chronicler of a Hungarian king, probably Béla III. Just as we do not know his exact date of birth, we cannot know with certainty under whom he served. Anonymus referred to himself only as Master P. ("P. dictus magister").

<sup>32</sup> In 1916 Bartoniek was hired by the National Széchényi Library.

<sup>33</sup> BARTONIEK Emma: *A magyar királykoronázások története* (History of Coronations of Hungarian Kings). Budapest, Magyar Történelmi Társulat (Hungarian History Association), 1939. – Reprint: Budapest, Akadémiai (Hungarian Academy of Sciences), 1987.

<sup>34</sup> The 1956 Revolution and War of Independence was a Hungarian fight for freedom against Stalinist terror and Soviet occupation.

<sup>35</sup> The 1989/90 System Changeover was an era in Hungarian history that witnessed the Hungarian state breaking with the (communist) one-party state and peacefully transitioning to a democratic republic.

<sup>36</sup> BÓDI, 2015. TÓTH Zoltán József: Az Eckhart-vita időszerűsége (The Relevance of the Eckhart-Dispute). *Iustum Aequum Salutare*, 2007/1. 153–163.

<sup>37</sup> Act I of 2000: Commemoration of the founding of the Hungarian state and the Holy Crown, 2. § (2).

<sup>38</sup> Fundamental Law of Hungary (April 25th, 2011) National Creed.