

# The Holy Crown of Hungary, Visible and Invisible

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The reader at this point will certainly ask: how it is possible that a national relic of such great significance has never been properly examined in order to attain satisfactory conclusions [about its origin]. The answer is as contradictory as unexpected: precisely because such importance was attached to the crown; because it has been treated as the greatest national treasure.

Kálmán Benda and Erik Fügedi on the Holy Crown<sup>1</sup>

THE history of political ideas reveals continuities and unexpected revivals. Too frequently it proves premature to pronounce a political idea dead. A well-known example which demonstrates that major political ideas hardly ever disappear without trace has been the re-emergence of the natural law theory which had spent years in the doldrums while utilitarianism dominated political philosophy in Britain and America.<sup>2</sup> Ideas whose impact is more limited and confined to a single national society could, likewise, unexpectedly revive after their apparent demise.

When over forty years ago the present writer, working towards his DPhil in Oxford, took up the doctrine of the Holy Crown of Hungary, he thought that the subject was of purely historical interest, or at least one without any direct relevance to Hungarian politics, present and future. The reason why this assumption looked obvious at the time was not even primarily because Hungary, as a part of the Soviet bloc, was ruled by Communists who rejected and sneered at any political

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<sup>1</sup> Kálmán Benda and Erik Fügedi, *Tausend Jahre Stephanskroner*, Szeged, 1988, translation of *A magyar korona regénye*, Budapest, 1979 (hereafter, *Stephanskroner*), p. 20.

<sup>2</sup> The revival followed the appearance of John Rawls's *A Theory of Justice*, Cambridge, MA, 1971.

tradition of the old order which they replaced.<sup>3</sup> The reason went deeper: it was generally taken for granted, even by opponents of the Communist regime, that political traditions, like the ideas of the Holy Crown, however important they had been in past centuries, were closely tied to the institution of the monarchy that had irretrievably perished by the end of the Second World War. By 1945 the whole traditional social order that used to maintain the institutions of the kingdom was gone. It is true that even after 1945 some émigré groups of the displaced political élite, having escaped to the West from Nazi or Communist rule, cherished old political traditions including ideas about the Holy Crown.<sup>4</sup> In the 1960s a Hungarian scholar, Charles d'Eszlary, published in France a three-volume history of the Hungarian political institutions from the Middle Ages,<sup>5</sup> considered largely in terms of the Holy Crown doctrine (the doctrine was a late-nineteenth-century innovation, of which more later). He must have been a 'last Mohican'. For the world at large, so far as it took cognizance of Hungarian constitutional matters, the doctrine was as dead as the dodo.

Yet, the reports of the death of the Holy Crown tradition turned out to be greatly exaggerated. Come 1989, Eastern Europe's *annus mirabilis*, Soviet power in the region collapsed and, together with that, Communist rule. Hungary, like a few other former satellites, became a parliamentary democracy. There was no question of restoring either the monarchy or the old social order. And yet the Holy Crown, like that fabled Egyptian bird, the phoenix, miraculously came forth with new life. The revival, as in the past, touched on the visible St Stephen's Crown as well as the invisible crown of ideas. Further, what makes the revival notable is that, as so frequently in the past, the 'crown question' stirred up an unusually large amount of political dust.<sup>6</sup> Indeed, at one point the Academy of Sciences had to intervene to resolve the political conflict generated by the revival of the tradition. Leaving out antecedents, to which I shall in due course return, the millennial celebrations provided the occasion for the revival of a cult with remarkably strong roots. For, in Hungarian political rhetoric and historiography, the

<sup>3</sup> I am informed that after 1945 the Law Faculty at the University in Budapest had on its noticeboard: 'No dissertation will be considered on the law of rape and on the doctrine of the Holy Crown'.

<sup>4</sup> Even in Hungary not everybody changed their political beliefs after the War. I recall a meeting with an old fogey in Budapest in 1955 before his arrest, secret trial by the ÁVH and subsequent death in prison, who thought that the Russians would soon leave Hungary when a *nádor* (palatine) was elected and the monarchy restored after a plebiscite.

<sup>5</sup> *Histoire des institutions publiques Hongroises*, Paris, 1 (1959), 2 (1963), 3 (1965).

<sup>6</sup> A perplexing case is Kim Lane Scheppele's who writes that by moving the crown to parliament (see below) 'it has become a symbol concentrating the dark passions of Hungarian conservatism, particularly those that move toward fascism', 'The Constitutional Basis of Hungarian Conservatism', in *East European Constitutional Review*, 9 (Fall 2000), 4, pp. 51–57 (p. 51).

second millennium is intimately connected with the first. St Stephen, who turned Hungary into a Christian kingdom, was crowned at Christmas in AD 1000. In December 1999, after sharp debates between the ruling coalition of the moderate right parties, parliament passed a bill which commemorated the establishment of the State one thousand years ago and ordered the Crown of St Stephen, otherwise known as the Holy Crown, together with the other coronation *regalia*, to be transferred from the National Museum to parliament for the millennial year.<sup>7</sup> On 1 January 2000, it was reported, the crown

was placed inside a glass cabinet and carried under heavy security in an armoured car followed by a motorcade. A guard of honour carried it up the stairs into parliament and then a gun salute was fired over the River Danube.<sup>8</sup>

The *regalia* were received by the Corporation (*testület*) of the Holy Crown, created by the Law, consisting of the Republic's highest office holders.<sup>9</sup> The President of Parliament opened the celebration. Then the President of the Republic signed Law I of 2000 'To Commemorate the Establishment of the State by St Stephen and the Holy Crown'.<sup>10</sup> The preamble of the Law referred to the Holy Crown as 'the relic living in the memory of the nation and Hungarian constitutional tradition that embodies the continuity and independence of the Hungarian State'. Paragraph 2 of the Law ordered the transference of the Holy Crown to parliament. In his Address, the President said that the crown had for centuries signified the supreme power shared between the king and the nation as the crown's members.<sup>11</sup> This was followed by the Prime Minister's speech with the following operative passage:

<sup>7</sup> The government bill was passed on 21 December 1999 by a large majority after most of the references to the 'doctrine' of the Holy Crown were deleted from the ministerial draft. The bill (T/1816) 'A Szent István-i államalapítás emlékének megőrkítéséről és a Szent Koronáról' was submitted by Ibolya Dávid, Minister of Justice, in November 1999 and passed by the House's Constitutional and Judicial Committee on 1 December (T/1816/32). The bill's preamble was then substantially shortened by the House before it passed as Law I 2000, *Magyar Közlöny*, 1 January 2000, pp. 1–2. The Centre-Right government gave way after the forceful intervention by the President of the Hungarian Academy of Sciences whose team of historians sanitized the text of the preamble: see László Szále and László N. Sándor, 'Tudomány és közélet', *Magyar Tudomány*, 2000/6, pp. 736–41 (interview with President Ferenc Glatz). Also, the Opposition, before its revision, threatened to take the bill to the Constitutional Court. Still, the political Left, the Free Democrats and many Socialist deputies either voted against the revised bill or abstained and stayed away from the subsequent celebrations.

<sup>8</sup> *The Times*, 3 January 2000.

<sup>9</sup> Created by para. 5 of the Law. Its members are the President of the Republic, the Minister President, the President of Parliament, the President of the Constitutional Court and the President of the Hungarian Academy of Sciences.

<sup>10</sup> *Magyar Közlöny*, 1 January 2000, pp. 1–3.

<sup>11</sup> This is the gist of the doctrine of the Holy Crown, deleted from the bill after debate but affirmed by the President of the Republic. *Magyar Nemzet*, 3 January 2000, pp. 1 and 5.

the head of the Christian Church sent a crown to Stephen to make him anointed king; the king who created nation and patria; the country that through struggles, strife and sacrificed lives became a part of Christian Europe. This crown created the possibility for Hungary's entry into Europe.<sup>12</sup>

Clearly, independent statehood and entry into Europe are the two mantra phrases today in the rhetoric associated with the Holy Crown.

It is too early to speculate on how far these solemn flourishes about the crown will go beyond the millennial celebrations. There is plenty of opposition particularly in the Budapest left-wing intelligentsia to the new political rhetoric about the crown. Yet what has already happened clearly demonstrates that for many Hungarians the crown tradition is still alive and well.<sup>13</sup>

When we examine Hungarian political rhetoric concerning the Holy Crown, the first striking fact to observe is the central importance of the visible, material diadem in the generation of the crown tradition. We have to discuss, therefore, however cursorily, the provenance and the political role of St Stephen's visible crown before turning to the invisible *corona*, a multivocal term, and its uses in the past and the present.

*The Crown of St Stephen and its provenance*

It is doubtful whether there have ever been bestowed upon *regalia*, or indeed any object,<sup>14</sup> in a European country the cult and such an enduring political role that have been accorded to the Crown of St Stephen.<sup>15</sup> For centuries the diadem itself was not even clearly distinguished from the ideas associated with the crown. Sanctity, 'inamissibility' and mystery were attributed to the diadem in the Middle Ages which then retained a central place in modern constitutional politics. The provenance of the diadem is uncertain. Moreover, the expansion of research over the years has only increased rather than reduced the uncertainties about the origin of the crown's various parts. The vast literature on the subject reached consensus only on the two points that (i) the crown which has borne his name for centuries, never embellished St Stephen's head, and that (ii) the crown was assembled

<sup>12</sup> Ibid., p. 5.

<sup>13</sup> This is inadvertently recognized even by the opponents of its present revival when they criticize the government for taking up the crown tradition in order to do better in the opinion polls.

<sup>14</sup> The Stone of Scone (Destiny) on which Scottish kings were crowned has had a longer history than the Hungarian diadem but it did not become a repository of ideas and rights. The Black Stone of the Kaaba in Mecca is purely religious.

<sup>15</sup> Curiously, this point has been neglected by Hungarian scholars. But see Zoltán Tóth, *A Hartvik-legenda kritikájához*, Budapest, 1942, p. 97.

from parts with different provenance.<sup>16</sup> The lower crown, the so-called *corona graeca*, is a wide circular golden rim with enamels and stones to which *pinnae* (finials) are attached. This part of the crown might have been a gift crown, which was subsequently rearranged, or some other gift from Michael VII, Byzantine Emperor (1071–1078) to King Géza (1074–1077), or more probably his wife.<sup>17</sup> Opinion diverges even more widely on the nature of the upper crown, the so-called *corona latina*. This consists of two intersecting bands with eight enamels, each portraying an apostle, and, where they overlap, the ninth and largest enamel which portrays the Pantocrator, crudely mutilated by the hole to hold the surmounting cross which later went crooked.<sup>18</sup> Theories on the original function of the upper intersecting bands are many. Also, some scholars date the bands from the time of St Stephen;<sup>19</sup> others from the twelfth century. On the date of the crown's assembly in its present form, disregarding (with respect) some extravagant ideas about the whole crown being assembled in the year 1000, or even centuries before, opinion, once more, varies between the late eleventh and the fifteenth centuries, the late twelfth century being the favourite.<sup>20</sup> Nor is there, so far as one can see, consensus as regards the type of the assembled crown; is it a *stephanos*, a *stemma* or *kamelaukion*?<sup>21</sup>

<sup>16</sup> Neither point is surprising. Crowns named after founder kings are frequently from later periods and may be assembled from parts with different origin. Concerning the large literature see Iván Bertényi, *A magyar Szent Korona, Magyarország címere és zászlaja* (hereafter, *Szent Korona*), fourth edn, Budapest, 1996. A bewildering diversity of conflicting hypotheses and conclusions emerge from the author's summary of recent research, pp. 27–56. Éva Kovács, leading art historian, assessed in two chapters in her *Species modus ordo* (Budapest, 1998) the research into the Hungarian *regalia* since the Second World War, pp. 9–14 and 386–400; Éva Kovács and Zsuzsa Lovag, *The Hungarian Crown and Other Regalia*, 2nd ed., Budapest, 1980, offer the best photos, independent views and a short summary of recent research. Three important earlier studies from the post-war literature: Albert Boeckler, 'Die "Stephanskroner"', in P. E. Schramm, *Herrschaftszeichen und Staatssymbolik III*, Stuttgart, 1956; P. J. Kelleher, *The Holy Crown of Hungary*, Rome, 1951 (hereafter, *Holy Crown*); Josef Deér, *Die heilige Krone Ungarns*, Vienna, 1966 (hereafter, *Die heilige*).

<sup>17</sup> Most experts, following Magda Bárány-Oberschall and Josef Deér's studies, assume the original gift to have been a female crown.

<sup>18</sup> Sign of wear and tear or that of a botched job because of haste in the assembly of the diadem during a succession crisis?

<sup>19</sup> Kelleher suggested that the bands, with eight apostles only, might have been part of a bible cover or some other sacred object that survived from the treasury of the first king. The richly embroidered coronation robe, originally a chasuble, is, however, undoubtedly from St Stephen's court. The provenance of the other coronation *regalia* is diverse.

<sup>20</sup> For a summary of the different positions see Bertényi, *Szent Korona*, pp. 56–69, who concludes on the point that 'the secret of the Holy Crown is still unsolved'. Many historians date the assembly to the reign of Béla III (1173–1196). Deér argued for 1270 when, on the death of Béla IV, his daughter Anna escaped with the *regalia* to Prague and Stephen V hastily assembled a new crown for his inauguration: Deér, *Die heilige*, pp. 256f. György Györffy has recently argued (on rather thin evidence) that the assembly took place under Coloman: *István király és műve*, Budapest, 2000, pp. 356–61.

<sup>21</sup> See Szabolcs Vajay, 'A Szent Korona kamelaukion jellege', in Gyula Borbándi (ed.), *Nyugati magyar tanulmányírók antológiája*, München, 1987, pp. 310–21. The reader may be spared from explication of these terms.

The assembled diadem, as a whole, was up to 1790 held to be St Stephen's. At the coronation lunch of Emperor Leopold II as King of Hungary, scholars had a chance to discover the Greek inscriptions on the lower crown. But no proper examination of the crown was allowed either in 1790 or after.<sup>22</sup> Thus, in the nineteenth century, the *corona latina*, the upper part of the jewel, was still held to be St Stephen's. Indeed it was regarded as tangible proof of the veracity of Hartvic's account of the crown's origin. In his *Vita, Life of St Stephen*,<sup>23</sup> Bishop Hartvic, a century after the event, gave a colourful account of Bishop Ascherik's journey to Rome where he was sent by Stephen in the fourth year of his rule. The pope, acknowledging Stephen's work in establishing the Church in Hungary, granted him benediction, crown and apostolic cross.<sup>24</sup> The crown donation by the 'pope' (Hartvic did not know Sylvester II by name), as described in this extremely popular work which attained papal approbation,<sup>25</sup> was seen for centuries as an act which had established indissoluble ties between the Holy See and the kingdom, which underlined its independence from the German and the Byzantine emperors. In the nineteenth century, the crown donation thesis gave powerful support to the legal tenet that the Hungarian state had never been subordinated to any secular power; from its inception it possessed sovereignty.

The Sylvester crown donation did not look implausible to historians in the nineteenth century because of their views on the relationship between Pope Sylvester II (999–1003) and Emperor Otto III (983–1002). The young emperor who pursued an unrealistic dream, the *renovatio imperii Romanorum*, was not an equal match to the pope, his former teacher Gerbert, a highly educated skilful diplomat.<sup>26</sup> He must have been the crown's donor, so the argument continued, rather than Otto. The traditional mould into which the relationship between the two heads of Christianity had been pressed was broken by P. E. Schramm's seminal work published in 1929.<sup>27</sup> Far from being an ineffective dreamer, Otto III re-emerged as a powerful designer of an

<sup>22</sup> Kelleher summed up all the physical examinations of the Holy Crown before 1945: 'Those scholars who published the results of the brief investigations conducted under official auspices on the rare occasions when the Holy Crown was available for study, did so under pressure of the centuries-old tradition of sanctity, the aura of political significance surrounding the relic and a heritage of opinions, ecclesiastical and nationalistic, which engulfed the object.' *Holy Crown*, p. 17.

<sup>23</sup> *Scriptores rerum Hungaricarum*, ed. E. Szentpétery, 2 vols, Budapest, 1937–38 (hereafter, *SRH*), second edn (reprint with addenda) by K. Szovák and L. Veszprémy, Budapest, 1999, 2, pp. 401–40.

<sup>24</sup> *Ibid.*, pp. 412–14.

<sup>25</sup> C. A. Macartney, *The Medieval Hungarian Historians: A Critical and Analytical Guide* (hereafter, *The Medieval*), Cambridge, 1953, p. 165.

<sup>26</sup> German historians were critical of Otto III for abandoning his predecessors' *Sicherungspolitik* as regards German interests for fantasy.

<sup>27</sup> P. E. Schramm, *Kaiser, Rom und Renovatio*, 2 vols, Leipzig, 1929 (hereafter, *Kaiser*).



empire based on a universalistic ideal. Schramm reconstructed Otto's policy by the new titles his chancery introduced, particularly that of *servus apostolorum*, through which the emperor claimed a closer connection with St Peter than the pope.<sup>28</sup> Further, Otto's *renovatio* strengthened the emperor's position as *defensor ecclesiae*. His mission was to reduce the barbarians to obedience and convert them to Christianity under his leadership, especially in the East. Schramm asked for a reappraisal of Otto's rule in the establishment of the Polish and Hungarian kingdoms.<sup>29</sup> One of the several implications of his work was that the donor of Stephen's crown could not have been the pope alone.

Schramm broke an old mould without firmly establishing a new one. Among those who carried further his inquiry was A. Brackmann who, in his studies, reinterpreted the Polish and the Hungarian material. For him, Thietmar, the Bishop of Merseburg's almost contemporary reliable chronicle, offered decisive evidence in clearly stating that Stephen had received a crown 'through the favour and encouragement of the emperor'.<sup>30</sup> Brackmann concluded that through 'staatliche Umgestaltung' Poland and Hungary were incorporated into the Empire by Otto III and that Boleslav and Stephen became imperial lieutenants, positions from which, however, both kingdoms soon afterwards escaped.<sup>31</sup>

Hungarian historians were put on the spot and a mighty row ensued. The debate took place against the background of the rising, expansionist Third Reich. A Hungarian historian, Zoltán Tóth (by no means a sympathizer with the new Germany), had the temerity to go along with Schramm and even Brackmann's findings. In a substantial study,<sup>32</sup> prepared in 1937, he eliminated Hartvic's *Vita*, the main support for the Sylvester crown donation thesis, written around 1100 AD, from the proper sources on the establishment of the Hungarian kingdom. Composed a whole century after the event, Hartvic's *Vita* reflected the papal claims to supremacy in the investiture contest between the two heads of Christianity. Pope Sylvester II and Emperor Otto III, however, closely co-operated at the end of the tenth century and the Emperor's

<sup>28</sup> Schramm, *Kaiser*, 2, pp. 65–67.

<sup>29</sup> *Ibid.*, 1, p. 153; 2, p. 14.

<sup>30</sup> See passage note 44 below.

<sup>31</sup> See especially his *Kaiser Otto III und die staatliche Umgestaltung Polens und Ungarns*, Berlin, 1939, esp. pp. 25–27.

<sup>32</sup> Zoltán Tóth, *A Hartvik-legenda kritikájához (A szt. korona eredetkérdése)*, Budapest, 1942 (hereafter, *Hartvik-legenda*), 130 pp. This work written in 1937 for the *Szent István Emlékkönyv* (1938) was, because of its unacceptable views, rejected by the editors and was published later separately by the author. The reliability of Hartvic's *Life* was questioned by Hungarian historians, notably by János Karácsonyi (*Századok*, 1892, p. 136). In the 1930s, however, the doubts (until Tóth's work) disappeared. On Tóth, see Bertényi, *Szent Korona*, pp. 24–25.

will was probably the decisive factor in granting the crown to Stephen.<sup>33</sup> Alluding to the political conditions of Hitler's Central Europe, Tóth, aware of walking on to 'most dangerous terrain',<sup>34</sup> claimed, nevertheless, that he was guided by what he believed to be the truth.

József Deér led the attack against Tóth's iconoclastic views. In a masterly argued long piece<sup>35</sup> and in a *Századok* article Deér censured and taunted Tóth for blindly following (sometimes even misunderstanding) his German models.<sup>36</sup> His primary target was the new outlook established by Schramm, Brackmann and the other German historians on Otto III.<sup>37</sup> Their writings, Deér explained, were politically inspired; the universalistic imperial idea cloaked, as indeed it had even before Otto III, German hegemonic aspirations, the *Reich* behind the *imperium*. Once more the past was tied to the present:

The 1933 turning point did not only create the Third Reich but in close connection with this a new imperial idea.<sup>38</sup>

Deér went along with Schramm's German critics, who questioned whether Otto III's new titles, including the *servus apostolorum*, involved new claims.<sup>39</sup> As to Brackmann's *Umgestaltung*, that the Hungarian kingdom was established under the protection of Otto III and that Stephen became a 'patrician' of the empire, the thesis lacked proper evidence. It disregarded the fact that the *servus apostolorum* title had appeared in the Pentapolis donation letter in January 1001, only after the Hungarian coronation had taken place.<sup>40</sup> At any rate, there was no evidence that the new title was ever used in connection either with Poland or Hungary. Hungarian historians had already questioned the

<sup>33</sup> Tóth emphasized this even after his work was attacked by others, '*Történetkutatásunk mai állása*' körül. *A szent korona eredetkérdéséhez*, Budapest, 1943 (hereafter, *Történetkutatásunk*), p. 36.

<sup>34</sup> *Ibid.*, p. 5. Indeed it was 'dangerous terrain' during the Second World War. Brackmann, the leading authority of *Ostforschung* carried out a programme that served his political masters. He took care, for instance, that his study on the 'Umgestaltung' of Poland and Hungary (see note 31 above) should get to the desk of Reichsführer SS Himmler. Michael Burleigh describes the role played by Brackmann in the Third Reich in his *Germany Turns Eastwards*, Cambridge, 1988, esp. p. 149.

<sup>35</sup> József Deér, 'A magyar királyság megalakulása', in *A Magyar Történettudományi Intézet évkönyve*, Budapest, 1942 (hereafter, 'A m. királyság'), pp. 1–88. This work was also published in German and Italian.

<sup>36</sup> Deér, 'A m. királyság', pp. 3 n. 2, 26 n. 3, 41 n. 1, 65 n. 7; 'III Ottó császár és Magyarország az újabb történetírásban' (hereafter 'III Ottó császár'), *Századok*, 78, 1944, pp. 1–35 (pp. 26–27). Tóth called Deér's longer study a 'pettifogger's masterpiece which glosses over the crucial question all along', *Történetkutatásunk*, p. 21; Deér in his rejoinder protested against Tóth's personal attack which was grist to the mill of Romanian and Slovak historians whose aim was to damage the reputation of Hungarian historians, 'III Ottó Császár', p. 14 n. 39.

<sup>37</sup> It is telling that Deér earlier was still sympathetic to the revision carried out by German historians on Otto III and the Pope's relationship. See his *Pogány magyarság keresztény magyarság*, Budapest, 1938 (hereafter, *Pogány m.*), pp. 94–99.

<sup>38</sup> Deér, 'III Ottó császár', pp. 8–9.

<sup>39</sup> Deér, 'A m. királyság', pp. 56 and 60–61; *idem*, 'III Ottó császár', p. 13.

<sup>40</sup> Deér, 'A m. királyság', pp. 66–67.



*Vita*'s reliability as a historical source.<sup>41</sup> There were, however, other sources, argued Deér, which supported the Sylvester crown donation, from which he then inferred his concluding point that Stephen as *rex* possessed sovereignty as an 'equal member in the community of European states'.<sup>42</sup> Deér analysed the two other *Lives* of Stephen (in fact, Hartvic's sources) written in the late eleventh century.<sup>43</sup> As neither of them contained anything on the donor of Stephen's crown, the historian had to apply heavy massage in arguing his case. Also, he had to construe an interpretation of a near contemporary source, generally reputed to be reliable, which his opponents exploited to the full and to which we have already referred.

The Chronicle of Thietmar, Bishop of Merseburg (c. 1015), contains the following passage:

Through the favour and encouragement [*gratia et hortatu*] of the Emperor [Otto III], Waic [Stephen] the duke of Bavaria Henry's son-in-law, created bishoprics in his *regnum*, received crown and benediction.<sup>44</sup>

Thietmar's text was terse and obscure enough to be construed in ways which can lead to opposite conclusions as regards the donor of the crown; the exercise is entirely conjectural. Brackmann and Tóth could (and did) point out that the pope was not even mentioned by Thietmar and built on the phrase *gratia et hortatu*. Against this position Deér could argue that *corona* in the text appeared together with *benedictio* which only the pope could grant.<sup>45</sup>

In sum, it is more than probable that a crown was used at Stephen's inauguration as *rex* in AD 1000 (a crown that, however, did not

<sup>41</sup> The point was not backed by evidence, *ibid.*, p. 3 n. 2.

<sup>42</sup> A rather anachronistic assertion, *ibid.*, p. 88.

<sup>43</sup> The *Legenda minor S. Stephani regis* (*SRH*, 2, pp. 393f) and the *Legenda maior* (*ibid.*, pp. 377f.) were both written before or shortly after Stephen had been canonized in 1083 (see C. A. Macartney, *The Medieval*, pp. 161–64). The *Leg. minor* does not even mention Stephen's crown, the *Leg. major* refers to his *diadema regalis* without any other particulars (*SRH*, 2, p. 384).

<sup>44</sup> Imperatoris (autem predicti) gratia et hortatu gener Heinrici, ducis Bawariorum, Waic, in regno suimet episcopales cathedras faciens, coronam et benedictionem accepit. *Die Chronik des Bischofs Thietmar von Merseburg und ihre Korveier Überarbeitung*, ed. Robert Holtzmann, Berlin, 1955, *MGH Scriptores*, Nova Ser., vol. 9, p. 198.

<sup>45</sup> Deér, 'A m. királyság', pp. 26f. and 69–74.

survive).<sup>46</sup> It is less certain whether Stephen received a crown from abroad in a literal rather than only in a metaphorical sense. If, however, a diadem was actually sent to Hungary, this must have been with the complete agreement of the two heads of Christianity whose support Stephen undoubtedly enjoyed. The vexed question whether the pope or the emperor was the donor of the putative crown may not be (historically) the right one to ask.<sup>47</sup> The question acquired importance because the driving force of the debate during the Second World War came from politics. The trouble is, however, that politics, in an insidious way, will always intrude on the historian's perspective. Today is no exception. Can the historian 'disremember', so to say, the uncanny 'parallels' between the Ottos' imperial plans and the EU's policy of eastward expansion? The revival of the Roman Empire in the West under Otto I by his coronation as emperor in AD 962 led to an expansion of Christianity in the East. Among those present in Quedlinburg at Easter 973 to pay homage to the emperor we find leaders and people of high rank from the new territories of Bohemia, Poland, Hungary and also Kiev and Bulgaria.<sup>48</sup> Yet only some of those countries made the 'transition', to use a modernism (Brackmann's *Umgestaltung*). Bohemia soon became an integral part of the empire and then, in the year AD 1000, Otto III went to Gnesen and Stephen was said to have received a crown: Poland and Hungary, too, were in some way connected with the imperial plan<sup>49</sup> but not the other countries. As the attempt at integration into a universal empire turned out to be largely a fiasco, one should not perhaps make too much of the parallel that the countries that 'made' the transition at the end of the first millennium happen roughly to coincide in the second millennium with

<sup>46</sup> See József Gerics's study on the use of the 'Egbert Ordo' in Hungary in his 'Az úgynevezett Egbert (Dunstan)-ordo alkalmazásáról a XI. századi Magyarországon', in György Székely (ed.), *Eszmetörténeti tanulmányok a magyar középkorból*, Budapest, 1984, pp. 243–54 and Benda and Fügedi, *Stephanskrona*, pp. 15–17. Pope Gregory VII in a letter to King Salamon (28 October 1074) recalled that a lance and a crown, the insignia of the *regnum*, were (after the Battle of Ménfő in 1044) sent to the tomb of St Peter whence his *dignitas* originated. There is no agreement among historians whether these were Stephen's regalia or not. The Pope in another letter (13 March 1075) sent to Géza I reminded the king that Hungary, like other kingdoms, was subordinated only to the universal Roman Church rather than to other kings: Vilmos Franknói, *Magyarország egyházi és politikai összeköttetései a római szent-székekkel*, 3 vols, Budapest, 1901–03 (hereafter, *Magyarország*), pp. 23, 24, and 360. Gregory VII's claims of spiritual and political papal supremacy were not yet made by popes at the beginning of the eleventh century.

<sup>47</sup> Whoever sent the (putative) crown, Hungarian historians rightly point out the complete lack of evidence that Stephen accepted imperial overlordship. Indeed he stressed his independence on every occasion. See, for example, Pál Engél, *The Realm of St Stephen*, London and New York, 2001 (hereafter, *The Realm*), p. 28.

<sup>48</sup> *Magyarország története*, ed. Pál Zsigmond Pach, 9 vols, Budapest, 1976–85 (hereafter, *MT*), 1, p. 729.

<sup>49</sup> Poland and Hungary were compared in the light of recent literature by János M. Bak in 'Some recent thought of historians about Central Europe in 1000 A.D.', in *Hortus Artium Medievalium*, 6, 2000, pp. 65–71.

those of the so-called Visegrád group: the front-line applicants to join the European Union.

*The cult of St Stephen's Crown*

Hungary emerged from the transformation as a recognized independent kingdom. From a half nomadic pagan society, it became a Christian *regnum* with a settled rural population. This momentous change was rightly associated with the country's first king, Stephen (997–1038). He established the Church by creating bishoprics, ruled as *dominus* over his *regnum*, organized the system of royal counties headed by *ispáns* (*comites*) and set up the high offices of his court. Although the two lawbooks bearing his name may have been compiled some years after his death, Stephen was venerated for centuries as the lawgiver. Property, privileges, rights (liberties) and obligations were recognized throughout the Middle Ages as deriving from the *auctoritas* of the first monarch.<sup>50</sup> With papal permission he was canonized in 1083<sup>51</sup> under King Ladislas I, who likewise was canonized in 1192. The canonization led within the ruling dynasty (the so-called 'St Stephen's clan') to the cult of *sancti progenitores nostri* in the thirteenth century. The *szentkirályok* (saintly kings) label, as József Deér argued, combined Christian and pagan charismata and was frequently applied to the whole dynasty rather than only to its canonized members.<sup>52</sup> The saintly clan was believed to have been endowed with supernatural powers. Sacral rulership as an ascribed quality of the dynasty is a well-known feature

<sup>50</sup> On the founder's role in Europe and Hungary see Ferenc Eckhart, 'Jog és alkotmánytörténet', in Bálint Hóman (ed.), *A magyar történetírás új útjai*, Budapest, 1931 (hereafter, 'Jog és alk.tört.'), pp. 269–320 (p. 285); Péter Váczy, *A szimbolikus államszemlélet kora Magyarországon*, Budapest, 1932 (hereafter, *Szimbolikus*), pp. 37–38, 54–55.

<sup>51</sup> King Stephen I was canonized together with Emeric, his predeceased son and three martyrs of the Church: Bishop Gerard (Emeric's tutor, later *ordinarius* at Csanád) and two hermits, Zoerard and Benedict. Stephen's body was disinterred and was found intact. The Holy Dexter (only the hand has survived) has ever since been venerated as a relic of the 'saintly king' (*szentkirály*). It is kept today in the Budapest Bazilika church in a glass cage and taken around the town in a splendid procession on St Stephen Day, 20 August.

<sup>52</sup> See Deér, *Pogány m.*, ch. 4; Emma Bartoniek, 'A magyar királyválasztási jog a középkorban', *Századok*, 70, 1936 (hereafter, 'A m. királyválasztás'), p. 365 and n 2; Gyula Kristó (ed.), *Korai magyar történelmi lexikon*, Budapest, 1994, pp. 632–33 incl. literature; Gábor Klaniczay, *Holy Rulers and Blessed Princesses: Dynastic Cults in Medieval Central Europe*, Cambridge, 2002, esp. chs 3 and 4.

of kingship in early medieval Europe.<sup>53</sup> But how the *insignia* of the rulers became sacred is only a matter of conjecture.

Stephen's inauguration followed the general European custom of instating people into office with objects which testified to the authority behind the post.<sup>54</sup> From the teaching of the Apostle that all legitimate power derived from God's authority,<sup>55</sup> it followed that the emblem which conferred *officium* and *dignitas* was presented to the appointed by the Church. The investiture took place at the altar and was rather similar to the consecration of a bishop; grace was transferred to the king from God by virtue of which he became Christ's deputy on Earth. The aureole attached to the incumbent *szentkirály* and the office was then gradually transferred to the *insignia* associated with the whole clan.

The peculiarity of the Holy Crown tradition in Hungary is that although the holiness of the visible crown (as we shall presently see) appeared later, the tradition went deeper and lasted much longer than it did elsewhere in Europe. The crown had already acquired prominence in the West among the *insignia* (orb, sceptre, sword, etc.) in transferring *officium* and *dignitas* by the time kingship was established in Hungary. There, too, the crown rather than any other regalia stood for *rex*,<sup>56</sup> although at Stephen and his immediate successors' inauguration *acclamatio* and anointment were possibly still more important than coronation.<sup>57</sup> It is more probable that the regalia used at Stephen's

<sup>53</sup> Janet Nelson notes: 'English seems to be the only language which not only distinguishes *sacral* from *sacred*, but (unlike Greek, Latin, French or German) also has two separate words for the substantive saint and the adjective holy (or sacred). Sacrality involves the transmission of otherworldly powers into this world, crosscutting the line between nature and supernature. Sacral rulership, therefore, transcends the distinction between clerical and secular (in societies where such a distinction is made at all). It constitutes an ascribed not an achieved status, for its bearer possesses magical powers by definition. Nothing has to be proved or approved: sacrality goes with the job, is carried in the blood. There was nothing here to attract, and much to repel, the Christian churchman attempting to construct a model of royal sanctity.' Janet L. Nelson, *Politics and Ritual in Early Medieval Europe*, London, 1986 (hereafter, *Politics and Ritual*), pp. 71–72.

<sup>54</sup> On the sources of royal coronation in Hungary see János M. Bak, *Königtum und Stände in Ungarn im 14–16. Jahrhundert*, Wiesbaden, 1973 (hereafter, *Königtum*), Anhang II, pp. 165–90; Benda-Fügedi, *Stephanskrona*, pp. 41–48.

<sup>55</sup> Epistle to the Romans, 13.1, and see Emma Bartoniek, 'A királyi hatalom eredetéről', *Századok*, 70, 1936, pp. 480–96.

<sup>56</sup> According to the Chronicle, Duke Béla, summoned to Várkun by King Andrew I after 1057 to test the loyalty of his brother, had to choose between the 'sword' (*ducatum*) and the 'crown' (*si vis regnum, accipe coronam, si ducatum, accipe gladium*), *SRH*, 1, p. 355.

<sup>57</sup> The *Legenda maior* distinguishes three elements in Stephen's inauguration: *acclamatio*, *uncio* and *coronatio* in that order, *SRH*, 2, p. 384. The seating of the king in the throne of the founder king was also a part of the investiture held in the Basilica at Székesfehérvár. On European practices see János M. Bak (ed.), *Coronations, Medieval and Early Modern Monarchic Ritual*, Berkeley, CA, and Oxford, 1990. The editor pointed out that research in the previous decades 'raised the study of royal ritual from the marginal and illustrative to the paradigmatic', p. 6.

inauguration served his successors.<sup>58</sup> The authenticity of royal power was conserved by being linked to the founder.<sup>59</sup> The claim that the diadem used at coronations came from the founder of the kingdom, the *szentkirály* (saintly king), strengthened the sanctity of his successors. The crown itself did not belong to the incumbent but to the ruling clan, the whole dynasty.<sup>60</sup> Yet the term *sacra corona* appeared for the first time in a royal charter only in 1256, long after the phrase had gone out of use in other European countries.<sup>61</sup> The ‘holiness’ of the crown indicates that it was not merely a symbol, for that presupposes a distinction between the representation and what is being represented. But the clear distinction between the jewel and what it stood for developed only in more recent times.<sup>62</sup> The ‘strength’ or ‘mystery’ attributed to the Holy Crown, the object itself, reveals the lack of distinction.<sup>63</sup> This is the critical point: to wit, until modern times the visible crown did not symbolize some abstract idea, like the ‘state’, as is frequently claimed; the material object itself was believed to possess efficacy.

Andrew III (1290–1301), the last of the native dynasty, was the first king who claimed in a royal charter in 1292 that he was ‘wearing’ St Stephen’s Crown.<sup>64</sup> The king must have referred to the crown that has survived unless all experts in the dating of its assembly are mistaken.<sup>65</sup> The growing political importance of the crown from the second half of

<sup>58</sup> The Chronicle recalls that Peter’s (second) inauguration in 1044 took place *sacris insignibus sancti regis Stephani*, *SRH*, 1, p. 333.

<sup>59</sup> Andrew I, 1046–1060 (who had the hard job of claiming continuity with Stephen) imitated the founder even by the coins he minted and the seals of his summons: Deér, *Pogány m.*, p. 115.

<sup>60</sup> St Stephen’s successors even from 1046, when Andrew I replaced Peter, were not the descendants of the first king but his uncle, Michael.

<sup>61</sup> Ferenc Eckhart, *A szentkorona-eszme története*, Budapest, 1941 (hereafter, *Szentkorona*), p. 42; Benda and Fügedi, *Stephanskrona*, pp. 26–31; Tamás Katona (ed.), *A korona kilenc évszázada*, Budapest, 1979 (hereafter, *Korona*), pp. 48, 53–55.

<sup>62</sup> For foreign analogies see Ernst H. Kantorowicz, *The King’s Two Bodies*, Princeton, NJ, 1957 (hereafter, *The King’s*), pp. 338–41.

<sup>63</sup> Although references to *robur* and *mysterium* appeared first time in 1440: see below.

<sup>64</sup> Tóth, *Hartvik-legendá*, p. 126; Benda-Fügedi, *Stephanskrona*, p. 29. Strictly speaking, kings did not ‘wear’ St Stephen’s Crown which was used only at their inauguration and not otherwise. Nor is there evidence that it was worn at *coronamenta*. The kings appeared in images wearing either a simple circlet or a liliated crown: Deér, ‘A m. királyság’, pp. 17–18. Benda and Fügedi, *Stephanskrona*, pp. 55–56.

<sup>65</sup> The first description of St Stephen’s Crown is, however, available only from 1440 in the mortgage-deed by which Elizabeth, widow of King Albert, pawned the crown to Frederick III for 2,500 florins. Emma Bartoniek describes the political background in her *A magyar királykoronázások története*, Budapest [1939] (hereafter, *A m. királykoronázások*), pp. 64–65.

the twelfth century is indicated by references to its custody.<sup>66</sup> Possession of St Stephen's Crown became vital in the struggle for the throne between rivals: on the first of many future occasions, in 1163, the crown was stolen.<sup>67</sup> In 1301 a new chapter began in the history of the Holy Crown which, with the extinction of the native *szentkirályok* clan in the male line, brought to life its peculiar Hungarian features. The cognate branches generated plenty of foreign claimants<sup>68</sup> and from this time, and for well over two centuries, succession crises became the norm. Now coronation with St Stephen's Crown became constitutive in legitimizing the position of the incumbent. Charles Robert, the Angevin claimant to the throne, was crowned by his party in 1301 and once again in 1309 with 'substitute' crowns blessed by the pope. Yet he could settle in office only after he had secured the possession of St Stephen's Crown and was inaugurated for the third time on 20 August 1310 *cum corona sancta*.<sup>69</sup> King Matthias, who acceded to the throne in January 1458, in order to consolidate his position was made to pay through the nose by Emperor Frederick III, to whom he was also forced to make political concessions, in order to recover from him the Holy Crown with which Matthias was crowned in March 1464.<sup>70</sup> Thus, in late medieval Hungary, the liturgy of the coronation with the Holy Crown acquired new, fundamental significance, even though the king's consecration had elsewhere become (as Archbishop Thomas Cranmer observed) 'but a ceremony', having 'its ends and utility yet neither direct force nor necessity'.<sup>71</sup> In most of Europe but not in Hungary, then, liturgy was gradually replaced by the dynasty-bound divine right.<sup>72</sup>

In fourteenth-century Hungary, instead, the belief evolved that the crown had heavenly origin: *ab angelo privaretur*, and as such was

<sup>66</sup> The custody of the crown was a politically most sensitive job. Under the Árpáds the *custos* of the Basilica at Székesfehérvár, the centre of St Stephen's cult, was the keeper. From the fourteenth century the crown was kept by the king in the safe castle of Visegrád, later in Buda Castle. From 1464 onwards the diet introduced measures for the protection of the Holy Crown which eventually led to the system that has survived into the twentieth century: the two Keepers of the Holy Crown elected by the diet. Bertényi, *Szent Korona*, pp. 62 and 78f.; Benda and Fügedi, *Stephanskrona*, pp. 53–55.

<sup>67</sup> An incident in 1163: see Bertényi, *Szent Korona*, pp. 60–62.

<sup>68</sup> Vilmos Franknói, *A magyar királyválasztások története*, Budapest, 1921, p. 25.

<sup>69</sup> *SRH*, I, p. 486; Bak, *Königtum*, pp. 13–22 (the full story); Benda-Fügedi, *Stephanskrona*, pp. 33–41.

<sup>70</sup> Benda-Fügedi, *Stephanskrona*, pp. 77–89; Engel, *The Realm*, pp. 299–300.

<sup>71</sup> Quoted by Nelson, *Politics and Ritual*, p. 283. The high degree of institutionalized government turned royal succession in western Europe 'automatic'. When George VI suddenly died in London in 1952 Princess Elizabeth happened to be on safari in Kenya on a treetop. As a courtier old hand observed: 'Elizabeth had climbed up a tree as Princess and climbed down as Queen Elizabeth II'.

<sup>72</sup> Kantorowicz, *The King's*, pp. 317–18 and 328–30.



inamissible, not liable to be lost.<sup>73</sup> Cardinal Gentilis di Montefiori, papal legate plenipotentiary threw up his hands in despair in 1309 because the Hungarians treated St Stephen's Crown, the visible crown, with so much veneration, attributing to it such authority *quasi in eo sit ius regium constitutum*.<sup>74</sup> That just about summed up the position. There was, nevertheless, in 1440 a reckless attempt to undermine the traditional belief. The diet elected Vladislav I king, but St Stephen's Crown was abroad in the hands of the rival party. The king's supporters decided to use as a substitute for the coronation the relic crown taken from St Stephen's sarcophagus at Székesfehérvár. The diet declared that 'the coronation is always dependent on the will of the people (*regnicolae*) and that the *efficacia et virtus corone* rests on their approval'. Should it be impossible to retrieve the old crown, its *mysterium et robur* would be transferred to the new crown.<sup>75</sup> The innovation, bordering on sacrilege, ended in well deserved failure. Vladislav I was dead before the Holy Crown had been recovered and none of his donation letters were recognized in court.<sup>76</sup> The mystery of St Stephen's Crown remained unimpaired. Visitors from the West were mystified about the office attributed to a jewel. The Italian Bonfini, King Matthias's court historian, writing in 1495 (and repeated by others even in the late seventeenth century), preserved Mihály Guti Ország, the palatine's injunction that 'even an ox, once you see it embellished with the Holy Crown, must be honoured with respect and treated as inviolate saintly king'.<sup>77</sup>

The palatine could not have quite meant it, otherwise we would not be able to explain that in the anarchic political conditions that followed

<sup>73</sup> In 1305 during Otto's travel to Hungary to be crowned king, the Holy Crown fell out of its case on to a busy road, yet only his men found it next day (others could not see it) which according to the *Chronicum Pictum* 'Quid est, quod a nullo inventa, sed ab ipsis, qui portabant, nisi quod ne Pannonia data sibi corona ab angelo privaretur'. *SRH*, 1, p. 484.

<sup>74</sup> 'cui multum reverentiae atque auctoritatis ex dicti regni incolarum opinione defertur, quasi in eo sit ius regium constitutum.' Letter to the Pope, 29(?) June 1309, Buda in *Acta legationis Gentilis, Monumenta Vaticana hist. Regni Hung. illust.*, Ser. I, 1887–91, vol. 2, pp. lxx, lxxx–lxxxi, 353; Bartoniek, 'Corona és regnum' (hereafter, 'Corona'), *Századok*, 68, 1934, p. 321.

<sup>75</sup> Martinus Georgius Kovachich, *Vestigia comitiorum apud Hungaros*, Buda, 1790, p. 240. The passages were quoted by Eckhart, *Szentkorona*, pp. 96–97; Bartoniek, 'Corona', p. 325.

<sup>76</sup> Werbőczy, in withholding recognition to Vladislav's charters, observed: 'qui non vera, sacraque regni hujus corona, sed reliquiarum capitis S. Stephani regis ornamento insignitus fuerat': István Werbőczy, *Tripartitum opus juris consuetudinarii inclyti regni Hungariae*, editio princeps: Syngrenius (hereafter, *Tripartitum*), Vienna 1517, repr. Márkus edn of *Corpus Juris Hungarici*, Budapest, 1897 (hereafter, *CJH*), Pt. II, Tit. 14, para. 34. See, also, Péter Révay's points on this question, Keeper of the Holy Crown and author of the first history of the jewel from 1613, in Katona, *Korona*, pp. 331–32.

<sup>77</sup> *Quem cunque sacra corona coronatum videris, etiam si bos fuerit, adorato et pro sacrosancto rege ducito et observato. Antonii Bonfinii, Rerum Ungaricarum decades quatuor cum dimidia Basileae, ex officina Oporiana, 1568, Dec. 4, Lib. 3, p. 588. The bon mot was probably a sneer at Vladislav II. See György Szerémi, *A mohácsi vész kora*, Szeged, 1941, pp. 25, 27, 30.*

the disaster at Mohács in 1526 the *ország* elected, at two diets within a year, János Zápolya and Ferdinand I Habsburg. Both kings' coronations took place in traditional form with St Stephen's Crown at Székesfehérvár, officiated by the same István Podmaniczky, the Bishop of Nyitra.<sup>78</sup>

All the same, the authority of St Stephen's Crown, if anything, acquired new significance during the reign of the Habsburg dynasty. The *diaetalis* coronation, with the Oath and with bargaining which preceded the issuing of the Inaugural Diploma, offered the best institutional safeguards to the nobility against the encroachments of the alien monarch.<sup>79</sup> The transparent utility and rational function of *diaetalis* coronation did not, however, weaken the supernatural attributions of the emblem even in the eighteenth century. József Keresztesi, a Protestant parson, recorded the violent storm that suddenly engulfed the whole country when, on the order of Emperor Joseph II, the Holy Crown was taken from Pressburg Castle to the Schatzkammer in Vienna in 1784.<sup>80</sup> People there were convinced that God had punished them with economic miseries for the emperor's daring act. It would be a mistake to assume that by the late eighteenth century only the uneducated attributed supernatural powers to St Stephen's Crown. On the command of Emperor Joseph, the Staatsrat instructed the University of Pest to revise a textbook MS in 1785 on Hungarian Public Law to 'explain the rights derived from the alleged sanctity of the crown as state-rights'.<sup>81</sup> In late February 1790 the regalia were brought back to Buda amid, even by Hungarian standards, great pomp and splendid celebrations. The counties set up banderia for the crown's 'protection'. The Holy Crown was addressed as if a 'person' in speeches, poems and songs.<sup>82</sup> Law VI of 1790, in making provisions about the keeping of the royal emblem in Buda, observed that the Holy Crown, which had faced great perils, *nonnisi superum favore servatam*. The innovations of Joseph II, 'the hatted king' so called as he dodged his coronation, incurred the

<sup>78</sup> Bartoniek, *A m. királykoronázások*, pp. 85–91.

<sup>79</sup> For the text of the inaugural Diploma, see Henry Marczali, *Hungary in the Eighteenth Century*, Cambridge, 1910 (hereafter, *Hungary*), pp. 348–52.

<sup>80</sup> József Keresztesi, *Krónika Magyarország polgári és egyházi közéletéből*, Pest, 1868 (hereafter, *Krónika*), pp. 82–83 and 197; for an account of Joseph's measure see Henrik Marczali, *Magyarország története II József korában*, 3 vols, Budapest, 1885, 2, pp. 363–69; see also Éva H. Balázs, *Hungary and the Habsburgs 1765–1800*, Budapest, 1997, pp. 204–05.

<sup>81</sup> Ferenc Eckhart, *A jog- és államtudományi kar története*, Budapest, 1936, (hereafter, *A jogi kar tört.*), p. 150; Keresztesi, *Krónika*, p. 198.

<sup>82</sup> *Ibid.*, pp. 196–203, 214; Keresztesi apparently examined 'the so-called' Holy Crown, described in his diary (he knew that it could not be Stephen's) and was surprised by the 'superstitio' that surrounded it (pp. 269–75); Benda-Fügedi, *Stephanskrona*, pp. 164–78; Bertényi, *Szent Korona*, pp. 125–28.

same fate as happened to the charters of Vladislav I.<sup>83</sup> The cult of St Stephen's Crown, as E. H. Kantorowicz alluded to it, created such a robust tradition of continuous and legitimate political authority that there was no need (indeed no room) for abstractions like the theory that 'the king never dies', or that the king possessed two bodies, a physical and a political.<sup>84</sup>

The Enlightenment and nineteenth-century liberal constitutionalism dented the belief in the sacred character and mystery of the crown jewel. Through gradual and incomplete change, St Stephen's Crown became a symbol of the values and fundamentals rather than, as earlier, a carrier of them. The coronation with the crown, however, retained its constitutive force up to the end of the Monarchy. Elsewhere it may have become a ceremony but in Hungary, insisted Ferencz Deák, coronation was constitutionally essential.<sup>85</sup>

As in earlier centuries, the Crown of St Stephen has continued to show a remarkable narrative even in the more recent periods. Because the visible crown was indispensable in legitimizing political power at times of impending regime change, the crown habitually disappeared from Buda Castle where from 1790 it had been kept. In 1849, the crown travelled three times. In January it was taken to Debrecen to avoid the army of Prince Windisch-Graetz. It was returned to Buda after Görgei had retaken the city in May. In late August, when the War of Independence was lost, Prime Minister Szemere, before escaping to the Ottoman Empire, buried the chest of regalia in swampy ground at the borders. It took over four years for the Austrian authorities to find the chest.<sup>86</sup> The coronation of Francis Joseph in 1867 combined the inauguration of the constitutional regime with a formidable display of pageantry. The last coronation, that of Charles IV in 1916, was a subdued occasion. The crown tilted (*mebillent*) on Charles's small head

<sup>83</sup> The derisory nickname of *kalapos király* became in 1781 the title of the Pauline monk Pál Ányos's manuscript poem: Lőránt Czigány, *The Oxford History of Hungarian Literature*, Oxford, 1984, p. 90; Béla Tóth, *Szájru! szájru!*, Budapest, 1901 (hereafter, *Szájru!*), pp. 71–72. Joseph II's ordinances were not recognized by the courts, and see note 76 above.

<sup>84</sup> Kantorowicz observed that 'Hungary carried the distinction between the mystical crown and a physical king to great refinement, but the material relic of the Crown of St Stephen seems to have prevented the king from growing his own super-body', *The King's*, p. 446.

<sup>85</sup> 'The coronation is constitutionally essential' wrote Ferencz Deák: *Ein Beitrag zum ungarischen Staatsrecht* (hereafter, *Ein Beitrag*), Pest, 1865, pp. 207–08. Also, *Deák Ferencz beszédei*, ed. Manó Kónyi, 6 vols, second edn, 1897–1903 (hereafter, *DFB*), 3, p. 554, the text of the Address of February 1866. The coronation with the Holy Crown in the course of which the *neorex* takes the Oath and on his inauguration issues the Diploma provided the indispensable guarantees for the constitutionality of monarchic rule. Deák insisted that the Diploma was not ordinary law: the issuing of it, before the coronation, was a duty: *Ein Beitrag*, pp. 157–58.

<sup>86</sup> Benda-Fügedi, *Stephanskroner*, pp. 181–97.

and within two years his kingdom and empire were dissolved.<sup>87</sup> In October 1944 the Regent, Admiral Horthy, ordered the crown to be buried. The fascist successor regime dug it up and Szálasi took the oath facing it. Not long afterwards the chest of regalia began its long journey, this time to the West, to escape capture by the advancing Red Army. Once more, the crown was buried in Germany. The US authorities dug it up whereafter its whereabouts were uncertain for many years. In fact, the chest was kept at Fort Knox until January 1978 when the US government handed back the regalia to Hungary.<sup>88</sup> There is no mistake: the Crown of St Stephen is inamissible.

*The visible and the invisible crown compared*<sup>89</sup>

Enough has been said to demonstrate that the Crown of St Stephen has engendered a singular and enduring national tradition. The visible crown of Hungary has been surrounded by an unambiguous cult from medieval to modern times. The constitutional function of the visible crown can also be properly attested through legal evidence. There is plenty in the lawbook on the visible crown: how and where it was to be guarded, about its elected Keepers and about the coronation itself. In contrast, the invisible crown, the ideas associated with the Holy Crown, apart from some territorial uses, partly based on the medieval precept of inalienability, only rarely appear in the lawbook. Indeed, the primary context of the invisible crown has always been political rhetoric rather than constitutional law. Any attempt to summarize the history of the invisible crown, so far as it may be separated from the visible one, is like trying to put a ferret into a bag. The subject is complex and highly controversial. The last work on it, based on original research, was published over sixty years ago by Ferenc Eckhart.<sup>90</sup> In contrast to the visible crown, which has attracted much scholarly interest, very little research has been done on the invisible crown since Eckhart's book. This study will lean heavily on the knowledge that went into it. Eckhart took for granted that because the past and the present were always

<sup>87</sup> Alice Freifeld, *Nationalism and the Crowd in Liberal Hungary, 1848–1914*, Washington, D.C., 2000, pp. 189–92 and 214–19 offers a vibrant account of the coronation on 8 June 1867; Benda-Fügedi, *Stephanskrone*, pp. 218–21; Bertényi, *Szent Korona*, pp. 137–41.

<sup>88</sup> Benda-Fügedi, *Stephanskrone*, pp. 226–32.

<sup>89</sup> For general points, see Kantorowicz, *The King's*, pp. 336–42; Sándor Radnóti observes that in contrast to Western Europe, where institutional continuity was secured by the invisible crown, in Central and Eastern Europe 'the visible crown provided continuity', 'Az üvegalmárium, esettanulmány a magyar korona helyéről', *Beszélő*, III. Ser. 6, November 2001 (hereafter, 'Üvegalmárium'), p. 49.

<sup>90</sup> Eckhart, *Szentkorona*; for a good summary of this basic study, see Josef Karpát, 'Die Idee der Heiligen Krone Ungarns in neuer Beleuchtung' (hereafter, 'Die Idee') in Manfred Hellmann (ed.), *Corona regni*, Darmstadt 1961 (hereafter, *Corona*), pp. 349–98. Ferenc Eckhart, born in 1885, was Professor of Legal and Constitutional History in the Law Faculty, Budapest from 1929 to 1957.

mixed up in ‘crown’ uses, the tradition had to be studied as a whole. The question that primarily interested Eckhart was about continuity *versus* discontinuity. That was entirely justified. It would be a grave (yet in practice very common) error to assume that the historian’s job is to unravel the ‘development’ or history of the Holy Crown ‘idea’<sup>91</sup> *sub specie aeternitatis*, as it were.<sup>92</sup> I find such an assumption manifestly untenable. A patently multivocal term, only as such is the ‘crown’ an appropriate object of study. Accordingly, what follows here will be an attempt to distinguish the different classes of *corona* uses (from age to age), establish the provenance of new ones, where serviceable, explain their context and discard attributions to the crown that are patently anachronistic. The exercise may shed some new light on the nature of the Holy Crown tradition. Sixty years is a long time (the past, as we all know, is a different country). I take assumptions, different from Eckhart’s; I see distinctions at places elsewhere than he did. These differences undoubtedly have a bearing on my conclusions. For all this, the inspiration to pursue this study came from his work.

*Rex and corona: the incumbent and the institution*

As it appeared in the Hungarian sources in the eleventh century, *corona*, by far the most prolific multivocal political term in the country’s history, was clearly an adaptation from contemporary Christian political theology in which its uses usually appeared in association with a jewel. We have already seen that the term in Hungary, as in other countries, stood for the gold rim embellishing the king’s head with the function of transferring the spiritual and material powers of royalty. Upon this primary sense of *corona* stood a whole cluster of uses: it appeared as the royal *dignitas* associating the notions of rank, prestige, and honour; also as that of *officium* associating capacities, i.e., properties and competencies of power in its material appearance.<sup>93</sup> Further, since earthly capacities were blended with transcendental ones in the inauguration, *corona* associated the spiritual capacities of kingly power. More widely, *corona* conveyed everything that was consecrated by the Church as belonging to the king’s vocation and even his character *qua*

<sup>91</sup> ‘a szentkorona eszme’; Ferenc Eckhart, notwithstanding his book’s title, was probably aware that it was a misnomer or at least a malapropism.

<sup>92</sup> The assumption of the Holy Crown ‘idea’ frequently leads to the patently anachronistic corollary that the crown has symbolized the ‘Hungarian State’.

<sup>93</sup> Most of these uses are not yet based on clear distinctions. *Rex* and *corona* or *dignitas* and *officium* are not juxtaposed, they are close cognates if not synonyms of each other in the legends, in King Stephen’s *Admonitiones* and in the early chronicles: Bartoniek, *A m. királykoronázások*, pp. 67–69; *SRH*, 2, pp. 621–24; Josef Karpat, ‘Corona regni Hungariae in Zeitalter der Arpaden’ (hereafter, ‘Corona’) in Hellmann, *Corona*, pp. 225–348 (transl. from Slovak, Bratislava 1937); Eckhart, *Szentkorona*, pp. 13–17.

king. Finally, *corona* denoted kingship in general, insofar as an abstraction like this could exist in the eleventh century.

These uses of *corona*, interwoven with purely religious ideas, appear in the legends, in early Hungarian chronicles and similar writings. Sense and context are frequently not easily definable, a characteristic of Christological thought taken over to the political writings in liturgical kingship. In the *Admonitiones*<sup>94</sup> two crowns occur: Stephen's terrestrial, and therefore temporal *corona*, meaning a jewel and also a holder of certain qualities, and a celestial and therefore eternal *corona* as the apotheosis of saints.<sup>95</sup> The holiness and glory of the former are sometimes contrasted, at other times not really distinguished from the celestial bliss and sanctity of the latter. The king serving God faithfully through his terrestrial *corona* will eventually be worthy of the other, the celestial *corona*. If he wants 'to keep the royal *corona* in honour'<sup>96</sup> — Stephen tells his son — he should retain the Christian faith: without that he would neither be able to reign in honour nor would he share in the 'eternal kingdom or *corona*'.<sup>97</sup> Emeric is told to augment the Church's properties so that his *corona* may be praised.<sup>98</sup> He is to mete out justice, this being 'the [fifth] ornament of *corona*'.<sup>99</sup> *Hospites* adorn the court, says the author, so if they are patronized by the king '[your] *corona* will be held in esteem by everybody'.<sup>100</sup> The spirit of disobedience 'disparages the leaves of *corona*'<sup>101</sup> — said at another place. Again: 'The degree of virtues defines the king's *corona*.'<sup>102</sup> At the end of the work Stephen declares that royal *corona* is 'compounded by the discussed principles'.<sup>103</sup> All in all, the function of *corona* in the *Admonitiones* is to demonstrate the substance of kingly power. The term embraces the

<sup>94</sup> *Libellus de institutione morum*, *SRH*, 2, pp. 619–27; King Stephen's *Admonitiones* to his son Emeric: Bartoniek, 'Corona', pp. 314f.

<sup>95</sup> The roots of the crown concept of the *Admonitiones* as being based on the European Christological literature is discussed by József Balogh in his 'Szent István politikai testamentuma', *Minerva*, 9–10, 1930, pp. 129–64, and 1931, pp. 39–51; also in his 'Szent István "intelmei"-nek forrásai', in Cardinal Primate Jusztinian Serédi (ed.), *Emlékkönyv Szent István halálának kilencszázadik évfordulóján*, 3 vols, Budapest, 1938 (hereafter *Emlékkönyv*), 2, pp. 237–65 and esp. p. 262, Jenő Szűcs, 'König Stephans "Institutionen"', in *Nation und Geschichte*, Budapest, 1981, pp. 245–62.

<sup>96</sup> 'Si regalem cupis honestare coronam.' *SRH*, 2, p. 621.

<sup>97</sup> 'nec eterno regno vel corona participantur.' *Ibid.* Also, 'Hec omnia superius libata regalem componunt coronam, sine quibus vallet nullus hic regnare, nec ad eternum pertingere regnum.' *Ibid.*, p. 627. Bishop Hartvic writes of God '... ille nimirum potius electum suum Stephanum hac (temporali) statuerat felicitier insignire corona, ipse postmodum eundem felicius decoraturus eterna'. *Life of St Stephen*, *ibid.*, p. 413.

<sup>98</sup> *Ibid.*, p. 622 (26).

<sup>99</sup> '... quinta regalis corone est ornatio.' And again, 'ut tua corona laudabilis sit et decora'. *Ibid.*, p. 624.

<sup>100</sup> 'tua corona ab hominibus habeatur augusta.' *Ibid.*, p. 625.

<sup>101</sup> 'Spiritus quidem inobedientie dispergit flores corone.' *Ibid.*, p. 626.

<sup>102</sup> 'Modus virtutum finit coronam regum.' *Ibid.*, p. 627.

<sup>103</sup> *Ibid.* For other examples see Balogh's works in note 95.



duties of the king, the qualities the holder of the office ought to have, and also the principles of rule to be followed.

Most of these uses of *corona* were close to *rex*; however, none were merely identical with it. The terms *rex* and *corona*, though in none of the available sources of the eleventh century are they juxtaposed, stand for more than rhetorical tautology.<sup>104</sup> *Corona* was, even in the eleventh century, distinct from *rex*. The use of both terms did not reflect a functional differentiation between man and his office, although this idea could have been known in Hungary at that time. Nor was the use of the two terms related to any distinction between *officium* and *dignitas*, these being close cognates if not synonyms at the time.

*Rex* usually embraced the king both *qua* king and also *qua* human being. It seems, however, especially in the *Admonitiones*, that *rex* sometimes means only the latter and that the more spiritual *corona* tends to cover kingship.<sup>105</sup> It looks plausible that this was so. King Stephen (Vajk) inherited power from his father Geiza — a pagan — and the future king himself had been converted to Christianity in his youth. The king's person, therefore, could not alone represent all the new qualities attached to Christian rulership. The qualities set out for the king to practise pertained to *corona: rex*, the *officium* in its ideality. So *corona* in the eleventh century was distinct only from *rex* as human being and that only by implication; no explicit contrast was made between them as yet. *Corona*, of course, belonged entirely to the king. It was his in the sense that it was conferred upon him by the Church on behalf of both pope and emperor to the exclusion of everybody else.

*Corona*, when it appeared in Hungary, implied a reference to a higher authority.<sup>106</sup> The grace of God was transmitted through it to the king and so the distinction between *rex* and *corona* was already beginning to appear. It was, however, insufficient as yet for the emergence of a consistently dichotomous use of *rex* and *corona*. As the person of the king and his *dignitas* were connected, royal charters referred to the *honor*, *gloria*, *commodum*, *incrementum* of the crown, and likewise its *preiudicium*, *detrimentum* or *opprobrium*.<sup>107</sup> These uses did not yet separate *corona* and *rex*. Soon, however, the rights, duties, properties and capacities as they gradually evolved as parts of the royal office, became attributes of *corona*, a process by which the term became filled with positive content. As the capacities and competencies of the royal office differentiated, so

<sup>104</sup> This does not mean, however, that the distinction was already clear either. Kantorowicz (*The King's*, p. 345) writes about the distinction between king and crown found in Glanvill's *De legibus et consuetudinibus regni Angliae*, although here the institutional framework was undoubtedly more differentiated than in Hungary.

<sup>105</sup> Bartoniak, 'Corona', pp. 314–17.

<sup>106</sup> Eckhart, *Szentkorona*, pp. 14–15.

<sup>107</sup> Karpat, 'Corona', pp. 312–23, passim; Eckhart, *Szentkorona*, p. 43.

did the senses and contexts in which *corona* appeared. By the thirteenth century *ius coronae*, and indeed the totality of the king's legal position — *status corone* — were in use.<sup>108</sup> Thus, a clear distinction finally emerged between the person of the king and the impersonal institution; between *rex*, the temporary incumbent, and *corona*, the royal office; or perhaps, on a more abstract level, between the *auctoritas* of sacral rulership and the *potestas* of the office holder.<sup>109</sup> The emergence of the clear distinction between *rex* and *corona* followed a general European pattern.<sup>110</sup> Neither in Hungary, nor elsewhere in Europe, did the making of the distinction involve a concept of the 'State'<sup>111</sup> as the legally organized society or community. Further, the distinction, as we shall see, did not lead in medieval Hungary to a corporate political conception of the crown. The king habitually referred to *corona* as his own: *corona nostra regia*.<sup>112</sup> And later when the crown was predicated on the *regnum Hungariae*, it was either the king's *regnum* or *regnum* in the (territorial) kingdom sense. Normally, the capacities that inhered in *corona*, the office, concerned the incumbent to the exclusion of others.

The king in Hungary wielded near despotic power based on, by West European standards, an enormous *patrimonium*. He was *dominus terre* (private) lord and ruler to whom and to his crown all inhabitants were

<sup>108</sup> Ibid., 22f., 47–48; Ferenc Eckhart, 'The Holy Crown of Hungary' (hereafter, 'The Holy Crown'), *The Hungarian Quarterly*, 6, 1940/41, pp. 633, 639.

<sup>109</sup> József Deér, 'A szentkorona eszme története' (hereafter, 'A szentkorona') *Századok*, 76, 1942, p. 203; yet *rex* could still have more abstract uses. At the coronation ceremony of Maria Theresa in 1741 the nobles shouted: 'Vivat Domina et rex noster!', Bartoniak, *A m. királykoronázások*, p. 162.

<sup>110</sup> On the distinction between the person of the king and the 'crown' representing the king as an institution in Europe, see Fritz Hartung, *Die Krone als Symbol der monarchischen Herrschaft im ausgehenden Mittelalter* (Abhandlungen der preussischen Akademie der Wissenschaften, Phil.hist. Klasse Nr. 13, 1940 (hereafter, 'Die Krone'), repr. in Hellmann, *Corona*, pp. 1–69; Kantorowicz, *The King's*, pp. 358–60.

<sup>111</sup> At this point nearly all historians (even Marczali) take a leap in the dark insisting that when *corona* is clearly distinguished from *rex* it becomes the 'subject' or the 'personality' of the State: Marczali, *Hungary*, p. 303. Other historians, going even further, assume that the crown ever since St Stephen has 'symbolized the Hungarian state', for instance Bartoniak, 'Corona', p. 529. Eckhart assumed in 1941 (but, as we shall see, not earlier) that the change, leading to the concept of the 'State', gradually evolved from the late fourteenth century: Eckhart, *Szentkorona*, pp. 72, 79, 81, 84–87, 102 (!); also, Eckhart 'The Holy Crown', pp. 637f. József Deér rightly pointed out in his book review that Eckhart was wobbly and partly contradictory in his use of terminology: 'We cannot share, however, his view that from the end of the fourteenth century the crown in external relations became a symbol of the State. It all depends on what we mean by the State and the extent to which we can shed its modern associations', Deér, 'A szentkorona', pp. 203f. Bertényi follows the traditional Hungarian thesis rather than Deér: *Szent Korona*, pp. 145 and 148. Fritz Hartung wrote that the crown in sixteenth-century Europe, following Bodin's work, lost its importance in representing the royal office (as opposed to the king's person) and the 'crown' was replaced by the abstract idea of the 'State': 'Die Krone', in Hellmann, *Corona*, p. 48. However, this process began only in the seventeenth century in Western Europe and it had not yet affected Central and Eastern Europe. See Quentin Skinner, 'The State', in Terence Ball et al. (eds), *Political Innovation and Conceptual Change*, Cambridge, 1989, pp. 90–131.

<sup>112</sup> Eckhart, *Szentkorona*, pp. 76–77; Bak, *Königtum*, pp. 22–23.

subjected without distinction.<sup>113</sup> All subjects owed allegiance to the king and his office as *fideles coronae regiae*. Loyalty was demonstrated through *servitium nobis et regiae coronae* which, if exceptional, invoked *gratia* and *donatio* by the king.<sup>114</sup> And contrariwise, lack of loyalty towards the king, nay rebellion against him, was treason, violation of allegiance to *corona*.<sup>115</sup>

Papal intervention was at times decisive in the affairs of the kingdom and, correspondingly, the Church and the Holy See had strong influence on the growth of ideas associated with the crown in Hungary.<sup>116</sup> In order to uphold the royal dignity the pope enjoined the king to preserve his *patrimonium* by revoking lands alienated by him or his predecessors to the detriment of his office. ‘At your coronation’, wrote Pope Honorius III to King Andrew II in 1220, ‘you swore to preserve the rights of your royal office and the dignity of your crown unimpaired.’<sup>117</sup> The inalienability of the royal patrimonium was then, in the fourteenth century, extended to the whole territory of the *corona regni Hungariae*. The king, the temporary incumbent, could not alienate any part of the kingdom to another country, this being detrimental to the crown: the unity of the kingdom. The king at his coronation took the Oath to recover alienated land, lost from the kingdom’s territory, ‘to the possession of the Holy Crown’.<sup>118</sup> The royal revenues were said to be crown revenues, kept in the crown’s treasury, which was, however at the sole disposal of the king.<sup>119</sup> The same went for the crown’s right of escheat: land without rightful heir reverted to the

<sup>113</sup> Eckhart, *Szentkorona*, pp. 35f., 104–05; idem, ‘The Holy Crown’, p. 639; Martyn Rady, *Nobility, Land and Service in Medieval Hungary*, London, 2000 (hereafter, *Nobility*), p. 16.

<sup>114</sup> Váczy, *Szimbolikus*, pp. 31f.; Eckhart, *Szentkorona*, pp. 45–49; Agnes Kurcz has pointed out that because of the fear from attack by the Tatars *fidelitas* played a central role in the relationship between the king and the nobility in the second half of the thirteenth century: ‘Arenga und Narratio ungarischer Urkunden des 13. Jahrhunderts’, *Mitteilungen des Instituts für österreichische Geschichtsforschung*, 70, 1962, pp. 322–54 (pp. 337–42).

<sup>115</sup> *Ibid.*, p. 45.

<sup>116</sup> Karpát, ‘Corona’, p. 347. The author points out that crown uses were more prominent in Hungary than in Bohemia and Poland because of Hungary’s proximity to Rome; Eckhart, *Szentkorona*, pp. 33–34, 49–54. Eckhart throughout his work placed his subject in a wide European context and in a separate chapter looked at Hungary’s neighbours. He noted that the crown in Bohemia became a corporation of the estates in the fifteenth century (the Hungarian development was more conservative). In Poland the territorial unity of the kingdom dominated crown uses. The distinguishing feature of the ‘crown’ in Hungary was the central importance of *fidelitas*, pp. 142–58.

<sup>117</sup> Eckhart, *Szentkorona*, p. 22; idem, ‘The Holy Crown’, p. 634; Kantorowicz, *The King’s*, pp. 354f. The inalienability of the rights of the crown developed in much the same manner in many European countries, *ibid.*, pp. 345f. The unity of the crown was affected neither by the Árpád’s custom of dividing the ruling of the kingdom among the male members of the house (*ducatus*) nor by the short lived institution of *junior rex*, introduced by Béla IV in 1262 whose son had already been crowned in 1246. See Gyula Kristó, *A feudális széttagolódás Magyarországon*, Budapest, 1979, pp. 33–34, 37, 54f., *passim*. See Eckhart, *Szentkorona*, pp. 44–45.

<sup>118</sup> Eckhart, *Szentkorona*, pp. 105–12, 116f., 140; idem, ‘The Holy Crown’, p. 639.

<sup>119</sup> *Ibid.*, idem, *Szentkorona*, p. 111.

crown, the *radix* of all property, that is the royal office.<sup>120</sup> Werbőczy, a high judge in royal service, wrote in 1524 that his duty was to administer justice to all who sought it, including Jews and Gypsies, if they were subjects of *corona regni Hungariae*.<sup>121</sup>

A telling example that shows the indivisibility of the crown's authority lies in respect to the arrangements made under interregnum. In 1401 the royal dignitaries kept King Sigismund prisoner in Visegrád Castle for six months. During this time the Primate of Hungary as Chancellor acted *auctoritate iurisdictionis corone* rather than, as usual, *regia auctoritate*. He engraved a new seal, *sigillum sacre corone regni Hungariae*. The soon forgotten arrangements arose clearly as a temporary substitute which the clear distinction between the physical king and the royal office made possible.<sup>122</sup> The incident did not lead either to institutional or conceptual change<sup>123</sup> but similar arrangements obtained on other occasions. During the interregnum that followed the death of Vladislav I, János Hunyadi, as regent from 1446, acted by reference to the Holy Crown in the absence of the king, a minor.<sup>124</sup> Article XIV 1446 instructed the regent that repossessed mortgaged properties should be returned to the crown for the king (*ea Coronae reapplicando Domino Regi reservare*).<sup>125</sup>

These cases amply demonstrate that the distinction between *rex* and *corona* was between the incumbent and the office. The capacities of the Holy Crown were not shared; the crown was not a super-body which embraced the king and the estates.<sup>126</sup> This does not mean, however, that the Church, the barons, the nobility and, from the fifteenth century, the diet were not institutionally connected to the responsibilities of the king and, thereby, to those of the Holy Crown.<sup>127</sup>

<sup>120</sup> The idiom 'sacra corona radix omnium possessionum', has sometimes been attributed to Werbőczy, at other times to Imre Kelemen. I could find it neither in the *Tripartitum* nor in any editions of the *Institutiones juris hungarici privati*.

<sup>121</sup> Letter to András Báthory on 27 February 1524 quoted by Eckhart, *Szentkorona*, p. 105 n. 8.

<sup>122</sup> *Ibid.*, pp. 79–82.

<sup>123</sup> Eckhart thought that the incident made the Holy Crown 'the sole subject of state power', *ibid.*, p. 79.

<sup>124</sup> *Ibid.*, pp. 99–101.

<sup>125</sup> M. G. Kovachich (ed.), *Vestigia comitorum apud Hungaros*, Buda, 1790, p. 260; János M. Bak et al (eds), *The Laws of the Medieval Kingdom of Hungary*, 3 vols, 1992–1999 (hereafter *DRMH*), 2, p. 115 (English trans.).

<sup>126</sup> As far as I can see, only József Deér recognized this among Hungarian historians, see note 111 above. There are one or two cases in which foreigners refer to the Hungarian crown as a 'community', for example, in a letter by the Polish Treasurer to Bártfa in 1438: 'ac totam communitatem Hungarie sacre corona', Eckhart, *Szentkorona*, p. 128 n. 62.

<sup>127</sup> In comparing the growth of *corona* uses in Hungary and Bohemia Eckhart found that the imperative presence of a specific material crown made the Hungarian development more conservative than the Czech. Another distinguishing feature of the Hungarian practice was the centrality of the notion of *fidelitas* towards the royal and later the *ország's* crown, which was associated with the system of royal land donation. See below, Eckhart, *Szentkorona*, pp. 151–53.

*Corona regni*

The king in Hungary, as in other Christian kingdoms, had duties toward the Land and his subjects. These obligations arose from the mode in which power was transferred to him. The *rex haereditarius*, the legitimate successor, was duty-bound to arrange his coronation, as we have seen, with the Crown of St Stephen,<sup>128</sup> officiated by the Roman Catholic hierarchy in the presence of the kingdom's high dignitaries, the barons. A splendid pageant, at which Hungarians always excelled, the inauguration was not merely a formal ceremony of investiture. From the late Middle Ages, it had to be performed *diaetaliter* as a bestowal of authority, transferred to the king after hard bargaining with the assembled estates. This contractualist character of the coronation was maintained until 1918.<sup>129</sup> The king had to take a solemn oath in church<sup>130</sup> and from 1687 enact, in *decretum* form, the Inaugural Diploma in which he promised to defend the kingdom and its inhabitants, to recover and reincorporate with the kingdom lost territories as well as to maintain the ancient privileges, laws and customs unimpaired.<sup>131</sup> Further, when the deceased king had no legitimate heir, the bishops and the barons, and later the whole landed nobility of the *regnum*, the *ország*, claimed the right to 'choose' a king at

<sup>128</sup> After 1790 within six months of his accession, as stipulated by Art. III of 1790 following Joseph II's ten years of 'unconstitutional rule'.

<sup>129</sup> Antal Csengery's diary preserved Deák's comment made on 11 June 1867, the day of Franz Joseph's coronation, that the nation in the Diploma 'renews the contract' with the new incumbent: Lóránt Csengery (ed.), *Csengery Antal hátrahagyott íratái*, Budapest, 1928, p. 94. The Conservative Pál Somssich, President of the House, said in an electoral address in 1869 that the coronation was a 'reinforcement of the mutual contract which the nation had made with the Habsburg House in 1723': Miklós Somssich (ed.), *Somssich Pál beszédei*, Budapest, 1942, p. 107. Miksa Falk in 1892 described the coronation as 'the external sign of the agreement between the monarch and the nation as regards their mutual rights and duties': 'A koronázás közjogi jelentősége', in Dénes Kovács et al. (eds), *Koronázási Emlékkönyv*, Budapest, 1892, p. 25.

<sup>130</sup> The king swore to observe 'the immunities, liberties, rights, laws, privileges, the good old approved customs' of the prelates, barons, nobles and all the inhabitants of the kingdom, to dispense justice to all, and to respect the *decretum* of Andrew II, the Golden Bull of 1222 with the exception of the clause on the right of resistance. He would not alienate any part of the kingdom's territory and would promote the common good. The royal Oath's text was included in the *decretum* issued at the time of the coronation. On the Oath in the Middle Ages see Emma Bartoniek, 'A koronázási eskü fejlődése 1526-ig', *Századok*, 51, 1917, pp. 5–44.

<sup>131</sup> For the medieval antecedents and *capitulationes* of the 'elected' kings, see Bartoniek, *A m. királykoronázások*, pp. 54–57; András Kubinyi, 'Die Wahlkapitulationen Wladislaws II. in Ungarn', in Rudolf Vierhaus (ed.), *Herrschaftsverträge, Wahlkapitulationen, Fundamentalgesetze*, Göttingen, 1977, pp. 140–62. The Diploma of Joseph, enacted in January 1688 (not yet in *decretum* form), was arranged under five headings: the confirmation of rights; the Holy Crown to be kept by its Keepers in the country; the reincorporation of reconquered territories with the kingdom and its adjoined parts; the right of the estates to elect the king in accordance with their ancient custom to remain intact (from 1723 after the Karl, the Joseph and the Leopold branches of the dynasty become extinct); a promise that all the successors would arrange their inauguration *diaetaliter*, take the Oath and issue the Diploma. See Marczali, *Hungary*, pp. 350–52.

their assembly, the diet, which developed in the fifteenth century.<sup>132</sup> In this sense the Holy Crown became the *ország*'s crown.<sup>133</sup> But the powers of the crown belonged to the king and those who acted on his authority or, in very exceptional circumstances, those who temporarily acted on behalf of the royal office without the king (as in 1401). The *ország*, by transferring the *potestas* of the office to the new incumbent, legitimized the transition by reference to the *auctoritas* of the Holy Crown. For the mechanism of royal land donation changed the relationship between the king and organized society. The *prelati et barones*, through the royal council, acted as power brokers, and in the fifteenth century the *servientes regis*, the landed nobility of the self-governing counties, brought forth the diet of the *ország*. For all this, the estates shared power *with* the crown, rather than with the king *in* the crown.<sup>134</sup>

Indeed, the institutions of the kingdom moved quite in the opposite direction. Side by side with the monarch's *regnum*, the term in its other, *ország*, sense stood for the politically organized society seen as a *corpus*, a body with 'members'.<sup>135</sup> The organic metaphor (used widely in Europe) was in Hungary applied first to the *prelati et barones*<sup>136</sup> and then through gradual extension to the collective rights of the landed nobility as a whole. The members of the *ország* formed a *universitas* of a sort,

<sup>132</sup> Emma Bartoniek, 'A magyar királyválasztás', pp. 385f.; Elemér Mályusz, 'A magyar rendi állam Hunyadi korában', *Századok*, 91, 1957, pp. 46–123, 529–602; Bak, *Königtum*, chs 3 and 4.

<sup>133</sup> Bartoniek, 'Corona', pp. 325–27; Eckhart, *Szentkorona*, pp. 96–99. *Per contra* József Deér argued that *regnum* in the phrase *corona regni* should be translated as 'kingdom' rather than 'ország' (see next footnote). Deér might have been right for many cases before the Habsburg period, but not after. Also the four laws passed by the diet between 1464 and 1500 about the protection of St Stephen's Crown clearly shows the *ország*'s involvement with the visible crown.

<sup>134</sup> Today most Hungarian historians are less than willing to accept this distinction even though the two leading authorities on the subject, Ferenc Eckhart and József Deér, emphatically argued that the 'transference' of *corona* and 'participation' in the office of *corona* must be clearly distinguished from each other. See 'Deér, 'A szentkorona', esp. pp. 204–05.

<sup>135</sup> In the bipolar world of Hungarian politics *regnum* was either the monarch's or the *ország*'s and was used in two different clusters of senses (see Rady, *Nobility*, pp. 16 and 172–73). It was either coterminous with *corona* and embraced the whole territory of the Hungarian crown (the 'kingdom' sense) or it meant the Land, which, as a repository of right, was coterminous with the Hungarian nobility and its territory, Hungary proper (the *ország* sense). Werbőczy juxtaposed *regnum Hungariae* with Dalmatia, Croatia, Slavonia and Transylvania: *Tripartitum*, Pt. III, Tit. 2. On the other hand, *regnum Hungariae* in the royal Oath and the Inaugural Diploma was coterminous with the whole territory of the Holy Crown. Both uses survived into the nineteenth century.

<sup>136</sup> The papal nuncio Gentilis enjoined the prelates and barons to obey Charles Robert in 1309 who they had recognized as king 'cum non liceat a capite membra discedere', quoted by Bartoniek, 'A m. királyválasztás', p. 398 n. 2.



sometimes referred to as the *totum corpus regni Hungariae*.<sup>137</sup> Just as the king exercised customary rights vested in the crown, the diet exercised corporate rights and privileges vested in the noble *ország*, the Land: Hungary as a possessor of rights. This structural dualism developed in the fifteenth century; it was exacerbated after 1526 when the Hungarian crown was acquired by the alien Habsburg dynasty. It became a central feature of the political institutions that the crown and the noble *ország* existed side by side as two distinct and largely separate repositories of right and authority which were mutually complementary and functioned alongside each other in conflict and accommodation.<sup>138</sup> A notable common feature in the uses of *corona*, *regnum* (in its *ország* sense), *comitatus*, voivod(at)us of Transylvania and ban(at) of Slavonia and Croatia was that these terms signified territory, office, rights of authority or merely an incumbent or a group.

The Land (territory) of Hungary, the *ország* as a subject of right and the *magyar nemzet* (Hungarian nation) of the nobility were coterminous. The crown of Hungary, in addition to Hungary proper, ruled over other Lands, notably Croatia-Slavonia and Transylvania, both of which had their own distinct dualistic systems of rights. Werbőczy referred to Dalmatia, Croatia, Slavonia and Transylvania as *regna* that had long been subjected and incorporated with *sacra videlicet corona regni hujus Hungariae*.<sup>139</sup> If by the State we mean a more or less integrated system of law, we could find it neither in respect of the territory of the crown nor of any of its Lands. For centuries, the kingdom was an acute case of legal-institutional bipolarity (*Doppelpoligkeit*)<sup>140</sup> which had a

<sup>137</sup> Bartonicz pointed out that in this form the *communitas totius regni Hungariae* and *totum regnum Hungariae* were synonyms and that they referred to the estates in juxtaposition to the king; Bartonicz, 'Corona', pp. 328–29; Eckhart showed that both the royal council and the diet were seen as bodies with members. Charles Robert called together a diet in 1318 'omnes et singulos, qui se regni nostri membra existimant' (*Szentkorona*, p. 179 n. 61) and that by the middle of the fifteenth century all nobles were regarded as members of the *ország* (*ibid.*, pp. 181f.) as well as the royal free towns of Hungary and sometimes even Dalmatian towns like Ragusa (Dubrovnik). See Bak, *Königtum*, pp. 74–77.

<sup>138</sup> On the system of *Doppelpoligkeit* in the estate constitutions in general, see Otto Hintze, *Staat und Verfassung*, Leipzig, 1941, esp. pp. 111–13; Otto Brunner, *Land und Herrschaft*, Vienna 1970, esp. pp. 437f.; Ferenc Eckhart, *A magyar alkotmányfejlődés*, Budapest, 1931 (hereafter, *Alkotmányfejl.*), pp. 15–16.

<sup>139</sup> *Tripartitum*, Pt. III, Tit. 1 § 1. *Regnum Hungariae*, territorially referred either to Hungary proper (like in *partes regni Hungariae*), the counties attached to Transylvania in the Ottoman period or, alternatively, to all *regna* under the Hungarian crown as in the Inaugural Diploma. Art. XVIII of 1741 offers clear examples for the two uses.

<sup>140</sup> See László Péter, 'Die Verfassungsentwicklung in Ungarn' (hereafter, 'Verfassungsentwicklung'), in Helmut Rumppler and Peter Urbanitsch (eds), *Die Habsburgermonarchie 1848–1918*, Vienna, 2000, 7, pp. 249–52; Martyn Rady has discussed *Doppelpoligkeit* and its limitations in his *Nobility*, pp. 158–61. He rightly criticized adherents of *Doppelpoligkeit* who posit 'the existence of only two separate subjects of right, ruler and estates', for the medieval polity was indeed 'multicellular'. Yet, when we look at the diet in Hungary we find it increasingly being dominated by the dialogue, *tractatus*, between the two actors and this is strongly reflected in the structure and style of the *decreta* up to 1867.

lasting effect on political attitudes and rhetoric. The bipolarity became a potent source of political nationalism after 1790. All in all, while organological forms, involving persons, social groups and territories, appeared in abundance when predicated on *ország/regnum*, the uses of *corona* affected by the simile were confined to a few contexts.<sup>141</sup>

*Werbőczy on the Holy Crown*

István Werbőczy's *Tripartitum*,<sup>142</sup> published in 1517 planted the seeds of a new Holy Crown tradition. Medieval Hungary's distinguished jurist-politician habitually and consistently uses the term *sacra corona* in his customary in its traditional forms, based on the distinction between the king's person and his office.<sup>143</sup> In a single instance, however, Werbőczy in the *Tripartitum* refers to the landed nobles as *membra sacrae coronae*.<sup>144</sup> The use of the organic crown metaphor suggests a body politic which comprises both the king and the nobility.<sup>145</sup> By placing the metaphor in its proper context we should, however, come to the conclusion that Werbőczy's crown simile has very little to do with any corporate political conception.

Where Werbőczy asks the question *Qui possint condere leges, et statuta?*,<sup>146</sup> that is, where he discusses the political arrangements of the kingdom, he does not bring in the organic metaphor. He tells us at the beginning of his work's Second Part that while the Hungarians were still pagans their dukes and captains made laws for them:

After they [the Hungarians] converted to the Catholic faith and freely elected their king, they transferred the power and right to make laws,

<sup>141</sup> The one or two odd cases of organological *corona* uses applied to persons are mostly in foreign sources: Bartoniak, 'Corona', p. 327 n. 5, 328 n. 1; Eckhart, *Szentkorona*, pp. 127–28, 140. Officials of the town of Ragusa in their diplomatic correspondence in the fifteenth century frequently extended the organological uses of *ország* to *corona*, the town describing itself as a member of the *ország* as well as the Holy Crown. Eckhart emphasized that the use was 'purely territorial': *ibid.*, pp. 193–96 and see note 158 below. For the territorial organological *corona* uses, see further on pp. 452f and 458f.

<sup>142</sup> Werbőczy, *Tripartitum*, see note 76 above. The diet commissioned Werbőczy, protonotary of the High Court, to collect the country's laws. The draft, approved by a committee, attained royal *approbatio*, but the work was never promulgated by the king in a *decretum*. The *Tripartitum* was to become the book in Hungary which, apart from the Bible, attained the highest number of editions (said to be around fifty).

<sup>143</sup> To ignore this fundamental fact, as many historians do, is itself a major failure of scholarship. Herewith a sample of references to passages in the *Tripartitum* where Werbőczy's use of the Holy Crown is entirely traditional: Pt. I Tit. 3 § 6, Tit. 9 § 6, Tit. 10 § 1, Tit. 13 §§ 2, 4 and 5, Tit. 14 § 2, Tit. 16 § 6, Tit. 24 Preamble, Tit. 26 Preamble, Tit. 37 §§ 2, 5 and 8, Tit. 64 Preamble and § 1, Tit. 66 § 4; Pt. II Tit. 3 § 2, Tit. 14 §§ 31, 34, 37 and 43, Tit. 39 § 3; Pt. III Tit. 1 § 1. It is even more telling that Werbőczy sometimes refers to the reversion of property to the Holy Crown as *jurisdictione regia* (Pt. I Tit. 65 §§ 3 and 5) or *fisco regio* (Pt. 47 § 2). See also, Eckhart, *Szentkorona*, pp. 197–99, and Bak, *Königtum*, p. 122 n. 32.

<sup>144</sup> Pt. I Tit. 4, para. 1.

<sup>145</sup> This is the conclusion of most Hungarian historians. They ignore Eckhart's contribution on this critical point, see *Szentkorona*, ch. 10.

<sup>146</sup> Pt. II Tit. 3.

donating land and administering justice together with the rule and government to the jurisdiction of *sacrae regni hujus coronae* with which all the kings of Hungary are crowned,<sup>147</sup> and consequently to our legitimate king and prince. And from this time onwards the kings have made laws by summoning and consulting the people as it happens in our age too.<sup>148</sup>

There is no sign of any corporate political theory, embracing the king and the nobility, in this passage.

In order to explain the organic simile, used in a single instance in Pt. I of his work by Werbőczy, we should start with the politician rather than the jurist. For Werbőczy was the leader of the nobility party at the diet which supported Count János Szapolyai, the ambitious voivode of Transylvania, against the barons who ran Vladislav II's court. A promoter of elective kingship<sup>149</sup> based on the landed nobility, Werbőczy announced, right at the outset of his work, his cardinal principle: *Quod tam personae spirituales, quam saeculares, una et eadem libertate utantur.*<sup>150</sup> Within the nobility, Werbőczy claims, there were no legal differences. An opponent of the barons and leader of the 'nobility party', Werbőczy asserted the principle again and again:

all prelates, Church leaders, barons, other magnates and nobles and persons of rank in this kingdom of Hungary with respect to their nobility and the possession of temporal goods, *una, eademque libertatis, exemptionis, et immunitatis praerogativa gaudent.*<sup>151</sup>

This was a political programme rather than a legal fact. The legal positions of the prelates and the barons were always different from those of ordinary nobles. But this is exactly what Werbőczy (the leader of the nobility party) set out to deny. The nobility as a whole (including

<sup>147</sup> Notably, Werbőczy does not yet distinguish the visible crown from the invisible *corona*.

<sup>148</sup> Pt. II Tit. 3 para. 2. Werbőczy read the conditions of the fifteenth and sixteenth centuries into the period of the Árpád kings.

<sup>149</sup> An outstanding judge and silver-tongued orator, Werbőczy drafted the xenophobic 'Rákos Resolutions' at the diet in 1505 against Habsburg succession in favour of native elected kings. On the politics of the period see Dezső Szabó, *Küzdelmek a nemzeti királyságért 1505–1526*, Budapest, 1917, pp. 94–99; on the political ideology of the nobility party see Bálint Hóman and Gyula Szekfű, *Magyar történet*, 5 vols, Budapest, 1936, 2, pp. 592–95; Bak, *Königtum*, ch. 6; Engel, *The Realm*, pp. 349–51, passim (a rather traditional account of Werbőczy's crown 'theory').

<sup>150</sup> Title of Pt. I Tit. 2.

<sup>151</sup> § 1.

the barons), the *populus*, which Werbőczy contrasted with the non-nobles, the *plebs*,<sup>152</sup> enjoyed the same basic privileges which he lists further on.<sup>153</sup>

After the announcement of his cardinal principle of 'identical' liberty, Werbőczy immediately went into history in order to explain how the *communitas*, when the Hungarians were still pagan, had split into *populus* and *plebs*.<sup>154</sup> As Eckhart has convincingly argued, Werbőczy's only interest here is to support by history the *una eademque libertas* principle and he entirely ignores the topic of political participation by the *communitas*.<sup>155</sup> Here, Werbőczy explains that the Hungarians were, through the work of the *szentkirály*, converted to Christianity and:

By freely electing [Stephen] and crowning him king, the *communitas* by its free will transferred to the jurisdiction of the kingdom's Holy Crown and consequently to our prince and king, together with the rule and government, the right and the entire power of ennoblement and consequently of land donation which adorns and distinguishes the nobles from the non-nobles. Henceforth he is the source of nobility and the two things, owing to the reciprocal transference and mutual connection, are so interdependent that they are inseparable and unbreakable and the one cannot exist without the other. For the prince is elected only by the nobles and, in turn, the nobles are only created and adorned with that dignity by the prince.<sup>156</sup>

The thrust of this passage is that *all* nobles acquire nobility in the same way. Werbőczy then argues that nobility, earned by military or other services, is obtained by royal land donation. By virtue of this donation anyone endowed by the prince with a castle, an *oppidum* or a village

<sup>152</sup> Pt. II Tit. 4.

<sup>153</sup> These were the four cardinal privileges listed in the '*Titulus Nonus*', Pt. I Tit. 9: (i) nobles may not be arrested by anybody without a writ issued by a court, (ii) they are subject to no authority except that of the lawfully crowned king, (iii) they are exempted in perpetuity from servitude, dues, taxes and custom duties of any kind, their only obligation being the taking up of arms when the kingdom is attacked, (iv) if the king violates the liberties of nobles, they have the 'right in perpetuity to withstand and resist, by word and deed, without thereby incurring the crime of infidelity'. The last point, the *ius resistendi*, appeared for the first time in Andrew II's Golden Bull of 1222 (Art. 31). Werbőczy claimed that all the kings at their coronation had taken the Oath on the keeping of the Golden Bull (in fact, only some did). Art. IV of 1687 annulled the *ius resistendi*. Because this act did not acquire the 'tacit consent' of *populus*, the king at his inauguration and right up to 1918 expressly excluded from his coronation Oath Art. 31 of the Golden Bull. For the critical edition of the Golden Bull in English see Bak et al., *DRMH*, I, pp. 32–35.

<sup>154</sup> Those who did not respond to the call up of the *communitas* of the Huns, that is the ancestors of the Hungarians, a *communitas* based on equality, were either executed or subjected to permanent servitude: Pt. I Tit. 3 §§ 2–4.

<sup>155</sup> Following Elemér Mályusz, Eckhart explored the connections between Thuróczy's Chronicle (1488) and Werbőczy's digression into history to explain the division between the nobility and the ordinary people: *Szentkorona*, pp. 200–05. The ultimate source of Werbőczy and Thuróczy's account was Simon Kézai's 'hun story' in his thirteenth-century chronicle. Kézai in turn, as Jenő Szűcs argued, constructed his story on French analogies, 'Társadalomelmélet, politikai teória és történelemszemlélet Kézai Simon Gesta Hungarorumában', *Századok*, 107, 1973, p. 595.

<sup>156</sup> Pt. I Tit. 3 §§ 6–7.

becomes a true noble provided he is lawfully installed. After this, he sums up his position with a passage that became a *locus classicus* in the nineteenth century:

And with us this *donativa libertas* is called nobility. Hence the sons of these nobles are rightly regarded as heirs and free. Such nobles, because of their endowments which we have just mentioned and of their connections, are considered as members of the Holy Crown, who are, apart from the lawfully crowned prince, not subjected to anyone else.<sup>157</sup>

It appears that for Werbőczy ‘crown membership’ is a mere simile to underline the thesis of *una eademque libertas* based on direct connections with the crown: and only such nobles (*et hujusmodi nobiles!*) who received (or inherited) land, donated by the king, were, because of that, called members of the crown. Contrary to what has been repeated *ad nauseam* in more recent years, even by historians, in the *Tripartitum* it is not the nobility as a whole who are called members of the Holy Crown but only those who benefited from royal donation of land, a minority within the nobility.<sup>158</sup> And having established this, Werbőczy, very logically, gets down to discussing property rights, privileges and forms of donation and the organic simile never recurs in his work.<sup>159</sup> The context in which Werbőczy used the organic metaphor was clearly *fidelitas*, service and land donation rather than the political rights of the *communitas*. He combined two precepts: the *ország*’s crown, in the form of an elective kingship, and his controversial principle<sup>160</sup> that all nobles,

<sup>157</sup> Pt. I Tit. 4 § 1. ‘Et ista tandem donativa libertas, per nostrates, nobilitas appellatur. Unde talium nobilium filii, merito haeredes, et liberi nuncupantur. Et hujusmodi nobiles, per quandam participationem, et connexionem immediate praedeclaratam, membra sacrae coronae esse censentur; nulliusque, praeter principis legitime coronati, subsunt potestati.’

<sup>158</sup> Less than one-third of the whole nobility: see Rady, *Nobility*, pp. 155–57. Judicial practice followed Werbőczy in this respect too: see Béni Grossschmid, *Magányjogi előadások*, Budapest, 1905, pp. 237–38. Henrik Marczali made the point that royal land donation (rather than noble status) qualified for membership: *Ungarisches Verfassungsrecht, Das Öffentliche Recht Gegenwart*, vol. 15, Tübingen, 1911 (hereafter, *Ung. Verfassungs.*), p. 28; and see notes 141, 220 and 405 below. During the Dózsa peasant uprising on 16 June 1514 Werbőczy, on behalf of four counties, requested the northern mining towns to send *pixidarios* (lancers or musketeers) against the peasants, ‘quia etiam Dominaciones Vestras membra sacre corone regni huius esse scimus’. Zsuzsanna Hermann points out that the crown simile was hardly applied to towns, although rather exceptionally, in 1490 the metaphor was applied to Sopron in a *missile regium*. However, Werbőczy, an opponent of the towns, did not extend crown membership to them in the *Tripartitum*: Zsuzsanna Hermann, ‘Egy pénzügyi tervezettől a Hármaskönyvig’, *Századok*, 115, 1981, pp. 108–51 (pp. 130–32). Martyn Rady has drawn my attention to this case as well as to a similar one in an unpublished letter by Vitez de Kállai, ban of Szörény, to the citizens of Kassa (Košice) written in 1522 (MODL Df 271232). Art. XIX 1958 referred to the royal free town as property (*peculium*) of his majesty’s crown. The town as *koronajószág* appeared in the legal literature, alternately, as *peculium regium* and as *peculium sacrae coronae*.

<sup>159</sup> Eckhart emphasized this point: *Szentkorona*, p. 208.

<sup>160</sup> In fact a very high proportion of the nobility served as *familiares* (servitors) of the Church and magnates, see György Bónis, *Hűbériség és rendiség a középkori magyar jogban*, Kolozsvár (1944), pp. 217–312; Martyn Rady regards *familiaritas* as ‘one of the distinguishing features of Hungarian noble society’: *Nobility*, p. 112.

as beneficiaries of the royal office, the Holy Crown, which was the single source of their donated land, were in law equal because they were not dependent on anybody else but the lawfully crowned king.

In sum, the evidence is simply not there in Werbőczy that his organological crown metaphor even prefigured the idea of political authority, let alone a system of public law, residing in the Holy Crown as a corporation which comprised the king as head and the noble *ország* as its members. It is then a remarkable feat of nineteenth-century scholarship that it was on Werbőczy's authority that his metaphor, used in a single instance and in a very different context, could become the main evidence to attest the evolution towards the concept of a unified system of public law and political authority.

*Reincorporation with the crown and the ország*

In the early modern age, as the kingdom became a part of the Habsburg empire, *corona* and *ország* moved apart. The royal prerogatives vested in the Holy Crown and the corporate rights of the *ország* or, as they were now called, the *status et ordines* of the counties and of the diet marked two separate spheres of right and authority.<sup>161</sup> Their complementary relationships, the endemic conflict and accommodation between the two sides, provided the defining political tradition. The links between the offices of the Hungarian crown, mostly subordinated to Habsburg imperial offices, and the *ország* diet became tenuous.<sup>162</sup>

The tripartite division of the kingdom in the sixteenth century accounts for the predominance of the territorial senses in which the Holy Crown turns up in the proceedings of the diet and in the *decreta*. As elsewhere in Christian medieval Europe, the territory of the Hungarian crown was held to be inalienable. It was an obligation imposed on the king by the Oath he took at and the Diploma issued after the coronation that he might not alienate any part of *corona* territory. Or, inversely, should any part of the territory over which the king had a claim to rule, and consequently held of the Hungarian crown, be severed from the rest by any means, he had the obligation to recover what had been (temporarily) alienated and reincorporate it with the rest of *corona* territory, or, in other words, to bring it back under the king's rule. The crown was indivisible. The duty of reincorporation acquired special significance after 1541 when Suleiman

<sup>161</sup> SS & OO became the abbreviated form (*Status et Ordines*). The organological image of the *ország* survived into the early modern age: the landed nobility, the royal towns, Transylvania, persons as well as territories, are said to be its members; examples are given by Eckhart, *Szentkorona*, pp. 240f.

<sup>162</sup> See László Makkai, 'The Crown and the Diets of Hungary and Transylvania in the Sixteenth Century', in R. J. W. Evans and T. V. Thomas, *Crown, Church and Estates*, London, 1991, pp. 80–91.



the Magnificent occupied large parts of the kingdom. The diet habitually demanded that the monarch should retake the lost territories and reincorporate them with the crown, and also with the *regnum* in its *ország* sense. In their territorial uses *corona*, like *regnum*, was regarded as a *corpus* with members.<sup>163</sup> The two demands, when juxtaposed, did not necessarily refer to the same territory. From the sixteenth century, three *regna*, each with its own customary laws, offices and diet, coexisted: Hungary, Croatia and Transylvania.<sup>164</sup> In the late seventeenth century the Habsburg army retook the territory hitherto under Ottoman rule and Transylvania reverted to the Holy Crown. There were some links between the *ország* of Hungary and the other *regna*. In the eighteenth century, Hungary and Croatia had some joint royal offices and Croatia also sent deputies to the Hungarian diet.<sup>165</sup> But the Croat Sabor possessed autonomous statute-making power which attained the royal assent<sup>166</sup> without reference to the Hungarian diet. There was no *diaetalis* link between Hungary and Transylvania.<sup>167</sup> The estates of Transylvania declared in Art. I of 1744 that the Principality, which used to be *sacrae regni Hungariae coronae membrum* — and even then under its own voivode — later had separated from that *regnum*<sup>168</sup> and acquired its own princes. The apogee of the process in which each of the three *regna* was regarded as independent of the other two was reached in 1790, just as the first move in the opposite direction was being attempted. After the collapse of Joseph II's system, all three *regna* declared<sup>169</sup> that they were entirely autonomous, not subject to any other Land.

In the eighteenth century the nobility demanded the reincorporation *diaetaliter* of all territories that used to be parts of Hungary, yet after

<sup>163</sup> Eckhart, *Szentkorona*, pp. 222 ff. and 245 ff. 'Corona' and 'regnum' in their 'kingdom' senses were interchangeable, at other times *regnum Hungariae* referred only to Hungary proper, the *ország*.

<sup>164</sup> László Péter (ed.), *Historians and the History of Transylvania*, New York, 1993 (hereafter, *Historians*), pp. 8, 12; and Martyn Rady, 'Voivode and *Regnum*', in *ibid.*, pp. 87–101. Count Miklós Zrínyi adopted the phrase that can be found in all European languages, 'C'est un des plus beaux fleurons de la couronne', for Transylvania: Tóth, *Szájru*, pp. 42–43.

<sup>165</sup> After the collapse of the Wesselényi conspiracy in 1670 Croat and Hungarian aristocrats politically moved apart. Conflicts of competence between the two *regna* were tolerable as long as the deputies of the *ország* did not attempt to 'majorize' the two Croat deputies at the diet in Pressburg. On its own, Croatia carried little political weight in the eighteenth century. Although the three Croat counties together raised less tax than a single Hungarian county, Croatia became a distinct *regnum* in the *ország* sense.

<sup>166</sup> Para. 1, Art. 120 of 1715. Croatia was, as Croats argued, subject to the Holy Crown, that is the king of Hungary, not Hungary (the *ország*) itself. The Croat estates offered to accept the Pragmatic Sanction on 15 March 1712 without reference to the diet of Hungary: Joannes Kukuljević, *Jura regni Croatiae, Dalmatiae et Slavoniae*, Zagreb, 1862, 2, pp. 105–07.

<sup>167</sup> There was some support in Hungary for *diaetalis* union with Transylvania but none there before 1790, see Péter, *Historians*, pp. 12–13, 22 and n. 43.

<sup>168</sup> 'ab eodem regno', here *regnum* in the kingdom sense.

<sup>169</sup> See Péter, 'Verfassungsentwicklung', p. 261.

their reconquest the crown had not reattached them to the *ország*.<sup>170</sup> In Art. XVIII 1741 Maria Theresa promised that, subject to conditions, the counties of the so called 'Partium'<sup>171</sup> and the *Militärgrenze*<sup>172</sup> would be reincorporated; she partly kept these promises.<sup>173</sup> Within a few years the Tisza-Maros *Militärgrenze* was dismantled and, towards the end of her rule, so were the Banat and Temesvár; the rest of the *Militärgrenze* was not. The Partium stayed with Transylvania but the thirteen towns of the Zips were reincorporated with Hungary at the First Partition of Poland in 1772.<sup>174</sup> Galicia, which was then acquired by Austria by reference to the rights of the Hungarian crown, was not attached to Hungary.<sup>175</sup> Neither the court nor the nobility regarded it as a part of the *ország* in any sense. Fiume was an interesting case. In order to provide the kingdom with a seaport on the Adriatic, outside the control of both the Croat and the Hungarian nobilities, Maria Theresa, in two moves in 1776 and 1779, attached the town to the Hungarian kingdom<sup>176</sup> as a *separatum sacrae regni Hungariae Coronae adnexum corpus*;<sup>177</sup> hitherto the town had been a part of the Holy Roman Empire. The restoration of the royal land donation system throughout Hungary proper (to benefit the nobility) and the demands to re-establish the counties including their *diaetalis reincorporatio*, were the antecedents of the claim made after 1790 that the integrity of the *ország* should be restored. As we shall presently see, however, what the nobility was to understand in the nineteenth century by the 'restoration' of Hungary's territorial integrity amounted, in fact, to a major discontinuity with the past.

All in all, it is plain that for well over two and a half centuries after Werbőczy, neither his organic metaphor nor any other uses of *corona* exhibited any sign of development into a corporate political concept of the crown which comprised the king and the nobility.

<sup>170</sup> Eckhart, *Szentkorona*, pp. 232, 270.

<sup>171</sup> § 2. Transylvania, to which the counties of eastern Hungary had been attached in the 1540s, was to be consulted.

<sup>172</sup> § 3. In the South of Hungary and parts of Croatia, instead of the restoration of the counties, the monarch introduced a military frontier system under the Hofkriegsrat.

<sup>173</sup> R. J. W. Evans, 'Maria Theresa and Hungary', in H. M. Scott, *Enlightened Absolutism*, London, 1990, pp. 199–200.

<sup>174</sup> C. A. Macartney, *Maria Theresa and the House of Austria*, London, 1969, pp. 142f.

<sup>175</sup> Endre Kovács, *A lengyel kérdés a reformkori Magyarországon*, Budapest, 1959, p. 57.

<sup>176</sup> *Regnum Hungariae* in the 'kingdom' and emphatically not in the *ország* sense. Neither Croat nor Hungarian nationalists ever distinguished between the two senses of *regnum* and Maria Theresa's gift to the kingdom became a Pandora's Box between 1779 and 1918. Péter, 'Verfassungsentwicklung', p. 347.

<sup>177</sup> Henrik Marczali, *A magyar történelm kútjainak kézikönyve*, Budapest, 1901, pp. 756 and 748 f., also Gyula Miskolczy, *A horvát kérdés története és irományai a rendi állam korában*, 2 vols, Budapest, 1927–1928, 1, pp. 35–40 (p. 39 n. 2) (with robust Hungarian gloss).

*The Holy Crown uses in statute laws and government instruments*

Evidence bears out Eckhart's observation that Werbőczy's simile became a *point d'appui* of new political and constitutional claims only from about 1790.<sup>178</sup> The critical point is, however, that the new uses of the organic simile occurred in constitutional discourse, notably in political rhetoric and legal literature rather than in statutory law. The references to the 'Holy Crown' in the *Corpus Juris Hungarici* are overwhelmingly about the visible Crown of St Stephen rather than about the invisible crown. The articles on the coronation, the Diploma and the election of the Holy Crown's two Keepers<sup>179</sup> all bear witness to the strength of the tradition attached to the jewel, of which we have already given a brief account. Whereas the constitutional role of the visible material crown can be properly attested through legal evidence, this is, apart from the uses of territorial integrity, missing for the *new* uses of the invisible crown. The point here is that, even after 1790, we do not find in the Lawbook a single instance where the Holy Crown appears as a political corporation embodying the king and the nobility or the nation. Also, it is less than clear whether the crown was ever used by the legislator to express continuous independent statehood. Whenever the invisible *corona* appears in the Lawbook it follows the earlier uses. This is the case with Werbőczy's organic simile which Art. XVI 1791 of Transylvania asserted by reference to the rights of the Transylvanian landed nobility. I have not found, however, a single instance of the Holy Crown membership idiom applied to persons rather than the territory in the *Corpus Juris Hungarici*. This omission is rather unexpected.

Following the established path of earlier centuries, apart from the territorial uses, the uses of 'Hungarian Crown' and 'Holy Crown' in the modern periods refer either to the (common) monarch, or the person of the king, or the royal office. In Art. XIX 1596 the estates supplicated 'his Majesty the Emperor' for the preservation of the Free Towns' liberty as they were [*ipsi*] *peculium coronae suae majestatis*. In the enacting clauses of the Hungarian Pragmatic Sanction, the so-called *jus haereditarium succedendi in Hungariae regnum et coronam* was extended to the female line.<sup>180</sup> There can be little doubt that 'crown' here refers to the majesty of royal office to rule and govern the kingdom. It clearly emerges from Article VII of 1790 that the landed property of the *sacra regni corona* for the maintenance of royal office was at the king's disposal

<sup>178</sup> Eckhart, *Szentkorona*, p. 290.

<sup>179</sup> Tamás Katona published all the Laws concerning the Keepers and the protection of the Holy Crown from 1464 to 1928. See Appendix of his *Korona*, pp. 569–87. Even the republican Károlyi régime passed Néptörvény XXXI. On the safekeeping of the crown and the other regalia, see *ibid.*, p. 580.

<sup>180</sup> §§ 5–9 of Art. II 1723.

and had nothing to do with the diet.<sup>181</sup> Even a century later, when in 1895 Prime Minister Baron Dezső Bánffy argued in a submission to Franz Joseph that the Hungarian Holy Crown should be registered as the owner of Buda Castle, the monarch agreed, as Eckhart observed, ‘because in his view the crown, as the symbol of rule, could only mean the monarch and under no circumstances that special community of the monarch and the *ország* which was advanced by public law’.<sup>182</sup>

The crown stood for the monarch in the basic laws of the nineteenth-century constitutional conversion. In April 1848 at the Staatskonferenz dealing with the draft bill concerning the reincorporation of the Partium with Hungary, which was opposed by the chancellor of Transylvania, the view of the former Chief Justice Anton Cziráky prevailed:

Conflicts between Lands of one and the same crown, as, for instance, those in relation to the Partium, can be lawfully resolved only by decision of the common monarch.<sup>183</sup>

Law III of 1848, which ordained the creation of an independent responsible ministry for Hungary, emphatically maintained ‘intact the unity of the crown and the imperial connection’. Here, unmistakably, the rights of the Hungarian king were considered in conjunction with the responsibilities of Palatine István. The imperial crown was juxtaposed to ‘the crowns of his Other Lands’, from all of which Ferdinand had abdicated, according to the Diploma of Franz Joseph.<sup>184</sup> Para. 7 of Law XII 1867, the Settlement Law, repeated the Pragmatic Sanction: ‘the crown of Hungary is vested in the same monarch who also rules the Other Lands.’ Law I 1875, ‘On Incompatibility’, stipulated that a member of the House of Representatives was prohibited from accepting any office which depends on ‘nomination by the crown’ (para. 1). Law XXIII 1901 affirmed that Count Béla Széchenyi had been elected

<sup>181</sup> Árpád Károlyi pointed out in ‘Az 1848. III. törvénycikk történetéből’, that until 1848 the revenues of the crown were the royal revenues *in toto*. Although some distinctions were made between different categories, they were technical rather than constitutional because the diet did not have a say in expenditure: *Néhány történelmi tanulmány*, Budapest, 1930, p. 511; Károly Miskolczy, *Magyar Ország köz Joga*, Eger, 1846, pp. 44–46, distinguishes various categories of crown property and revenue; they are all royal. Antal Cziráky notes in his *Conspectus Juris Publici Regni Hungariae ad Annum 1848*, Vienna, 1851, 2 vols (hereafter, *Conspectus*) in vol. 2, Caput XIV that the only firm rule is the inalienability of property.

<sup>182</sup> Ferenc Eckhart, *A volt monarchia udvartartásának vagyona*, Budapest, 1928 (hereafter, *A volt monarchia*), pp. 43–44. Eckhart meant, of course, by ‘public law’ the legal literature. Also, he emphasized that Buda Castle was the property of the ‘king’ as an institution, distinguished from the private property of the dynasty as well as other ‘crown properties’, like Gödöllő, which was ‘pure Hungarian state property’: *ibid.*

<sup>183</sup> ‘Differenzen zwischen Ländern einer Krone, wie die hier vorwaltende wegen der Partium, gesetzmässig nur durch den Ausspruch des gemeinschaftlichen Regenten entschieden werden können.’ On 8 April 1848, *Az 1848-iki pozsonyi törvénycikkek az udvar előtt*, ed. Árpád Károlyi, Budapest, 1936, pp. 305–06. The editor disagreed, pp. 152–53.

<sup>184</sup> Preface of Law II 1867.

Keeper of the Hungarian Holy Crown because of his work ‘in the interest of crown and country’.

It should not surprise us that, in the liberal age, Hungarian law followed the general European practice in crown uses. The imperial connection, however, produced a few peculiarities. The programme of the Committee of Nine, agreed between Franz Joseph and incoming Prime Minister Count István Tisza on army reforms in October 1903, referred to the political responsibility of the ministry which applied to ‘every act of the crown’. As the context involved the monarch’s reserved rights the ‘crown’ here referred to the ruler of the Austro-Hungarian Monarchy as a whole.<sup>185</sup> The Treaty of Trianon enacted by Law XXXIII 1921 likewise understood by the ‘crown’ the sovereign’s rights of the whole Austro-Hungarian Monarchy (para. 177). These uses without exception followed patterns well established for centuries. Apart from the territorial uses of the Holy Crown, to which I shall soon turn, the only new crown use in the *Corpus Juris Hungarici* was a legal curiosity, nay oxymoron, born posthumously after the collapse of the Monarchy. Until 1918, justice was administered by the courts ‘in the name of His Majesty the King’ and, after Law I 1920 had been passed ‘in the name of the Hungarian State’. The novel use came in with Law XXXIV 1930 which ordained that ‘the judicial power is exercised by the courts of State in the name of the Hungarian Holy Crown’.<sup>186</sup>

The central fact is that (at least before 1930) the Holy Crown did not become the Hungarian term for the ‘State’.<sup>187</sup> From the 1830s liberal constitutionalism aimed to carry out a conversion (*átalakítás*) of the whole constitution. The legal dualism of the mutually recognized rights and obligations of the crown and the *ország* was to be replaced by a system of public law based on the assumption that all public power had a single source, the State, whose impersonal regulations extended equally to everyone. As elsewhere in Europe, the ‘State’ grew out of

<sup>185</sup> József Barabási Kun (ed.), *Gróf Tisza István képviselőházi beszédei*, Budapest, 1930 (hereafter, *TIKB*), 1, p. 751, see Edmund Bernatzik, *Die österreichischen Verfassungsgesetze*, Vienna, second edn, 1911, p. 706 (‘jede Handlung der Krone’). The programme was an agreement, a contract of sorts between the monarch and parliament’s majority (rather than statute law) in which the latter was compelled to recognize the *reservata* of the former. In another place the agreement referred to the legislature as ‘the crown and parliament together’ where the ‘crown’ stood for the rights of the king of Hungary.

<sup>186</sup> Para 1. Eckhart was justified to note that this innovation was ‘the offspring of the new legal literature’, *Szentkorona*, p. 265. Indeed, the Ministerial Motivation of the bill referred to the Holy Crown that ‘embodies the sovereignty of thousand years’ Hungarian statehood based on the ruler and the nation in its entirety’: *CJH*, Márkus edn, Budapest, 1931, p. 469, n. 1.

<sup>187</sup> Eckhart, *Szentkorona*, pp. 263–64.

*status*,<sup>188</sup> in Hungarian *álladalom*,<sup>189</sup> and from 1850, *állam*. In the new vocabulary, the ‘State’ was sometimes predicated on the Empire of Austria, which included Hungary, at other times on Hungary itself.<sup>190</sup> The April Laws of 1848 referred to the liberal representative system introduced in Hungary as *álladalom*.<sup>191</sup> Henceforth, the traditional intercourse between the crown and the *ország* acquired a new dimension with the enigmatic *quodlibet* of ‘Austria’ versus ‘Hungary’. Indeed it was the rival claims to statehood, culminating in the claim to *Gesammt-Monarchie* in the 1849 March Constitution and the Independence Declaration of the *magyar álladalom*, that the War in 1848–49 was about.<sup>192</sup> After Világos, *die Krone*, in the enactments of the centralized Austrian State, referred either to the person of the autocrat or his rights. The ‘state’ now transformed the vocabulary of law and political discourse. Throughout the Dualist Era the Hungarian legislator invariably employed *állam* rather than crown or Holy Crown for the notion of legally organized society. There was, nevertheless, one new class of crown uses, which was introduced in the Lawbook with the nineteenth-century conversion of the constitution.

*The Lands of the Hungarian (Holy) Crown*

The crown became the territorial reference for the unitary Hungarian national state. To begin with a summary: before 1790 the rights of the *ország* were predicated on the territory of Hungary proper. After 1790 the diet of the *ország* claimed the right to legislate for the other Lands (*regna*) under the Hungarian crown. And from the 1830s the liberal nationalists called for all the Lands of the Hungarian crown to be united in a single governmental system. This claim was a part of the programme for the establishment of a Hungarian State. The claim was partly based on the liberal vision of civil society, which was to establish legal equality for all, and also on the *ország*’s historical rights.<sup>193</sup> And

<sup>188</sup> The estates claimed in 1790 that Transylvania was a part of the *status Hungarici*, Eckhart found this early reference: *Szentkorona*, p. 264.

<sup>189</sup> *Allomány* and *közálladalom* were possibly the earlier forms of *status*: see Béla Szabó, *A magyar korona országainak státusjogi és monarchiai állása a pragmática sanctio szerint*, Pozsony, 1848, p. 5.

<sup>190</sup> Hungarian authors frequently did both, sometimes in the same work: for example, Baron Zsigmond Kemény, *Forradalom után*, Budapest, 1908, pp. 9, 13, 53, 328, 371f; Pál Somssich, *Magyarországnak és királyának törvényes joga*, Vienna, 1850, pp. 78–79, 85, 88, 94f.

<sup>191</sup> See Laws XIII §3, XIV §3, XVIII§6, XX §8.

<sup>192</sup> On this subject, see Péter, ‘Verfassungsentwicklung’, pp. 272–75 and 291–94. Paradoxically, Hungarian historians, axiomatically and *sub specie aeternitatis*, identify the Holy Crown with the ‘Hungarian State’ yet the ‘crown’ is entirely missing from the Independence Declaration, the very first authoritative document which asserted the Hungarian State principle (in 1849).

<sup>193</sup> *Ibid.*, pp. 262–65. Kossuth, then leader of the Opposition, in December 1847 questioned the very existence of Croatia as a Land. He insisted at the diet that under the Hungarian Holy Crown only a single historical nation existed, the Hungarian, in order to claim the right to a single common legislature.



history had to be subjected to heavy massage to support the claim to the State with its modern system of government. The medieval precept of *reincorporatio* with the Hungarian crown, through conversion of sorts, reappeared as the territorial and political integrity of the unitary Hungarian State based on the Hungarian language.<sup>194</sup> This historic right argument for the creation of a Hungarian State, which was to replace the system of three *regna* under the crown, amounted to constitutional innovation by reference to pre-existing right.<sup>195</sup> The April Laws of 1848 ordained the creation of ‘the complete *álladalmi* unity of the territory under the Hungarian Holy Crown’.<sup>196</sup> Thus when the Law ‘On the Unification of Hungary and Transylvania’ confirmed the traditional precept that ‘Transylvania belongs to the Hungarian Crown’,<sup>197</sup> in fact, it asserted a new claim. The Law was to defend the territorial integrity of a fundamentally reorganized kingdom. Law XVIII ‘On the Press’ made it an offence to incite against ‘the complete state unity of the territory under the Hungarian Holy Crown’ (para. 6).

In 1848 the attempt to unify the three *regna* of the Hungarian Crown, notably Hungary proper, Croatia and Transylvania, turned out to be a failure. But the aim was pursued, on the basis of the April Laws in 1861, and was successful in 1867 when by virtue of the constitutional settlement (*Ausgleich*) Hungary attained Home Rule and centralized government over the territory of what Ferencz Deák termed ‘the Lands (*országok*) of St Stephen’s Crown’.<sup>198</sup> The crown was used consistently by the law to express the territorial integrity of the enlarged Hungary from 1867. Franz Joseph referred to himself in his *Diploma Inaugurale* as ‘the lawful and true successor to the throne and crown of Hungary and its Associated Lands’. The ‘Lands of the Hungarian Crown’, a stock

<sup>194</sup> Hungarian nationalists forgot the historical background when they claimed ‘the principle of one crown, one state, one language’, wrote Eckhart, *Szentkorona*, p. 277. See also data on the subject in Gyula Szekfű, *Iratok a magyar államnyelvi kérdésének történetéhez*, Budapest, 1926, pp. 214, 550, 588. The diet on 11 June 1790 resolved that in schools Hungarian be taught in all the parts that belonged to the Hungarian crown.

<sup>195</sup> In a very similar fashion, Croat nationalists claimed the *trojedina kraljevina* (the Triune Kingdom) which comprised three *regna*: Croatia (the medieval Slavonia), the three countries of lower Slavonia (which before the Turkish occupation had belonged to Hungary proper) and Dalmatia.

<sup>196</sup> Law XVIII § 6. The Proclamation of the diet (probably drafted by Kossuth in the first days of April 1848) announced: ‘Diverse nations are united under the Hungarian crown, they all work on the great building of the *álladalmi*’: István Barta et al. (eds), *Kossuth Lajos összes munkái*, 1948–, 15 vols (hereafter, *KLÖM*), 11, p. 698.

<sup>197</sup> Preface to Law VII 1848. The diet asserted the competence of parliament to legislate for Croatia by referring to the Hungarian crown which represented the unity of the *magyar közálladalm*, *KLÖM*, 11, p. 699. It was implicit in the April Laws that *regnum* in its *ország* sense was coexistent and interchangeable with the crown or *regnum* in the kingdom sense, but see note 135 above.

<sup>198</sup> See Péter, ‘Verfassungsentwicklung’, p. 348 n. 434.

phrase of the Settlement Law,<sup>199</sup> and (from 1896) ‘Holy Crown’ remained the territorial reference of legislative enactments to the end of the Monarchy. Law XXX 1868, a ‘common fundamental law’, declared that ‘as Croatia and Slavonia in law and in fact have for centuries belonged to the Lands of St Stephen’s Crown’, they reached the following agreement with Hungary: ‘Hungary and the Lands of Croatia, Slavonia and Dalmatia form one and the same state complex with respect to the Other Lands under His Majesty’s rule as well as other countries’ (§1). Law L 1879 declared ‘citizenship (*állampolgárság*) to be one and the same in all the Lands of the Hungarian Crown’ (§1). In 1896 *szent korona*, as a new form, came into regular use: Law VII, which commemorated the founding of the Hungarian State, referred to the ‘legislature of the Lands of the Hungarian Holy Crown’.<sup>200</sup> Law XXXI 1912 allowed, under some strict conditions, ‘the employment of the *honvédség* [a second line force] outside the Lands of the Hungarian Holy Crown’.<sup>201</sup> Franz Joseph sometimes adhered to the new *rigueur*, other times he did so with a twist in the tail. In his letter to parliament via the prime minister on 22 September 1903 the monarch referred to *szent Koronám országainak integritása*, i.e. ‘the integrity of the Lands of my holy crown’.<sup>202</sup> The old bipolarity between ‘crown’ and ‘nation’ never disappeared from public life.

When the Austro-Hungarian Monarchy was about to disintegrate in October 1918 the government bill submitted in the House to separate Hungary from Austria declared: ‘The Lands of the Hungarian Holy Crown constitute an *önálló állam* which is independent of all other countries.’<sup>203</sup>

In the interwar years Hungary did not accept the Treaty of Trianon which transferred over two-thirds of the kingdom’s territory to Hungary’s neighbours, and the law employed the Holy Crown to justify the (very temporary) successes of the ‘territorial revisionist’ policy pursued by successive governments. When between 1938 and 1940 the southern strip of the former Highland (Slovakia), Carpathian Ukraine and the northern part of Transylvania were reattached to Hungary,

<sup>199</sup> Law XII of 1867, see preamble, paras. 1, 18, 27, etc.. For instance §19 referred to parliament as the ‘diet of the Lands of the Hungarian crown’.

<sup>200</sup> §1. The daily, *Magyarország*, reporting on the passing of the bill in the House, regretted the absence of the king in the session: ‘as however the Holy Crown was present and wheresoever is this glorious treasure, there is the kingdom of Hungary’, 9 June 1896, p. 1.

<sup>201</sup> §2. The predecessors of this law on the *honvédség*, Laws XLI 1868 (§3) and V 1890 (§2), used ‘Hungarian crown’ rather than ‘Holy Crown’. The editor of the CJH volume on the 1912 Laws observed that the latter designation was constitutionally more appropriate (p. 163 n. 3).

<sup>202</sup> *TIKB*, I, p. 732.

<sup>203</sup> Preamble to the bill On the Austro-Hungarian Personal Union, 20 October 1918: Emma Iványi (ed.), *Magyar minisztertanácsi jegyzőkönyvek az első világháború korából 1914–1918*, Budapest, 1960, pp. 516–17.

according to the Laws XXXIV 1938, VI 1939, and XX 1940, these territories 'returned to the body of the Hungarian Holy Crown'.<sup>204</sup>

It is now time to sum up on the legal side of our enquiry. In the laws of modern Hungary the invisible crown followed the well trodden path in standing either for the monarch or the royal office. Alternatively, the law employed the crown to define territorially the modern centralized political system. Even in this new territorial sense the crown did not stand for the 'State' but, rather, 'piggy-backed' on it.

*The inveterate crown uses*

Contrary to what one might have expected, it was not constitutional law but political rhetoric and legal discourse within the Law Faculties that were the vehicles for the new ideas associated with the crown at every turn in their nineteenth-century history. And even here caution is in order. For even outside the law, in the overwhelming majority of its occurrences, the crown appeared in its well established senses denoting either the (common) monarch or the (Hungarian) royal office.<sup>205</sup> A few examples will do. In Kossuth's rhetoric, the crown frequently stood for the monarch and he did not even separate consistently the Hungarian crown from the others.<sup>206</sup> Count István Széchenyi hoped in 1859 that a new *pactum conventum* could be made between the crown and the nation.<sup>207</sup> Ferencz Deák had the rights of the Hungarian king in mind when he wrote that in 1723 'the nation had transferred the crown and its rights to the dynasty and not to the Austrian provinces'.<sup>208</sup> On the other hand, in Deák's May Programme in 1865, 'the crown' referred to the person of Franz Joseph as the holder of all his (undistinguished) monarchic rights.<sup>209</sup> Prime Minister Gyula Andrassy regularly used the 'crown' in this sense. He admitted in the House to having interfered with Austrian affairs during the Hohenwart crisis, 'acting as the crown's adviser' rather than as a

<sup>204</sup> Eckhart observed that the use of the term by the law followed historical tradition, *Szentkorona*, p. 288. Undoubtedly it did; however, the tradition had been rather less than a hundred years old.

<sup>205</sup> 'The separate existence of Transylvania is in our interest', wrote István Bocskai in his testament in 1606, 'as long as the Hungarian crown is held by a nation, the German, stronger than ourselves': *Erdély öröksége*, ed. László Makkai, Budapest, 1993 (reprint), 3, p. 118. Bocskai here had the royal office in mind but the crown frequently referred to the king. Eckhart held that the use of the crown as a synonym for king was of foreign origin: *Szentkorona*, p. 261.

<sup>206</sup> See Kossuth's speech in County Zemplén on 24 January 1831, *KLÖM*, 6, p. 217; another example: 'the crown of His Majesty', in the *Pesti Hírlap* (1842), Kossuth Lajos, *Íratái*, ed. Ferencz Kossuth, Budapest, 1906, 12, p. 254.

<sup>207</sup> Miksa Falk, *Széchenyi István gróf és kora*, Pest, 1868, p. 327.

<sup>208</sup> Deák, *Ein Beitrag*, p. 147. In another place Deák, again referring to the 'transference of the crown', observed that the crown meant the 'Hungarian state', p. 104.

<sup>209</sup> Deák wrote on the joint management of the common affairs: 'the two deputations with each other and with the crown reach agreement', *DFB*, 3, p. 428.

Hungarian minister.<sup>210</sup> He viewed Austria-Hungary as a monarchic union of Lands with legal connections between ‘the crown and the two states of the Monarchy’.<sup>211</sup> In political tracts the crown was habitually used for the monarch; in the large numbers of Kákai Aranyos pamphlets the crown stood for the common monarch.<sup>212</sup> These habitual uses of language went on in the twentieth century<sup>213</sup> and we find them in parliamentary politics even after ‘Holy Crown’ began to replace ‘Hungarian crown’ in other contexts. Count Gyula Andrassy the Younger, in a proposal to the Liberal Party, continued with the old bipolarity, juxtaposing ‘the power and lustre of the Holy Crown’ and ‘the rights of the nation’.<sup>214</sup> ‘The mutual trust between the crown and the nation’ was a stock phrase in the vocabulary of politics.<sup>215</sup> As the ‘crown’ here was (or could be) the king of Hungary this usage incurred no objection from any quarters. It was different with the description of the advisory body for the common monarch, alternatively called after 1867 ‘common ministerial council’ and ‘common crown council’.<sup>216</sup> This use of the ‘crown’, by emasculating the claim to a legally sovereign Hungarian State, raised the hackles of many jurists in the early years of the twentieth century.<sup>217</sup>

Turning to the new uses to which the crown was put in political rhetoric, it is clear that the organic simile found in the *Tripartitum* was a potent source.<sup>218</sup> Indeed, most of the new traditions that unfurled (or were invented) between the rule of Joseph II and the First World War were read into Werbőczy rather than into the innovations of 1401 and 1440.<sup>219</sup>

<sup>210</sup> In the House of Representatives on 7 November 1871: *Gróf Andrassy Gyula beszédei*, Budapest, 1893, 2, p. 523.

<sup>211</sup> *Andrassy Gyula gróf beszéde a véderő-törvényjavaslat tárgyában* (5 April 1889), Budapest, 1889, pp. 23, 29, 36f., 45; see also, Péter, ‘Verfassungsentwicklung’, pp. 513 n. 1286 and 525 n. 1354.

<sup>212</sup> For instance ‘II-ik Kákai Aranyos’ pseud. [Kornél Abrányi, the Younger], *A leláncolt Prometheusok*, Budapest, 1881, pp. 33, 40, 108, 150. The ‘crown’ is habitually juxtaposed to the ‘nemzet’.

<sup>213</sup> For instance: ‘Egy Dobzse-párti’, in *Se Bánffy se Wekerle*, Budapest, 1903, p. 3 (*a Korona*).

<sup>214</sup> 23 September 1903, *TIKB*, 1, p. 733.

<sup>215</sup> For instance Franz Joseph’s letter to Prime Minister Khuen Héderváry on 22 September 1903, *ibid.*, p. 732.

<sup>216</sup> *Protokolle des Gemeinsamen Ministerrates der Österreichisch-Ungarischen Monarchie (1914–1918)*, ed. Miklós Komjáthy, Budapest, 1966, pp. 25, 46, 61, 83f., 89f.

<sup>217</sup> One jurist, an adherent of the ‘doctrine’ of the Holy Crown, went livid about this use and also objected to the use of the ‘crown’ for the king: Gejza Ferdinándy, *Korona és monarchia*, Budapest, 1903, pp. 7–11.

<sup>218</sup> See p. 451 above.

<sup>219</sup> Not much was known about the ideas of the political events in 1401 and 1440 before modern scholarship brought them to light, see pp. 15 and 23–24 above.

*The extension of the Holy Crown membership*

From Werbőczy's time up to the nineteenth century membership of the Holy Crown, whenever it was predicated on persons rather than territory, applied to the beneficiaries of royal land donation rather than the nobility as such; the bulk of the nobility, the armalists and the curialists, were not yet considered members.<sup>220</sup> The use of the metaphor could serve conservative purposes. In closing the diet in 1805 Emperor-king Franz praised the deputies: 'You have understood the danger which threatens the Holy Crown of which you are members.' Archduke Charles Ambrose, Primate of Hungary, noted at the 1808 diet the need to maintain harmony between 'the head of the Holy Crown, the king, and its members, the *status et ordines*'.<sup>221</sup> In opening the diet in 1825 Archduke Palatine Joseph welcomed the *SS* and *OO* 'together with whom I share membership of the Land's Holy Crown'.<sup>222</sup> The Holy Crown membership in these cases did not serve Werbőczy's *una eademque nobilitas* principle based on *fidelitas*, service and land-donation; it was about partnership in the diet. However, county deputies (and even those representing absentee magnates), as Arts. LXII of 1625 and VII of 1723 confirmed, had to be owners of donated land, *possessionati*. Thus, the shift of context may not be regarded in itself as innovation.

Soon, however, Werbőczy's metaphor became an argument for noble democracy. This change had something to do with the new voting practice, introduced in the counties by the government in the late 1810s which gave the landless nobility the right to vote at least at the elections to the diet.<sup>223</sup> Crown membership was now tacitly

<sup>220</sup> Illés Geörch closely follows Werbőczy's *Tripartitum*. In his popular legal manual he points out that the royal donation letter does not have to mention even the nobility 'but only the landed estate (*fekvő jószág*), by virtue of which we become members of the Holy Crown'. The 'landless nobles' (*jószágatlan nemesek*), possessed only *armales*, and Geörch does not refer to them as crown members. Further on he notes that Art. 7 of 1723 ordered the counties to send *nobiles possessionati* to the diet: *Honnyi törvény*, 3 vols, Pozsony 1804–09 (hereafter, *Honnyi törv.*), 1, pp. 28, 32 and 36. A century later, however, the leading historian, Marczali, was reprimanded (see p. 496 below) for writing that Werbőczy held only the landed nobility to be members of the Holy Crown, not the rest as they did not enjoy equal liberty and had to pay tax: *Ung. Verfassungs.*, p. 28. From the considerable recent literature on the curialists and armalists see particularly the studies of József Hudi listed in László Kósa's *Hét szilvafa árnyékában*, Budapest, 2001, pp. 274–75. Kósa's work is a monograph on the social conditions of all groups of the petty nobility before 1848. The volumes of the István Hajnal Circle, *Rendi társadalom — polgári társadalom*, 1987–2000 (eleven volumes so far) is a storehouse of information on the subject.

<sup>221</sup> Eckhart, *Szentkorona*, pp. 291–92.

<sup>222</sup> '... qui Vobiscum una Sacrae Regni Unius Coronae comembra sunt': *Felséges Első Ferencz Ausztriai császár, magyar és cseh ország koronás királyától . . . rendeltetett Magyar Ország gyűlésének Jegyzőkönyve*, Pozsony, 1826 (hereafter, *Felséges Első Ferencz*), p. 48.

<sup>223</sup> The government (not at all interested in democracy) by this move tried to undermine the political influence of the *bene possessionati*, the well-to-do gentry. See Mihály Horváth, *Huszonöt év Magyarország történelméből*, Budapest, 1868, 1, pp. 27–28, 106.

extended from the *possessionati* to the whole body of nobility, emphatically underlining the political equality between poor and rich nobles<sup>224</sup> as well as the separation between the noble *populus* and the *plebs*. Because of the socially exclusive character of the crown metaphor, liberals applied it less frequently to persons than their opponents. Deák did not use it all and Széchenyi<sup>225</sup> and Eötvös<sup>226</sup> did so only mockingly. Wesselényi and Kossuth treated crown membership with respect but they predicated the metaphor on the 'nation' (a claim which, as we shall see, was not new) and they used it to further reform (which was, however, new). Baron Miklós Wesselényi, a constitutional radical, argued in the *Balítéletekről*<sup>227</sup> in 1831 that the king's right of escheat could be removed by legislation because:

the principle is clearly expressed by the the *Tripartitum* in Pt. I Tit. 10<sup>228</sup> that the true and legitimate successor of every baron and noble is the Hungarian crown by which we ought not to understand the person of the king on its own and in its particularity but the personality of the nation in its entirety which [the term] *membrum sacrae coronae* exhibits.<sup>229</sup>

In a manuscript composed in 1833, Kossuth placed the crown concept in the service of social reform. He too believed, he started defensively, that the basic rights, summarized by Werbőczy in the *Tripartitum* Pt. I Tit. 9,<sup>230</sup> were immutable in that they could not be taken away from the nobles, members of the Holy Crown:

But I ask what would the Hungarian noble lose from his rights if our law would declare that nobody could, without the process of law, interfere with

<sup>224</sup> By the end of the eighteenth century well over two thirds of the nobility were either curialists or armalists: Ferenc Maksay; *Le pays de la noblesse nombreuse*, Budapest, 1980.

<sup>225</sup> Széchenyi in the *Stadium* (1838) referred sarcastically to his own condition that 'for the honour of being a member of the Holy Crown or a part of St Stephen's mantle, which is in fact not true either physically or morally, I am not an owner, however, only an *usufructuarius*', quoted by Eckhart, *Szentkorona*, p. 294. Széchenyi scoffed at the visible Crown of St Stephen as well, see quotation in Radnóti, 'Üvegalmárium', p. 62.

<sup>226</sup> Eötvös observed in *Reform* (1846) that 'the Hungarian people are not only under the king of Hungary but subjected to the tyranny of the Hungarian crown's five hundred thousand members': József Eötvös in *Reform és hazafiság*, ed. István Fenyő, Budapest, 1978, 1, p. 355. Elsewhere Eötvös referred to the 'gallant members of the Holy Crown taking up their cudgels' at elections, see *ibid.*, p. 486. In his *The Village Notary*, a didactic novel from 1845, the Anglo-maniac 'James' Bántornyai founds an Association for the Prevention of Cruelty to Animals but because of the *Tripartitum* the nobles were exempted from its oversight: otherwise 'a landed proprietor and a member of the Holy Crown would lose his high position if he were forbidden to whip his horse to his heart's content': English translation by O. Wenckstern, London, 1850, 3, p. 163. The old Eötvös softened up his attitude: in 1864 he merely found 'peculiar' the crown membership idea: István Fenyő et al. (eds), *Vallomások és gondolatok*, Budapest, 1977, p. 586.

<sup>227</sup> Published in Bucharest and Leipzig in 1933.

<sup>228</sup> The king's right of escheat to landed property.

<sup>229</sup> Wesselényi, *Balítéletekről*, pp. 269–70.

<sup>230</sup> In the *Prima nonus* Werbőczy listed the four cardinal privileges of the nobility, see note 153 above.



the Hungarian peasant, his person and possession, that he too possesses land property, that he too is a member of the nation and the Holy Crown.<sup>231</sup>

The aim of the liberal programme of creating a Hungarian civil society was to close the gap between the *populus* and the *plebs* by ‘uniting in law and interest the whole Hungarian people’.<sup>232</sup> The abolition of serfdom and the first steps made in 1848 towards legal equality were truly popular reforms that attracted the loyalty of the towns and large sections of the peasantry to the new political order. There were two other potent factors at work. The experience of serving in the *nemzetőrség*, the militia, created by Law XXII of 1848, and later in the *honvédség* during the Independence War, tied masses of ordinary Hungarians to the nobility-based nation. Later, the popular song ‘Lajos Kossuth sent word . . .’ may have helped national integration as much as the earlier promise of legal equality. Participation in politics through the franchise at local and general elections was another factor. Here caution is in order. ‘Democracy’, a popular slogan in the 1840s, asserted the principle of legal equality rather than that of majority rule or the conferment of political rights on the adult population. The effect of participation as an aid to political integration was, therefore, limited. Both the *nemzetőrség*<sup>233</sup> and the franchise<sup>234</sup> were open only to the relatively well-to-do and the educated; service in the *honvédség*, although nationally divisive was, however, not.

Uncertainties over the extent of political integration after 1848 appeared in the uses of the crown membership metaphor. Imre Zsarnay, deputy *alispán* of Torna, argued with general support in the House at the 1861 diet, that because the differences between the *populus* and the *plebs* had been abolished in 1848, the law ought clearly to recognize ‘that all citizens inhabiting the country are members of the Holy Crown’ and must therefore be treated equally in penal procedure.<sup>235</sup> Zsarnay’s view was not quite shared by Emil Récsi, a leading jurist, who in his 1861 textbook connected membership of the Holy

<sup>231</sup> The first part of the passage (to which I shall return) runs: ‘The Hungarian noble is a member of the Holy Crown which is in turn, the symbol of national majesty and in this way the Hungarian noble is a part of the legislative power; he possesses the right to own land; without the process of law, not even the king can interfere with his person and possession; can freely dispose of his property, etc. All these rights rest on national majesty, which arise from the basic structure of life in society, and are therefore sacrosanct, unchangeable and indefeasible. But I ask . . . etc.’: *KLÖM*, 6, p. 378.

<sup>232</sup> Preamble to the April Laws of 1848.

<sup>233</sup> Set out in para. 1, Law XXII of 1848.

<sup>234</sup> Para 2, Law V of 1848.

<sup>235</sup> In the debate on the committee report of the Chief Justice Conference on judicial procedure, 20 June 1861, *Az országgyűlés képviselőházának naplója* (hereafter, *Képv. napló*), 2, p. 170. Zsarnay in another speech also applied the metaphor to the nationalities, *ibid.*, p. 298.

Crown with the exercise of political rights.<sup>236</sup> Perplexingly, both views survived in political discourse. The crown metaphor was used to support the introduction of general conscription in the House in the summer of 1868. The committee report on the three defence bills,<sup>237</sup> drafted by the rapporteur, Károly Kerkápoly, argued that before 1848 all members of the Holy Crown had been obliged to perform military duties and that, because the 1848 Laws 'had endowed the whole population with membership of this crown', military service had become equally everybody's duty.<sup>238</sup> The leading 48er, József Madarász, disagreed. He pointed out that the 1848 Law on the *nemzetőrség* had extended the obligation only to those who qualified.<sup>239</sup> But undisturbed, Kerkápoly reiterated: in 1848 all inhabitants had become members of the Holy Crown because the law in 1848 had opened the possibility for everybody to fulfil the conditions of membership.<sup>240</sup>

It was not difficult to extend crown membership to the whole population with respect to duties; it was more difficult to do so concerning political rights. Crown membership as a metaphor for the political community usually turned up in legal works and in political pamphlets in connection with the right to vote.<sup>241</sup> Sebő Vukovics, a Left-Centre member, in the debate on the revision of the electoral system, argued in the House that until 1848 only the privileged classes had possessed the vote and thereby membership of the crown; after 1848, however, all those who were given the right to vote, the *pays légal*, had to be regarded as 'members of the crown in whom popular sovereignty was vested'.<sup>242</sup> In the end, membership was neatly separated from the franchise;<sup>243</sup> thus it might be claimed that the whole nation and the crown 'entwined with each other, according to the teaching of Werbőczy', under Franz Joseph, 'the most constitutional

<sup>236</sup> Emil Récsi, professor at the Law Faculty in Pest, *Magyarország közigazgatása* Buda-Pest, 1861 (hereafter, *M. közigazgatás*), pp. 287, 307 and 326. *Per contra*, the rising jurist, Károly Csemegi in a baroque flourish declared in 1862 that the 1848 Laws had placed the whole nation 'in St. Stephen's heirloom': Károly Edvi Illés et al. (eds), *Csemegi Károly művei*, 2 vols, Budapest, 1904, I, p. 130.

<sup>237</sup> They became Laws XL, XLI and XLII of 1868.

<sup>238</sup> 20 July 1868, *Az országgyűlés képviselőházának irományai*, 5, p. 164.

<sup>239</sup> 30 July 1868, *Képv. napló*, 9, p. 290.

<sup>240</sup> 4 August 1868, *ibid.*, p. 420, see *DFB*, v, pp. 421–22. As minister of the crown, Kerkápoly later repeated that the Law had endowed 'millions of people' with crown membership, 8 March 1873, *Képv. napló*, 5, p. 377.

<sup>241</sup> For example, Ignác Kuncz, *Az államélet főbb mozzanatai tekintettel a magyar közigazgatásra*, Pécs, 1870, p. 62; [Elek Jakab] *Tisza Kálmán*, Budapest, 1978, p. 68.

<sup>242</sup> 24 February 1872, *Képv. napló*, 21, p. 271.

<sup>243</sup> Gyula Schvarcz, the scholar-politician, criticized the views of the jurist István Kiss on crown membership which conflicted with the principle of civil society, 'Tanulmány a magyar államjogi irodalom újabb termékeiről', *Magyar Igazságügy*, 27, 1887, esp. p. 352. On Schvarcz's conception of civil society see ch. 3. of György Miru's unpublished dissertation, 'Polgárosodás és alkotmányos átalakulás Schvarcz Gyula politikai gondolkodásában', Debrecen, 1997.

crown head'<sup>244</sup> (while the franchise was kept narrow). This may have only been whistling in the dark; rhetorical flourish could not paper over political rifts. When at the height of the conflict between parliament and the crown over army rights Prime Minister Kálmán Széll, heading only a government in resignation in June 1903, surmised in the House that 'the crown had always been a part of the nation as the nation was a part of the crown', he added the real message that whenever they had parted, it had turned out to be a disaster for both.<sup>245</sup>

These passages, in which the crown was associated with the 'nation', the 'constitution' and 'sovereignty', reveal that the nineteenth-century innovations went much deeper than the social enlargement of membership.

*The Holy Crown, the nation and the constitution*

The shift to the vocabulary of modern politics amounted to a radical departure from Werbőczy's ideas on the uses of the Holy Crown. Antecedents went back to the eighteenth century. For Werbőczy the majestic rights resided in the Holy Crown, the royal office, and were, consequently, vested in the legitimate, crowned king. The *ország*, as we have seen, was also a repository of rights and it became emphatically so after 1526 in its conflicting relationship with the Habsburg crown. One manuscript pamphlet, written anonymously by a canon in 1765, was very popular at the diet but distressed the queen so the authorities committed it to the flames in Pressburg. The pamphlet claimed that not only the king but the *Status et Ordines* as well were in possession of the rights that resided in the *Majestas Sacrae Coronae Hungaricae*.<sup>246</sup> The radicalism of this MS could not have been an isolated case. The crown's servants and the dynasty's supporters were not idle either in drawing political conclusions from the organic metaphor. They defended the rights of the 'head' against the encroachments of the 'members'. Mihály Bencsik, law professor and authority on the *Tripartitum* at the University in Nagyszombat, argued that because members had to follow the head, only Catholic nobles should be recognized as members of the crown; non-Catholics, being disloyal, should be deprived of their political rights.<sup>247</sup>

<sup>244</sup> B. Gusztáv Beksics, 'I. Ferencz József és kora', in Sándor Szilágyi, *A magyar nemzet története*, Budapest, 1898, 10, p. 517.

<sup>245</sup> On 25 June 1903, *Képv. napló*, 17, p. 10.

<sup>246</sup> The authorities set the police on finding the author, without success. He probably was György Richvaldszky, canon at Esztergom whose *Vexatio dat intellectum*, written in 1765, was published in 1785. See Győző Concha, 'A Vexatio dat intellectum című röpirat 1765-ből', in *Hatvan év tudományos mozgalmi között* (hereafter, *Hatvan év*), 2 vols, Budapest, 1928, 1, pp. 202–12.

<sup>247</sup> On Bencsik, see Eckhart, *A jogi kar tört.*, pp. 12–16, idem, *Szentkorona*, pp. 300–01.

By and large, it was from 1790 that the rights of the diet, which Werbőczy's passage does not even mention, became connected with Holy Crown membership. The collapse of Joseph II's system marked the naturalization of a new vocabulary of law and politics. The critical innovation was the emergence of the term and the concept of the constitution itself. Hungary's educated nobles, like other élites in eighteenth-century Europe, discovered in reading Montesquieu's *Esprit des lois* (1748), a very popular book in the country, that they possessed a 'constitution' rather than just a collection of customary rights sanctified by immemorial tradition.<sup>248</sup> The ten years' rule of Emperor Joseph II was branded as 'unconstitutional'. When in 1790 St Stephen's Crown was brought to Buda<sup>249</sup> it was seen as the *fulcrum* of 'Hungarian liberty'. From this time, the Holy Crown became the *palladium* of the *magyar nemzet's* (Hungarian nation's) constitution.<sup>250</sup> Once more, the visible and the invisible crown, combined and undistinguished one from the other, provided the referent for a new notion: the *palladium* of the constitution. The 'constitution', in contrast to most uses of *Verfassung* was, of course, a normative term. For Joseph II's rule was held to be 'unconstitutional' because he had dodged *diaetalis* coronation,<sup>251</sup> a precondition of which was the taking of the Oath and the issuing of the Diploma by which royal rule became 'constitutional'.

In the same turbulent years, a largely unnoticed<sup>252</sup> subtle shift, a reversion of sorts, occurred in political discourse concerning crown membership. Before this change the grantee or *donatarius*, called a noble and member of the Holy Crown by virtue of the donation, had appeared (personally or through a deputy) at the diet to make laws. After the shift, a noble by virtue of his participation in law-making was said to be with a sleight of hand, a member of the Holy Crown. This change of significance took place simultaneously with the extension of membership socially downwards, a process which I have already described.<sup>253</sup> All in all, by the 1830s the claim was firmly established (although not yet general) that the whole nobility, *because* of their political rights, were members of the Holy Crown. As the following examples illustrate, 'legislation', 'rights of *majestas*', 'national rights',

<sup>248</sup> László Péter, 'Montesquieu's Paradox on Freedom and Hungary's Constitutions 1790–1990', *History of Political Thought*, 16, Spring 1995, pp. 79–82; Éva H. Balázs, *Hungary and the Habsburgs 1765–1800*, Budapest, 1997, pp. 134–42.

<sup>249</sup> On the movement of the nobility in 1790 see C. A. Macartney, *The Habsburg Empire 1790–1918*, London, 1968, pp. 137–42; László Kontler, *Millenium in Central Europe: A History of Hungary*, Budapest, 1999, pp. 218–20.

<sup>250</sup> Péter, 'Verfassungsentwicklung', p. 250.

<sup>251</sup> See also p. 436 above.

<sup>252</sup> Eckhart, however, noticed it in Emil Récsi's work: *Szentkorona*, p. 311.

<sup>253</sup> See pp. 463f above.

‘state rights’ and ‘sovereignty’ were incrementally associated with Holy Crown membership.

An early example of political rights being deduced from crown membership dates from 1787. In their memorandum to the sovereign, the Transylvanian nobility, in listing their *gravamina*, associated their membership of the Holy Crown with their privileges and even the right to participate in legislation.<sup>254</sup> In 1811 the Hungarian diet took the view that the *fiscus*, in acting for the king, was also acting for the crown of which the estates were a part.<sup>255</sup> At the next diet in 1825 the *personalis* argued from the Chair, against the estates who wanted to set up a *fiscus* for the *ország*, that the move was unnecessary because ‘the royal *fiscus* acted for the crown which does not only include the king as its head but also the nobles of the *ország* as its members’.<sup>256</sup>

As we have seen, Baron Miklós Wesselényi argued in 1831 by reference to the *Tripartitum*<sup>257</sup> that the king’s right of escheat could be removed by legislation.<sup>258</sup> Also, he identified membership of the Holy Crown as the ‘personality of the nation’.<sup>259</sup> Wesselényi’s claim was an early example of inferring political rights from crown membership. In his political rhetoric, Kossuth made similar deductions. He wrote in a minority report in respect of the instruction of the deputies in County Zemplén in 1832:

When we look at the origins and developments of our system of legislation in historical and *status* terms we are convinced that not only are all nobles members of the Holy Crown, which represents all national rights and consequently they truly participate in legislation, but also that participation is every noble’s right and duty.<sup>260</sup>

Later Kossuth in an unpublished MS repeated the flourish:

The Hungarian noble is a member of the Holy Crown which is, in turn, the symbol of national majesty and in this way the Hungarian noble is a part of the legislative power.<sup>261</sup>

Both examples are from Kossuth’s early career. In the 1840s, the years when Kossuth rose to political prominence, he did not use crown

<sup>254</sup> Oscar Meltzl, ‘Die Gravamina-Vorstellung des siebenbürgischen Adels an Kaiser Joseph II von Jahre 1787’ (*Archiv des Vereins für siebenbürgische Landeskunde*, N.F., 21), Hermannstadt, 1887, pp. 367–440 (p. 372).

<sup>255</sup> Quoted by Ereky, *Jogtört.tanulm.*, 1, p. 390 n. 1, but this is not a clear example as the office, among its other responsibilities, was dealing with *fiscalitas* and *caducitas*.

<sup>256</sup> *Felséges Első Ferencz*, p. 126; and *Felséges Első Ferencz . . . írásai*, Pozsony, 1826, pp. 60–61. This is a better example than the previous case (see note above) because the disputed point concerned the administration of justice.

<sup>257</sup> Published in Bucharest and Leipzig in 1833.

<sup>258</sup> Werbóczy explained *fiscalitas*, royal escheat in Pt. I Tit. 10.

<sup>259</sup> *Balítéletekről*, pp. 269–70.

<sup>260</sup> *KLÖM*, 6, p. 331.

<sup>261</sup> *Ibid.*, p. 378. For the full quotation see note 231 above.

membership in putting together his reform programme with the sole exception of the crown's territorial integrity.<sup>262</sup> Kossuth followed general practice. However, after *állam* (the State) became firmly established in the vocabulary of politics during the 1848 revolutions, the relationship between *korona* and *állam* moved closer. Baron József Eötvös wrote in 1865, on the eve of negotiations with Franz Joseph, that 'we ought to steer clear of any step which surrenders the state independence of the Hungarian crown'.<sup>263</sup> Deák in his *Beitrag* identified *korona* sometimes with the *ország* (in the kingdom sense), at other times with *magyar állam*, by which he understood the rights of the monarch as king of Hungary.<sup>264</sup> Living in a very different mental world, a champion of municipal autonomy asserted that the people (before 1848 only the *populus*, i.e., the members of the Hungarian Holy Crown), through the autonomous counties, 'personally exercised supreme majestic rights'.<sup>265</sup> The publicist István Toldy held more widely shared views: 'The "Crown" meant state sovereignty; king and nation — all nobles being members of the Holy Crown — were the bearers of this sovereignty'.<sup>266</sup> The same claim was explored further in 1869 by the learned Left-Centre backbencher Ignác Ghyczy in the House: the people were always sovereign in the constitution because the nobles, the *populus*, 'by being described as members of the Holy Crown, were emphatically a part of the sovereignty which inhered in the Crown'. And in 1848 the nobility, by letting everybody into the constitution, 'shared the attributes of sovereignty with the people'.<sup>267</sup> *Per contra*, Sebő Vukovics, another Left-Centre politician, thought that only those who had the franchise were Holy Crown members and thereby had a share of popular sovereignty.<sup>268</sup> Gyula Gyórfy, Independentist, used crown

<sup>262</sup> For instance, in the debate on the bill on *honosítás* (naturalization) at the diet Kossuth predicated 'legislative sovereignty towards Croatia' on the 'domains of the Hungarian Holy Crown', on 27 January 1847, *KLÓM*, 11, pp. 479, 480.

<sup>263</sup> From his diary on 7 July 1865, Imre Lukinich (ed.), *Báró Eötvös József. Naplójegyzetek — gondolatok 1864–1868*, Budapest, 1941, p. 119.

<sup>264</sup> *Ein Beitrag*, pp. 104 and 147; and on p. 112 Deák referred to the Hungarian state as 'the united will of the king and the nation'.

<sup>265</sup> 'Kunágoti' Endre Vertán, *Képviseleti és önkormányzati rendszer vonatkoztatva hazánkra*, Arad, 1865, pp. 13–14. The author held all citizens (since 1848) to be 'members of the Hungarian Crown, that is part of the supreme power directly and personally', p. 258.

<sup>266</sup> This work is a political history: István Toldy, *Régi Magyarország*, Pest, 1868, p. 233, see also p. 222.

<sup>267</sup> On 6 July 1869 in the House arguing against the bill on the judicial power, *Képv. napló*, 2, pp. 381–82. The crown was occasionally even equated with *ország* (an untutored view). Boldizsár Halász, Independentist, opined that the view that *interkalariis* revenues were the king's really meant that they belonged to the *ország* 'because in Hungary the king and the crown always meant the *ország*', on 15 February 1870, *Képv. napló*, 5, p. 355.

<sup>268</sup> On 24 February 1872 in the House, *Képv. napló*, 21, p. 271.



membership in rejecting the 1867 constitutional Settlement;<sup>269</sup> *per contra* Gyula Andrásy, the Younger, praised the Settlement as it preserved 'the thousand years' sovereignty of St Stephen's Crown'.<sup>270</sup> The Independentists who fought in the House against the government's motion to suspend the immunity of a member on their side shouted in the debate that the Minister of Defence, Baron Géza Fejérváry (in defending the motion) 'did not have the foggiest' what membership of the Hungarian Holy Crown meant.<sup>271</sup> That might have been; was there, however, anybody else who did?<sup>272</sup> The new political rhetoric easily crept into foreign works. The Hungarian crown, visible and invisible, represented 'national sovereignty' in the works of John Paget,<sup>273</sup> Arthur J. Patterson<sup>274</sup> and others.

*Limited versus mixed monarchy in the jurists' works*

When we leave the clumsy patchwork of political rhetoric, in which even the visible and the invisible crowns were mixed up, and turn to the jurists, we find after 1790 a more orderly, slowly evolving vocabulary. Rising French radicalism in the late eighteenth century had echoes even in conservative strongholds like the Law Faculty in Pest, although heterodox writings mostly remained in manuscript

<sup>269</sup> The deputy's point was that Law XII of 1867 abandoned legislative sovereignty because it was shared with another State (i.e. Austria). But, he went on, sovereignty cannot be alienated, 'because we share that right only with the crown', on 22 March 1892, *Képv. napló*, 1, p. 317.

<sup>270</sup> Count Gyula Andrásy, *Az 1867-iki kiegyezésről*, Budapest, 1896, p. 123.

<sup>271</sup> On 20 Nov 1902, *Képv. napló*, 9, p. 57; another similar interjection on 15 November, *ibid.*, 8, p. 418.

<sup>272</sup> An unsigned article which poked fun at the indulgence with which writers compared the Hungarian to the British constitution pointed out the muddle over the use of the 'crown' in political rhetoric: writers follow the British precedent, referring to the king of Hungary as the 'crown'. The injunction is frequently heard in parliament: 'Do not involve the crown in political debates', but the deputies also claim that 'they represent the nation in the crown': 'Az angol-magyar alkotmány-rokonság hazugsága', *Pesti Hírlap*, 3 November 1907, p. 35. Muddle over the use of 'the crown' was not a Hungarian monopoly. F. W. Maitland cautioned his students: 'There is one term against which I wish to warn you, and that term is "the crown". You will certainly read that the crown does this and the crown does that. As a matter of fact we know that the crown does nothing but lie in the Tower of London to be gazed at by sightseers. No, the crown is a convenient cover for ignorance: it saves us from asking difficult questions, questions which can only be answered by study of the statute book.' *The Constitutional History of England*, Cambridge, 1913, p. 418.

<sup>273</sup> 'It is almost impossible for a foreigner to conceive with how deep a veneration the Hungarians regard this crown as an emblem of national sovereignty', John Paget, *Hungary and Transylvania*, London, 1839, 1, p. 153.

<sup>274</sup> Before 1848 a noble was 'membrum sacrae coronae, a member of the Hungarian Crown, and as a representative of the original free conquerors of the land, a co-partner in sovereignty with the king': Arthur J. Patterson, *The Magyars: Their Country and Institutions*, London, 1869, 1, pp. 253–54.

form.<sup>275</sup> The Latin and German works published by Professors Rosenmann,<sup>276</sup> Schwartzner,<sup>277</sup> Cziráky,<sup>278</sup> and Virozsil,<sup>279</sup> the standard-setting manuals of public law until the 1860s, possessed a common conceptual outlook. Their authors were all king's men, followers of Martini.<sup>280</sup>

Karl Anton Baron Martini, highly respected jurist of the natural law school, adviser to the court and tutor to the sons of Empress Maria Theresa was a late follower of Pufendorf and of Johann Christian Wolff. Martini's university textbooks, published in the late 1760s, reveal him to have been a contractualist of rank moderate form. He held that, once transferred by the people, the power of the monarch was complete yet not unlimited. Although the people did not possess the right of resistance to the edicts of the monarch, their representatives were to be consulted on public matters. Their consent was, however, required only concerning changes in people's fundamental rights. The followers of Martini regarded Hungary a limited rather than a mixed monarchy. The distinction is crucial: in *monarchia limitata* (in contrast to *monarchia absoluta*) the king governs in accordance with the laws enacted by him after consultation with the subjects. In *monarchia mixta* royal power is balanced by the powers of the privileged classes; legislation is claimed to be joint and therefore monarchy is 'constitutional'. Chief Justice Cziráky waxed eloquent in rejecting the view that the *forma imperii* in Hungary was 'mixed'. The form of rule (*imperium*) was purely monarchic,<sup>281</sup> but the powers of government (*regimen*) were restricted by the

<sup>275</sup> Eckhart found an early example of the deducing of political rights from crown membership. Antal Demjén, Professor of Natural Law in Pest, in a MS from 1783 which the Staatsrat did not allow to publish, inferred from Werbőczy (*Trip.*, Pt. 1 Tit. 3) that the nobles, as members, are connected to the monarch, as head, 'in ordinandis administrandisque negotiis publicis': Eckhart, *Szentkorona*, p. 301 n. 13; idem, *A jogi kar tört.*, pp. 146–49.

<sup>276</sup> Stephan Rosenmann's work was based on manuscripts by József Ürményi, High Court judge and Chief Justice, and György Lakics, law professor in Pest: *Jus publicum regni Hungariae*, Vienna 1791 (hereafter, *Jus publ.*); its German abridged translation: *Staatsrecht des Königreichs Ungarn*, Vienna, 1792.

<sup>277</sup> Martin Schwartzner, *Statistik des Königreichs Ungern*, Pest, 1798 (hereafter, *Statistik*).

<sup>278</sup> Cziráky, *Conspectus* (see note 181 above).

<sup>279</sup> Anton Virozsil, *Juris publici regni Hungariae*, 6 parts, Buda, 1850–1854 (hereafter, *Juris publ.*); idem, *Magyarország nyilván-vagy közjoga*, Buda, 1861 (hereafter, *M. orsz. közjoga*); idem, *Das Staats-Recht des Königreichs Ungarn*, 3 vols, Pest, 1865–1866 (hereafter, *Staats-Recht*). Efforts to publish a university textbook on Hungarian public law were unsuccessful between 1790 and 1848. The court carefully guarded the crown's sovereignty claims which were not entirely endorsed even by 'establishment men'. Virozsil wrote his Latin work in 1843 but the authorities did not allow its publication at the time. Cziráky's work (written in the 1830s) received the same treatment. The fact that he was Chief Justice and the doyen of the profession and that Virozsil was the rector at the University of Pest made no difference. Both works were allowed to be published after 1849 as historical accounts.

<sup>280</sup> The authorities were afraid of the influence of Kant's works. The Gubernium ordered in 1795 the University to use Martini's works, where it was possible, in teaching: Eckhart, *A jogi kar tört.*, pp. 230–31.

<sup>281</sup> Cziráky, *Conspectus*, 2, pp. 186–88, 'omnis civilis Imperii Majestas, omnique plenitudo potestatis in una Ejusdem Persona resideat', p. 188.

laws, made with the consent of the diet, which the king had inherited.<sup>282</sup> Virozsil, like Cziráky, expressly rejected the claim that *jura maiestatica*, being divided between the king and the estates, *formam . . . imperii e monarchica et aristocratica mixtam concipiunt*.<sup>283</sup>

As we should expect, crown membership did not have a prominent place in the works of the royal jurists. Rosenmann used the *Tripartitum* to support Martini and the court's position that Hungary was a *monarchia limitata*. The monarch's dispositions were not based on personal will; they were limited by laws to which the diet had freely consented. Thus Werbőczy, he went on, appropriately called the nobles members of the Holy Crown.<sup>284</sup> It followed that the *Regni Hungariae corpus politicum* consisted of the king as head and the nobles as members whose cooperation and harmony were necessary for the survival of the body.<sup>285</sup> No political conclusion followed from the exhortation. Schwartner, taking a very strict line on *Majestas-Rechte*, emphatically stated that unless there was firm evidence in law to the contrary, all rights of the king *Reservatrecht sey*,<sup>286</sup> that is, they lay outside the competence of the diet. He barely mentioned crown membership let alone drew any political conclusions from it.<sup>287</sup> Cziráky, although less strict on the king's *jura reservata* than Schwartner, was as indifferent to using crown membership for political points as his predecessors.<sup>288</sup> Virozsil repeated the injunction in strict form that the king's majestic rights were restricted only on the basis of strong legal evidence; the *presumptio juris* was on the side of the monarch. Like his predecessors, he briefly mentioned crown membership, but he did not use this to make claims, although it clearly emerges from the references that those who

<sup>282</sup> Ibid., pp. 189–90.

<sup>283</sup> Virozsil, *Juris publ.*, Pt. 4, pp. 13–14.

<sup>284</sup> 'Dass die Regierungsart von Hungarn *monarchisch sey*, wird leicht keiner in Abrede stellen, da die ganze oberste Gewalt in der Person des Monarchen vereinigt ist, so, dass in den, die öffentliche Verwaltung und das ganze Königreich betreffenden Angelegenheiten, ohne seinen Beitritt und seine Einwilligung, nichts gültig entschieden werden kann; dass sie aber auch eine *beschränkte Monarchie sey*, ist aus dem abzunehmen, weil die Könige in öffentlichen Reichsangelegenheiten nicht nach ihrer Willkühr handeln und entscheiden dürfen, sondern an die landtagmassige Einwilligung und freiwillige Beistimmung der Stände gebunden werden. Daher sagt Werbőz granz anpassend: dass die Edelleute durch eine gewisse Reziprokation und wechselseitige Verbindung mit dem Königen, als Glieder der heiligen Krone geachtet werden, die, ausser dem rechtmässig gekrönten König, keinem anderen unterworfen sind.' Rosenmann, *Staatsrecht*, Pt. 2, para. 1. Idem, *Jus publ.*, pp. 30–31.

<sup>285</sup> Quoted by Eckhart, *Szentkorona*, p. 303.

<sup>286</sup> Schwartner, *Statistik*, pp. 347–48. In the second edn (2 vols, 1809–1811), he referred to Hungary as 'eine erbliche aber eingeschränkte Monarchie', 2, p. 1.

<sup>287</sup> Ibid., p. 365.

<sup>288</sup> Cziráky, *Conspectus*, Pt. 2, p. 6 and Pt. 1, p. 132.

appear at the diet were called members of the Holy Crown *because* they participated in politics.<sup>289</sup>

Jurists representing the views of the nobility, rather than being directly dependent on the government, begged to differ from the royal jurists. They regarded Hungary as a constitutional rather than a limited monarchy. In essence, this principle was what the ‘movement’ of the nobility in 1790 was about. Even when they conceded that monarchy in Hungary was ‘limited’, they went on to argue that in fact it was ‘mixed’. Their mental world, medieval and dualistic, was inhabited by two actors: king and *ország*. Albert Barits, the university teacher, and György Aranka, judge in Transylvania, argued in their anonymous publications in 1790 that ‘the supreme power is divided between king and *ország*’.<sup>290</sup> Illés Geörch reckoned that the laws were made by the four *status et ordines*, empowered to legislate at the diet, which the king then had only to approve and render authentic by personal signature.<sup>291</sup> Any royal jurists would have dismissed, as untutored, the very first sentence after the introductory parts of Zsigmond Beöthy’s Public Law: ‘The *kormányalak* [form of government] in Hungary is monarchy restricted by the estates of the *ország*’.<sup>292</sup> The author then gave a potted history of the fundamental laws as agreements between the two actors and concluded on the point that the *kormányalak* was really ‘monarcho-aristocratic’ in which the single ruler ‘shared’ power with the few, the aristocracy.<sup>293</sup> A moderate man, Beöthy inferred from membership of the Holy Crown only the injunction of fidelity to the king and the crown.<sup>294</sup> Károly Miskolczy’s outlook was similar to Beöthy’s but his interest in the Holy Crown was confined to the fiscal and the territorial senses.<sup>295</sup>

<sup>289</sup> Virozsil, *Juris publ.*, Pt. 2, p. 11. *Ibid.*, Pt. 4, p. 16; idem, *M. orsz. közjoga*, pp. 68 and 149; idem, *Staats-Recht*, 1, p. 282, 2, pp. 256–59. Jurists after the 1867 constitutional settlement followed Virozsil. Ignác Kuncz noted that because the ultimate source of political rights was the state, the Hungarian noble was adorned by the splendid title of the Holy Crown’s member. Kuncz, at the same time, departing from Virozsil, tried to soften the implications, not very successfully, of the monarchic *reservata*: *Az államélet főbb mozzanatai tekintettel a magyar közjogra*, Pécs, 1870, pp. 62, 99–103.

<sup>290</sup> Quoted by Győző Concha, *Politika*, 2 vols, Budapest, 1895, 1, p. 298. On Barits see Eckhart, *A jogi kar tört.*, pp. 208–12. There is some doubt over the authorship of the work attributed to Barits.

<sup>291</sup> Geörch, *Honnyi törv.*, 1, pp. 4–5.

<sup>292</sup> Zsigmond Beöthy, *Elemi magyar közjog*, Pest, 1846 (hereafter, *Közjog*), p. 14. The author was szolgabíró in County Komárom.

<sup>293</sup> *Ibid.*, p. 15. The claim that the ‘nation’ shared the majestic rights with the king was common currency in lectures at the Hungarian Academy in Pest. See, for instance, Antal Sztrokay, ‘A Magyar álladalmi szabadság jogi szemléje’, in *Magyar Tudós Társaság Évkönyvei*, ‘Értekezések’, 7, 1846, pp. 3–17 (p. 7).

<sup>294</sup> Beöthy, *Elemi magyar közjog*, p. 66.

<sup>295</sup> Károly Miskolczy, *Magyar Ország köz. Joga*, Eger, 1846. The author was a solicitor. After declaring that the form of government in Hungary was *monarchia limitata*, Miskolczy went on to argue that power was transferred ‘on conditions’ and that legislation was ‘joint’: pp. 13, 40–41.

The subject suddenly took off with Béla Szabó, a judge in County Moson, whose treatise, written in 1847, was published during the 1848 revolution. His individual political system was based on two propositions, both argued on historical grounds. The first was that the Lands of the Hungarian crown formed an *álladalom* entirely independent of Austria, which was likewise an *álladalom*.<sup>296</sup> The second contention of Szabó was that the Hungarian crown was the true owner of all the lands within the Hungarian *álladalom*, a thesis from which he boldly deduced a whole set of other principles. Individuals could only ‘possess’ (rather than own) property in the *álladalom*.<sup>297</sup> In it, a single Hungarian nation (the nobility) had existed in the past and should (in a new form) exist in the future.<sup>298</sup> The king, too, was only a ‘possessor’ of power, the *országol*, on the strength of *pactum conventum* with the nation, while sovereign power, following from its ownership of all the lands, was settled on the crown of which the possessors of land were members. The members of the crown were not even ‘subjects’ (*Untertanen*) of the king.<sup>299</sup> As Győző Concha, politics professor in Budapest, pointed out in a perceptive, critical essay, Szabó, by mixing up property relations and the question of sovereignty, confused private law with public law.<sup>300</sup> Szabó, the Filmer of the Hungarian nobility, was overtaken by the revolution and the subsequent recentralized Austrian system. Szabó’s monograph remained an isolated work seemingly without influence either on politicians or jurists until it was discovered by Concha, the true maker of the Holy Crown doctrine, who gained inspiration from it.<sup>301</sup>

Unexpectedly, membership of the Holy Crown turned up in a legal case in London. In the Hungarian Banknote Affair of 1861, the well known constitutional writer Joshua Toulmin-Smith went to the defence of Kossuth who had arranged the printing of paper money for Hungary in his own name. The Austrian government took him to court in

<sup>296</sup> Béla Szabó, *A magyar korona országainak státuszjogi és monarchiai állása a pragmática sanctio szerint*, Pozsony, 1848 (hereafter, *A. m. korona*), pp. 5f., 29f., 51, 121, 136. The author was a landowner and solicitor, *absentium legatus* at the diet in 1832–36, *juratus assessor* in Counties Győr and Moson and a follower of Kossuth in 1848.

<sup>297</sup> *Ibid.*, pp. 73–74.

<sup>298</sup> *Ibid.*, pp. 6of., 157–58.

<sup>299</sup> *Ibid.*, pp. 29, 51, 80–84, 112–14.

<sup>300</sup> Győző Concha, ‘Szabó Béla elfeledett közjogásunk’ (1918), repr. in *Hatvan év*, 2, pp. 496–519, 515.

<sup>301</sup> Concha regretted that Szabó’s work had been forgotten for so long since it made an original contribution to Hungarian legal thinking ‘by giving a clear interpretation to what the attribution of sovereignty to the Holy Crown, as had been expounded by Werbőczy, involved’: *ibid.*, pp. 497, 500. Concha’s first reference to Szabó’s ‘valuable work’ was from 1891 (see *Hatvan év.*, 1, p. 639), the year when he constructed the Holy Crown doctrine, see page 481f. below.

London.<sup>302</sup> In order to win public support for Kossuth, Joshua Toulmin-Smith, a political friend, agreed to the publication of his letter to the Foreign Secretary<sup>303</sup> in which one of the arguments to justify the printing of the banknotes was:

It is written, then, among the fundamental laws of Hungary, that every Hungarian noble has a share in the Sacred Crown of Hungary, and that none is above him but the lawfully crowned King. Kossuth is a Hungarian noble: he has therefore the full right to put the figure of the Hungarian Crown on any document or anything else that he pleases.

In a footnote to the paragraph, Toulmin-Smith even attached chapter and verse from the *Tripartitum*.<sup>304</sup> Not unexpectedly, the High Court found against Kossuth and his associates.<sup>305</sup>

Only one or two works moved the subject further from the spate of publications on public law after the collapse of the 'Bach regime', the easing of government control and the enactment of the October Diploma in 1860. Emil Récsi, professor in Pest, produced an independent work. In his Public Law he sought to have it both ways. The 'Hungarian state body' was a 'limited monarchy' in which, however, the monarch's rights faced the nation's which 'bear on the exercise of the same supreme power'; from their mutually restricting balance a 'constitutional system' emerged.<sup>306</sup> Récsi emphatically stated that the nobility (before 1848) were called members of the Hungarian Holy Crown *because* they 'participated in the exercise of the supreme, notably legislative power at the diet',<sup>307</sup> however, since the 1848 Laws, all

<sup>302</sup> In order to finance a revolutionary war against the Habsburg Emperor so that an independent Hungarian State could be established, Kossuth, then an émigré in London, commissioned a firm, W. Day & Sons, to print 100 million forints in paper money with his name as Governor of Hungary and the Hungarian coat of arms on it. After the money had been printed by the firm the Emperor of Austria brought an action against W. Day & Sons and Louis Kossuth on 29 February 1861. The case was heard in the Court of Chancery. See Erika Garami, 'Louis Kossuth's banknote issue and legal case in London in 1861', in Virginia Hewitt (ed.), *The Banker's Art: Studies in Paper Money*, London, 1995, pp. 38–45.

<sup>303</sup> J. Toulmin-Smith: *Who is the 'King of Hungary', that is now Suitor in the English Court of Chancery? A Letter to the Right. Hon. Lord J. Russell. M.P.* (London, 1861). Kossuth writes in his memoirs that he arranged for 3000 copies of the letter to be printed. These were then sent to all MPs, newspaper editors and various institutions. See *KLI*, 2, p. 442.

<sup>304</sup> See note 303 above. Toulmin-Smith: p. 12 and n.

<sup>305</sup> The case was won by the Emperor (4 May). The defendants appealed to the Lord Chief Justice. The Lord Chancellor, however, dismissed the appeal on 12 June 1861. The printed paper money (weighing about 20 metric tons) was then destroyed. The Emperor of Austria v. Day and Kossuth. Before the Lord Chancellor Lord Campbell and the Lords Justices. 22, 23, 24 May, 7 June 1861; and see *KLI*, 3, pp. 71–79, 366–507.

<sup>306</sup> Récsi, *M. közjoga*, pp. 124, see 230 and 439. In his *Public Law*, Mihály Boross, formerly alispán of County Fejér, a local judge, argued that, although a limited monarchy, in Hungary 'the exercise of complementary and mutually restricting monarchic and national rights make up the constitution', *Magyarország közjoga 1848-ig s 1848-ban*, Pest, 1867, p. 27.

<sup>307</sup> Récsi, *M. közjoga*, p. 287. Récsi also held that the Hungarian crown united 'various nations' who all benefit from it, 'if they all equally revere the authority of the single legislature and the Hungarian crown which represents the unity of the Hungarian *közállodalom*', p. 314.



citizens were legally eligible to acquire the franchise.<sup>308</sup> The leading Hungarian authority on public law in Transylvania, Elek Dósa, defined the legal relationship between the prince and the people as constitutional, based on the principle of mutual rights and obligations.<sup>309</sup> On the Holy Crown, however, Dósa had no original ideas except the observation that civil society, as a concept, was realized in the Holy Crown and consequently the crowned prince.<sup>310</sup> More originality was shown by Károly Csemegi, a leading jurist, who used crown membership in 1862 to rebut the so-called *Verwirkungstheorie* which claimed that Hungary had forfeited her constitution in 1849. According to Csemegi, the theory could not apply to Hungary, since Hungary was a 'constitutional monarchy based on the sovereignty of the State'. The *membra sacrae coronae*, in addition to their strictly legislative function, were also empowered to participate in other governmental acts. Thus, 'the great question of sovereignty, which today is so hotly debated in other countries, was settled with us by the precise disposition of the law centuries ago, as the attribute of the crown'.<sup>311</sup> Before 1848 the right of the crown was exercised by 'the Holy Crown as a whole' which included the king and the nobility and, after 1848, the whole nation.<sup>312</sup>

The 'crown as whole' apparently haunted other scholars as well until the legal historian Imre Hajnik supplied the phrase. He wrote in 1875, that is a few years after the 1867 constitutional Settlement, in his *General European Legal History*:

Only where, as in the diet, the monarch wearing the crown on his head appeared together with the members of the Holy Crown was the whole body (*totum corpus sacrae regni coronae*) present, that is public power in its entirety. Only under these conditions could the Holy Crown exhibit its capacity to the full and could law be made. And finally, the Holy Crown and its members developed the governmental relations on which the autonomy of the Hungarian state is, in particular, dependent.<sup>313</sup>

<sup>308</sup> Ibid., p. 326.

<sup>309</sup> Elek Dósa, *Erdélyhoni jogtudomány*, 3 vols, Kolozsvár, 1861, 1, pp. 117–18.

<sup>310</sup> Ibid., 1, p. 56. Dósa had the land donation in mind, see 2, p. 258.

<sup>311</sup> 'A jogvesztés elmélete és az államjog', in *Csemegi Károly művei*, 2 vols, Budapest, 1904, 1 (hereafter, *Csemegi*), pp. 126–27. Csemegi was arguing against minister Schmerling's statement in the Reichsrat, made on 23 August 1861. See Josef Redlich, *Das österreichische Staats- und Reichsproblem*, 2 vols, Leipzig, 1920–1926, 2, p. 157.

<sup>312</sup> *Csemegi*, p. 130.

<sup>313</sup> Imre Hajnik, *Egyetemes európai jogtörténet*, Budapest, 1875 (hereafter, *Egyet. jogtört.*), p. 210; also quoted by Eckhart, *Szentkorona*, p. 319. The passage was repeated without any revision in all the five editions of the work (fifth edn, 1899, p. 237).

Many a historian since the First World War has been looking for *totum corpus sacrae regni coronae* in the sources without, however, coming up with a single example.<sup>314</sup>

Hajnik referred to the ‘public law character’ of Hungarian constitutional development as the ‘doctrine’ of the Holy Crown, and historians have ever since regarded him as the discoverer of the ‘doctrine’.<sup>315</sup> A distinguished historian of medieval European institutions, Hajnik insisted that Hungarian institutions could be understood only in this wider context. His influence was undoubtedly important; a strong case could be made, however, that he was not the author of the Holy Crown doctrine. A conservative scholar, Hajnik, like others, understood by supreme power, or sovereignty, the legislative independence of Hungary as a state. He was not concerned with the king’s rights, which is what the doctrine was about. Politically a follower of Deák, Hajnik never argued that parliament had the right to initiate legislation on any subject that the 1867 Settlement had recognized as the monarch’s *reservata*. The doctrine as it has been asserted and used in constitutional discourse was the product of the so-called dogmatic law school, which appeared in the 1880s in association with the work of a young jurist, Ernő Nagy.<sup>316</sup>

*The making of the doctrine of the Holy Crown*

Nagy’s *Public Law* (1887)<sup>317</sup> represented a new method; indeed its author established a new school. The ‘Hungarian Laband’, as Nagy was soon called, learnt German analytical jurisprudence, the so-called dogmatic method, in Strasbourg. Paul Laband, the most influential lawyer of the German imperial system of government, who became professor in Strasbourg in 1872, was an analytical jurist concerned with the general qualities of existing law. While adherents of the ‘historical method’ frequently treated the existing law as a mere adjunct to what had historically evolved, the followers of the analytical method examined the legal concepts of the present and used the past to

<sup>314</sup> Hungarian jurists and some historians, following Hajnik, went on referring to the ‘total body of the Holy Crown’ *ad nauseam* without producing a single instance in the documents. The lack of the evidence was pointed out by József Barabási Kun, ‘Szeljegyzetek a szent korona tanához’, *Budapesti Szemle*, 172, 1917 (hereafter, ‘Szeljegyzetek’), pp. 16–53 (p. 26). The subject was critically examined by Bartoniek, ‘Corona’, esp. p. 328. She found *totum corpus* predicated only on *regnum*.

<sup>315</sup> Hajnik, *Egyet. jogtört.*, p. 208 Eckhart wrote that Hajnik’s works provided ‘the starting point of the new understanding of the doctrine’. Hajnik undoubtedly regarded the corporate crown as central in the working of the political institutions when others did not. Yet his ideas on the crown were very similar to Récsi and Csemegi’s apart from contriving the *totum corpus* phrase — an aberration in the work of a respectable historian.

<sup>316</sup> See Péter, ‘Verfassungsentwicklung’, pp. 386–97.

<sup>317</sup> Ernő Nagy, *Magyarország közigazgatása (államjog)*, Budapest, 1887, seven edns (hereafter, *Közjog*).

supplement it. As critics of this school liked later to point out, the jurists of the new method ‘discovered’ modern legal categories in the legal material of the past. Nagy applied the new method vigorously to the Hungarian constitution which had hitherto been superabundant in historical material. In his textbook he gave clear definitions of legal categories like the State, public law, sovereignty and others. Following German jurisprudence, inspired by Hegel, he defined the state as an entity with the attributes of ‘personality’. The State possessed individuality, free will, ability to act and develop. Because it determined its own norms, the State was a legal person in the highest sense rather than just a ‘mechanical compound of the state members’. From this it followed that ‘the subject of state power had to be the state itself’.<sup>318</sup> Problems lurked. Did Hungary possess a state personality jointly, as Siamese twins, with or separately from Austria? Did support exist in statutory law for the claim to separate Hungarian State sovereignty? Besides, the juridical nature of the ‘common’ monarch’s rights was a contentious subject. Legal history seemed to be on the side of the leading jurists before 1867 who were unanimous in distinguishing the reserved from the shared monarchic rights and who invested the *presumptio juris* in the former.<sup>319</sup> Jurists of the lower courts in the counties did not share these views. Sometimes they even claimed that the king possessed only specific powers transferred to him by the nation:<sup>320</sup> royal power after all was based on the ‘*ország*’s crown’. We have seen earlier, however, that the ‘*ország*’s crown’ had nothing to do with the extent of the king’s rights. The crown belonged to the *ország* only in the sense that the diet acquired the right in the late Middle Ages to elect the king when the predecessor failed to leave behind a legitimate male successor (developments that were later reversed).<sup>321</sup>

In the first edition of his work Nagy asserted (although without legal evidence) the principle that Hungary and Austria were two separate states, each with unimpaired sovereignty. Somewhat incongruously, however, he reiterated the traditional distinction between the reserved and the shared rights of the emperor-king.<sup>322</sup> When he was criticized for this by the scholar-politician Gyula Schvarcz, Nagy, in the second

<sup>318</sup> Ibid., second edn, 1891, pp. 1–3, and 150. More later on ‘organic’, the new vogue word among jurists.

<sup>319</sup> See p. 47 if. above.

<sup>320</sup> This was difficult to argue as the Pragmatic Sanction (and the *Tripartitum*) maintained that the rights of the crown were transferred to the king *regendam et gubernandam*: Art. 2, 1723, §7. See also, Péter, ‘Verfassungsentwicklung’, pp. 259–60.

<sup>321</sup> See pp. 445–46 above. From 1687 (at the latest), Hungary reverted to a hereditary monarchy.

<sup>322</sup> The existence of the two separate actors, monarch and parliament, in the working of the constitution was institutional fact. The reserved rights of the emperor-king could not go along with the concept of the sovereign Hungarian State: they tied Austria and Hungary together as Siamese twins.

edition of his work (1891), accepted his odd advice that it was only in 1848 that the laws introduced this division of the supreme rights between the absentee king and the palatine. However, he went on, Law VII of 1867 had rescinded the palatine's power and therefore the division of the supreme rights was no longer justified. Nagy got himself into deeper trouble over this revision which, together with much else written in his manual, Győző Concha attacked.<sup>323</sup>

We should digress now from the jurists in order to uncover a political innovation which brings into focus their debate. A critical change took place during the Great Defence Debate of 1889 in which parliament challenged the king's *reservata*. From then onwards, Hungarian politics became a terrain of volcanic eruptions. Count Albert Apponyi's magnetic personality and oratorical brilliance helped to create a new political outlook in parliament which rejected the claim that Franz Joseph possessed reserved rights concerning the language of the army.<sup>324</sup> The crux of Apponyi's argument was that, amidst shattering screams of approval in the House, he reversed the presumption of the law on *reservata*: the onus of proof was with the king rather than with parliament.<sup>325</sup> Although formally representing a minority in the House, Apponyi won the day. Teofil Fabiny, Minister of Justice, after manfully defending the monarch's army rights in the House, resigned from office.<sup>326</sup> The outcome of the Great Defence Debate was the background and the context for the creation of the Holy Crown doctrine. The debate over the second edition of Nagy's textbook provided the occasion.<sup>327</sup>

<sup>323</sup> See Péter, 'Verfassungsentwicklung', p. 397. Gyula Schvarcz's criticism was recently reprinted by György Miru, *Schvarcz Gyula*, Budapest, 2000, pp. 150–51.

<sup>324</sup> *Ibid.*, pp. 521f. We ought to remind ourselves that an Apponyi speech never merely restated constitutional principles; this magician's speech-act, or 'performative' to use J. L. Austin's term, could transform his audience's perception of reality.

<sup>325</sup> 'The extent of monarchic rights fluctuates', he began the argument, and soon came to the point: 'anybody who claims that a subject exclusively belongs to His Majesty, according to our existing public law, has to offer strict evidence. The onus of proof rests [. . .] on those who claim that a particular subject does not belong to the joint competence of king and nation, i.e. legislation', 2 March 1889, *Képv. napló*, 9, p. 176. Because of the customary character of the constitution, 'proving' a point in question (by either side) was far too delicate. The reversal of the (traditional) *presumptio juris*, potentially amounted to a rejection of most *reservata*.

<sup>326</sup> Further, Fabiny's successor was none other than Dezső Szilágyi, Apponyi's guru on constitutional principle. See Péter, 'Verfassungsentwicklung', pp. 323–26. Szilágyi (member of the House from 1871, professor of law in Budapest from 1874 and joint leader with Apponyi of the Moderate Opposition between 1878–1886) did more than anybody else to naturalize the vocabulary of the German dogmatic law school in parliament in the 1880s before Ernő Nagy and the other jurists' changeover.

<sup>327</sup> Eckhart mentioned briefly the army rights as a background to Timon's book (see further: *Szentkorona*, pp. 325–26). He assumed that the author of the doctrine was Hajnik and that Concha only 'vindicated' Hajnik's ideas (we shall presently see that Concha did much more than that): *ibid.*, pp. 325–26 and 320.

In 1891, Győző Concha, professor of Politics in Budapest, sharply criticized Nagy's *Public Law*, and indeed attacked the author himself, for Nagy, Concha claimed, slavishly followed foreign authors, particularly Laband, and 'in order to make our public law appear modern and juristic had sacrificed its specific Hungarian character'. Nagy's definition of the personality of the State led his analysis nowhere; his use of terms were confusing. He failed to grasp that in Hungary the powers of the king and the nation were for centuries intertwined to a degree found nowhere else: the ancient constitution, through the participation of the diet and the counties in the exercise of sovereignty, possessed the 'nature of public law'.<sup>328</sup> Concha did not explore this point to which he returned only in his rejoinder. Instead he moved on to Nagy's other mistakes, of which there were many, and finished his review with Nagy's 'most glaring mistake': his failure to realize that the king's reserved and the shared supreme rights had always been distinguished from each other.<sup>329</sup> Again Concha did not elaborate the point. Nagy was on the defensive in his *Reply*. As he explained, his book was only the first attempt to apply the dogmatic method to Hungarian public law and was not intended as a definitive work. Yes, he adopted the basic concepts of modern jurisprudence, but was not a slavish follower of foreign scholarship. While he learnt much from Laband, he rejected many of his ideas. The tenet of the personality of the State was, of course, much older than Laband's theories and at any rate it had acquired general acceptance in the literature. 'It is possible to talk about specific Hungarian doctrines only where specific Hungarian institutions exist', but even these have to be analysed by the methods of modern scholarship which were international. Nagy rejected point by point Concha's innuendo that he had failed to bring out in his analysis the individual features of the Hungarian constitution. He did not take on Concha's larger claim, however, concerning the nature of supreme power in Hungarian public law and was rather evasive on the distinction between the reserved and the shared rights.<sup>330</sup>

Concha, irritated by Nagy's *Reply*, produced a fifty-page rejoinder.<sup>331</sup> This writing rather than, as Ferenc Eckhart had thought, Hajnik's *Legal History* should be regarded as the first exposition of the Holy Crown

<sup>328</sup> Győző Concha, 'Magyarország közjoga' (1891) reprinted in *Hatvan év*, 1, pp. 553–67 (hereafter, 'Magyarország közjoga'). Concha supported this claim with a passage from Werbőczy (*Trip.*, Pt. II, Tit. 3), pp. 558–59.

<sup>329</sup> *Ibid.*, p. 567.

<sup>330</sup> Ernő Nagy, *Válasz közjogi könyvemről . . . megjelent bírálatra*, Budapest, 1891, pp. 1–16. Rather confusingly he had written in his textbook: 'The crowned king, is in his own right, the head of the Hungarian state, the possessor of supreme power.' Nagy, *Közjog*, 1891, p. 166.

<sup>331</sup> Győző Concha, 'Közjog és magyar közjog', *Hatvan év* (hereafter, 'Közjog'), 1, pp. 568–618: a storehouse of new interpretations across Hungarian public law.

doctrine. Concha found vacuous the axiom that the subject of state sovereignty had to be 'the State itself'.<sup>332</sup> He deftly combined the old simile of the king as 'head' and the nobility (later the electorate) as 'members' with the modern idea of legislative sovereignty: the single supreme authority which possessed the legally unfettered right to make and unmake law. At first sight the following passage may not look all that different from Récsi, Csemegi, and Hajnik's statements. A closer look at it, in conjunction with other passages, however, reveals the differences:

In Hungarian public law the subject of sovereignty is the Holy Crown. The king becomes the participant of sovereignty through formal investiture with the symbol of that crown and the citizens do so by becoming its members, in former times through ennoblement, today through enfranchisement. Foreign jurists, by casting aside centuries-old patrimonialist views, today, nearly three hundred years after Grotius,<sup>333</sup> hold that the subject of sovereignty is neither the ruler nor the people but the State. But, for centuries, this has already been expressed in Hungarian public law through the concept of the crown.<sup>334</sup>

Concha's evidence consisted of the joint law-making by king and diet, the monarch's obligation to enact the Inaugural Diploma and the passage from Werbőczy about the 'reciprocal transference and mutual connection' between the king and the landed nobility, the 'members of the Holy Crown'.<sup>335</sup> As we have seen, however, the passage in the *Tripartitum*, Pt. I Tit. 3, had referred to the principle of equality within the landed nobility and the land donation system.<sup>336</sup> Concha, with a sleight of hand, converted Werbőczy's 'mutual connection' to the doctrine that king and parliament were 'joint possessors of legislative sovereignty'. The modern theory of the State was, perhaps incongruously, adjusted to medieval *Doppelpoligkeit*. It could be objected that if supreme authority resided in king *and* parliament, the Holy Crown doctrine was a statement on joint authority, which existed only so far as the monarch and parliament were in agreement, rather than a statement on legislative sovereignty which presupposed a single source of authority. For all this, Concha's understanding of sovereignty, based on the assumptions of the dogmatic school, radically differed from

<sup>332</sup> Ibid., pp. 585, 591f.

<sup>333</sup> Concha referred to Grotius here probably because he had viewed the State as a legal person rather than because of his contribution to the theory of sovereignty which, compared to Bodin and others, was slight. See Győző Concha, *Politika*, 2 vols, Budapest, 1895 (hereafter, *Politika*), pp. 235, 255f., 258.

<sup>334</sup> Concha, 'Közjog', pp. 585–86. The force of this claim is, however, weakened by another passage in which Concha admits that before the 1848 laws, 'the unity of the Holy Crown was insecure' because 'the king and the diet faced each other, in many respects, as two separate supreme powers', p. 615.

<sup>335</sup> Ibid., pp. 586–90.

<sup>336</sup> See above p. 450.



Csemegi and Hajnik's. They had asserted the principle that the Hungarian legal system was not subordinate to any other: it was legally independent. For Nagy and Concha (and Apponyi), however, sovereignty, more than just independence, was a necessary attribute of the State in possessing unrestricted and legally illimitable supreme power in the making and unmaking of law.

An essential part of Concha's argument was that the functions of the state (legislative, executive and judicial) had to be clearly distinguished from the 'organs' of the state (which Nagy failed to do). The functions and the organs did not coincide.<sup>337</sup> The king, parliament and the ministry constituted the three chief organs of sovereignty. Treating the ministry as a separate organ, on a par with the other two organs of the state, was a realistic assumption. The concept of organs, with its radical implications as to the nature of the king's rights, was a part of the metaphysical theory of the State which began to affect a few Hungarian jurists who read too many German authors influenced by Fichte and Hegel's writings. They certainly influenced the adherents of the dogmatic law school, notably Ernő Nagy and Győző Concha. They both claimed that the State, an end itself, an 'independent' being, indeed, a person in a legal and moral sense, was 'organic'. The term, the new buzzword, became commonplace among Hungarian jurists in the late nineteenth century. Concha, however, one of the very few who read and perhaps even understood Hegel, was the first who explored the speculative context of the organic vocabulary. For him 'organ' was 'a part of vegetal or animal body, differentiating itself from the rest of the body, which performs certain specific tasks'.<sup>338</sup> The functions and organs of the State were only necessary elements, 'moments' of state personality.<sup>339</sup> Hegel's direct and, through Lorenz von Stein, indirect influence is transparent.<sup>340</sup> Organs could not will for themselves (only the whole body could), the king as an 'organ' of the State (Concha was the first to make the inference) did not possess, even as regards the *reservata*, a 'will' separable from the personality of the State. Nagy, according to Concha, had failed to grasp that although unlike the shared monarchic rights, the reserved rights had always been exercised

<sup>337</sup> Concha, 'Magyarország közjoga', pp. 554–57; Concha, 'Közjog', pp. 591–600.

<sup>338</sup> Ibid., p. 598.

<sup>339</sup> 'mozzanat': See Concha, *Politika*, 1, pp. 272f.

<sup>340</sup> Hegel's organic State does not have 'head' and 'members'; its parts are 'aspects' or 'moments', analogous to the cells of animal organisms: 'Life is present in every cell. There is only one life in all the cells . . .' (para. 276A). Hegel expressly rejects the feudal state, an artificial person, which was 'rather an aggregate than an organism' (para. 278). Concha may have been inspired by Hegel's prescription that in the Crown 'the different powers are bound into an individual unity, which is thus at once the apex and basis of the whole, i.e. of constitutional monarchy' (para. 273): T. M. Knox (ed.), *Hegel's Philosophy of Right*, Oxford, 1958 (the paragraph numbers are Hegel's). Concha was a student and an admirer of the jurist Lorenz v. Stein, professor in Vienna, a follower of Hegel.

by the king through the government without parliament's involvement, he and parliament were, as they had always been, incompetent to legislate on any subject, including the *reservata*. Concha then let the cat out of the bag. He re-counted the 'mistake' made by Teofil Fabiný who, as Minister of Justice, had denied that parliament could legislate on *reservata* and was forced out of office. In Britain, the monarch's prerogative was converted into the nation's; in Hungary the king's *reservata* became the rights of the Holy Crown.<sup>341</sup> Concha's throwaway line on minister Fabiný's resignation was a direct reference to the conflict between the Tisza government, defending the army rights of the crown and the Opposition, the Independentists and, above all, Count Apponyi, an outcome of which was the doctrine itself. The resignation of Fabiný on 9 April 1889 (totally overlooked by historians), was the harbinger that marked the onset of permanent instability in Dualist Hungary's politics.

The organic vocabulary of the State sheds light on our contention that Eckhart was wrong to regard Hajnik, rather than Concha, as the author of the Holy Crown doctrine. What Concha meant by organic had little in common with what Hajnik meant by *totum corpus sacrae regni coronae*. Indeed, in the past, the organic metaphor was hardly more than a symbol of unity of some sort between the 'head' and the 'members', which constructed a composite whole.<sup>342</sup> The parts, each retaining separate individuality, were tied together by agreement or contract. The king in Hajnik's metaphoric 'body' possessed, just as the 'members' of the crown did, *praerogativa* in his own right. There was no trace of Hegel's influence in Hajnik's theory which left the king's *reservata* intact. In contrast, in Concha's theory, under Hegel's influence, the parts of the state body were not tied together by contract. The king ceased to be an agency for itself and was degraded to be an 'element' in the personality of the State.<sup>343</sup> In Concha's speculative body, the king was effectively deprived of his *reservata*. Eckhart treated 'the organic idea' of the late nineteenth century as if it had been the same idea of the organic simile used before the 1880s. He could hold Hajnik rather than Concha as the author of the Holy Crown doctrine because of his failure to distinguish between the old metaphoric and the speculative Hegelian organic uses.

<sup>341</sup> Concha 'Közjog', pp. 617–18.

<sup>342</sup> The unity was 'collective' rather than 'biological; 'medieval doctrine', wrote Gierke, 'despite all the analogies that it drew from organic life [...] regards the State as a mechanism constructed of atoms': Otto Gierke, *Political Theories of the Middle Ages*, ed. F. W. Maitland, 1958, p. 30. In contrast, the 'organic' idea of modern German philosophy invited us 'to walk by the uncertain and lunar right of [a] biological metaphor' — wrote Sir Ernest Barker in his introduction to Otto Gierke's *Natural Law and the Theory of Society 1500 to 1800*, Cambridge, 1950, p. lxii.

<sup>343</sup> See note 339 above.

Nagy eventually accepted Concha's innovation. Indeed the next (1897) edition of his work became the first textbook that expounded the doctrine in its chapter on royal power.<sup>344</sup> Concha, appointed to the Law Faculty at Budapest in 1892, also influenced Ákos Timon, the leading constitutional historian and first holder of a new chair in Hungarian Constitutional and Legal History.<sup>345</sup> Timon turned the doctrine into the central tenet of the history of the Hungarian constitution in a comprehensive textbook published in 1902.<sup>346</sup> He read the ideas that others attributed to Werbőczy, even into earlier periods. Also, he insisted that Hungarian institutions were largely indigenous and had already existed at the time of the conquest. The doctrine of the Holy Crown became widely known after the translation of Timon's work into German, based on the second Hungarian edition, which appeared shortly before the 1905 constitutional crisis and which attained a rather mixed reception abroad.<sup>347</sup>

Belief in the doctrine sometimes produced extraordinary reactions. Politicians and highly educated university professors were totally impervious to the mildest critical observations concerning the doctrine. Hajnik's slip about the existence of *totum corpus sacrae regni coronae*, of which not a single instance turned up in the documents, remained an article of faith even after non-believers pointed out that the phrase could not be found before Hajnik.<sup>348</sup> A good example of the zeal with which the doctrine could be cherished was the politics of Károly Kmety, Professor of Hungarian Public Law in Budapest from 1902 to 1929 and Independentist deputy in parliament from 1906. Kmety drew on Concha and Timon's ideas. From 1896 onwards, when Kmety was first appointed as a *Privatdozent*, these three jurists were in the same Law Faculty and influenced each other for nearly three decades. Kmety's *Public Law*, with a large number of editions between 1900 and the First

<sup>344</sup> Eckhart made this point: *Szentkorona*, p. 323.

<sup>345</sup> The chair was created by Count Albin Csáky, Minister of Education, at Budapest University in 1890. Timon was appointed to it on 1 February 1891. He held the Chair until he died in 1925. A Catholic jurist of great learning, Timon studied in Berlin and in Strasbourg in 1876 where he was a member of Laband's seminar.

<sup>346</sup> Ákos Timon, *Magyar alkotmány-és jogtörténet különös tekintettel a nyugati államok jogfejlődésére*, Budapest, 1902, second edn, 1903, third edn, 1906, fourth edn, 1910, fifth edn, 1917 (each new edition was enlarged). A glowing review in the work appeared in *Századok* by Lajos Crescens Dedek, 1903, pp. 63–67.

<sup>347</sup> Idem, *Ungarische Verfassungs- und Rechtsgeschichte mit Bezug auf die Rechtsentwicklung der westlichen Staaten* (hereafter, *Ung. Verfassungsgesch.*), Berlin, 1904, second edn, 1909. Timon's work was praised abroad for the width of its well organized knowledge but the claims concerning the originality of the Hungarian political institutions were treated with polite scepticism. See reviews by Hans Schreuer in *Zeitschrift für Rechtsgeschichte*, 26, Germ. Abt. 1905, pp. 326–40; Paul Laband, *Archiv für öffentliches Recht*, 19, 1904, pp. 277–79; Paul Vinogradoff, *The Law Quarterly Review*, 21, 1905, pp. 426–31.

<sup>348</sup> József Barabási Kun was the first writer who pointed out that the phrase *totum corpus sacrae regni coronae* was never found in a Hungarian legal document: 'Széjjegyzetek', p. 16; also see Eckhart, *Szentkorona*, p. 333.

World War, treated the Holy Crown as a *nemzetállam*, 'nationstate'.<sup>349</sup> After the collapse of the Austro-Hungarian Monarchy in 1918 this professor sent memo after memo to Michael Károlyi, Prime Minister, later President of the Republic, arguing that his government should recognize that it had become the trustee of the Holy Crown. When the communist Béla Kun regime took over in Budapest in March 1919, Kmetz spoke in his lectures in support of the regime on the grounds that it 'aimed at the preservation of the country's territorial integrity'. According to an eyewitness student, he called the Revolutionary Directorate the repository of the Holy Crown to which, by virtue of the declaration of the dictatorship of the proletariat, the rights as well as the obligations of the Holy Crown had been transferred.<sup>350</sup>

The socialist lawyers denounced Kmetz as a reactionary; it was asking too much of Lenin's Hungarian disciples to digest the Holy Crown doctrine. Indeed, there is some evidence that Béla Kun, the Communist leader, planned to sell St Stephen's Crown in Munich as scrap metal.<sup>351</sup>

#### *Hungarian exceptionalism*

The doctrine of the Holy Crown had a strong appeal to those in the political class who were poised to take on the ageing monarch over his right to regulate and control the army on his own. Before discussing the impact of the doctrine in general and its political utility, however, it would be instructive briefly to look at Hungarian exceptionalism which the doctrine reinforced and lent new shape to.

When the claim to exceptionalism first appeared in the late eighteenth century it had much to do with Montesquieu's influence on Hungarian politics.<sup>352</sup> The nobles learnt from *The Spirit of the Laws* that, owing to the separation of powers, the Roman Republic in ancient times and England in modern times possessed a free constitution. Now, those public men who represented the *ország's* rather than the Court's views, argued as we have already seen, that monarchy in Hungary was

<sup>349</sup> *A magyar közjog kézikönyve*, first edn, Budapest, 1900 (hereafter, *Közjog*). 'The nation is the total body of the Holy Crown and not one factor in it', *ibid.*, third edn, p. 64 and n.; see also Eckhart, *Szentkorona*, pp. 329–31.

<sup>350</sup> Pál Halász, 'A jogi gondolkodás alakulása a Magyar Tanácsköztársaságban', *Jogtudományi Közlöny*, 14, 1959, p. 59.

<sup>351</sup> See István János Bálint, 'Szent István koronája kalapács alatt', *Kapu*, 8, 1999, pp. 80–82.

<sup>352</sup> Although Pál Ráday, as Ágnes R. Várkonyi pointed out, the Golden Bull had been compared to the Magna Carta even as early as 1706: *MT*, 4, p. 327.

‘mixed’ rather than ‘limited’.<sup>353</sup> They furnished this claim by discovering parallels, affinity, kinship, with the ‘English’ constitution.<sup>354</sup> ‘No other nation apart from the English and the Hungarian can be called free’ — declared County Zemplén in its 1784 address to the monarch.<sup>355</sup> The British constitution became the standard for Hungarian parliamentarians to increase national rights at the expense of the crown’s.

The earliest two propagandists of the parallels were the author of an anonymous Latin pamphlet (possibly Adalbert Barits, law professor in Pest) and György Aranka, author of a Hungarian pamphlet. Both writings appeared in 1790.<sup>356</sup> Constitutional radicals, like Kossuth in his early years, invoked the parallels with England either to support constitutional grievances or to underline Hungary’s *Sonderstellung* in the Habsburg Monarchy by contrasting Hungarian constitutionalism with Austrian ‘absolutism’.<sup>357</sup> Others, like the publicist János Csaplovics, produced substantial essays on the parallels.<sup>358</sup> After 1849, Conservatives, like Pál Somssich, through excerpts from Macaulay’s *History of England*, explored the affinities between the English and the Hungarian institutions, as a part of an attack on the ‘Bach regime’.<sup>359</sup> In the Dualist Era comparisons between the Magna Carta and the Golden Bull and insistence on other ‘parallels’ served the aspiration of extending Hungary’s rights with respect to ‘Austria’.<sup>360</sup> But even after the dissolution of the Habsburg Monarchy philologists were looking for constitutional parallels with England in the Middle Ages.<sup>361</sup>

Yet the search for parallels could, of course, produce very little to lend support to Hungarian exceptionalism. Although the topic has not

<sup>353</sup> See above p. 474.

<sup>354</sup> Párhuzam, hasonlóság, rokonság. The history of this topic is yet to be written, although Eckhart regretted its lack over seventy years ago: ‘Jog és alk. tört.’, p. 297. A bibliography of the subject was compiled by István Csekey after 1945, MTA, Kézirattár, Cs. I. For a short bibliography see György Bónis, ‘Az angol alkotmánytörténetírás tegnap és ma’, *Századok*, 74, 1940, p. 181 n. 1. The basis of the ‘kinship theory’ is that in contrast to all the other constitutions which are ‘written’ the ‘English’ and the Hungarian were historical (in other words, the giraffe and the elephant have ‘in common’ that neither is like the hippopotamus).

<sup>355</sup> László Péter, ‘Montesquieu’s Paradox on Freedom and Hungary’s Constitutions 1790–1990’, *History of Political Thought*, 16, Spring 1995 (hereafter, ‘Montesquieu’s Paradox’), p. 84.

<sup>356</sup> See Győző Concha, ‘Az angolos irány politikai irodalmunkban a múlt század végén’ (hereafter, ‘Az angolos irány’), in *Hatvan év*, 1, pp. 213–27; Eckhart, *A jog és államtud. kar tört.*, pp. 208–12. It is not certain that Barits was the author of the anonymous Latin pamphlet.

<sup>357</sup> For an early reference from 1831 see *KLÖM*, 6, p. 217.

<sup>358</sup> Johann v. Csaplovics, *England und Ungarn. Eine Parallele*, Halle, 1842, 117 pp.

<sup>359</sup> Paul von Somssich, *Das legitime Recht Ungarns und seines Königs*, Vienna, 1850, pp. 130–43.

<sup>360</sup> See Géza Jeszenszky, *Az elveszett presztízis*, Budapest, 1986, pp. 202–03. A substantial study on the subject was by Elemér Hantos, *The Magna Carta of the English and of the Hungarian Constitution*, London, 1904.

<sup>361</sup> Sándor Fest, *Skóciai Szent Margittól a Walesi Bárdokig*, ed. Lóránt Czigány and János H. Korompay, Budapest, 2000, pp. 121f., 147f.

even today entirely disappeared from public discourse,<sup>362</sup> it has had a struggle to survive criticism and ridicule. Austrian pamphleters in the 1790s and later German liberal authors, the Transylvanian Saxon Herald Steinacker and the Scottish traveller R. W. Seton-Watson all regarded the analogies as an *idée fixe* of Hungarian nationalists.<sup>363</sup> And even in Hungary the country's best brains habitually rejected the claim to parallels as superficial. The Hungarian *philosophe*, József Hajnóczy, an admirer of the British constitution emphasized in his works the great differences between the two country's institutions.<sup>364</sup> Count István Széchenyi and Baron József Eötvös referred to the parallels with derision.<sup>365</sup> Győző Concha rejected the claim<sup>366</sup> and Ferenc Eckhart thought it was the 'product of fantasy fed on national presumptuousness'.<sup>367</sup>

The crown seemed to provide a more promising basis for Hungarian exceptionalism than the 'parallels' with England. Kossuth, a firm believer that the Hungarians were the only truly constitutional nation on the Continent,<sup>368</sup> never produced explanations. Others, whether under the spell of the Great Exile or not, found the explanation in the early appearance of Public Law in Hungary when countries in western Europe were still debilitated by 'feudal divisions'. This thesis became the hard core of the argument for exceptionalism for many a year. We have seen that the jurist Csemegi argued in 1862 that, while elsewhere the question was still hotly debated, in Hungary the question of sovereignty had been, centuries before, settled on the crown, a corporation of the king and the nobility.<sup>369</sup> Hajnik, the legal historian<sup>370</sup>

<sup>362</sup> After meeting Prime Minister Viktor Orbán on 25 April 2000, the Lord Chancellor, Lord Irvine of Lairg and the President of the Hungarian parliament exchanged facsimile copies of the Magna Carta and the Golden Bull. When Hungary is on the brink of the European Union, this old chestnut is produced to underline the country's European credentials.

<sup>363</sup> Péter, 'Montesquieu's paradox', p. 85 nn. Apart from critics there were, particularly after 1848, supporters too of the parallels abroad, particularly in Britain, e.g. Joshua Toulmin-Smith, *Parallels between the Constitution and Constitutional History of England and Hungary*, London, 1849.

<sup>364</sup> *Hajnóczy József közjogi-politikai munkái*, ed. Andor Csizmadia, Budapest, 1958, see index on p. 307.

<sup>365</sup> For example, in the *Falu jegyzője*, Eötvös in 1846.

<sup>366</sup> Concha 'Az angolos irány', esp. pp. 213–14.

<sup>367</sup> Eckhart, 'Jog és alk. fejl.', p. 300. Only the first edition contained the jeer which was replaced in the second edition by an inoffensive passage. Eckhart thought that instead of parallels with the British, they existed with respect to the Bohemian and the Polish institutions, pp. 296–303.

<sup>368</sup> See, for instance, his statement, made in London in 1858, in László Péter, 'Language, the Constitution, and the Past in Hungarian Nationalism', in Ritchie Robertson and Edward Timms (eds), *The Habsburg Legacy*, Edinburgh, 1994, p. 21.

<sup>369</sup> See p. 477 above. By contrast, the leading jurist Virozsil in the same period referred only to the similarities between the Magna Carta and the Golden Bull: *Staats-Recht*, 1, p. 270 n. d.

<sup>370</sup> Imre Hajnik, *Magyar alkotmány és jog az Árpádok alatt*, Pest, 1872, pp. 270–71.



and István Toldy, a liberal political writer,<sup>371</sup> both wrote in the same vein shortly after the 1867 Settlement.

Representatives of the dogmatic law school pressed the point further in the 1890s. Concha, as we have seen, while rejecting the claim to the parallels with England, argued that the special features of the Hungarian constitution could be found nowhere else.<sup>372</sup> Ernő Nagy, with the zeal of a recent convert, added that the Hungarian institutions were ‘even more constitutional’ than their English counterparts.<sup>373</sup> Timon too argued that Werbőczy’s ideas were superior to English constitutional ideas.<sup>374</sup>

The scholars’ assertions soon found their way to the wider public. In 1892 Gusztáv Beksics, the cleverest liberal political weathervane, introduced his most popular pamphlet with two themes: (i) the Hungarian nation’s legal institutions were superior even to those of the English and (ii) the *jura reservata* (taken over from German state theory) was a false doctrine as regards Hungary where king and nation merged into the Holy Crown entirely and where the monarch exercised only those powers that were expressly transferred to him by the nation.<sup>375</sup> All rights were under the control of the nation.<sup>376</sup> These themes were then variegated in speeches by politicians: ‘Nowhere else in the world exists the ideal content of the (Hungarian) crown’, opined an Independentist deputy.<sup>377</sup> Apponyi referred to the Holy Crown doctrine as the ‘masterpiece of the nation’s constitutional genius’, unparalleled in the world.<sup>378</sup> Hungarian exceptionalism formed the hard core of the claim that Hungary possessed a ‘thousand year old constitution’ at the millennial celebrations in 1896.<sup>379</sup> Yet the seemingly unison rhetoric contained different trends.

<sup>371</sup> István Toldy, *Régi M.orsz.*, pp. 220–23.

<sup>372</sup> p. 482 above. Odön Polner in his study on the legal connection between Hungary and Austria also inferred Hungarian exceptionalism from the corporate political concept of the Holy Crown: *Magyarország és Ausztria közjogi viszonya*, Budapest 1891, pp. 62f., 107.

<sup>373</sup> Ernő Nagy, ‘A magyar alkotmány állandósága’, *Jogtudományi Közöny*, 19 June 1896, p. 193; idem, *Közjog*, 1901, fourth edn, pp. v–vi; see also the inflated claims about the Hungarian constitution in Kmetz, *Közjog*, 1911, fifth edn, pp. vii–xxxii.

<sup>374</sup> Timon, *Ung. Verfassungsgesch.*, pp. 512–13; see also Albert Deák, *Parlamenti kormányrendszer Magyarországon*, 2 vols, Budapest, 1912 (hereafter, *Parl. korm.*), 1, pp. 48, 65.

<sup>375</sup> Gusztáv Baksics, *A dualizmus*, Budapest 1892, pp. 1–2.

<sup>376</sup> *Ibid.*, p. 6.

<sup>377</sup> László Rátkai, 15 November 1902, *Képv. napló*, 8, p. 418.

<sup>378</sup> Count Albert Apponyi, 9 July 1904, *Képv. napló*, 26, p. 346.

<sup>379</sup> A rather arbitrarily selected year for the anniversary of the conquest of Hungary. See János M. Bak and Anna Gara-Bak, ‘The ideology of a “Millennial Constitution” in Hungary’, *East European Quarterly*, 15 (Sept. 1981), 3, pp. 307–26; Karpát, ‘Die Idee’ in Hellmann’s *Corona*, pp. 349–54. Notwithstanding all the criticism that Hungarian exceptionalism has received over the years, its remnants are still around today. ‘In east-central Europe Hungarian has been the only nation — said a historian to a journalist — that has possessed a thousand-year-old independent statehood’: *Napi Magyarország*, 19 August 1999, p. 5.

*The impact of the doctrine*

Political rhetoric is never uniform. Only a part of the political class and literati accepted and used the new vocabulary of the doctrine which made headway in the 1890s. In the legal profession most of the Publicists and legal historians swallowed it hook, line and sinker, while the Civilians, the civil servants and conservative academic historians were seemingly reluctant. In parliament, the growing number of Independentists and Apponyi supporters, who stood poised to take away from the monarch his army rights, grasped the doctrine with both hands. Predictably, the Liberal establishment and the government remained lukewarm. The Budapest (progressive, Jewish) professional and business classes were rather flabbergasted.

The crown tradition, visible and invisible, formed a prominent part in the pomp and ceremony with which the millenary of the conquest, the *honfoglalás*, was commemorated in 1896.<sup>380</sup> Yet the new doctrine was missing from the speeches of the 67'er Liberals in office; likewise, after the turn of the century when the Opposition in the House began to demand the introduction of Hungarian as the language of command and service in the Hungarian regiments of the common army. The incomprehension between the traditional rhetoric, in which crown and nation were juxtaposed, and the new rhetoric engendered by the doctrine, which insisted that the king, through the crown, merged in the nation, led to a head-on clash between the government and the Opposition.<sup>381</sup>

Supporters of the doctrine urged people not to use the word 'crown' for the monarch.<sup>382</sup> The dictum that 'it is not the monarch who inherits the crown but the crown that inherits the monarch',<sup>383</sup> when crown and nation became synonymous, showed the utility of the doctrine for those who were set to deprive the monarch of his army rights. It was not a coincidence that it was Apponyi who, in the Great Defence Debate of 1889, had transferred in his speech the *presumptio juris* of the monarch's army *reservata* to parliament, turned out to be 'the most

<sup>380</sup> See note above.

<sup>381</sup> 'Orthodox' liberals even after the turn of the century juxtaposed 'nation' and 'crown' — this being the language of Deák who held that the 1867 Settlement was a contract between two actors in which they mutually recognized each other's rights. When, however, the head of the new government Count István Tisza warned in his policy speech on 6 November 1903 about the consequences of any conflict over the language of the army, and urged harmony between the 'nation' and the 'crown', József Madarász, Independentist old hand, interjected: 'The crown is ours! The country's'. 'Therefore the language ought to be Hungarian' — added another Independentist: *Képv. napló*, 28, pp. 280–81. See also the encounter with minister Fejérváry in the House p. 471 above.

<sup>382</sup> Gejza Ferdinándy argued that the usage was in conflict with the principles of the constitution and the independence of Hungary and that either the usage or the doctrine of the Holy Crown had to be abandoned: *Korona és monarchia*, Budapest, 1903, p. 11.

<sup>383</sup> István Csekey, *A magyar trónöröklési jog*, Budapest, 1917, p. 14.

effective propagator' of the doctrine<sup>384</sup> at home and also abroad.<sup>385</sup> And his growing influence in politics between 1903 and 1905 led to the attempt by parliament to tilt the constitutional balance against the crown.

The issue was now the changeover to parliamentary government, replacing the balanced constitution which Deák had secured back in the 1867 constitutional Settlement. Apponyi became the leading force in the Coalition that plunged the country into the constitutional crisis in 1905. The doctrine turned up in speeches that justified 'national resistance' against the 'unconstitutional' Fejérváry government.<sup>386</sup> After Franz Joseph had emerged from the crisis with his prerogative left intact and Sándor Wekerle's Coalition government was appointed in April 1906, the doctrine acquired semi-official status, for the Coalition, although defeated, did not abandon its aspiration to have a separate Hungarian army. Apponyi, now as a minister of the crown, sponsored publications in which he set out the doctrine at length.<sup>387</sup> Yet the doctrine failed to become Hungarian official ideology in the life-time of the Monarchy. The Wekerle government turned out to be short-lived; Franz Joseph allowed it to disintegrate in 1909. Tisza's reorganized 67'ers were back in office and the doctrine of the Holy Crown was put on the back-burner. It was a pointer to the reservations with which the Khuen-Héderváry government treated the doctrine that when a new Chair was established in Public Law at the Law Faculty in Budapest in 1911, the Faculty (in which Concha, Timon and Kmety were all professors) invited Count Apponyi and submitted the proposal to minister Count János Zichy. The government, however, 'refused to make the appointment on political grounds' and the chair was eventually filled by Ernő Nagy<sup>388</sup> — a scholar not interested in the political implications of the doctrine.

<sup>384</sup> Gyula Szekfű, *Három nemzedék és ami utána következik*, third edn, Budapest, 1935, pp. 399–400.

<sup>385</sup> Count Albert Apponyi, 'Le parlement de la Hongrie', in *Annuaire du Parlement*, 4<sup>e</sup> année 1901, Paris, 1902, ch. 10, pp. 864–958, esp. pp. 880–82; idem, *A Brief Sketch of the Hungarian Constitution*, Budapest, 1908, esp. pp. 16–18; 'The Hungarian Constitution', in *Hungary Today*, ed. Percy Alden, London, 1909, pp. 103–208, esp. 123–25 (the three publications are essentially identical).

<sup>386</sup> See, for instance, the speech by Baron Dezső Prónay at the meeting of the 'leading county', Pest, on 20 June 1905, József Horváth, *Az 1905/6. évi vármegyei ellenállás története*, Budapest [1907], p. 299; on the constitutional crisis see Péter, 'Verfassungsentwicklung', pp. 451–61.

<sup>387</sup> See note 385 above. The teaching of Concha, Timon and Kmety was also accepted by the Coalition's foreign supporters. See, for instance, C. M. Knatchbull-Hugessen's *The Political Evolution of the Hungarian Nation*, 2 vols, London, 1908, see esp. 1, pp. 39, 90–91, etc. Its robust pro-Coalition political bias was pointed out by a critical review in *The Saturday Review*, 16 January 1909, p. 81.

<sup>388</sup> Eckhart, *A jogi kar tört.*, pp. 621–22.

Paradoxically, the doctrine of the Holy Crown acquired a dominant position in public life only after the collapse of the Monarchy. Once the old political order was restored following the revolutionary period, without the monarchy, in 1920, the doctrine was elevated as the official ideology of the regime. As we have seen, the Law of 1930 ordained that the judges should pass sentences ‘in the name of the Hungarian Holy Crown’.<sup>389</sup> After the dissolution of the Austro-Hungarian Monarchy neither state independence nor the reserved rights of the monarch were any longer relevant contentious issues. The kingdom was formally restored in 1920. But as the Western Powers did not allow the king to return, the legitimacy of the regency was bolstered by the elevation of the doctrine to official ideology. An obvious reason for the prominence accorded to the doctrine was that within the new political élite the former Independentists rather than the 67’ers possessed the upper hand. But the chief reason for the doctrine’s elevation must have been the territorial question. Hungary did not accept as final the Trianon Treaty of 1920, which disposed of more than two-thirds of Hungary’s former territory. The justification for the ‘revisionist’ policies pursued by successive Hungarian governments after 1920 became the dominant context in which the Holy Crown appeared. When between 1938 and 1940 parts of the lost territories were reattached to Hungary, according to the enacting laws, these parts ‘returned to the body of the Hungarian Holy Crown’.<sup>390</sup> The triumphalist flourish by the writer Ferenc Donászy in 1941 invoking the magic of St Stephen’s Crown (once more mixing up the visible and the invisible) stands for many others dating from the period.<sup>391</sup>

It became the ironic fate of the doctrine that just about the time when it was at last elevated to the level of official ideology, it suffered a devastating blow from the pen of the leading legal historian which undermined its credibility. Before turning to that subject, however, we have to examine the political efficacy of the doctrine.

*The utility of the doctrine*

The Holy Crown doctrine undoubtedly possessed utility. The mystery of the whereabouts of sovereignty in the Habsburg Monarchy was not

<sup>389</sup> See p. 457 and note 186 above.

<sup>390</sup> See p. 461 and note 204 above.

<sup>391</sup> ‘The magical unity [...] of the Holy Crown’s body brings together the empire of St Stephen from the green leaves of the Carpathian slopes down to the blue Adriatic. The idea and the binding force of the Holy Crown proved stronger than the rule of the Ottoman crescent lasting one and a half centuries; it proved stronger than the suffocating clutches of the German imperial eagle and stronger than the chains forged in Trianon. By now all these are far gone while the Crown of St Stephen shines with the light of nine hundred years. And we believe, we believe with inextinguishable faith that St Stephen’s empire will be reunited in the Danube basin.’ Quoted by Bertényi, *Szent Korona*, p. 164.

merely an intellectual puzzle. The assimilation of the German dogmatic school's vocabulary into Hungarian constitutional discourse and the concept of the personality of the State, in particular, highlighted long-standing problems of constitutional balance. Power was still tilted too heavily in favour of the monarch. As king, the executive power was formally vested in Franz Joseph, although he exercised it through a ministry that was responsible to him as well as parliament. In legislation, the monarch was equal partner with parliament.<sup>392</sup> Over and above these rights, the monarch possessed powers that were entirely outside the control of the Hungarian parliament. Franz Joseph, as emperor, was the monarch of the Lands represented in the Reichsrat — the stronger partner in the Dualist relationship. Above all, he had near complete personal control over the Monarchy's common institutions, including the army buttressed by long-standing legal presumption. The Holy Crown doctrine, by reversing the legal presumption that hitherto buttressed the king's *reservata*, undermined (potentially) the security of the prerogative. It subordinated the common monarch's rights to the legislation of the crown's total *corpus* within which the monarch was said to be a mere 'organ'.<sup>393</sup>

Although the doctrine did not resolve the juristic problem of the whereabouts of sovereignty, an intractable one for Austria-Hungary,<sup>394</sup> its creation was, by any standard save historical veracity, a considerable political achievement on the part of the Law Faculty of Budapest University. The refashioning of Hungarian constitutional history, as we have seen, bolstered the claim to a thousand-years'-old constitutional life. Also, it reduced the much-lamented dependence on German scholarship and asserted the legal sovereignty of Hungary without making ineffective the constitutional dualism of crown and nation. Although the doctrine itself was not politically radical, forged at a time when crown and parliament were gingerly moving towards major confrontation, it undoubtedly helped the latter side. Its effectiveness, however, should not be overrated. Strictly speaking, parliamentary government did not necessarily follow from the doctrine. We can distinguish at least three different positions taken up by those who professed to adhere to the doctrine:

<sup>392</sup> To describe the king's participation in legislation as 'veto power' is a common enough mistake of scholars. See Péter, 'Verfassungsentwicklung', pp. 412–14.

<sup>393</sup> See above (Concha), pp. 483–84. On the lower level of a well-known Independentist ringleader, this point was understood as: 'The claim that the army belongs to the nation rather than the king means the strongest loyalty, because, according to the splendid imprescriptible theory of the Holy Crown, all nobles used to be its members in the past, just as all Hungarian citizens are today. But his Majesty the king is also a member.' Géza Polónyi in the debate on the new government orders on the coat of arms and flags, 1 December 1915, *Képv. napló*, 27, p. 288.

<sup>394</sup> As, for instance, James Bryce argued in his *Studies in History and Jurisprudence*, Oxford, 1901, 2, pp. 91–92.

1. For Count Albert Apponyi it followed from the doctrine that government in Hungary was parliamentary, at least in the sense that ultimate control over policy was already vested in parliament. Because of this belief he left the Liberal party in 1903, joined the Independentists in the following year and became the drafter of the Address in April 1905 during the constitutional crisis in which the House demanded that the crown should appoint a government 'such as would have the House's confidence'.<sup>395</sup> The Coalition claimed that Law III of 1848 had already established parliamentary government in Hungary. Among the leading jurists Károly Kmety, himself an Independentist deputy, likewise represented the radical interpretation of the doctrine. Yet it would be premature to rush to the conclusion that we have the key in hand to understanding the politics of the doctrine.

2. Quite unexpectedly, the maker of the doctrine, Győző Concha (unlike Apponyi) failed to whistle in the dark. He understood that Hungary did not (and could not as yet) have parliamentary government. The Politics professor attacked in an article the Coalition's claims: the 1848 Laws did not establish parliamentary government, for that system was, wherever it existed, an informal convention rather than a legal institution and in Hungary the convention had not yet evolved.<sup>396</sup> Concha also developed doubts about the efficacy of the doctrine in practical politics.<sup>397</sup> Albert Deák, author of the first monographic study on the Hungarian political system and a firm believer in the doctrine (even after the fiasco of the 1905–1906 constitutional crisis), was more optimistic than Concha: it was the mission of the Holy Crown principle that the nation *should* acquire 'the dominant weight' in the working of the State.<sup>398</sup>

3. The problem with the doctrine was (apart from being quite unrealistic about the balance of effective power in the Austro-Hungarian Monarchy) that, as it did not abandon the duopoly of king and nation, the monarch could use it as much as parliament. In the royal Rescript, which reappointed the Fejérváry cabinet in October 1905, Francis Joseph (emphatically and for the first time) styled himself

<sup>395</sup> Péter, 'Verfassungsentwicklung', pp. 453–54.

<sup>396</sup> László Péter, 'The Aristocracy, the Gentry and Their Parliamentary Tradition in Nineteenth-Century Hungary', *SEER*, 70, 1992, 1, pp. 77–110 (pp. 107–08).

<sup>397</sup> Concha understood that the function of the doctrine was the replacement of structural dualism by a body politic in which the political will was unified. In an article he condemned parliamentary filibustering in 1904. Later, in 1921, he wrote with some resignation that the *Sacrae Coronae Corpus* did not function properly as the concept of the legal State because the head and the members, as in the Middle Ages, were connected by contracts rather than laws, *Hatvan év*, 2, pp. 183, 570–71.

<sup>398</sup> Deák, *Parl. korm.*, 1, p. 188.



as ‘the wearer of the Holy Crown’.<sup>399</sup> Further, Bertalan Lányi, Minister of Justice in the Fejérváry cabinet, in setting the record straight after the crisis, abundantly used Timon and Kmety’s work. But he inferred from the doctrine the dominance of royal power and rejected the claim that Hungary had a parliamentary system of government.<sup>400</sup>

All in all, the effectiveness of the doctrine was more limited than is frequently assumed. The appeal of ideologies, however, does not ultimately depend on their utility in its narrow sense but on other factors.

*Against the current: Eckhart*

While the traditions and innovations of the visible crown (at least until recent years) have hardly ever caused dissent,<sup>401</sup> innovations about the invisible crown frequently did so. The doctrine of the Holy Crown, despite its enthusiastic reception by the Independentist wing of the political class, with the charismatic Count Apponyi as its most ardent promoter, remained a contested product of the dogmatic law school.

At the turn of the nineteenth century, cultural life, outside the parliamentary oligarchy of the aristocracy and the gentry, was largely urban, progressive and dependent on support from the Jewish business classes. Predictably, the Holy Crown doctrine had no appeal to this bourgeois counter-élite whose journalists gave short shrift to it.<sup>402</sup> It was as much as one would have expected. Surprisingly, however, the 67’er Liberal establishment (by no means being all king’s men) were also resistant to the reception of the doctrine. Most of them kept their heads down but a few spoke up. Jenő Balogh, a Criminalist at the Budapest Law Faculty, attacked Timon for his claim that the development of the Hungarian legal system was largely indigenous and superior to other European legal systems. Balogh deplored ‘the patriotic

<sup>399</sup> 16 October, József Kristóffy, *Magyarország kálváriája*, Budapest, 1927, pp. 260–61. That most astute political observer in Vienna reported to PHS London that ‘the passage in which the Monarch styles himself not King or ruler, but “wearer of the sacred crown” of St Stephen, is particularly significant, since, according to Hungarian constitutional theory, kingship resides in the holy crown itself, and not legally in the person who may inherit the right to wear it unless and until that person has been duly crowned with it according to the traditional Hungarian ritual and after giving the traditional and clearly defined pledges concerning the inviolability of the Constitution. The phrasing of the rescript thus contains a definite reminder to the Hungarian people that the King is in possession of full constitutional rights, of which he is minded to make use, just as he is determined not to suffer any encroachment upon the independence and sovereignty of the Hungarian nation’. H. W. Steed, *The Times*, 19 October 1905.

<sup>400</sup> Bertalan Lányi, *A Fejérváry-kormány*, Budapest, 1909, esp. pp. 204–22.

<sup>401</sup> Joseph II’s measures might have been the sole exception, see above pp. 16–17.

<sup>402</sup> A typical example is the pamphlet of Oszkár Gellért, *A szent korona tan hazugságai* (The lies of the doctrine of the Holy Crown), Budapest, 1908 in which the author rejects the doctrine as sham-constitutionalism.

clamour' which surrounded the reception of Timon's book.<sup>403</sup> The Romanist and Civilian Gusztáv Szászy-Schwarz ridiculed the whole literature on the Holy Crown doctrine and treated it as trash.<sup>404</sup> Whereas these strictures were largely ignored by the adherents of the doctrine, Henrik Marczali's 'Hungarian Constitutional Law' published in Paul Laband's series in German<sup>405</sup> led to a public scandal and Hungary's leading historian<sup>406</sup> was ostracized. Marczali distinguished the uses of the 'crown' (signifying the State) from those of the 'Holy Crown' (which referred to the *Lehengewalt*, the royal land-donation only).<sup>407</sup> This accurate reading of Werbőczy, together with much else of Marczali's views, inspired a long-winded and vicious attack by Ödön Polner, a leading Publicist, who dismissed the book as a dilettante work.<sup>408</sup> The attack marked the beginning of Marczali's isolation.

These objections were expressions of dissent rather than critical analysis of the new literature and they appeared in the last years of the Monarchy. There were no dissenting incidents in the 1920s, a decade during which the doctrine, for the first and the last time, enjoyed a monopoly position in government and academia.<sup>409</sup> After 1920, with the (alien) royal power in abeyance, the doctrine lost its *raison d'être* (Deák's usage 'the Lands of St Stephen's Crown' adequately supported territorial revisionism). Yet it came as a bolt from the blue when, in 1931, a reputable conservative law professor examined and repudiated the doctrine and much of the new legal-historical literature on grounds of scholarship. From now on historians had an 'open season' on Timon's theories.

Ferenc Eckhart was appointed to the chair of Constitutional and Legal history at the Law Faculty in Budapest in 1929. His fifty-page essay on Hungarian legal scholarship, which appeared in a volume on

<sup>403</sup> Jenő Balogh, 'A jogtörténet tanítása hazánkban', *Budapesti Szemle*, 122, 1905, pp. 161–97 (pp. 167, 179).

<sup>404</sup> Gusztáv Szászy-Schwarz, *Parerga*, Budapest, 1912, pp. 448–55.

<sup>405</sup> Marczali, *Üng. Verfassung*, and see notes 158 and 220 above.

<sup>406</sup> G. P. Gooch wrote: 'Not till the emergence of Marczali did Hungarian historiography break the shackles of a narrow patriotism. His [works] represent the highest achievement of Magyar scholarship'. *History and Historians in the Nineteenth Century*, London, 1952, p. 400.

<sup>407</sup> Marczali, *Üng. Verfassung*, pp. 25–29.

<sup>408</sup> Ödön Polner, 'Magyar közjog német nyelven', *Jogállam*, 11, 1911, pp. 337–62 and 417–43. What particularly upset Polner was that Marczali, by denying the legal unity of *rex* and *regnum* and emphasizing their legal dualism, let the cat out of the bag. See p. 345.

<sup>409</sup> Although on specific points historians sometimes criticized Timon's doctrine, e.g. R. István Kiss on aviticity, 'Nagy Lajos és az ősiség', in *Emlékkönyv gr. Klebelsberg Kunó negyedszázados kulturpolitikai működésének emlékére*, Budapest, 1925, pp. 241–48 (p. 248). See also Timon, *Üng. Verfassungsgesch.* pp. 555–56. Gyula Szekfű also criticized Timon's work although not his view of the Holy Crown doctrine but Timon's insistence in reading Werbőczy's ideas into the early Middle Ages: *A magyar állam életrajza*, 2nd edn, Budapest, 1923, pp. 227–28. Szekfű, like the rest of historians was a firm believer in the doctrine: *ibid.*, pp. 69–70.

new historical methods,<sup>410</sup> edited by Bálint Hóman, a leading medievalist, created a mighty row. This reached even parliament where Eckhart was reprimanded by the Minister of Justice because of his injudicious treatment of views that were in the ‘sanctuary’ of national feeling. The Minister of Education, pressed by the Hungarian Academy, had to come to the rescue of the professor by making a conciliatory statement. The publication of the essay, as Eckhart bitterly remembered years later, nearly cost him his chair.<sup>411</sup> He went on working on the subject, however, and ten years later was able to publish his comprehensive monograph on ‘the History of the Holy Crown idea’ which, sixty years later, is still the only proper historical analysis available on the subject. The book silenced his opponents for a few years.<sup>412</sup>

Eckhart argued in 1931 that because the Habsburg Monarchy had ceased to exist, an impartial examination of constitutional questions could no longer be labelled as unpatriotic. It was now time to look at the historical claims the jurists and legal historians had made before 1918.<sup>413</sup> Each period of the constitution should be discussed in its own terms rather than ‘bringing concepts into the past that are quite alien to it’.<sup>414</sup> Laband’s Hungarian disciples regularly erred in this respect: they treated the medieval legal material in terms of modern concepts like ‘sovereignty’ and the ‘personality of the State’.<sup>415</sup> They lived in a *magyar glóbusz* claiming exceptionalism for Hungarian legal developments. The jurists postulated the principle of a thousand-year-old constitution as a continuously existing system of unified public law which Hungary possessed before any other nation in the West. This was hardly more than ‘muscle-flexing chauvinism’ on the part of the dogmatic School.<sup>416</sup> It was particularly painful for many of Eckhart’s readers that he insisted on Czech and Hungarian constitutional developments being analogous.<sup>417</sup> Eckhart set out a programme and a conceptual frame within which the growth of Hungarian political

<sup>410</sup> Eckhart, ‘Jog és alk. tört.’ (see notes 50 and also 90 above), pp. 269–320.

<sup>411</sup> Ferenc Eckhart, *Magyar alkotmány-és jogtörténet*, Budapest, 1946, p. 3. In parliament the Minister of Justice, Tibor Zsitvay, censured Eckhart’s essay but the Minister of Religion and Education, Count Kunó Klebelsberg, defended the principle of free speech. On the ‘Eckhart debate’ see Elemér Mályusz, ‘Az Eckhart vita’, *Századok*, 65, 1931, pp. 406–19 (still the best); József Kardos, ‘Az Eckhart-vita és a szentkorona-tan’, *Századok*, 103, 1969, pp. 1104–17 (pedantic); Bertényi, *Szent Korona*, pp. 161–64 (informative).

<sup>412</sup> Eckhart, *Szentkorona*, see note 61 above; for its German summary see Karpát ‘Die Idee’, see note 90 above.

<sup>413</sup> Eckhart in 1931 was the pathfinder but other scholars soon set out on the same route. Emma Bartoniek, Péter Váczy, József Deér and György Bónis all looked at the subject from a new perspective.

<sup>414</sup> Eckhart, ‘Jog és alk. tört.’, pp. 281–82.

<sup>415</sup> *Ibid.*, p. 282.

<sup>416</sup> *Ibid.*, pp. 304–06. The last phrase and a few other offensive phrases were deleted from the second edition (1931) of the volume. The changes did not effect the argument.

<sup>417</sup> *Ibid.*, pp. 300f.

institutions should be explored. He concluded on the point that, as elsewhere, in Hungary the monarch and the subjects were connected through contracts in the Middle Ages and later (for instance, the royal Oath, the *capitulationes* and the *decreta*), because ‘the unified system of public law, the characteristic of the modern state was missing’.<sup>418</sup> The jurists and many politicians on the right were dismayed and alarmed. An articulate but noisome attack on Eckhart’s views, written by Kálmán Molnár, professor in Pécs, added little to the subject despite its outlandish argument. Scholars should be able to ‘rise above’ the contradictory historical data in order to ‘abstract their spirit’. The ‘distillation of their substance through jurisprudence’ was the doctrine of the Holy Crown.<sup>419</sup> In parliament a member lamented the fact that ‘a fine illusion was once again torn out of the soul of Hungary’s youth’.<sup>420</sup>

When, ten years later, Eckhart carried out his programme and published his study on the history of the Holy Crown, long overdue basic information was at last furnished on the subject.<sup>421</sup> Eckhart set hundreds of *corona* passages in their institutional context and interpreted the rich variety of ideas which the term represented at one time or another. In fact, notwithstanding the title of the book, Eckhart did not look for a ‘concept’ with a set of definable properties to which the crown uses could be adduced. He describes how the term took on new meanings, frequently without losing old ones. In other words he takes it for granted that the term, like most other political terms, is multivocal. Another notable feature of his work is that it is nearly as much about *regnum* and *ország* uses as it is about *corona*. For this reason, Eckhart’s analysis sheds light on the fundamental structural feature of Hungarian political institutions: the complementarity of monarchic and *ország* powers. Yet he abandoned a position in 1941 which he had held before. We have seen that Eckhart in 1931 treated *corona* and *regnum* as two distinct loci of authority because, before the nineteenth century, ‘a unified system of public law’ did not exist.<sup>422</sup> Statements in similar vein may be found throughout Eckhart’s works before 1941. He wrote in 1928 that ‘the State concept as a legal person’ appeared in Hungary (as

<sup>418</sup> Ibid., p. 320.

<sup>419</sup> Kálmán Molnár, *Alkotmánytörténeti illúzió-e a magyar alkotmányfejlődés jellegzetes közjogi iránya?*, Pécs, 1931, pp. 29 and 54; see also Móric Tomcsányi, ‘A magyar közjog és jogtörténet téves szemlélete’, *Magyar Jogi Szemle*, 1931, pp. 271–94; Miklós Nagy, ‘A szent korona eszméje’, in Serédi, *Emlékkönyv*, 2, pp. 269–307, and esp. pp. 305–06. On Eckhart’s side though not in complete agreement with him on every point, see László Erdélyi, *Az ezeréves magyar alkotmány*, Szeged, 1931, esp. pp. 20–26.

<sup>420</sup> Sándor Kálnoki Bedő in parliament, *Budapesti Hírlap*, 8 March 1931, quoted by Kardos, ‘Az Eckhart-vita’, p. 1112.

<sup>421</sup> Eckhart, *Szentkorona*, pp. 3–4.

<sup>422</sup> Eckhart, ‘Jog és alk. tört.’, p. 320 and earlier: ‘the concept of the personality of the State did not exist in the Middle Ages’, p. 282.

elsewhere) in the eighteenth century.<sup>423</sup> During the debate in 1931 he argued that the king and *regnum* had stood in respect of each other as two distinct legal persons.<sup>424</sup> In 1933 he wrote, in relation to the Bocskai uprising, that ‘the concept of state unity between the king and the estates was missing’; the two sides were independent.<sup>425</sup> In contrast, by 1941, Eckhart has changed his position in his book. He fell in line with *communis opinio* and held that the ‘concept of the State’ had appeared in Hungary already in the Middle Ages.<sup>426</sup>

This could be one of the reasons why Eckhart’s work enjoyed a good reception: praise and accolade were showered on the author by the reviewers without a dissenting voice. Most of the reviews were concerned with the medieval periods and, by 1941, no established scholar was inclined to defend Timon’s school. But Eckhart’s book never received, at least in Hungary, the close attention and critical comment it would have undoubtedly deserved. This was particularly so for the modern periods. As far as I know the only review that took the argument further was by the medievalist József Deér in the *Századok*. He also pointed out that Eckhart’s use of the term ‘state’ was inconsistent.<sup>427</sup> Szekfű wrote a splendid, informative article for the *Magyar Nemzet*.<sup>428</sup> The historians, argued Szekfű, had never touched even with a barge-pole the theories with which the jurists<sup>429</sup> embellished Werbőczy. At last, however, with Eckhart’s work, so Szekfű explained, we have evidence of the ‘thousand years old Holy Crown idea’, the product of our ‘national genius’.<sup>430</sup> This was devastation; Szekfű, unwittingly, emasculated Eckhart’s seminal study by inferring something into it which it was Eckhart’s avowed purpose to reject. At any rate, within a few years the *ancien régime* was swept away by the Red Army and historians in the new regime turned their back on subjects like *corona* and *regnum*.

Marxist historians in the 1950s were primarily concerned with economic change and social progress rather than ideology — except when they denounced bourgeois historians for their reactionary views.

<sup>423</sup> Eckhart, *A volt monarchia*, pp. 5–6. The concept of the state in the Habsburg Monarchy appeared under Maria Theresa.

<sup>424</sup> Eckhart, *Alkotmányfejl.*, pp. 15–16; he also surmises, however, that these ‘dualistic features’ might have induced Werbőczy to ‘formulate the Holy Crown doctrine’ in order to influence the attitudes of the king and the *ország*.

<sup>425</sup> Ferenc Eckhart, ‘Bocskay és híveinek közjogi felfogása’, in *Károlyi Árpád emlékkönyv*, Budapest, 1933, pp. 133–41 (p. 134).

<sup>426</sup> In the late fourteenth century, see note 111 above.

<sup>427</sup> Deér, ‘A szentkorona’, see notes 109 and 111.

<sup>428</sup> 30 March 1941, republished in Gyula Szekfű, *Állam és nemzet*, Budapest, 1942, pp. 304–11.

<sup>429</sup> Szekfű even lists their names: ‘Timon, Kmety, Concha and Ernő Nagy’, *ibid.*, p. 305.

<sup>430</sup> *Ibid.*, p. 311.

This was the context in which the ‘crown’, without any adjective,<sup>431</sup> occasionally turned up in historians’ conferences and writings. The task of political rhetoric was the debunking of religion and nationalism. And now Eckhart became the *Priegelknabe* for the ‘bourgeois’ sins of the Holy Crown doctrine. Márton Sarlós, Communist old hand elevated to a chair in the Law Faculty in Budapest, launched in 1954 a venomous attack mitigated only by pomposity: Eckhart was denounced as anti-Marxist, indeed he was worse than even his predecessors.<sup>432</sup> He was a racist, stirred up revisionist propaganda, and served ‘Horthy Fascism’.<sup>433</sup> Sarlós also rejected Eckhart’s method for it was primarily concerned with words, i.e., trivia.<sup>434</sup> He never stopped denouncing Eckhart and the Holy Crown theory as anti-Marxist etc. and, after Eckhart’s death he went on denouncing Eckhart’s student, György Bónis.<sup>435</sup> Comrade Sarlós did not have followers and by the 1960s the Kádár regime had eased up on the class enemy and become less intolerant towards non-Marxist views and methods in history, at least for the periods before 1917. Ideological purity was not needed as long as the Socialist system was able to satisfy the expectations for better living conditions.

### *Revival*

The oil crisis in the 1970s and much else beside shattered the regime’s optimistic expectations about the effectiveness of its economic reforms. It was then that the regime rediscovered the efficacy of the national idea as a way of gaining political support. One of the moves through which the regime was willing to meet Hungarian national feeling halfway involved the crown tradition. The regime now put out feelers to Washington as to whether the government of the United States would be prepared to return St Stephen’s Crown; after some footwork the Americans were. The Hungarian government promised that the

<sup>431</sup> The Communist authorities even in the 1970s were peevisish on this point, see Bertényi, *Szent Korona*, p. 5.

<sup>432</sup> Eckhart ‘did not only accept the doctrine of the Holy Crown in its entirety, in fact in religious mythology and the ultra nationalist chauvinism he went even further than Timon’, Márton Sarlós, ‘A szellemtörténeti irány és a magyar jogtörténetírás’, *Jogtudományi Közöny*, 11, 1956, pp. 87–103 (p. 88).

<sup>433</sup> Márton Sarlós, ‘Az organikus és a szentkorona-államelmélet a magyar történetírásban’, *Magyar Tudomány*, 1960/3, pp. 111–22 (p. 111).

<sup>434</sup> ‘This method which interprets charters is only interested in words (like *corpus, membrum*) and deduces the general principle of organic state theory’, instead of examining the class structure. ‘I must confess I cannot appreciate the historical method that having found little florid passages in documents, *façon la parler*, will construct a great edifice following his whim’. Márton Sarlós, ‘A “Szent Korona Tan” kialakulásához’, *Jogtudományi Közöny*, July–August 1959, pp. 357–62 (pp. 359, 360).

<sup>435</sup> Márton Sarlós, ‘A feudális parazitizmus a kiegyezés utáni jogszabályainkban és a magyar jogtörténetírásban’ in *Jogtörténeti tanulmányok*, 2, ed. Andor Csizmadia, Budapest, 1968, pp. 273–85 (pp. 276–77).



crown would be put permanently on public display. The ceremony of the crown's handover in parliament in January 1978 was a rather quiet affair.<sup>436</sup> The crown and the other *regalia* were exhibited afterwards in a glass case in the National Museum and people began to flock to see them. Through the public display of the 'Hungarian crown' (as it was generally referred to at the time), the regime claimed that it was not insensitive to the national traditions of the past. Also, the regime was to demonstrate its international acceptance. Otherwise the crown was not to be exploited for political purposes. Nor was there any demand to do otherwise outside the party. The crown was a national relic, a treasure that belonged to the past, as such its place was in the National Museum. The historian Iván Bertényi may have expressed a general attitude in 1978.

The idea of the holy crown has ceased to be an effective political ideology. Today only legal and other historians are concerned with it.<sup>437</sup>

Activists on the political right (outside the circle of scholars), however, began well before 1989 to take an interest in St Stephen's Crown, together with the Holy 'Dexter', as hallowed relics of Hungarian national identity. As much could be predicted, but the revival of the tradition of St Stephen's Crown had a more specific context in the 1980s: it served as a catalyst of political change, or so it is claimed. Géza Jeszenszky recalled twenty years after the event that the American gesture to return the crown

was intended towards the Hungarian people rather than towards the government. The handing back of the crown was tied to agreed conditions and guarantees. This was why hundreds of thousands soon came to admire the Holy Crown and the other regalia exhibited in the National Museum. And this set in train an unpredictable transformation in Hungarian society. The ancient relic without which (as Cardinal Gentile, papal nuncio, had reported in the fourteenth century) power was not legitimate, performed a real miracle. Hungarians, falling to their knees in front of it, chastened from the effects of Communist brainwashing, shed the complexes of national inferiority and shame and the disparagement of national inheritance and traditions. The Holy Crown gave them the strength and courage to censure

<sup>436</sup> The Hungarian *regalia*, including St Stephen's Crown, were brought to Budapest from the United States by a delegation headed by Cyrus Vance, Secretary of State, and handed over to the President of Parliament on 6 January 1978. The agreement between the two states stipulated that the crown should be exhibited for the public in an appropriate place: Katona, *Stephanskrona*, p. 566. The visible crown in Hungary had, of course, been in the past quite invisible and used only for coronations. Its visibility is once more restricted today, writes Radnóti, 'Üvegalmárium', p. 55.

<sup>437</sup> Iván Bertényi, *A magyar korona története*, Budapest, 1978 (in fact the first edition of author's *Szent Korona*), p. 149.

the regime more openly. Hungarians raised their heads and began to think for themselves.<sup>438</sup>

After the collapse of the Communist regime Holy Crown societies with their own publications were formed by conservative groups. For them the crown, the visible and the invisible Holy Crown, was not a respectable relic of national identity, something to be tucked away in a museum. Rather, it was an integral part of the present, a *living* tradition and a part of national identity in this sense.<sup>439</sup> It has even been argued either that the doctrine of the Holy Crown was still valid constitutional law or that parliament ought to recognize it as such.<sup>440</sup> We can only surmise what may have motivated these groups. Preoccupation with the past has always been a Hungarian pastime. But nostalgia apart, the indigestible culture-shock of Trianon,<sup>441</sup> the desire to re-establish closer links with Hungarians living beyond the borders and sometimes even flirtation (in a coded language rather than overtly) with the idea of border revision have been obvious factors. There is not much evidence that either the new political class or the public has taken these groups seriously. Their position and political support has been marginal.<sup>442</sup>

Nevertheless, since 1989, the Holy Crown tradition has been reincorporated with the country's political discourse.<sup>443</sup> After heated arguments parliament decided in July 1990 to cap the Hungarian

<sup>438</sup> Géza Jeszenszky, historian and Hungary's foreign minister between 1990 and 1994, referred to the 1998 statement by American ambassador Peter Tufo that the gesture in 1978 had indeed been towards the people and not the government: 'A gesztus a magyar népnek szólt', *Magyar Nemzet*, 10 January 1998, p. 4. The regime also contributed to the revival of the Holy Crown tradition in the 1980s when the festivities, including fireworks on 20 August, St Stephen's Day, and their media coverage became official policy. On the Holy Dexter: see note 51 above.

<sup>439</sup> The earliest association was probably the Magyar Szent Korona Társaság (Feb. 1989); the Szent Korona Nemzetszövetség and others were established in the 1990s.

<sup>440</sup> István Kocsis, a Transylvanian writer who has moved to Hungary, in his *A Szent Korona tana*, Budapest, 1995, second edn, 1996 (hereafter, Kocsis, *Szent Korona*) reviewed the books that have taken this position, pp. 270–72. See also the politician Zsolt Zétényi's *A Szentkorona-eszme mai értelme*, Budapest, 1997, and *Magyarország Szent Koronája*, Budapest [2000].

<sup>441</sup> Had the doctrine of the Holy Crown been adhered to in 1918, the 'Trianon dictate' might have been avoided — surmised István Kocsis, *Demokrata*, 1996, 19, p. 39. 'A Szent korona Nemzetszövetség magyar külpolitikai koncepciója', *Hunnia*, September 1997, pp. 18–20, a vaguely revisionist programme.

<sup>442</sup> Because of the requirement of 'the two-thirds support' for constitutional change, even minor amendments can only be put through with great difficulties in Hungary.

<sup>443</sup> For a summary of the changes of the symbolic elements in Hungarian politics since 1989, see Daniel Fehér, *Panem et Circenses* (MA Dissertation, SSEES, University College London, 2000), esp. pp. 25–39.

national escutcheon with St Stephen's Crown.<sup>444</sup> Changes in linguistic usage reflect gradually changing attitudes. The *magyar korona* before 1989 first became *szent korona* and subsequently *Szent Korona* in general usage.<sup>445</sup>

There never was a traffic jam by historians on the road to Damascus (to borrow a phrase from Péter Esterházy) on attitudes toward the Holy Crown. But transition there has been. József Kardos, a specialist who began to study the ideologies associated with the crown in the 1960s did not show much empathy towards the subject in his writing in 1967: bourgeois ideologists used 'the *szentkorona-eszme*' to legitimize their nationalist policies — was the message he repeated *ad nauseam*.<sup>446</sup> In the interwar years, the author went on, the holy crown idea had provided the theoretical basis for irredentism and 'concealed the class dictatorship'.<sup>447</sup> Two years later in a *Századok* article, he was nearly as hard on Eckhart as Sarlós had been.<sup>448</sup> Yet the same author published in 1985 a narrow, Marxist, but competent, well written monograph on the history of the doctrine between 1919 and 1944, showing empathy towards the subject, in which irredentism gets only one and half pages.<sup>449</sup> By the time he published his second work in 1992 (after the collapse of the Kádár régime) he had warmed to the subject to such an extent that this reader could not find a single reference to irredentism. The author now discovered the socially progressive elements of the 'crown idea' in Kossuth's writing, described Béla Szabó's work on the crown as 'the first significant formulation of *polgári* (bourgeois) political ideas' and was fulsome in his praise of Eckhart's scholarship (although

<sup>444</sup> Parliament began the debate on the Amendments of the Constitution Bill on 5 June 1990. The issue whether the so called 'Kossuth escutcheon' of the 1848 revolution or the escutcheon with the crown, used until 1945, should replace the one used during the Kádár régime came up on 18 June. After a tense and not particularly edifying debate the House decided that the issue would be dealt with in a separate bill which was passed by a large majority (for 258, against 28 abstained 35) on 3 July, 1990. *Országgyűlési Értesítő*, 2, pp. 865–68, 873–74, 1006–13, 1213–28, 1266–70.

<sup>445</sup> See note 437 above.

<sup>446</sup> 'in general the main ambition of the advocates of nationalism has been and still is to create a "historical basis" for their views. The "historical arguments" are to secure a legitimacy of nationalist demands. The historical setting was not missing from the accessories of Hungarian nationalism either. The "idea" of the holy crown provided one of these settings: this train of thought contained constantly changing, mystical and diffuse ideas with the help of which bourgeois ideologists and politicians by reference to historical roots have justified and proved their current political aims and interests. They tried to secure the effectiveness and agitative force of this ideology chiefly by unrealistic exaggeration and actualization of the real and supposed role associated with the crown in the course of our history.' József Kardos, 'Sorsfordulók egy mítosz életében', *Világosság*, July/August 1967, pp. 444–49 (p. 444).

<sup>447</sup> *Ibid.*, pp. 447, 448.

<sup>448</sup> *Idem*, 'Az Eckhart-vita és a szentkorona-tan', *Századok*, 103, 1969, pp. 1104–117.

<sup>449</sup> *Idem*, *A szentkorona története 1919–1944*, Budapest, 1985, pp. 87–88.

not quite understanding it).<sup>450</sup> Following well established local tradition the author mentions nowhere his turn-about.

The revival of the cult of St Stephen and the tradition of the Holy Crown do not necessarily extend to the doctrine itself as valid constitutional law today. But even in that extreme form the doctrine has champions. István Kocsis makes clear in the preface of his book on the Holy Crown doctrine ‘its past, present and future’<sup>451</sup> that he does not regard the crown as a museum piece because:

The Holy Crown is still the subject of state power and the doctrine of the Holy Crown is not only a relic of a glorious Hungarian past but valid and enforceable public law [. . .] the doctrine of the Holy Crown has never been repudiated by the constitutionally formed Hungarian legislature [. . .] and we know that not even the lawfully elected Hungarian national assembly, the parliament, could put the Holy Crown doctrine out of force.<sup>452</sup>

The author is a successful writer from Transylvania and his outlandish views on the constitution have not of course influenced the legal profession.

Yet the crown question was not settled by the inclusion of St Stephen’s Crown in the national escutcheon in 1990. After 1994, when the Socialists and the Free Democrats were in office, politicians of the Right, particularly in the Smallholder party, demanded that the crown should be transferred from the National Museum to parliament and that the doctrine of the Holy Crown should be included in the revised Constitution. Their proposal in the House in 1996, however, did not get very far. The coincidence of two factors moved the cult of the crown further. One was the replacement of the Left-wing government by Viktor Orbán’s right-of-centre government in 1998. The other factor was the celebration of the Millennium, which coincided with the coronation of St Stephen I in the year 1000. The government appointed a *kormánybiztos* (commissar), István Nemeskürty, historian and ardent promoter of the Holy Crown tradition, to organize the events. St Stephen’s Crown, as we may recall, was ceremonially transferred from the National Museum to parliament on 1 January 2000.<sup>453</sup> The ministerial draft of the Millennium Bill had a long preamble which included the doctrine in a passage. This passage was eventually deleted because of strong opposition to it in parliament and by the Academy.<sup>454</sup>

<sup>450</sup> Idem, *A szentkorona és a szentkorona-eszme története*, Budapest, 1992, pp. 41–46, 79–83. This work follows the revived usage ‘Szent Korona’ (capitalized) and was prefaced by Otto Habsburg.

<sup>451</sup> The subtitle of Kocsis’s *Szent Korona*.

<sup>452</sup> Ibid., pp. 5, 11 and 12. Kocsis’s attitude to the doctrine’s status today is comparable to Kmety’s in 1918–1919, see note 350 above.

<sup>453</sup> See p. 423 above.

<sup>454</sup> See note 7 above. The final vote went for 226, against 65, abstained 61: on 21 December 1999, *Az országgyűlés hiteles jegyzőkönyve*, 112, pp. 16273–77.

Thus the doctrine did not get into the Lawbook although it crept into the speech of the Republic's President on 1 January.<sup>455</sup> The return of the Left to power in the Spring of 2002 has, for the time being, stopped any further innovations in the cult of the crown.

### *Conclusions*

The central fact of the Hungarian crown tradition's history is the existence of St Stephen's Crown. The question which looks for some answer is why it came to be that the visible crown, an artefact, has played such a seminal role in Hungarian history. This role cannot be explained by foreign influences alone. While the crown tradition originated in European Christian religion, we cannot find strong analogies, at least in the history of European political culture, for the cult of an artefact that has practically run through the whole history of a country. A visitor would find in several European countries matchless collections of regalia that have played prominent roles in the past. Today they are, as treasured relics, mostly on display in museums. In contrast, the Hungarian crown, guarded in parliament to which it has been recently transferred, is still a living part of the political discourse. Can the endurance of this tradition be explained?

Perhaps the explanation is to be found in social structure: the permanent ascendancy of the large nobility over all the other social groups for much of the country's history. Italian humanists in King Matthias's court in the late fifteenth century (Enea Silvio, Callimachus, Bonfini, Tubero, Ransano) viewed the nobility as rough uneducated soldiers proud of their Scythian background.<sup>456</sup> The cult of a sacred object, we may surmise, served better this society in legitimizing authority than intellectually more demanding fictions like 'the king never dies'. But of course this explanation does not hold for modern times when the country has been led by a highly educated élite. Yet the invisible crown became an even more important part of political discourse than it had been before.

From 1790 onwards the crown tradition has undergone major changes, whether invented or not, and it is these that should be explained. The tradition played a prominent role in 1790, in the 1890s, in the interwar years and since 1990. These have been periods of rapid social transformation. The nobility's movement in 1790, in which the cult of the crown played such a prominent role, followed Joseph II's reckless attempt to drag Hungary out of its medieval conditions. In the late nineteenth and early twentieth centuries the political class, based on the gentry, was under increasing threat of losing its social position.

<sup>455</sup> See p. 423 above and note 11.

<sup>456</sup> Deér, *Pogány m.*, pp. 238–55, a realistic description of the social-cultural conditions.

And Hungarian society since the collapse of the Socialist system, which has coincided with the revival of the crown tradition, has been in turmoil. Yet mental constructs, even ones simpler than the crown tradition, cannot be satisfactorily explained by reference to social change. An explanation should be more specific.

If we are looking for specific political explanation, the long Habsburg connection provides the most obvious context. Historically, the relationship between Hungary and Austria grew out of the relationship between the crown and the *ország*. The distribution and balance of power between the alien dynasty and the large nobility depended on a few insecurely established institutions. The obligation of *rex hereditarius* to arrange his/her *diataelis* coronation with an artefact which is in the secure possession of the other side, together with the Oath and the Diploma, provided the only institutional safeguard for the preservation of *ország* rights. This explanation obviously holds water for the period between Mohács and 1918, yet leaves unanswered the question regarding the medieval period, the interwar years and the recent revival of the tradition.

Perhaps the explanation lies in the mental sphere rather than in social structure or politics. Our view of the past is shaped by what we read into it from the present; on the other hand, we understand the present in terms of what we have constructed about the past. The use of words within a community is to an extent an autonomous development. Once the vocabulary of the Holy Crown is established the hypnotic power of words takes a permanent hold on minds. While this may be true as a part of an explanation it is (again) too abstract and not specific enough.

There is also a functional explanation which is currently advanced by many people. The Holy Crown tradition can be explained, so runs the argument, by the need that all communities have for symbols of identity. This observation is true but as an explanation it begs the question. Further, the Holy Crown tradition could be described as part of a 'cultural system' from which the new Hungarian 'imagined community' sprung in the early nineteenth century.<sup>457</sup> As we have seen, the tradition played a central role in the 'origin and spread of nationalism'. Nationalism, however, still does not provide an answer to our question: why the crown? I should refrain from the customary evasion of historians in comparable situations by suggesting that the list of features together furnish the explanation. Instead of being overly preoccupied with establishing causes, the historian may not want to do more than place the subject in its social and cultural settings. At any

<sup>457</sup> See Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London, 1991, esp. p. 12.



rate it is very likely to be a mistake to look for straightforward causes of highly complex historical phenomena that may belong even more to social anthropology than constitutional or intellectual history. What is undeniable is that a relic attributed to St Stephen, the visible crown, created a most effective metaphor for transmitting political messages for centuries.

Our survey of the political tradition associated with the invisible crown from the Middle Ages to the present suggests that there are no strong grounds suggesting that the tradition is based on a definable idea. Rather, the tradition consists of a compound, an unstable combination of several (partly contradictory) ideas. This itself is not at all surprising as the same can be said of other political terms and particularly of those that create traditions. Political ideas are seldom 'general'; they always express changing particular and moral perspectives. Those who do not recognize this fail to understand that the past is a different country.

What does lend coherence to the tradition of the Holy Crown is not some conceptual hard kernel but the permanence, for some eight hundred years, of the visible Crown of St Stephen. This jewel, which itself has had a remarkable narrative,<sup>458</sup> has never been unambiguously separated from the invisible crown. Indeed, the ideas were always parasitical on the magic of St Stephen's Crown which has behaved like a magnet, attracting political rhetoric throughout Hungarian history. Hungarians rephrased their changing collective and frequently their sectional values, aspirations and programmes in reference to their visible crown.

The most radical transformation of the ideas associated with the crown occurred in the nineteenth century with the creation of the Holy Crown doctrine. As we have seen, Hungary for centuries represented an acute case of institutional and conceptual bipolarity between the royal power and the *ország*. It was a remarkable turn-about, with which Hungary's jurists should be credited, that *corona Hungariae* was moved over from the monarch's to the *ország*'s side. The hereditary possession of the alien dynasty, the 'crown', was transformed to represent the sovereignty of the nation. Although the doctrine as a concept of legislative sovereignty was defective,<sup>459</sup> nevertheless, the crown as the source of national sovereignty became a powerful icon in the political rhetoric of modern Hungarian nationalism.

<sup>458</sup> See the apt title of the Hungarian edition of Benda-Fügedi *Stephanskrona*, note 1 above. Sándor Radnóti contrasts developments in Western Europe, where the invisible crown provided institutional continuity, with Eastern Europe, where the visible crown played a similar role, 'Úvegalmárium', p. 49. This idea is worth pursuing although it still does not explain the unparalleled duration of the Hungarian invisible crown's tradition.

<sup>459</sup> See p. 482 above.

The recent revival of the Holy Crown tradition largely fits in with the pattern established in the nineteenth century. Firstly, the doctrine today, as in the nineteenth century, is not a part of constitutional law but appears in political rhetoric and in textbooks on the history of constitutional law.<sup>460</sup> Unlike the pre-1945 periods, however, the jurists keep themselves at a safe distance from the doctrine. As in the past, official attitudes to the crown tradition greatly depend on the political colour of the government that happens to be in office. 'Forty-Eighters' (Independents) cherished the tradition much more than 'Sixty-Sevens' (Liberals) before 1918, just as Centre-Right governments support (restore) traditions rather than the Centre-Left governments today. Again, the champions of the tradition, and the doctrine in particular, insist today, as they used to in the nineteenth century and the interwar years, that the Holy Crown, as a fundamental source of national identity, was a serviceable idea. For Hungarian society was and is still not properly integrated. The Holy Crown tradition is conducive to social and national cohesion. It undoubtedly has been for many people; at the same time, however, it has been culturally divisive too. As we have seen, the doctrine creates social conflict as well as healing it.

Yet even the opponents of the Holy Crown tradition unwittingly testify to its strength. A distinguishing sign, if not the hallmark, of a successful mythos is its ability to neutralize critical analysis about itself. The Holy Crown tradition can easily pass this test. The tradition has been so powerful that it has successfully absorbed (indeed obliterated) the findings of Eckhart. For the opponents as much as the champions of tradition ignore what Eckhart clearly demonstrated over sixty years ago: that the crown as a corporate political concept, comprising the king and the nobility (or nation) evolved in the nineteenth century (rather than in the *Tripartitum* or even earlier); that the nobility shared power with the crown rather than in the crown;<sup>461</sup> and that the doctrine itself was produced by jurists in the late nineteenth century.<sup>462</sup>

<sup>460</sup> The various editions of *Magyar alkotmánytörténet*, ed. Barna Mezey, published in the 1990s, is a goulash of Marxist canon, Laband and the doctrine of the Holy Crown.

<sup>461</sup> See page 446 and note 134 above.

<sup>462</sup> Iván Bertényi, a champion of the crown's political tradition and Sándor Radnóti, an opponent, equally hold Eckhart in high esteem. Radnóti would exhibit St Stephen's Crown in the National Museum, the right place for historical relics; yet he finds the mystical state theory of the Holy Crown doctrine in the Middle Ages: 'Úvegalmárium', p. 49. Bertényi invokes Eckhart's authority but argues that Werbőczy's idea of the Holy Crown was an appeal to 'noble democracy', an idea which leads to popular sovereignty: Bertényi, *Szent Korona*, p. 150. Gyula Rugási, an opponent of the crown tradition, takes for granted that the 'doctrine of the Holy Crown' emerged sometime in the Middle Ages: 'Szellemképek', *Holmi*, 12, 2000, pp. 1331–45 (p. 1338). See also, Eckhart, *Szentkorona*, esp. pp. 204, 210, and Szekfű's misinterpretations of Eckhart's views on p. 499 above.

Finally, we ought to ask how far the jurists, who constructed the doctrine of the Holy Crown, were aware of what they were doing. After a lecture I gave in Holland over forty years ago on the making of the doctrine, the classical scholar, Károly Kerényi, advised me to make up my mind whether the Holy Crown tradition was a mythos or a pseudos. I am still unable to provide a satisfactory answer. It is, of course, quite clear that the cult surrounding St Stephen's Crown has generated a proper mythos. Scholars have not even been able to establish the provenance of the artefact, the tradition does not have an 'author', the crown's veneration has been a genuine 'uninvented', lasting tradition of a national community.

The ideas associated with the crown, until the late nineteenth century, appear in diverse uses in political discourse rather than in deliberately designed practices. Werbőczy did not 'invent' a theory; he used, on a single occasion, a convenient simile for a specific purpose. Nor is it plausible to suggest that Récsi, Csemegi or even Hajnik were engaged in inventing theories. Our survey showed that the ideas and attributions of the crown evolved very gradually even in the course of the nineteenth century until its last decade. They exhibited 'the strength and adaptability of genuine traditions' rather than 'invented ones'.<sup>463</sup>

The creation of the Holy Crown doctrine in the 1890s appears, however, to have some of the makings of a pseudos. The question is whether the jurists' doings fit what Eric Hobsbawm calls the invention of tradition: 'where a "tradition" is deliberately invented and constructed by a single initiator'?<sup>464</sup> Do we not have here the arch constructor, Győző Concha, whose retrospective invention of the doctrine read into the Middle Ages was then developed further by his colleagues at the Law Faculty in Budapest? Yet the case is not as straightforward as it looks. 'Pseudos' in the OED associates 'false', 'counterfeit', 'pretended', 'spurious' (in the sense of not genuine). False and spurious the doctrine certainly was in that it laid claims on a past that had never existed, but that itself may not be sufficient to qualify for being a pseudos. If veracity is the measure of a genuine tradition then (to give just one example) the cult of St Stephen's Crown would be disqualified by the belief in the Middle Ages that it was *ab angelo privaretur*.

We are left with the two other adjectives of the OED: 'counterfeit' and 'pretended'. Our problem here is that we can never be certain what goes on in other people's minds (sometimes not even in our own). We can only speculate about the extent to which the jurists themselves

<sup>463</sup> On this, see Eric Hobsbawm and Terence Ranger (eds), *The Invention of Tradition*, Cambridge, 1984, p. 8.

<sup>464</sup> *Ibid.*, p. 4.

were aware of being the doctrine's inventors. Yet it does appear that they honestly cherished their brainchild even to the point of absurdity. Concha and Timon were not forgers, they might have been fantasists but in their work they showed integrity: they followed their own light. Kmety, on the other hand, was an acute case. He adjusted his views to changing political circumstances and developed his constitutional position between two editions of his textbook. Similar doubts apply to historians today, who, without a flicker of the eye, shift their position in order to adjust to political changes.

It is easier to detect when rituals are deliberately invented than ideas. The taking of the visible crown to parliament (which was unprecedented) on 9 June 1896 for the millennial celebration of Hungary's conquest, the transference of St Stephen's Crown to a permanent site in parliament on 1 January 2000,<sup>465</sup> and the crown's travel by boat to Esztergom on 16 August 2001 as a part of the celebration of St Stephen's Day have been telling examples. It may be argued that Hungary has merely followed other European countries where the heyday of invented public traditions were the decades before the First World War<sup>466</sup> — except that, as in some other respects, Hungary is lagging behind by several decades. It may be argued that as the importance of public rituals has declined in Western Europe since the Second World War, we should expect the same to happen in Hungary. It is, however, too much to assume that a cult that has mysteriously surrounded an inanimate artefact through almost the entire history of Hungary should in a few decades fade away.

<sup>465</sup> In today's Hungary the chief inventor of tradition has been the commissar appointed by the Orbán government to organize the millennial celebrations (see page 504 above). The left wing press in Budapest had a field day when it turned out that on 1 January 2000 St Stephen's Crown was ceremoniously (but out of ignorance) taken up to parliament *farra előre* (backside first) — a rather typical mishap when traditions are created.

<sup>466</sup> On the invented traditions of the British monarchy in the late nineteenth century see David Cannadine, *Ornamentalism: How the British Saw Their Empire*, London, 2001, ch. 8, esp. p. 106.