



THE HUNGARIAN STATE

THOUSAND YEARS IN EUROPE

Editors

ANDRÁS GERGELY
GÁBOR MÁTHÉ



KORONA PUBLISHING HOUSE
BUDAPEST, 2000





DEVELOPMENT OF LAW IN HUNGARY: THE FIRST EIGHT CENTURIES



The view maintaining the singular national character of the development of law in Hungary and its independence of the other European developmental patterns is rooted in Hungarian history itself. At the turn of the 15th and 16th centuries, that is, at the time of the second wave of the renewal of Roman law in Europe, when the foundations of a modern European *ius commune* had been laid, Hungary had a king who, at the same time, was the emperor of the Holy Roman Empire. Thus the country inevitably came under the influence, both political and economic, of that empire. It was from that time on that – aside from the increasingly vain insistence upon the country's political sovereignty – it also became an important element of the idea of national independence to emphasize the full independence of the development of Hungarian law and administration of justice which would not need any external assistance.

However, no legal cultures may exist closed in themselves. The many-sided advantages of mutual influences are made apparent by the fact that every intellectual progress requires interactions and interconnections among the neighbouring communities.

Moreover, law in its details is constantly exposed to minor changes, even though its foundations have been laid down in the form of a definite system. Law is not a fossilized institution as its very essence lies in its continuous development, as well as in its adaptability to the actual requirements of life.

In what follows, an attempt will be made to present this developmental process in three major chapters. The first is concerned with the forms which the legal norm systems, prevailing until the late 18th century, had taken (*Normentstehung*). Thus an overview will be given of those types of sources of law and their Hungarian specialties which carried the positive law. In the second chapter, those channels will be discussed, through

which the members of society, but primarily those engaged in applying the law, could get acquainted with the rules and possible ways of solution which they could apply to solving the emerging problems (*Normvermittlung*). This means nothing but the presentation of the individual segments of Hungarian legal culture. The third chapter attempts to outline the question of how the legal norms could prevail in the examined centuries, which were the most important developmental traits of the individual branches of law. (In the latter, the rules of the state establishment will not be dealt with, because this topic will be discussed in a separate chapter.)

The first eight centuries of the history of Hungarian law discussed here used to be divided into developmental periods, a traditional periodization which we also follow to help the Reader follow the discussion. Of course, one may find very different markers for the individual periods, mainly because the individual periods of the history of law may be marked from a wide range of aspects (such as annals history, dynastic or state organization-history, development of law, etc.). At the same time, it must also be seen that the traditional historiography of law is inclined to discuss the development and institutions of law in the examined centuries as a unity, namely as manifestations of feudal law. Hopefully, in what follows, it will be successfully demonstrated that such a uniform view can only partly square with the real situation.

The most ancient period of the history of Hungarian law, which in fact coincides with the gentilian (tribal) society, that is, with the age of principality, is called the period of the "ancient law" and approximately covers the period between the year 896 and the foundation of the state. The following three centuries constitute the age of the rule of kings of the Árpád dynasty – which (with a debated periodization) is also marked as the age of "patrimonial" or "personal" kingship – may be called the period of early



feudal law in terms of the development of law. This closes in the mid- or late 13th century. It was followed by the age of the feudal monarchy with kings from different dynasties which closed at about the time of the Mohács Battle (1526)¹. In the development of law this period marked the formation of the characteristically Hungarian, feudal-type private and penal law. From the first third of the 16th century, the former Hungary became politically divided. From this time on, the "royal Hungary"² which came under Habsburg rule and the more or less independent Transylvania took separate courses. In a certain sense, this fact was also mirrored in the development of law, though to a lesser extent than in the state organizational

or political development. After the ousting of the Turks (in the late 17th century), the development of law in the two parts of the country, now both under Habsburg rule, though these continued to be handled separately, became increasingly similar so that formally they might be regarded again as a uniform field of law. Endeavours to create a modern, bourgeois-type legal system can be traced back to the early 18th century. However, until the late 18th century only the first steps could have been taken to achieve this end, even then mainly under the inspiration and encouragement of the central power. The task of elaborating a legal system that would meet the demands of a bourgeois society was left to the 19th century.

THE ORIGIN AND TRANSMISSION OF NORMS

The positive law and order will prevail within a defined social group. On hearing this today, one would think of the state in the first place. For us, law means first of all the law established by the state. However, quite different is the situation when we examine the development of law in the middle ages or in the early modern age. Then the state was by no means the only social formation, within which the positive law could have come into being. Communities and circles of rights in large numbers were co-existing. However, it is obvious that – as with other states in Europe – in Hungary, too, after its foundation as a state, of all the various other communities of rights, only the state enjoyed a distinguished position. This was so because it was the state that made efforts – to an ever increasing extent during its history – to expropriate the forced monopoly within its own territory, and even to realize it. The dominant position of law established by the state, of course, could not be independent of the way the relationship among the state, the society and the individual communities of society had been settled and of the way this had been realized in practice.

In the age of feudal disintegration, to wit, the reconciliation of conflicting interests as one of the most important objectives of law could not have been accomplished solely by the state, nor was it within its powers in many cases. Over several centuries, the state had –

though to an ever decreasing extent – to put up with the existence of legal norm systems which were not created by the central power. There were some "minor or major circles of liberties" in existence, and the state had to tolerate the fact that it could only gradually make its way into those circles as a regulating power.

Taking this fact into consideration, sources of law used on the territory of the Hungarian Kingdom might be national (general) or local (particular) in character, depending on whether they covered the country's whole territory or only part of it. There were general sources of law which as general rules were binding on all, and there were specific ones binding only on a group of citizens living in the country. The same held true of almost all states of Europe in the middle and early modern ages. Yet it must be noted as a Hungarian trait that – according to the main rule – the sources of the old Hungarian law uniformly applied to one and the same class of the society on the country's whole territory. In other words, the mediaeval Hungarian law did not know of the manifold articulation of the branch of law which had been attained in Western Europe. In Hungary, it was the national law that commanded, while particular laws were subject to it. Just the reverse was the situation in Western Europe: local law was compulsory, while national law was only of complementary character.

1 In August 1526, the Turkish emperor Suleiman II („the Magnificent”) inflicted a decisive defeat on the Hungarian army in the Field of Mohács. This led to a 150-year occupation of one-third of Hungary by the Turks. Due to its tragic consequences, the Mohács Battle has also a symbolic meaning and has become a sort of landmark in Hungarian history. Hereinafter referred to simply as 1526. (Editor)

2 That is, the second part of the former Hungary, which was not occupied by the Turks, the nominally independent Transylvania forming the third part. (Editor)





However, it concurred with the general European development that in the mediaeval Hungarian law, at least in its more developed form, a feudal articulation can be observed: the most important was the national law proper that applied to the nobility, there were, however, other additional rules governing the townspeople³ which were established as local laws, and it was not until the late middle ages that the common civil law with a country-wide validity could take shape. On the other hand, mention should also be made of a nation-wide peasant or serf law, though only from the late middle ages. Nevertheless, the significance of the particular sources of law, especially those originating in the early centuries, should not be underestimated. Of all the "national laws", it is unambiguously the law of nobility which we know most of.

SOURCES OF LAW

As will appear clearly from what follows, when it is attempted to describe the outward forms of the mediaeval and early modern Hungarian law and the possibilities for the cognition of any given rule or – to use the legal terminology – the external sources of law, the breakdown of these sources of law by certain types is not always unequivocal. To wit, the individual external sources of law (customary law, act, decree, statute, privilege, ruling or leading case) are often permeable. There are legislative initiatives (such as the *Tripartitum* and *Quadrupartitum*) which – having not obtained legal corroboration as laws proper – were applied only as customary law. At the same time, it was a frequent method of obtaining the state recognition of particular customary laws that these were corroborated in a royal privilege or were put down in writing in a statute by a local authority. In such cases it is very difficult to establish the original nature or type of the given rule. Hence it also follows that the sources of knowledge described below may in some cases be classed into more than one source of law.

National customary law (common law)

When the Hungarian society entered the era of its existence as a Christian statehood at the turn of the millennium, the everyday life and conditions of communities were governed by customs, that is, by customary law. Customary law is essentially based on unique responses

to concrete problems, and these resolutions will constitute the national law.

Public interest called for a regulation; this demand was met in the form of law. However, this law was unable for centuries to wrestle with *consuetudo* successfully.

In fact, the *decretum* (decree) with its long search for a proper form (see below) expressed the uncertainty and hesitation of law (and also of the law-makers). It was towards the end of the middle ages that law could get rid of the cloak of unique judgements and of the privilege character to attain an articulated formulation having particular validity clauses and formal requirements. A whole series of laws sought to find legitimation in customs.

This important role of customary law produced a profound effect on law as a whole, and also determined the scope and intensity of the effect of European law in Hungary.

The absolute superiority of customary law over other sources of law was a decisive factor in Hungarian law prior to 1848 (taking also into consideration the divergencies arising from the development of previous centuries). Consequently, the whole law in Hungary was characterized by contingency: conception and coherence were completely missing.

Particularism formed one of the components of this contingency. Law tended to attune itself to the variegated privileges. There was one law for towns, another for the county, still another for the privileges districts or before the manorial court (also known as *soke* or *seigniorial court*). The competition of rules was a common occurrence. Legal life in Hungary was characterized by everyday conflicts between the individual particular (local) laws, between the local and central legislature, the law formation and the will of the legislator or between statute law and customary law. The lack of security in law gave way to arbitrary actions as well, though to a smaller or larger extent.

According to the Hungarian conception of law, law was traditionally rooted in the customs: initially, tradition and custom played a decisive role in shaping the terrain of legal rules. Later, the emphasis was increasingly shifted towards the judicial practice. Then, from the 16th century on, the judicial practice gradually, but not too conspicuously, yielded to the pressure of statute law.

From the viewpoint of the formation and further development of the rules of customary law, distinction must be made between the so-called customary law of popular origin and the customary law formed by the ju-

3 The words townspeople or alternately townsmen refer to the civic inhabitants of mediaeval and early modern age towns, to "burghers", that is, to what is collectively terms as "urban bourgeoisie" or the third estate in Western Europe. (Editor)





dicial practice. In the case of the former, the individual norms originated in a given community, within which these became a general conviction. Later these norms were recognized and made compulsory by the judicial practice, and those violating this law were inflicted with sanctions. The latter is based on identical sentences delivered in similar cases. In the latter type of customary law, it is implied that – owing to the gaps and defects in this system – the judge has to play an active role in creating new rules, as well as in reforming or further developing the old ones. According to the 16th century conception, the practice of courts of territorial competence might establish a custom for the given territory. This, however, might also come into conflict with the national practice: to wit, it might furnish a basis for a territorial law applicable to the given court's own territory. The possibility of such courts to avail themselves of their own laws, that is, the entitlement of the territory's own court to shape the practice of law were ensured by privileges. In the interest of security in law, this practice or this custom was later put down in writing in the form of statutes. The legal practice determined by those customs, which were later adopted by the local courts, precisely by their nature, encompassed the everyday life in its totality.

The Hungarian nobility's customary law was put down in the jurist-politician István Werbőczy's *Tripartitum* in 1514. In the mediaeval way of thinking, to the validity of a law it would be sufficient if the law was *old* and *good*. In his *Tripartitum*, Werbőczy elucidated the validity requirements of customary law: a) the custom must be rational, that is, capable of serving the achievement of public good. It must be right according to the public knowledge and compatible with the sense of justice; b) it must be in effect during an appropriate period (at least ten years); c) it must be recurrent, i.e. frequently used.

Citing the words of the *Tripartitum*, "The custom has three kinds of forces: an explanatory force since it is the best explicator of laws, thus when the law is unambiguous, we have to resort to the local custom; if it can provide the relevant information, we should not deviate

from the meaning which the custom has attached to it. Second, it has a law destructive force, because it can degrade the law, if it (the custom) comes into conflict with it. Third, it has a law substituting force as it can substitute for a missing law." In the eyes of the contemporaries, the real value of customary law laid in the fact that it was equally binding on all.

The utterly high value of customary law is also shown by the fact that in various forms it has survived even in modern legal systems.

Municipal customary laws

Besides the nation-wide customary law that governed mainly the living conditions of the nobility, the customary law-based rules governing the urban communities were also of a great moment.

The most developed towns in Hungary (their number was about 30 in the 15th century), having got rid of the dependence on private feudal landowners, became directly subjected to the king. Simultaneously, their feudal organization also started. This manifested itself first in the formation of their organizations to safeguard their interests (such as the league of five towns in Northern Hungary: Kassa, Bártfa, Lőcse, Eperjes, Kisszeben).

The second important momentum was the change of the Magister tavernicorum's courts⁴ into independent municipal courts. In the body of lay-judges of such courts, the representatives of towns had gradually superseded those of the nobility by the 15th century. In addition to towns with such treasury courts (Buda, Pozsony, Sopron, Nagyszombat, Kassa, Eperjes, Bártfa, Pest)⁵, the towns under the jurisdiction of the Chief Justice⁶, and the mining towns constituted what were termed as royal free towns (boroughs). Also placed under the jurisdiction of the Magister tavernicorum, the mining towns were divided into two groups: Lower Hungarian (Selmebánya, Körmöcbánya, Besztrcebánya, Bélabánya, Bakabánya and Libetbánya) and Upper Hungarian Gőlnicbánya, Szomolnok Rudabánya, Telkibánya and Igló).

In the early 15th century, these town were recognized

4 A high ranking royal official in feudal Hungary, the Magister tavernicorum (tárnokmester), in addition to its main function of controlling the the royal revenues, was also invested with judiciary power over the royal free towns, where his court(s) (sedes tavernicalisis – tárnokszék) administered justice at certain intervals. (Editor)

5 Place names throughout this study are given in their original (historical) Hungarian form. Many of these names changed after the Versailles (Trianon) Peace Treaty of 1920 when a good part of the towns and their regions referred to in this study were detached from the historical Hungary to form part of the neighbouring countries. (Editor)

6 In the 15th century, especially during the rule of King Matthias Corvinus, the Chief Justice (Personalis) was also the head of the Royal Chancery and represented the king in his absence in certain bodies: hence his official name: Personalis presentie regie locumtenense. He was invested with direct jurisdiction over a group of the royal free towns. (Editor)





as an estate, so that from 1445 on, their deputies might regularly participate in the National Diet.

With the towns developed, a new colour appeared on the palette of the feudal law and order. Towns developed a separate municipal law different from the feudal law and order constructed in terms of lord and serf. This law was laid down as privileges in charters or patents granted or endorsed by the ruler. According to this law, the town generally not only held but also owned its confines, and as a community – a collective landlord – might also have serfs and even serf villages.

Towns as a rule were accorded an extensive self-government. These local governments could freely regulate and manage their town's internal affairs on the basis of the local, municipal customary law. Their judges and priests were freely elected. Within their confines, towns could freely administer justice, and might exclude non-residents or those without civic rights from furnishing evidence.

As has been repeatedly mentioned, these rights of towns were ensured by privileges. These were particular, generally unique groups of legal rules developed by the customs prevailing in the individual towns. Yet these groups of rules were in connection with each other to some extent, and certain municipal law-families had appeared as early as the 13th century. We know the municipal laws of such towns as Székesfehérvár, Buda, Selmezbánya, Nagyszőlős, Magyszeben, Zágráb and the towns of the Szepes region, and we also know their parent law character as well as their significance going beyond the confines of those towns. Most important among them were the legal customs of the towns of Székesfehérvár, Selmezbánya (a.k.a Selmec) and Buda.

Székesfehérvár (a.k.a. Fehérvár) was one of the towns which had survived the period of the Great Migrations. Accordingly, its privileges and liberty (*Libertas Albensis*) are the oldest ones in Hungary. The most significant transmitter of the Fehérvár Code was the town of Sopron, the law of which was taken over by several towns in the late middle ages.

The Selmec law-book dates back to the 13th century, to the time of King Béla IV. Written in German, this code included provisions for such things as – among others – immunity, the municipal magistracy, the judge's office, lawsuits, means of evidence, and also included punitive measures. Outstanding among the rules of private law were special rules for purchase, mortgage and inheritance. Its provisions concerning mineral rights were highly influential. However, the provisions of the Selmec law-book were rather defective and sketchy, except the parts dealing with penal law, especially those related to

larceny which were expounded somewhat more circumstantially. Essentially based on the Iglau Law-book, the Selmec law-book is nothing but a compendium of legal measures taken in a series of cases, but this fully met the contemporary needs.

Provisions respecting the legal status of Buda as a free royal town were first made and laid down in privileges by kings Béla IV and László IV in 1244 and 1276, respectively. The privileges included the right to elect judges and parsons freely, the king's jurisdiction, and the administration of justice in compliance with their own customs, the citizens' full freedom within the town. The practice of municipal judicature was in a process of formation for two centuries. Promoting this development were also the experiences of the German municipal laws (*Sachsenspiegel*, the *Magdeburg Weichbildrecht*, the *Vienna town-law*, etc.), and of the judicial practice of the Hungarian kingdom through the courts of the *Magister tavernicorum*s. This judicial practice was then recorded in the law-book of the town of Buda (*Ofner Stadtrecht*) which put together some 440 articles in 1413. This law-book also served as a model to develop their own municipal laws to such towns (under the *Magister tavernicorum*'s jurisdiction) as Komárom, Sopron, Zsolna, Eperjes, Privigye, Kassa and Bártfa. For these towns, Buda also acted as a forum of appeal partly in cases which fell outside the *Magister tavernicorum*'s competence, partly in cases when the litigants chose this way of appealing.

Municipal law was also enforced in the practice of higher judicial forums. In their legal contests, townspeople might lodge an appeal with the king who charged the *Magister tavernicorum* with the task of judging. Thus was it that this high ranking royal official, originally engaged in economic and financial affairs, became the permanent judge of towns under the reign of King Sigismund of Luxemburg. More precisely, at the assembly of towns in 1405, King Sigismund issued a decree to the effect that the *Magister tavernicorum* and Chief Justice (*Personalis*) might act as a supreme forum over the judicature of towns in cases when the litigants would not wish to avail themselves of their right to appeal to their respective town exercising the parent law. From the 1440s, we know of a trial in Lócse, in which it was the *Magister tavernicorum* who delivered the sentence. Hence it follows that the exclusive judicial function of the *Magister tavernicorum* could have been a well-established office at that time.

The development of the central judicial role of the *Magister tavernicorum*'s court was necessitated by some differences from the practice of municipal law, which existed despite the similarities, in order to make the judi-





cial practice uniform. This process resulted in a judicial practice which with its standardizing effect facilitated a certain codification of the law and order prevailing in the Magister tavernicorum's towns. This then became realized in the form of a common corpus of laws in the mid-15th century. This codification of laws connected with the Magister tavernicorum managed to realize the unification of statute laws and the time-honoured legal customs in such fields as right in rem, contract law, law of inheritance and penal law. Momentarily, this work failed to unify and codify the procedural law which had developed through the practice of the Magister tavernicorum's court during a few decades. The codification of procedural law took place somewhat later, in 1479. This regulated the two-stage judicial procedure, but did not modify the procedure of the *Personalis*'s court.

With his corpus compiled, legal connections among the Magister tavernicorum's towns (hereinafter: tavernicalis towns) became simpler and easier. This development also created conditions for reviving the interest in the Roman law, when the rules of Roman law were applied to the demands of the feudal society. Under the social conditions of that age, it was mainly the municipal law that permitted certain principles of civil law to prevail.

The Magister tavernicorum's law manifested a highly developed legal culture in the related towns. With this system, in fact, the uniform customary law of seven such towns was established. However, the Magister tavernicorum's law was not applied exclusively to the citizens of these tavernicalis towns, but was occasionally also used in disputes of clergymen, monasteries, chapters, provided they had estates on the given town's territory. It was applied to noblemen as well if they were residents of the given town. 1609 saw the printed publication of the code of the Magister tavernicorum's rules of law in Bártfa (*Articuli iuris tavernicalis*). Published later in the *Corpus Iuris* as well, these articles included mainly rules relating to procedures before the Magister tavernicorum's court (hereinafter: tavernicalis court). These articles were applied by courts until as late as 1848.

Territorial customary laws

The separate law of *Seklers*⁷, an ancient Transylvanian border guard people, may exemplify that particular law and order which was based on an essentially territorial

customary law, but which was also influenced by other kinds of sources of law. As with most of the particular laws prevailing in the historical Hungary, the separate law of *Seklers* is also difficult to be brought into direct connection with any given type of sources of law. Its reason lies in the obvious fact that the regulation of living conditions has been attempted very different ways over the centuries. The separate, independent status of *Seklers* was based on privileges itself, nevertheless they were also governed by laws and rules of statute character. Yet one must scrutinize perhaps their specific legal customs to find that resultant, on which the singular development of law of *Seklers* was based. The legal and political separation and independence of *Seklers*, living in the easternmost region of Transylvania, had been established by various privileges as early as the age of the Árpád dynasty. These privileges, however, tended to establish special rules for the *Sekler* community mainly from the aspect of public law. Thus – in terms of public law – the legal status of *Seklers* or the *Sekler* "nation" was determined primarily by royal privileges and later, in the age of the Transylvania Principality, by acts adopted by the Diet.

The seats (*sedes Sicolorum*) formed the singular administrative and judicial units of *Seklers*; these managed the everyday affairs of the people of the individual territorial units. The right to make law could be exercised exclusively by the general assembly (*congregation generalis*), presided by the *comes Sicolorum* who also represented the king. The main responsibility of the *comes* was to keep *Seklers* ready to be deployed for action whenever necessary; his additional duty was to administer justice. It was related with the latter function of the *comes* that the institution of the *congregation generalis* had gradually taken shape from the 14th century. At this general assembly certain rules were also adopted which were called *constitutio(nes)*, which from the early 16th century could be regarded (if at all) as a generally admitted source of law.

The special rights of *Seklers* extended not only to the protection of the personal freedom and of the legal status of noblemen, but also to issues pertaining to the law of property. To wit, *Seklers* acquired their lands by original occupation, rather than by royal grants, therefore, these lands never reverted to the crown. This ancient principle of law was violated by the princes of Transylvania in the 16th century. The property of *Seklers*

7 A Hungarian ethnic group in Transylvania; their origin has been long debated in Hungarian historiography. Considering their original social organization, customs, and some anthropological traits, their kinship with one of the old Turkic peoples might be seen as a high probability. (Editor)





was subject to a certain limitation similar to entailment (*avicitas* or *ius aviticum* in Hungarian history – see also below) which was designed to prevent the alienation of the land and the most important other assets of the family. This went as far as the provision: should a Sekler not have a son to inherit the ancient estate, his daughter would be legally qualified as son. Seklers, at the same time, enjoyed tax exemption.

The special traits of the Seklers's organization and private law arose primarily from their military services. Their liberties and prerogatives were due to them, because they were bound to serve on a *per capita* basis in the army of the king in the same way as the nobles. This obligation, with some modifications though, continued until as late as the 18th century. In the mid-18th century, Queen Maria Theresa forced the Seklers into the organization of the regular border guard, simultaneously depriving them of a good part of their privileges.

Acts

Acts have always been the most important sources of law ever since the age of feudalism. An act is the manifestation of the state's will at the highest level. Initially, its reputation derived from its having been considered as the most important manifestation of the ruler's will, which then became the most important decision of the national representative body, the Diet – embodying the dualism of the feudal order of society. According to its established concept, act is a universal and general source of law which may relate to any aspect of legal life and extent to every citizen of the given country.

During the rule of kings of the Árpád dynasty, acts served as sources of law complementary to the customary law. This was supported by the contemporary legal principle, according to which any act would have binding force only so long as the king who had issued it was alive. If the ruler's successor recognized the former legislations, he would confirm those rules once more in compliance with the custom.

During the rule of the first Hungarian kings, the king was the supreme law-giver, who involved in the law-making process both the members of the royal council and those participating in the feudal National (Legislative) Assembly (Act XXIII of 1298). At the time, the national assemblies (diets) were still not legislative bodies proper: national assemblies convoked for the

purpose of law-making were held not earlier than the late 13th century. The contemporary acts included mainly provisions concerning penal law and rules for sentencing. Acts adopted by the legislators at a certain time were then included in a decree (*decretum*) which was issued and endorsed with his seal by the ruler. The binding force of legal rules issued by the ruler arose from the royal power itself.

Under the reign of King András II, changes were taking place in both the content and direction of law-making. The Golden Bull of 1222 and the decrees based on it contained mainly regulations pertaining to public (constitutional) law. Formally, the 13th century decrees were: privileges and charters of liberties, which could only be distinguished from other privileges by their content. Deserving special mention among the 13th century Hungarian acts are those issued by King András III in joint with the royal council and the National Assembly (hereinafter: Diet) in 1290 and 1298, respectively.

In the Angevin period, especially under the reign of King Charles Robert, the king's legislative power was predominant, so much so that law-making proceeded with the involvement of the extended royal council only, often ignoring the Diet. The influence the Diet could produce on law-making must have been very slight, since in the preamble of the 1551 decree it is clearly stated that this law was made by the king "of his mother's will and on the advice of his barons", and that the king reserved himself the right to make law and to amend, modify or repeal the law. It was this decree that consolidated the "entailment" (*ius aviticum*) as an institution, introduced the obligation of delivering the "ninth" (*nona*)⁸, and declared the "one and the same freedom" (*una eademque libertas*) of nobility as the legal recognition of the rights and liberties of lesser nobility as well.

Pushing customary law into the background, King Sigismund sought to place more and more emphasis on acts. After his death, the Diet became a permanent participant of equal rank in law-making. From the mid-15th century, legislation in Hungary constituted a joint right and responsibility of the king and the estates (*ordines*), that is, of the feudal Diet. Decrees, which continued to be issued on behalf of the king, essentially contained the agreements, covenants between these two constitutional factors and their bilateral contracts. Both parties were entitled to initiate acts.

From this time on, act was considered as one adopted by the legally convoked and assembled Diet and as-

⁸ The obligation of serfs to deliver the ninth part of their harvest to the lord. This formed one tenth of the tithe (*decima*) to be delivered to the Church. (Editor)



mented by the crowned king (endorsed with the king's signature and seal, and properly promulgated).

Essentially, the real task of the mediaeval legislature was not to make laws, but to remedy the actual legal problems and meet the related legal needs. Nevertheless, according to Werbőczy's *Tripartitum*, the "people" and the king's assenting "will-resolution" were now indispensable elements of law-making. In his *Tripartitum*, Werbőczy outlines two methods of making laws: 1. the king convokes the "people" to ask their opinion about his proposal submitted, or 2. the "people" (i.e. the nobility) submits proposals, which are deemed to serve the public good, for approval by the king, and which became acts after the royal assent. Thus both the king and the Diet were entitled to initiate acts. Later on, the Act XVIII of 1635 confirmed what had been included in the *Tripartitum*: "whereas the king and the country are only entitled to make laws and statutes, other resolutions, which were made by some individual privately, should not be binding on any inhabitant of the country".

In addition to laws themselves, their amendments and repeal also originated in the joint resolution of the king and the Diet as the acts were binding on the king as well. It became a custom after 1439 that in the clause of an act the king promised to abide by the act and to have it observed by others, too.

Under the reign of the Habsburg dynasty, the Diet and the king jointly made laws. In the 17th century, peace treaties resulting from the insurrections of nobles were laid down in acts. From the 18th century the scope of legislation was extended to such issues as taxation, new levies of men, election and coronation of kings, issuing diplomas by the king, and the demarcation of the country's frontiers.

The acts adopted by the Diet and sanctioned by the king were relatively short-lived as these had a binding force only during the rule of the king who had sanctioned them. Some acts or some provisions thereof, however, might "survive" the reign of the king who had issued them. To attain a lasting validity was possible only if the norms, which proved to be viable, had become a customary law through their repetitious application in judicial practice. As has been seen, Werbőczy attached high importance to the law-generating effect of practice, but he also underlined its law degrading effect and referred to the conflicts among law, custom and the legal practice.

To be mentioned as an important circumstance is that the issues to be regulated exclusively by laws were never clearly stated either in the mediaeval or modern ages. In fact, in this case too, it was the customs of the

Diet and the political needs and possibilities at any given time that determined the actual issues, in which the ruler and the estates sought to come to terms.

The "Corpus Iuris Hungarici"

It was a perennial desire of those striving after a security of law to have the royal decrees and other royal constitutions collected in the form of a corpus. Throughout the 16th century the Diet kept urging on such a collection of laws.

Hungarian laws in the 15th and 16th centuries were commonly used in the forms of hand-written copies, collections and codices. In such a hand-written form, it was tiresome enough to produce a corpus of laws, and any claim to comprehensive coverage was virtually impossible, if only because the obtaining of even a copy of one or another law (or act) met with serious difficulties. It was also difficult to keep to the chronological order of the covered documents, because the availability of a certain text largely depended on how old the given law was. Thus the content of the older collections of law, of which we know, could not come near the content of the younger *Corpus Iuris*, often not containing even half of the content of the latter. Based on hand-written materials, this former system could not have been suitable in the age of printing. This first printed collection of laws was edited by János Sámbocki in 1581, appearing as one of the supplements to Bonfini's historical works. Sámbocki a.k.a. Johannes Sambucus or Zsámbocki, did not aim to publish a full collection, emphasizing that a separate collection of laws should be edited for use by courts.

Sámbocki, otherwise, published the *Tripartition* several times (first in 1572), to which he also added an index to make its use easier. In one of the later editions (1581) a subject index of decrees (laws) can also be found. A fact having an important impact on the domestic knowledge of Roman law is that in the latter edition Sámbocki also included, among the annexes, certain rules of Roman law bearing the title of *Regulae Iuris Antiqui* which then were included in the subsequent editions of the *Corpus Iuris*.

The first Hungarian corpus of law aiming at comprehensive coverage was published shortly after Sámbocki's death, in Nagyszombat in 1584. Its editors were Zakariás Mossóczi and Miklós Telegdi, bishops of Nyitra and Pécs, respectively. They designed their work partly to substitute for the missing *Corpus Decretorum*, partly to be used in the legal practice. This edition was of a non-official character.



This collection contains acts adopted until 1583. Decrees are accompanied by variant readings and also by notes on the margins and between the lines. The text is interwoven by the biographies of Hungarian kings. The law texts are followed by an account of the procedure of courts of honour of knights, and also by forms of oath, list of bishops and the alphabetical subject index of decrees. Mossóczi gave titles to the individual decrees, and divided the texts into articles. According to its editor's intent, the code was not to present merely the legal material actually in effect, but to contain all decrees.

Notes on the margins and between the lines gave the work a scholarly and instructive character. Most important among them were notes referring to parallelisms. Mossóczi's collection was the first in the Hungarian legal literature to compare the parallel *topoi* (places) in the texts of laws. The other notes convey various pieces of information on Hungarian and Roman law, history, diplomatics, numismatics, etc. In preparing these notes, Mossóczi apparently relied on the materials of the *Tripartitum* and *Quadripartitum*. The 1584 edition was immediately and generally accepted by the legal practice. Thus the hand-written legal collections went of use.

It was after the publication of Mossóczi's work that adding a *rubrum* (rubric, a brief reference to the content) to the individual articles became a regular practice even in the case of authentic texts. Subsequent to this work, the new laws began to refer, frequently and exactly (year and article), to places in former acts. This method of reference presupposes the existence and common use of the discussed collection of laws.

The following edition of this work was initiated by the Archbishop Péter Pázmány in Vienna in 1628. This edition, however, included the *Tripartitum* as well as Sám-boki's subject index (1572), Roman *regulae*, and Telegdi's *Euchiridion*. The second volume agrees word for word with Mossóczi's edition, while the third brings documents dating from the period 1584–1604.

As to the source of law character of the discussed collections of law, it may be established that in the case of a "*collectio decretorum*" the same force was operative as in the case of the collection of the national customary law, the *Tripartitum*. Vainly did the diets require the compilation of the official collection of laws in the form of a corpus, the law-makers failed to perform it. Here, too, the force of customs prevailed, and even the *Corpus Iuris Hungarici* itself as an official code originated in a

collection of law produced by private effort. It was custom that ultimately sanctioned and sustained this corpus of law as a whole in the same way as in case in the *Tripartitum*. Having obtained *authoritas publica* and *fides publica* in practice, *Corpus Iuris Hungarici* assumed the role of a collection of laws which with its full text and authenticity expressed the will of the law-maker and served as a means to execute the law. In addition, the *Corpus Iuris*, precisely by its nature outlined above, could institutionally assume the law-sustaining role of customary law as well.

The first editions of this Corpus were followed by further ones (Vienna, 1628, Sárospatak, 1653). Its 1688 edition also included decrees issued in 1655 and 1659. Edited by Márton Szentiványi, a new edition appeared in 1696, which, in fact, was the first to bear officially the name of *Corpus Iuris Hungarici*. Following the pattern of the Vienna edition, this also consisted of three parts. The first included Werbőczy's *Tripartitum*, the second contained the decrees arranged by Zakariás Mossóczi, while the third consisted of decrees issued until 1649, supplemented by acts adopted until 1697. In the mid-18th century a new edition was brought out by János Szegedi who divided the articles of the individual decree into sections. The subsequent edition appeared in 1779, this time in Buda. In the meantime, the Magister tavernicorum's rules of law (*Articuli iuris tavernicalis*) as well as Queen Maria Theresa's military procedure of 1747 and the *Praxis Criminalis* of King Ferdinand III had also been included in the *Corpus Iuris*. On the eve of the 19th century, Márton György Kovachich and his son attempted to amend and add the formerly missing laws to the *Corpus Iuris*

Transylvanian collections of laws

The first official collection of laws on the territory of the historical Hungary was compiled in Transylvania in the 17th century. The Prince of Transylvania, Gábor Bethlen issued a procedure relating to the rules governing the mode and order of administering justice. Having been initiated by Prince György Rákóczy I, the collection of laws which took all the existing and available Transylvanian articles into account was completed only under the principality of György Rákóczy. Its draft version was discussed by the Gyulafehérvár⁹ Diet of 1653, then it was published bearing the title of *Approbatæ Consti-*

9 Gyulafehérvár (now Alba Julia in Romania) was the seat of the princes of Transylvania. (Editor)





tutiones Regni Transylvaniae et Partium Hungariae¹⁰ eidem annexarum. Broken down into five parts, these *Approbatæ* comprised church-law, political law, the rights of the estates and the "nations"¹¹ as well as the rules of administrative law.

In 1688, Prince Mihály Apafi set up a committee consisting of men proficient in law to compile the laws to be supplemented to the *Approbatæ*. The committee submitted the material which it had collected until then for discussion and approval by the Gyulafehérvár Diet of 1669. This collection was then published under the title of *Compilatæ Constitutiones Regni Transylvaniae et Partium Hungariae*. Chronologically, the *Compilatæ* can be regarded as a continuation of the *Approbatæ*.

Going beyond the method of chronological arrangement, the editors of both works performed a certain selection of content elements: they omitted the obviously contradictory items and the ineffective rules; at the same time, they tended to arrange them according to a certain system. However, taken all this together, the editors of both the *Approbatæ* and the *Compilatæ* could not make any novel or original contribution to the contemporary law.

The last code of laws of Transylvania was the one entitled *Articuli Novellæ* which covered laws adopted between 1744 and 1848, while the bulk of those issued 1669 and 1744 did not meet certain formal requirements, thus they were not considered as legislative acts and were omitted from the *Articuli Novellæ*. Later collections were included in the *Diploma Leopoldina* issued by King Leopold I in 1691.

Privileges

Privilege is a source characteristic of the mediaeval law. Privilege was identical with the notion of freedom on the one hand, on the other, it embodied the legal form in which both the king and the higher nobility as well as the high dignitaries of the Church exercised the right to create rules.

In the age of "patrimonial" or "personal" kingship, the ruler as the owner of power and of the overwhelming part of the country founded churches, dioceses, monasteries and endowed them with assets, on the other hand,

he also granted estates and privileges to laymen, foreign settlers, communities regions or to a whole ethnic group. The king, in turn, regulated their obligations, and issued diplomas, that is, privileges as a guaranty of the related measures he had taken.

Prior to 1848, there was a great variety of privileges. Most important among them were: letters patent of nobility and those granting armorial bearings, patents of investment with the rights of a son, land-grants, those of investment with the rights of holding country-wide or weekly markets, or rights of running ferries, of imposing duties, or those granting *ius gladii*, or exemption from paying duties or the *Trentième*¹², and many other privileges conferred to regions, towns, and to bodies, secular or ecclesiastical. Privileges were divided into general and special ones. While the former (*privilegium generale*) was granted by the king to certain groups of individuals or to bodies, the latter (*privilegium speciale*) was due to one certain *individual*.

Among the validity requirements of a privilege were that a) it should be issued by the legally crowned king; b) should not be in conflict with the effective laws or with the rights of others; c) should be endorsed with the great seal of the king; moreover, according to the old Hungarian law; d) should be promulgated in one year from the date of the related document or should be implemented by entering the deed of endowment into the lawful possession of the privileged, otherwise it should cease to have effect. The promulgation could take place either at the general assembly of the given county or at the court of that county.

According to Werbóczy's tenet, it should be known of the privileges that a privilege as *lex specialis* (or *privata* or *singularis*) is generally stronger than as a *lex generalis* or a *decretum*. The latter – conveying a regulation with an opposite content – could only degrade the validity of a privilege if it made an explicit mention of the former privilege, that is, it contained statutory provisions concerning the repeal of the opposing privilege. In case the contents of privileges granted to one and the same community, but at different times, would come into conflict with one another, those of the older one could only lose force if the one issued later contained explicit provisions to that effect.

10 During the 16th century, certain Hungarian counties and regions were attached to Transylvania, but in legal terms these areas never belonged to Transylvania proper, though they were governed by the Transylvanian princes and were regarded as separate parts of Hungary. Hence its name Partium Regni Hungariae. (Editor)

11 The term "nations" in this context refers to the three leading ethnical groups – or rather to their ruling strata – of Transylvania in the age of feudalism, that is, to Hungarians, Seklers and Saxons. (Editor)

12 A customs duty equal to one-thirtieth of the value of all imported and exported goods to be remitted to the Treasury on crossing the Hungarian border. (Editor)





Statutes

Municipal corporations having adjudicative power of their own might make rules in issues falling within their jurisdiction and competence as established by the representative body of their respective community. Rules of this kind were called statutes. The only material requisite for their validity was that statutes should not be inconsistent with the acts and the national custom.

The legal basis for making such statutes was provided by the lawful self-government. In the feudal age, the source of the binding force of statutes originated either in a royal privilege or in the ancient custom. The purpose of a statute was to facilitate – without violating the laws and acts – the regulation of certain conditions and relations which could not be regulated uniformly and with a national-wide scope of validity without interfering with certain local customs, relations, socio-economic or natural conditions. A statute was to regulate issues of minor importance or those closely related to local conditions. Thus a broader regulation of a great variety of such minor issues, which mostly depended on the actual local circumstances, on ephemeral events, or on the particular conditions or interests of the minor regions, would have required the endless amendments, modifications and extensions of the related law.

The right to make statutes grew in importance in parallel with the development and strengthening of self-government. Apart from the privileged territories such as Transylvania and Croatia-Slavonia, the right to make statutes was gradually extended first to towns in the 14th-15th centuries, then to the counties and guilds from the 16th century on.

Thus in the pre-1848 Hungarian law, rules made by the counties, free districts and by the royal free towns were essentially municipal statutes in nature. The same holds true of the law-making of self-governmental corporations ranking higher than municipalities. This applies, e.g. to those of the Seklers, Saxons and of the related parts of the country. (The Hungarian and Transylvanian municipal statutes were collected and edited by Sándor Kolosvári, Kelemen Óvári; this work, entitled *Corpus Statutorum Hungariae Municipalium*, was published in four volumes in the late 1880s.)

Municipal statutes in general might only apply to issues falling within the competence of the given municipality. However there might also occur some issues of national purport, within which certain details were regulated through statutes.

Aside from the counties, the so-called associated

countries formed the most important fields of application of statutes.

The associated countries – Croatia, Slavonia and Dalmatia – had been occupied by force of arms and then defended by Hungarian kings in the late 12th century. Later these provinces were annexed to form part of the Hungarian empire as members of the “Holy Crown”, but within this, they enjoyed a certain degree of independence with a provincial organization of their own. In those countries a particular kind of the development of law was going on as they stood outside of both Hungary and the development of Hungarian law, taken in a narrower sense.

By the late middle ages, in these provinces a joint provincial diet had been developed (precisely from their independent judicial organizations) which was convoked by the *ban* (warder of the province or viceroy) or by the king. This joint provincial diet had regularly made rules from the 15th century on, which, however, could be termed as statutes, rather than laws, as they were never properly sanctioned.

In the associated countries, it was the judicial power which, going as far back as the age of the tribal or gentilian society, developed the practice of empowering every community to make rules for managing its own affairs. The judging of individual cases *slowly*, almost unnoticed grew into formal legal principles of general validity. This process resulted in a law and order that underlay the issue of statutes, to which (as with the statutes of the Hungarian counties) no royal assent was required in the feudal period. At the same time, the validity of acts and resolutions adopted by the Hungarian diet was extended to cover the associated countries as well.

The so evolved mixed system of customary and statutory laws was essentially not different – either in private or penal law – from the Hungarian customary law. In his *Tripartitum*, Werbőczy referred to only minor divergencies in the “separate customary law of Slavonia” from the Hungarian one. The agreement of these two legal systems was largely supported by the fact that the highest forum of appeal was always the supreme Hungarian judicial body, although the associated countries had a separate judicial organization (county and municipal courts). In the associated countries in the middle ages, the Ban’s court constituted the highest instance of judiciary, against which appeals might be placed only with the royal *curia*. A separate Croatian court of appeal was set up in the 18th century, against which one could lodge appeal first with the Ban’s court, and then with the supreme court of justice of Hungary.

Falling also outside of the general development of the national law were the special statutory laws of some





smaller, closed field of law. The most eminent among them were the statutes of the Iazygian-Cumanian district. An ethnic group kin to Hungarians, but of purely Turkic origin, Cumanian along with the Iazygians of Indo-European (more precisely, Indo-Iranian) origin had settled down in Hungary in the mid-13th century under the reign of King Béla II. The king donated them landed properties entailing nobles' rights, in exchange of which they were bound to render military services. In the 15th century, however, they were obligated to pay tax and do other services, even so they always enjoyed a privileged position: they had public organizations of their own, collective nobility, right to elect their priests freely, and also enjoyed on their own territory minor royal *profits à prendre* (to hunt and fish, to run butchery and mill).

Although their administrative autonomy had almost completely ceased after 1526, they still managed to maintain their special customary law for a long time. This differed from the national customs mainly in respect of laws on matrimonial property and inheritance. A relatively long time had elapsed before their special customary law was laid down in the form of statutes in 1751, in 24 articles, which then were confirmed by law. The special rights of Iazygians and Cumanians were laid down in statutory form once again in 1799, which, however, showed marked differences from the national law in respect of the inheritance and real estate alienation procedures.

From the 14th century on, the community (*universitas*) of 16 towns of the North Hungarian Szepes (German: Zips) region also had special rights laid down in similar statutes which, however, related only to the local affairs and comprised the related rules of procedure. The same applies to the community of the so-called Heyduck towns in the eastern part of Hungary which also had similar special rights from the 17th century.

Royal decrees

Rules of non-decree character originating from the legislative activities of the executive branch of power, as well as decrees issued by the major royal council, rather than by the Diet, were also considered as decrees throughout the feudal age.

If the Diet was not in session, or the ruling circles wanted to by-pass it, the king took measures by decrees in certain issues which, otherwise, would require a proper legislative process.

As to the validity and legal source quality of royal decrees (*constitutiones*) arising from the king's executive

power, Werbőczy maintained: "Nevertheless even the sovereign should not issue decrees of his own free will and without any limit, especially if those would concern things conflicting with the divine and human laws or violating the ancient freedom of the entire Hungarian nation. He may do so only if he convenes the nation and ask its opinion about his proposed decrees to see whether it likes or dislikes them. And if the nation gives an affirmative answer, the sovereign's proposed decrees (provided they would in no way violate the divine and natural law) may be adopted as laws."

The original (Latin) text itself reflects a certain terminological uncertainty. The boundaries between the notions of the royal decrees (*constitutiones*) and laws (*leges*) still melt into one another. The mediaeval Hungarian conception of law – as it quite naturally appears from Werbőczy's work too – did not really know what to do with the king's independent right to make rules and decrees other than privileges without the involvement of the estates.

The statements cited above from the *Tripartitum* were later strictly taken to mean that the king should not govern by decrees or rescripts. In reality, however, this interpretation politically could not gain ground at least in the 16th century (in fact, until the late 18th century).

Nevertheless, a certain positive role may also be attached to the royal decrees, even if this way of governing hurt the self-esteem of the estates. To wit, considering the role the royal decrees fulfilled in the development of Hungarian law over the 16th century, it may be established in general that with the Hungarian crown obtained by the Habsburgs, Hungary's legal life might have drawn near the empire and its common legal system. The Hungarian political resistance, however, made this impossible. Exposed to the imperial interests in both military and economic terms, the Hungarian estates wanted to preserve their independence at least in the legal life, that is, in the fields of legislation and the judiciary. Having failed to introduce innovations in the Hungarian legal practice by way of the legislation, the ruler availed himself of his imperial rights to regulate the field of public administration which fell within his own *plenitudo potestas*. Accordingly, such decrees were issued mainly in the fields of mining law and military penal law, but also in private law, which tended to adjust the Hungarian legal practice to the common imperial legal system. Issuing such decrees was especially characteristic of the 18th century when royal decrees (patents, open ordinances) regulated – among other things – the constitution of Transylvania (*Diploma Leopoldina*), the reli-





gious affairs (*Explanatio Leopoldina*, *Carolina Resolutio*, then the edict of tolerance by Joseph II), as well as problems involved in socage, the educational reform (*Ratio Educationis*) or just the judicature and the criminal procedure.

The royal will as an activity capable of creating a special branch of law may be best exemplified by the formation of the Croatian-Slavonian military border zone, a historical area which had been developed over the centuries of the anti-Turkish wars. The first part of the 16th century saw the beginning of the organization of a military administrative district under the king's direct supervision along the borders of Styria and Slavonia, then, in the late 17th century, on South-Hungarian territories recovered from the Turks. The territories of the three major military headquarters were taken out of the jurisdiction of the feudal Hungarian (or, respectively, Croatian and Slavonian) administration. Despite the fact that – especially from the early 18th century – there had been endeavours to restore civilian administration over those territories, their separate standing remained until as late as the mid-19th century. The soldiers of border-guard regiments were subject to a separate adjudicative power, and in a certain sense – particularly in respect of property law – special rights applied to them. To sustain the borderguard regiments, the military treasury purchased immense lands to form its own private estates, which areas were thus also taken out of the jurisdiction of the newly restored county-based administration and judicature.

Judicial customs, judicial decisions

As has been seen, the practice of courts constituted one of the outward forms of customary law. Specific decisions or practice of courts of particular competence might give rise to a custom in given field. This might well be inconsistent with the national practice, so that it might form the basis of a special territorial law prevailing in the given field. Naturally – as has been pointed out above – the entitlement for using this particular law, that is, the authorization of the local court to shape its own legal practice was normally granted by a privilege. To ensure security in law, this special legal practice was subsequently laid down in writing, primarily in statutes. The early development of the judicial practice as a source of law well illustrates the mutual permeability of the individual sources of law, as well as the difficulties of demarcating or classifying of such sources.

Not so much in respect of the material legal princi-

ples as in connection with the formal requirements of the written records and charters of courts and the chancellery, a certain uniform national judicial practice had been established in the age of the Árpád dynasty to continue for several centuries to come. This uniform way of editing documents was called *stylus curialis*. Though certain formal requisites of documents had been defined by law in the early modern age, but – as shown by Werbőczy's *Tripartitum* as well – courts (and bodies entrusted with public notarial functions) pursued their clerical activities in reliance on centuries-old customs. The nation-wide spread and uniformity of *formulae* (which will be discussed later in detail) largely promoted the prevalence of such customs.

From that time on, the principles of law implied in a given court's decision were applied only in the subsequent practice of the decision-making court in later cases, and those principles were accepted as precedents only within the given court's own practice. To have such decisions accepted at a national level was made impossible by the lack of both the theoretical and the practical (infrastructural) bases.

For want of uniform collections of decisions, it was not until the mid-18th century that the law-forming practice of courts, taken in a modern sense, which produced so great influence on the development of private law, could come into full display. Though previously, too, it had been the task of judicial practice to bridge over gaps and defects in law originating from the post-Werbőczy development of private law (or rather from the lack thereof), yet a nationally uniform judicial practice (going beyond the questions settled by Werbőczy) did not really exist.

Serving the unification of judicial acts in the field of private law was the collection of decisions made by the two supreme courts, closed in 1769, bearing the title of *Planum Tabulare*. Pursuant to Queen Maria Theresa's rescript dated 14 November 1768, a committee composed of the judges of the Royal Curia collected the decisions of principal significance (advisory judgements) which the Curia had made ever since its reorganization in 1723. Having revised by the Curia, the collection was confirmed by a royal decree by Maria Theresa. The decree made the use of the collection compulsory for all courts of justice. The collection's revision by the Curia and its confirmation by the Queen served only as an authentication, proving that what the committee collected were really those decisions of the Curia, the most of which had long been accepted by and applied in the judicial practice. The *Planum Tabulare* included mainly rules pertaining to private and procedural law. For the



most part, it contained the rights of nobles, and those of the townspeople were almost melted into the former category, while those of the serfs were almost completely disregarded.

However, without questioning the significance of the *Planum Tabulare*, reference must be made to the fact that this law-developing activity of courts became visible not in the activities of the Curia in the first place. Legal documents dating from the 18th century (only a small fraction of which has so far been scrutinized) show that advocates also often made efforts to support their arguments by the relevant provisions of the *ius civile*. On the other hand, courts also accepted without further ado the arguments which seemed reasonable to them on the grounds of *aequitas naturalis*. It comes quite natural that these endeavours came into conflict with the feudal stand-point and ran against the barriers of the feudal social conditions, which could not be transgressed even by the courts that often recognized well the economic necessities.

Law-books, customary law collections

Outstanding among the Hungarian customary law collections is István Werbőczy's *Tripartitum* which with its mere existence produced a marked effect on the Hungarian political thought, as well as on the development of law and legal consciousness in the early modern age. Its importance cannot be overestimated.

To synthesize the national law became an increasingly urgent task during the 15th and 16th centuries, because the judicial proceedings were strongly impeded by the fact that the litigants before the courts often referred to quite divergent legal rules. Intending to improve this situation, in his acts VI of 1498 and X of 1500, King Wladislas II provided that the country's customary law should be synthesized. The king charged István Werbőczy with the task of synthesizing the country's laws, acts, established and accepted customs and other legal rules. In addition to statutory law and the legal practice-based customary law, Werbőczy's work also comprised the royal charters of privilege as well as the legal material which the courts of national competence had accumulated in their practice over time. The completed work, entitled *Tripartitum Opus Iuris Consuetudinarii Inclyti Regni Hungariae*, was submitted for approval by the Diet in 1514. The work was adopted by the Diet, signed by the king, but its endorsement with royal seal and promulgation failed to come about.

Werbőczy had his work printed privately in 1517, then

distributed it among the counties where the courts – for want of other collection of legal rules – started using it in practice. Thus the *Tripartitum* itself became part of the Hungarian law in the same manner as customary law proper. It was translated into Hungarian, first in an abridged form, by Balázs Weres in 1565, its complete translation was published by Gáspár Heltai in Kolozsvár in 1571. From 1628 on, it formed part of the *Corpus Iuris Hungarici* as well. Considered as a source of law more important and more frequently used in legal practice than the laws themselves, the *Tripartitum* was placed in the foremost part of the *Corpus*. In the Principality of Transylvania, several princes has confirmed the *Tripartitum* in their inaugural oaths, and in 1698, it was also included in the main collection of Transylvanian laws known as *Approbatae et Compilatae Constitutiones*.

By its being uniform, easy to handle and readily available, the *Tripartitum* soon surpassed and superseded every other source of customary law, and its relative brevity made it highly popular.

Werbőczy's task was to collect all that constituted customary law in Hungary, and – according to his statement – he managed to well-render the norms resulting from centuries of development.

The immediate, external influence of Roman law may be felt in the scholarly treatment of the whole work. It appears not only from the system but also from the style of the work that the author tended to use the available linguistic patterns of the terminology of Roman law so much as the contemporary Latin usage in Hungarian law permitted it. In Werbőczy's work, Roman law acts mainly as a means of a scholarly precision in formulating the individual legal notions and definitions.

As concerns canon law, Werbőczy either studiously refrained from treating the material of canon law, or established that there were no differences between the secular and ecclesiastical rules (as, for instance, in the case of impediments of marriage). But this is not to mean that he did not know the canon law as his knowledge of it was proved by his several statements concerning the legal status of the Church. Werbőczy recognized the validity of canon law within its own sphere of competence, and he also accepted the Papal jurisdiction.

Consisting of 16 headings, the Prologue in its nature differs widely from the subsequent three parts. The author designed it to serve as a sort of introduction in legal theory. It treats such subjects as justice, law and its kinds, act and its kinds, customary law and its requisites, and finally it surveys the rules governing the behaviour of the judge and the delivery of just sentences.

Researches conducted so far have proved that certain



passages of this introduction were largely consonant with the corresponding texts of various laws, both secular and ecclesiastical.

The influence of foreign legal systems is perceptible in Werbóczy's work. However, the real reason of this is not that he drew on foreign sources (Roman and church) when formulating certain items, it is so mainly because the foreign legal systems themselves produced an undeniably marked effect on that law which prevailed in Werbóczy's life.

Essentially, the *Tripartitum* sustained the Hungarian private law, and with this it preserved the achievements of centuries of development, ensured its unity and its further advance in a uniform manner, even at the time of the country's disintegration, and often against the particular political tendencies. Thus the unity of law, at least in private law, existed at a time when the political unity seemed to have been lost.

Collated and jointly applied with the *ius commune*, the *Tripartitum* certainly met well the general demand on written law ensuring legal security. It did not lag behind the scientific level of that age. Apart from its original objective, it contributed to the sustaining of constitutionality and the independence of the Hungarian legal system, and became part thereof.

Taken as a whole, the work is a synthesis of customary law as applied in the judicature, and in this sense, it is compatible with its title, while the laws sporadically referred to in the volume account for only a fraction of the whole work. Since the legal custom of the Hungarian nobility was concerned with the private law in the first place, most of the reviewed cases are related to issues concerning personal rights, property, the legal status of family, inheritance and contracts of nobles. The judicial procedure is dealt with in detail because it also served to protect the rights of the nobility. Political or state law and penal law are covered rather poorly, however, the few principles, which Werbóczy refers to, are important. The legal relations of townspeople and subjects are only touched upon, though those of the former are much more progressive (that is, are much more imbued with Romanism – with the principles of Roman law) than the customs of the nobles and this presupposes the exist-

tence of subsistence farming, while those of the latter reflect the socio-economic conditions of popular masses. The reader of the work will remain almost uninformed of these two fields, but will be acquainted with all the subtleties of the rights of nobles. It should be noted here that by the term "nobility" Werbóczy meant the entire Hungarian ruling class, both secular and ecclesiastical.

Although the *Tripartitum* had been repeatedly referred to as a decree (*decretum*) and been regarded as customary law back in the early years of the 16th century, formally it could never rise to the rank of an act proper. In fact, it must have been the "party of magnates" that shoved this legally appropriate, but politically dangerous work aside. Namely, as can be read right at the beginning of the first part, its main thesis, *una eademque libertas*, especially for magnates, prelates and noblemen, implies that all of these individuals (in contrast with the actual structure of society) enjoy one and the same freedom, represent "the country" at the Diet, and are all equal members of the state embodied in the Holy Crown. Based on traditional elements, Werbóczy's singular doctrine of the Holy Crown¹³ was to serve the same purpose: it wanted to furnish a historical and theoretical foundation for this legally articulated equality. Thus was it that Werbóczy, who at the time held the office of the Chief Justice (*Personalis*), failed to have this doctrine with its dangerous implications – for the high nobility – promulgated as a law proper.

Attempts at codification

After the country had broken up into three parts, some traces of the former legal life still remained on territories which had come under the king's rule ("royal Hungary"), and in a sense, the elaboration of private law continued after Werbóczy's time too. But this work essentially did not form part of scholarly efforts, nor did it become manifest through legislation, but if so, only to a small extent.

In the royal Hungary, the legislation did not make any remarkable contribution to private law. However, apart from the newer and newer editions of the Tri-

13 The doctrine of the Holy Crown was a theory related to the notion of the royal crown, the particular content of which changed with the individual historical periods. Initially it had symbolized the power of the patrimonial king, then it was extended to cover the state power exercised by the barons (aristocracy, feudal overlords) more particularly their adjudicative power they exercised through the royal council on behalf on the Holy Crown. In the notion of the Holy Crown the country's territory and other possessions were also implied. In the discussed period, the whole nobility, both higher and lesser, was also included to form "the nation" or the community of nobles as a whole. (This was resented by the aristocrats, and it is on this account that they deemed Werbóczy's work dangerous from their aspect.) Ultimately the doctrine meant that the king and the estates are equally members of the Holy Crown and are inseparable from each other. (Editor)



partitum, there also appeared some endeavours to fill up its gaps.

The contemporary public opinion, to wit, was not fully satisfied with the *Tripartitum*. Thus there were attempts to bring it up to date and make up its defects. During the 16th century, a series of diets also expressed their wish to this effect.

The Act XXI of 1548 pronounced that a few scholarly men proficient in law should be selected to revise the country's law, and to amend it so that rules opposing the divine and natural laws might be omitted. The act also ruled that the King, Ferdinand I, should submit the work to the forthcoming Diet. This program, in fact, was a universal codification plan because – in addition to laws – it also prescribed the revision of the entire system of customary law. Commissioned by the king, the committee was charged with the task to produce all rights, laws, acts, legal rules, legal customs existing in Hungary from the strongly scattered legal material, and then to scrutinize their provenance, to select them, to leave out of them all what was conflicting with the divine or natural law, and to include the rest in one volume. Thus the producing of "*unum velut corpus*" now implied the inclusion of additions, amendments and new legal rules.

As an indication of its adherence to the past, the committee regarded Werbőczy's work as a standard and example to be followed in its work too. The king personally kept track of the work, so that he could express his wishes for certain changes both during the work and on its completion. The king was mainly concerned with three public-law problems: the first concerned the right to elect king in the case of the vacancy of the throne; the second was the problem of the king's accountability (right of resistance); the third concerned the possibility to place the king-sponsored armed forces under the jurisdiction of national authorities.

The most serious problem was posed by the right of resistance where the king's will encountered strong opposition on the part of the committee. The committee members maintained that changing the order of succession, or waiving the right of resistance or recognizing the king's free disposal of the army would be tantamount to breaking the ancient customs. The king repeatedly tried to persuade the committee members to change their mind. With all his efforts failed, the king requested Chancellor Miklós Oláh to present him a more pleasing text. However, this version, which was called "dynastic version" to distinguish it from the former, and which would have better satisfied the king's dynastic aspirations and absolutist desires, became the centre of utterly hot political debates and amidst the long-protracted tac-

tical manoeuvres could not be put on the agenda of the Diet while King Ferdinand I was alive. After his death, his son Maximilian also failed to have this version adopted by the Diet which continued to put up a passive resistance (1564).

Awaiting the codification of private and procedural law, the everyday legal life was not particularly affected by the fact that the reformed *Tripartitum* had failed to come across as an act. Customary law together with practice could cope with the actual needs of everyday life, and the *Tripartitum* could still provide an adequate basis for all this (unless it was modified by statutory law, though this was a rare occurrence). The same applied to the *Quadripartitum*, at least as the judges of higher courts were concerned, among whom the handwritten copies of the latter were passed from hand to hand, inherited and studied. These manuscripts were continuously used in legal practice, and were also used as one of the source materials for instruction by the professors of the faculty of law organized within the university in 1667. It was first printed in Zággráb as late as 1798.

Commissioned in 1548, the above-mentioned committee was, of course, also well aware of the defects of the *Tripartitum*. In general, they blamed Werbőczy for his treating certain items in a way different from what would be required by "the divine and natural equity". Thus they refer precisely to the same thing as the Diet, which commissioned the committee, also thought to be important to emphasize. The execution of the desired corrections, however, were impeded by several serious factors, however, on seeing this, the editors chose not to interfere much with the old law. By the nature of their task, the editors also deemed it their duty to point to the topics which were not discussed by the *Tripartitum* in accordance with reality. While they maintained that differences were particularly conspicuous in passages dealing with evidences and with the administration of oaths, they fail to clarify them in detail.

The system and arrangement of the *Tripartitum* were accepted by the editors after all, if only because it had become deeply rooted in common knowledge. They divided their work (that is, the *Quadripartitum*) into four parts. These presented the material in the same order as the *Tripartitum* did, but the first part of the *Tripartitum* was divided into two ones by taking out personal law to be placed at the front of the work.

Analysing its content, it can be established that the *Quadripartitum* is nothing but a somewhat enlarged, and not fully revised edition of the *Tripartitum*, and the greater part of it literally agrees with the former, and in



some cases presents its arguments in somewhat more detailed form.

The *Quadripartitum* faithfully follows the structural system of the *Tripartitum*, and as few as 94 out of the 389 titles show some difference from the *Tripartitum*. Nor do the new items touch upon questions of primary importance.

In Transylvania on its way towards independence, legal life began its own law-making activity with the Diet of Segesvár in 1540. The Prince and the estates would hold a Diet every year, often making contradictory laws which truly reflected and conformed to the intricate political situation of Transylvania and added to the insecurity of law. Furthermore, the prince recognized the validity of the older Hungarian sources of law as well. In fact, Werbóczy's *Tripartitum* had served from the outset as a basic source of law for Transylvanian courts, much earlier than it became established in the royal Hungary. However, little more than a few decades had elapsed after the independence when it became indispensable for the Transylvanian judicial practice to settle the problem of the country's casuistic, vague and contradictory laws. Considering the difficulties so arising in the judicial practice, it was not by chance that Prince Gábor Bethlen issued a command to the effect that customary law should be the first to be put in order. This was served by the *Specimen Iuridici Processus*, completed in 1619, which was submitted by the prince to Diet of May 1619.

In the age of principality, the organization of administering justice in Transylvania – due to the existence of several privileged groups of society – was much more involved than in the royal Hungary. On account of the multitude of problems, the unknown codificator of procedural law simply could not enlarge upon many questions at all. He could only collect very carefully and with a high selectivity that rules of the older laws which had proved necessary to be codified and now seemed relevant to the actual questions.

Despite its intrinsic values, the *Specimen Iuridici Processus* could not, from the outset, spare or substitute for the work of collecting, selecting the laws, and ultimately for the elaboration of a uniform code of laws.

By the order of prince György Rákóczi I, works on such a code had begun with the collection of laws, but its completion was left to his son, prince György Rákóczi II, who, in turn, charged Chief Justice György Lázár with the task of "gathering the articles together" in spring 1652. György Lázár in joint with several judges of county courts and treasury property directors as well as with other Hungarian, Sekler and Saxon jurists succeeded to produce a systematically formulated draft to

the prince in the same year. Then this draft was submitted by the prince to the Diet where the council of the prince made some corrections. Finally the Diet adopted it in March 1653 and the prince confirmed it with a "letter of approbation" (hence the term *approbatio*). Thus the *Approbatae Constitutiones Regni Transylvaniae et Partium Hungariae eidem Annexarum* was not simply a collection of laws, but the processing of laws by a certain system: decrees, decisions issued between 1540 and 1653 with their amendments and modification were grouped by subjects. Thus it is justifiable to regard it as a proper code of laws. The first part covers the rights of the churches, the second, the legal rules governing the prince, the state and the state finances, the third treats the legal status of the various estates. The fourth part deals with the judicial procedure (procedural law), and the fifth comprises the so-called edicts which contain mainly rules pertaining to public administration.

Also dating from the 17th century, the other Transylvanian code known as *Compilatae Constitutiones Regni Transylvaniae et Partium Hungariae* processed only laws issued after the *Approbatae*, between 1653 and 1668, by the same system. Thus it can be regarded as a supplement to the *Approbatae*.

The Habsburg rule (from 1690 on) also maintained the validity of these codes, and recognized as special rights those of the municipalities as well as the municipal rights of the Saxon nation.

Novum Tripartitum

After the Turks had been expelled in the early 18th century, the Diet raised anew the problem of codifying the Hungarian private law. Set up by the Diet, a special committee commissioned Pál Prileszky, a lawyer, to revise the laws. By the assistance of his numerous clerks, Prileszky did a quick work. His work, entitled *Novum Corpus Iuris Consuetudinarii Regni Hungariae*, etc. was submitted to the king in 1719. Prileszky's work cannot be deemed an original one since the *Novum Tripartitum* essentially may be reduced to such components as the fundamental concepts of Roman law, several laws included in the *Corpus Iuris*, the *Tripartitum* and *Observationes*. The latter as a matter of fact was a preliminary work, comments on the *Tripartitum*, worded in the form of glosses, being, in fact, the only original contribution. Apart from the latter, no original contribution, no novel or fresh thought can be found in the whole work. However, Prileszky did a good systematizing work, and with this he gave evidence of his profound knowledge of the Hungarian legal system. But





this compilation was shyly conservative in its approach, though the general progress would have required the separate codification of the individual branches of law. To enlarge Werbóczy's work was an outdated and impractical enterprise. This proposal could not come across at the 1723 Diet, though the want of a reform in both private and procedural laws was strongly emphasized on that occasion too. It was not until 1726 that this material was considered again to be referred to the counties to report on, but without any palpable result. The Diet of 1728–1729 was the last stage of the life of the *Novum Tripartitum*, when the creation of a new code was removed from the agenda for good. This was also motivated by the public feeling of deputies who had a strong penchant to uphold the old laws. Thus the nobility's carefully kept *Tripartitum* remained, which despite of all its virtues was 200 years old at the time. Thus there remained the old code of laws which "could only be transported by a wagon" and which the *Quadripartitum* labelled a thorny forest and others called it a tangled labyrinth full of contradictions. So subsequently, the problem of codification did not vex the Hungarian law-makers for a long time.

At any rate, the frequent citation of this work points to the fact that the *Novum Tripartitum* – which, otherwise, had been thoroughly talked over in the counties – necessarily produced a significant effect on development of law in the first part of the 18th century, which effect was diminished only by the appearance of the much more detailed *Planum Tabulare*.

TRANSMISSION OF NORMS

The primary task of law is to help solve certain well-defined problems arising from the social order. The circumstances that he will confront the people with unsettled problems which have to be solved. Law just as well as social order is not granted and determined once and for all. Law as a norm system will develop along the line of its "responses" to certain "challenges". These responses, in turn, will come from the intellectual creative force of Man, from the – right or wrong – judgement of facts, as well as from the – right or wrong – recognition of resolutions regarded as useful or ideally necessary. To put it somewhat more pathetically: the jurist's task is to find a solution. Jurists may establish rules, new norms. At the same time, because law is strongly attached to a subject, they also have various possibilities, though within certain bounds, to take over some specific solutions even from another legal culture.

This taking over of other legal material may extend to

entire legal systems, institutions or individual rules. It is obvious that these legal cultures, which are either co-existing or succeeding, will have an effect on each other in every field. The fact that one system has some effect on the other is evident in and typical of the world of law as well. Such effects take several discernible forms.

First of all, there is the phenomenon of the derived legal culture. This means that a posterior cultural period takes over the law system of a previous one which is deemed a model to be followed. This was the case when in the heyday and the late period of the middle ages, several states on the European continent – through the mediation of European universities – took Roman law for the basis of developing their own legal systems. Belonging to this category is also the phenomenon when a community (state) with a less developed legal system partly or wholly copies the law and order as existing in another state.

Apart from this, the phenomenon of taking over individual legal institution or singular legal rules can also be observed. This was characteristic mainly of nations which maintained vigorous exchange relations with each other. Thus, for example, the Italian institutions of maritime and commercial laws were widely spread throughout Western and Central Europe in the early modern age.

It comes quite natural that in the historical investigations all these phenomena could be frequently observed from the beginning of the Hungarian development of law. Thus among the universal or particular legal systems which bore influence on the development of Hungarian law, according to traditions, the effects of canon law, Roman law (in its western and Byzantine forms) and the Germanic legal systems can be studied. Historically, the effect of these components of the European legal life could be felt, of course, with a various intensity over time in Hungary. However, neither Roman law nor the "modern" legal system of any other European country was taken over in its totality in Hungary in the examined period.

The close cooperation or partnership between the Church and the Hungarian state resulted in a peaceful coexistence of the church organization and the secular state apparatus, including the secular and canon laws, and thus no tensions appeared at the points of junction. The non-aggressive nature of canon law also ensured a smooth cooperation. Canon law, to wit, did not aim to bring pressure to bear on the whole domain of law. Canon law never and nowhere could attain as much as Roman law could, namely that it could have pushed the national law into the background. On the contrary, it al-





ways held the given nation's law in respect, it could everywhere get along with the local legal life, as a result. in Hungary too, the particular development of canon law could be experienced.

Canon law made claim to influence for itself in such fields where the secular power could only with minor concessions give up its presence. Canon law made claim to not more than to play a supplementary role in such fields as marriage and family, or in affairs concerning the individuals, e.g. determination of age or the ties of affinity, or in certain aspects of law of inheritance, and in the field of penal law: in procedures related to morals and honesty (forgery, false testimony, etc.). In these fields, canon law became part of the national law. Its stability was also promoted by the consolidation of the ecclesiastical judicature. The – then still primitive – ecclesiastical judicature had become established simultaneously with the foundation of the Hungarian state, then its permanent organizational framework also took shape by the last decades of the 13th century in the form of the ecclesiastical courts of vicars. Canon law, then, was applied by courts employing means of coercion (interdiction, excommunication), while the cognition of civil law remained the private affairs of a tiny group of scholars of law. This is why the validity of canon law were by no means doubted despite the forceful anti-church measures that had been apparently taken since the early 15th century. This solid judiciary system made it possible that canon law managed to “retain its firm position” at a time when in the Hungarian law there appeared and pushed forward those secular jurists (“practicians”) who tended to defend the bastions of national law against the European law. Canon law was of Roman origin itself: *Ecclesia vivit legem*. Nevertheless, the highest values of Roman law, that is, the use of exact definitions and terms, subtle distinctions, were missing from the material the Church had left to the posterity.

A good part of Hungarian royal decrees were influenced by canon law. It seems likely that initially this was made use of by those judges, too, who acted on behalf of the king before the royal assizes. Canon law always played a distinguished role in improving the scientific quality of legal life in Hungary.

Despite the fact that King Stephen the Saint¹⁴ had deliberately followed western patterns in implementing his state organizational and law-making endeavours, the development of the early Hungarian state and law was not free of the direct effects which were produced on it by

the traditions of the neighbouring Byzantine empire. The Roman-Byzantine principles – though in

Field falling within the jurisdiction of the Church continued to draw on the teachings of commentators, but the major part of the domestic rules remained intact, in fact, these rules became apparently consolidated as a lasting legal system. The underlying reason for this singular phenomenon was that this period saw the development and strengthening of the stratum of jurist-intellectuals.

The practitioners of law spent their energy on the elaboration of the Hungarian system of customary law in a continuous struggle with the ecclesiastical judicature as a “competitor”. The permanently increasing effectiveness of customary law, in relative terms, by the 15th century (when the modernization of law by the help of Roman law was placed on the political agenda in Hungary too) made customary law a solid, nation-wide legal system that defied any attempt to take over a comprehensive external legal system, although *ius consuetudinarium* itself included a good many of elements of the ancient Roman law.

The third wave took place in conjunction with the sweep of the ideas of the early humanism and the ripe humanism, and this also brought the curtailment of the sphere of competence of canon law. Raising the Hungarian law to a scientific level yielded good results especially in such fields as the constitutional theory, penal law and procedural law. However, the subsidiary validity of civil law, exclusively in municipal law, was a development of the period following 1526. As the rights of the nobility had formed a uniform institution, and had become ripe for codification by that time, its reception brought at least the partial termination of this privileged position. This, in turn, confronted the nobility as a whole with the cause of modernization. At the same time, it is also undeniable that the common European law, *ius commune*, had at the time a significant share in the components of the Hungarian law. Over and above the Roman law conveyed by the Church, *ius commune* included – in a simplified form in line with the contemporary demands – in the Justinian law processed by jurists, commentators and gloss-writers as it was taken over into the practice of the European countries. Its authority was certainly very high in Hungary as well. The principles of this law as had been put into practice, together with other legal items which had been established as local (*nota bene* nation-wide) customs as against the

14 King Stephen (István) I of the Árpád dynasty. (cca. 975–1038), founder of the Hungarian state. (Editor)





former, constituted what was the Hungarian *ius consuetudinarium*.

In the age of the tripartite Hungary, the effect of Roman law became stronger. One of the obvious channels of this was the massive attendance of foreign universities by Hungarian students. Having graduated from these universities, these legal experts applied their knowledge to arranging formularies, to giving the reasons of sentences, etc. The influence of the Austrian law can be regarded as another channel.

With all this considered, the Hungarian law could not develop fully free of the Roman law-based *ius commune* of Europe.

The effect the German, more precisely Germanic laws produced on Hungary directly comes from the Germanic state model which the founders of the now Christian Hungarian state followed. Furthermore, it also came from such factors as the important role of economic and cultural contacts following also from the country's geographical situation, the Central-Europe-oriented expansionist program of the German foreign policy, the long

reign of the Habsburgs over Hungary. A further factor at the time of the first codification efforts was the requirement of building of an analogous institutional system in view of the similar level of social and economic development.

Germanic laws appeared most explicitly in developing an institutional system for the early mediaeval Hungarian procedural law, though – as has been seen – the German origin of the Hungarian civic population and civil rights is also beyond doubt. To be taken into consideration is also the fact that the destinations of the early modern age peregrination were the German universities: university-towns of the German principalities were the most favoured places of protestant Hungarian students who desired for a good professional training. In the age of the *Usus Modernus Pandectarum*, the Roman law-screened local legal institutions and principles of these principalities were easily discernible in the knowledge of those having attended German universities. The forceful effect of the Austrian (mainly decree-oriented) law-making was also of a rather great moment.

APPLICATIONS OF NORMS

DEVELOPMENT OF THE ADMINISTRATION OF JUSTICE

Administration of justice constituted the most important organs of the state mechanism in the period of the early feudalism, and the development of feudal law manifested itself in its judgements.

A characteristic of the feudal judicature, the separation of judicial organizations, namely that those belonging to different estates and social groups standing outside the estates all fell under different jurisdiction, was still not clearly marked in the early period. This separation developed in line with the consolidation of feudalism. It was at the time that the separate judiciary organizations, and in some respects even the separate laws, of nobles, clergymen, townspeople and serfs were established.

Organizationally, administration of justice in the early period of feudalism was composed of central (royal or king-substituting [curial]) courts, county or municipal courts, manorial courts, and of the organization of ecclesiastical courts.

In that age, most important among the former was the king's judicial activity. However, the ruler's many

other responsibilities increasingly prevented him from being personally engaged in judicial acts.

The king's personal act of judging took place in the royal high court of justice (*curia*). This court, however, always followed the king as he wandered round the country, so this court was not fixed to a certain permanent place. Owing to the king's heavy engagements, his judicial responsibilities were in most cases performed on his behalf by the Palatine (*nádor*) who, otherwise, also performed judicial functions with an independent jurisdiction over those living in the royal court.

The Palatine's judicial activity increasingly grew into an independent function. The Golden Bull (1222) pronounced that "the Palatine shall judge on every citizen of our country without any distinction". This authority of the Palatine was confirmed by the renewed Golden Bull in 1231, according to which the Palatine may judge on every citizen without any distinction. Here, however, cases pertaining to ecclesiastical courts were excepted. The Palatine exercised his judicial functions not only in the royal court but it was extended to cover the whole country from the 13th century on.

With the Palatine's independent judicial function instituted, the function of deputizing the king in matters





concerning judicature was performed by the judge of the court (seneschal) who thus also became a judicial dignitary of nation-wide competence (*judex curiae regiae*). This chief justice as the head of the court of royal presence delivered his sentences on behalf of the king with the king's seal as if the king had judged.

The most important country court was the one formed in the governorships of castles (*comitatus*, later called county) where the *comes comitatus* (Lord-Lieutenant or high-sheriff) exercised jurisdiction on the people of the province belonging to the royal castle. It seems probable that the *comes comitatus* was helped with his work by two royal judges (*judex regius*) in each county from as early as the 11th and 12th centuries. The county court – as the most important court of nobles of the feudal period – was developed towards the end of the early feudalism.

The municipal courts also appeared in the period of early feudalism. As has been seen the first and most important entitlement of municipal privileges was the right to elect judge freely. In the royal towns, the judge administered justice in the townsmen's legal contests. The town magistrate (justice of the town) and the jurors exercised their function in the council (*senatus*) of the given town, which body became the most important municipal corporation in the period of early feudalism.

Initially, feudal overlords, both secular and ecclesiastical, obtained their right to judge on the people of their estates by royal privileges. With the development of the class of nobility, noblemen became also entitled to judge on their serfs. Thus was it that the manorial court (soke), *sedes dominialis* as it was called, had taken shape which in later centuries could also obtain the right to pass death sentence (*ius gladii*).

References to the existence of ecclesiastical courts can already be found in the law-books of King Stephen I. Issues pertaining to religion and morals generally fell under the competence of ecclesiastical courts from the 11th century on. However, the early feudal law took good care to prevent the Church from monopolizing the judicature in property issues. In ecclesiastical lawsuits other than the former, however, the ecclesiastical courts, first of the court of the archdeacon, in major cases of the court of the bishop or later that of the diocese, retained their exclusive competence throughout the feudal period.

COURTS OF THE DEVELOPED FEUDALISM

In the feudal Hungary of the late middle ages, the king continued to administer justice personally on certain highly privileged members of the class of big estate own-

ers or in affairs of outstanding importance (this was called *specialis praesentia regis*). Since the number of the privileged and that of the mentioned affairs had increased considerably, from the second half of the 14th century (when Louis I of the Angevins reigned), it was no longer the king himself who presided at the judicial council, but his confidential man, the chancellor. Under the reign of Sigismund of Luxemburg, the reduction of the increased number of cases of infidelity and arbitrary action, that is, the containment of feudal anarchy became the primary task of the judiciary. In such cases the royal judicial council was again presided by the king in person. This council was termed as forum of the royal presence (*personalis praesentia regis*). The judicial reforms instituted by King Matthias I (Corvinus) in 1464 ceased the court of the royal presence, that is, administration of justice by the chancellor, and reorganized the former to be headed by the *Personalis* who issued its decisions with the seal of the king. In the days of King Matthias, the *Personalis* as the king's confidential man was a royal high official who was to implement the king's intentions in his judgements. To be found among his co-judges were not only high priests and magnates, but also members of the lesser nobility, as well as four jurisprudent men called *protonotarius*. The name of this court led by the *Personalis* had gradually changed since the days of King Matthias into royal court of appeal (*tabula regia judiciaria*). Leaders of the curial courts – the Palatine, the seneschal (as chief justice), the chancellor, the *Personalis* – were called the ordinary judges of the country (*judices regni ordinarii*) or grand judges, because any lawsuit could be commenced before them, being judges deputizing the king. The *Magister tavernicorum* did not belong to the former group because he only judged on appeals against the decisions of the courts of the royal free towns (tavernicalis towns as explained in the first chapter). Legal contests of nobles did not come under his jurisdiction.

Grand judges held their council meetings at the royal high court of justice, the *curia*; the further membership of the council was casually composed of aristocrats and high priests who just happened to be present. Therefore, the jurisdiction of the grand judges was not sharply separated, and so, by a royal order, any case could easily be remitted from one high court to another as it often happened. The function of the co-judges was to inform the presiding grand judge, who ultimately made a one-person decision, on the related customs.

It was to serve the centralizing endeavours of King Matthias in the 1480s that former university graduates specializing in Roman or canon law were also involved





in the judicial work of curial court. Had the endeavours of King Matthias met with success, the legal practice of the *curia* with these professionals could have provided a sound basis for the development of a modern Hungarian customary law. At any rate, it was from that time on that those members of the *curia* who held leading positions could be deemed professional judges rather than normal royal officials.

With the nobiliary counties developed in the country, the country assize (*judicium generale*) also started its judiciary activity in the second half of the 13th century. A country assize was held jointly by the nobles of several counties, presided in most cases by Palatine under special commission by the king, hence it was also termed as *judicium palatinale*. The palatine assizes had formed the most important judiciary forum of the nobility in the countryside until the early 15th century, but these were terminated under the reign of King Matthias Corvinus.

Apart from the palatine assizes held with the participation of nobles of several counties, there also appeared the separate assizes of the individual counties (*proclamata congregatio*) as early as the 14th century. These particular county assizes were engaged – in addition to or even instead of judging – in hearing evidences by witness for the curial courts. Otherwise, the county assizes as county assemblies also dealt with various other affairs of the given county.

The regular forum of administering justice of the self-governing county was the county court of justice (*sedes judicaria*) or *sedria* by its contracted Latin name. Presided by the *comes* or *by the vice-comes* (Deputy Lord-Lieutenant) and composed of by the district administrators (sheriff) and jurors elected from among the wealthier members of the local nobility, the *sedria* judged on the county's noble and non-noble inhabitants. As a court of first instance, *the sedria* dealt – among others – with minor arbitrary actions and also with civil actions, provided the related value would not exceed 100 gold forints, as second instance it gave judgement on appeals against the judgements of manorial courts.

Some lords were granted permission by the king as early as the 13th century to administer justice on those living on their estates. The 14th century saw the general acceptance of the legal principle that lords were entitled to judge on their serfs as well as on the landless familiars (*familiares*) in any kind of cases, except those entailing capital punishment, that is, such "public delict" as larceny, robbery, arson, rape, etc. which fell within the competence of the *sedria*. If, however, the lord had been accorded *ius gladii* by the king, he was entitled to

pass death sentence on such public evil-doers. The manorial court was presided by the lord in person (hence its historical Hungarian name *úriszék* – 'the noblemen's seat'). His co-judges were – depending on the status of the litigating parties within the feudal society – noblemen, *familiares* and serfs. On behalf of the county, one of the mentioned district administrators and jurors were normally also present in the capacity of "authentic witness" (*testimonium legale*), who at the following session of *sedria* were to report on the proceedings of that court. In addition to corporeal punishment, the manorial court also sentenced the serfs to serious fines. The amounts resulting from fines very significantly added to the income of the lord. In the form of a privilege, the lord conferred part of his judiciary power upon the villages where the headman of the village (*villicus*) and the jurors constituted the judiciary.

In the free royal and mining towns – on the basis of a royal privilege – the municipal council, that is, the judge of the town (*judex*) and 12 jurors (*jurati cives*) were responsible for judicature, and were also exercising the *ius gladii*. The sphere of competence of the municipal court covered all actions instituted against the citizens of that town, and no action against the citizens could normally be entered with other judicial forums.

Members of the Magister tavernicorum's court (*sedes tavernicalis*) came in increasing number from among the townspeople, from among the urban representatives. During the so-called Hunyadi period (the age of King Matthias Corvinus a.k.a Hunyadi and his family), the Magister tavernicorum's court, which followed the law-book of the town of Buda, became the court of appeal of seven, and then eight royal free towns (Buda, Bártfa, Eperjes, Kassa, Nagyszombat, Pozsony, Sopron and Pest). Substantive and procedural laws established by the Magister tavernicorum's courts were arranged into the collection of treasury laws.

The rest of the royal free towns, which did not use the Buda law-book and did not belong to the group of the tavernical towns, were granted a right by the king to lodge their appeals immediately with the *Personalis*. These towns formed the group of the *Personalis*'s towns (Esztergom, Székesfehérvár, Lócse, then Debrecen, Szeged, etc.). The *Personalis*'s court (*sedes personalitia*) constituted their separate high courts, where the *Personalis* and a five-member council administered justice – these council members were judges of the curial court, that is, of the king's court of appeal, also presided by the *Personalis* (thus they were not the deputies of the towns).

Forming a separate group of towns were the mining towns in Upper and Lower Hungary, which also devel-





oped their own courts of appeal where the deputies of those towns were in charge of judicial acts.

Appeals against the decisions of courts of certain towns might be lodged (mainly during the 14th century) with the court of another town. Namely, it was customary practice that the newly privileged towns applied to the king form granting them the rights or privileges of an older, significant town. Thus was it that the West-European model of municipal law-families became established in Hungary too. Appeals against the decision of the courts of such affiliated towns could be lodged not necessarily with the king, but with those of the parent towns as well.

The organization and forum-system of various ecclesiastical courts (called *sacra sedes*) such as those of bishops, arch-bishops, the Primate, and the Papal *Curia* in Rome as the highest instance persisted in this period too. (Cases of minor importance, however, came under the jurisdiction of the archdeacon's court.) In parallel with a marked decrease in the Papal power (schisms, synodical movements), however, the very broad scope of competence of those ecclesiastical courts were increasingly curtailed by the Hungarian kings, especially by King Matthias, by legislative means, thus withdrawing the right of making judicial decision in most of the cases, along with the related immense incomes, from both the domestic high clergy and the Pope. (This process will be discussed in detail below.) Finally, after a century-long struggle, what remained within the competence of ecclesiastical courts were – apart from the church affairs taken in a strict sense – such cases as the ill-treatment of clergymen and issues concerning the formal validity of testaments and marriages, one of King Sigismund's ordinances to the effect that the acceptance and execution of summons and letters of sentence, respectively, coming from the Papal courts, should be subject to royal permission, now aimed to bring – at least partly – the judicial acts of the Church under his control. On top of all, the highest forum of the ecclesiastical judicature was not even in the country, but abroad, in Rome.

JUDICIAL ORGANIZATION IN THE EARLY MODERN AGE

Though the fundamental principles of the judicial organization as had been formulated and laid down by 1526 persisted, the central judicature was almost completely discontinued throughout the 17th century. This situation led partly to an increase in the powers of county

courts, partly to the development of the system of itinerant assizes held by the prothonotary.

Thus the Hungarian judicial organization presented rather a blurred picture throughout the 16th and 17th centuries. There was an extremely big confusion about the spheres of competence, the judicial terms, as well as about the composition of tribunals for several decades. The high courts of justice were working in a defective fashion, for which mainly such factors were responsible as the endless wars, uprisings, diets, during the sessions of which judicature was in principle suspended, or the frequent vacancies of the throne when the office of every grand judge was suspended (in such cases the Palatine, the Vice-Palatine and the palatine prothonotary were exceptions to the rule). Adding to all this was also the strong penchant of judges to irresponsibility and comfort.

Obsolete as it was, procedural law was also responsible for this difficult situation of the judicature. Though some drawbacks of the practice which had distorted the procedural rules included in the *Tripartitum*, or the frequent opportunities for marking time and the losses the substantial justice had suffered by the trickeries of canny advocates had been identified by the contemporaries, it was not until 1723 or rather 1729 that these defects were remedied.

Reform proposals aimed at the country's restoration had also been concerned with the reform of jurisdiction ever since the late 17th century. Proposals by the Palatine Pál Esterházy and the *Einrichtungswerk* (1688) hallmarked by the name of Pál Kollonich, Archbishop of Esztergom, and other proposals paid particular attention to reforms to be carried through in the judicial organization as well as in procedural and private law.

At the 1712 Diet a so-called *Systema Iuridicum* was worked out in two versions. Finally, under Act XXIV of 1715 a committee, *Systematica Commissio* as it was called, was set up with the task of revising both the laws and the whole judicial system. The overall amendment of laws was extended mainly to the judicature-related private, penal and procedural laws, as well as to the principles of public law, that is, to all that had been included in the *Tripartitum* in general. The committee thought to improve the works of courts by replacing the prothonotarial courts with permanent courts of justice.

Most important among the courts formed after 1526 was the Royal *Curia* as the highest judicial instance which, in fact, consisted of two high courts: the so-called septemvirate court of appeal and the royal high court of justice.

As successor of the old palatine court, the septem-





virate court of appeal (*Tabula septemviralis*) was virtually the court of the Palatine, which held its session under his chairmanship and with 3 magnates and 3 high priests as its members made its judicial decisions. Under the judicial reform introduced in 1723, the number of its member was raised to 21, and from this time on its membership also included the representatives of the landed gentry.

The other high court was that of the king (*Tabula regis judicaria*), which in the late years of feudalism consisted of as much as 26 members (a mixed body with high priests, magnates and lesser nobles as lay-judges). The royal high court of justice as first instance judged in cases of infidelity (high treason), lese-majesty, as well as in certain "juris trials" when the right to a certain real-estate had to be proven on the basis of old privileges. Against the decisions of the royal high court made in its capacity of first instance appeals could be lodged with the septemvirate court. The royal high court acted as second instance in cases where an inferior court as first instance had made a decision. From 1781 on, in grievous cases of criminal acts, appeals against the decisions of not only the county courts, but also of the courts of royal free towns and the manorial courts could be lodged directly with the royal high court (Act XLIII of 1791). Acting as central courts in this period were also those of the *Personalis* and the Magister tavernicorum which constituted the superior courts of the urban bourgeoisie. In principle, the court of the latter held its session once a year, but the rule was not adhered to in this case either. Against the verdict of the Magister tavernicorum's court one might appeal to that of the *Personalis* (until 1619). The practice of appeal was discontinued between 1619 and 1733. As a result of a long dispute, from 1746, one might appeal from the Magister tavernicorum's court to the royal high court, and from 1807, directly to the septemvirate court of appeal.

The court of the *Personalis* acted only as a court of appeal. At second instance it dealt with the affairs of the *Personalis*'s towns, while at third instance (until 1619) it gave judgement on the appeals of those towns. In such cases the *Personalis* exercised the adjudicative power of the king who in the view of feudal law was the landlord (owner) of the towns.

The 1723 judicial reform organized the district courts of justice as permanent courts (in Nagyszombat, Kőszeg, Eperjes and Debrecen). Such a court of appeal consisted of a chairman and of 5 to 6 ordinary and several extraordinary lay-judges. District courts were always engaged in proceedings of first instance, trials involving values exceeding the amount of 100 gold forints.

Trials with values under 100 gold forints came under the jurisdiction of the county *sedria*.

In respect of the legal contests among the noblemen, the most wide-spread judiciary was the county court of justice also known as *sedria*. Prior to the 17th century every noblemen might appear and participate in the *sedria*, however, Act XXIV of 1613 pronounced that apart from the ordinary and extraordinary jurors, none of the nobles present should have a say in the judicial acts. At the *sedria* separate sections were active in civil and criminal proceedings as early as the first half of the 17th century. The penal *sedria* was detached from the uniform judicial organization in 1613, without, however, the full separation of their respective scope of authority.

After 1526, mainly during the period of the Turkish occupation, legal activities of higher courts were suspended, therefore the county courts of justice were – sometimes almost exclusively – responsible for administering justice in all cases. In issues concerning the nobles, the *sedria* as a rule acted as first instance, while in the cases of serfs, if appealable, as second instance. The civil *sedria* administered justice only in important cases of citizens. Falling within the competence of the penal *sedria* were all public delicts (*delicta publica*) other than Infidelity and lese-majesty.

Municipal councils (*senatus, magistratus*) continued to judge in the cases of the citizens of the royal free towns. In the organization and jurisdiction of the latter no change took place even after 1526.

Cases of serfs were judged at first instance by the headman of the village (*villicus*), or by an official of the lord or the manorial court. The village headman's competence extended to only cases of slight importance, while in also minor, but civil actions emerging on larger estates justice was administered by the lord's officials (*officiales*), or manorial court. The first half of the 19th century saw the development of this type of judicature on larger estates, and so the manorial court was only convoked in civil actions of major importance.

In addition to the manorial officials, representatives of the county authority and the invited neighbouring lords also participated in the manorial court. Serfs had also been regularly present as lay-judges at the sessions of the manorial court as late as 17th century, but this participation gradually ceased over the 18th century. Act X of 1836 put an end to the abuse of manorial courts that lords might make decisions on their own cases.

Manorial court also acted as a forum of appeal against judicial decisions by the village headmen, smaller estates, councils of market-towns or by the courts of





manorial officials¹⁵. In cases of serfs of the lesser landed gentry that did not hold manorial court, the village headmen, or in major penal cases the county court (*sedria*) administered justice.

ORGANS OF PUBLIC AUTHENTICITY

At the time of early feudalism, in addition to various judicial forums, an auxiliary to the judiciary, the bailiff (*pristaldus*) also acted as an authentic person. A bailiff had a double duty: first he acted as an emissary of a judge (king, Palatine, judge of the court, *comes*) to deliver summons, to arrange a livery of seizin or a beating the bounds, and so forth; second, on request by private persons, to act as "authentic witness" in their legal affairs (purchase, donation, delivery of testament and the like). The bailiff received a certain defined fee for his services.

It should be noted: whereas the 11th and 12th centuries were still characterized by a very limited spread of literacy, the issue of a royal diploma or charter was virtually the only possibility in that age of confirming a legal or other transaction in written form. The common use of written documents in Hungary was given a new impetus under the reign of King Béla III, because allegedly it was he who introduced the practice of submitting written petitions to the royal court as a new development. The authority of the authentic seals also worked out in the legal life. Over and above the royal chancellery and *curia*, some ecclesiastical institutions, the so-called "authentic places" (*loca authentica et credibilia*) also possessed such seals.

The increasingly important role of ecclesiastical institutions at the time could be attributed to the fact that the institution of the *pristaldus* could no longer meet the requirements of public authenticity as the parties paid for the bailiff's services and might provide good opportunities for abuses. Act XXI of 1231 ruled that to an evidence furnished by a *pristaldus*, an affirmative evidence by a bishop or a chapter or by a convent to the same effect should also be required.

In the 13th century, chapters and conventions increasingly developed into institutions of public authenticity. These authentic places were involved in judicial acts and in other transactions, of which they issued authentic documents. Issued by clerics and monks, these

written documents followed the secular customary law in both form and content. The authentic places also developed a practice of producing written documents which bore the marks of a strong chancellery influence and which – particularly in the field of contract law – was not devoid of the effects of Roman law either. Notwithstanding, it might rather be classed into the sphere of customary law.

From the 14th century on the authentic places took ever deeper roots. First the grand judges, then the king and kings tended to refer those applying for diplomas or other written documents to these organs of authenticity. Minor convents, however, could not enjoy such a high prestige as supposedly these may have been more easily influenced by power or money.

Forced out by the nobility, the decree of 1351 prohibited minor convents from issuing documents on the alienation of properties, depriving them also of their seal's authenticity. The king requested all authentic places of the country to produce their seals at the Buda court in 1353, then, after an examination, the seals were not returned to some of the authentic place. With this measure, the king definitely determined the circle of accepted authentic places and strengthened the royal control over them. All this, along with the introduction of the use of formularies developed by the royal *curia* in the authentic places, ensured the continuity of these institutions up to the days of the Turkish rule.

In Werbóczy's view too, documents issued by the authorized chapters and convents were of an unlimited authenticity. Secular courts considered such documents as a stronger evidence than oral evidence by witness.

However, the dominant position of authentic places produced important effects on the development of literacy in private law as well as on judicial proceedings as a consequence. Namely, it can be attributed to the institution of authentic places that Roman law – through the mediation of canon law – failed to have such a great influence on law in Hungary as in other places in Europe, on account that authentic places resisted the influence of canon law. Curious as it may seem – since these places were of an ecclesiastical character after all – the fact is that these became the keepers of customary law in Hungary. However, the appearance of notaries public in Hungary was impeded by the system of authentic places. It was only with difficulties that the institution of notary

¹⁵ In addition to their basic economic and administrative duties, these officials were also invested with judicial functions within a large feudal estate (*demesne*). They were also called *comes curialis* or *provisor*. Here the term *comes curialis* relates to only a certain *demesne*, and is not to be confused with the office of the judge of the court (*seneschal*), the holder of which was a royal official. (Editor)





public, mediated through papal legates, could gain ground in Hungary. The fact is that the papal or imperial notaries public could only limitedly contribute to the spread of the notions of the Roman-based canon law. The institution of notary public existed in connection with forums of canon law and with the courts of vicars, and only with a limited influence until the 16th century. But this had only a slight influence on Hungarian legal practice.

Organizations of public authenticity developed in the middle ages could only with difficulties continue their activities after 1526. Most of the chapter and convents were forced to abandon their seats, having been disabled to perform their regular functions either. With the advance of Protestantism, the religious autocracy of the Catholic Church was also shaken, and this also had a political effect.

After 1526, besides the authentic places, the practice of arranging important property law-related legal acts before the county authorities also gained ground. The counties entered these legal acts onto the record of the county, and in controversial questions the counties issued just as authentic documents as those of the ecclesiastical authentic places. The royal free towns, in turn, simply required the bring property law transactions before their authorities, so that the cases might be entered into the municipal records. These circumstances lessened the significance of the ecclesiastical authentic places, though by the time the king and/or the Diet would have restored the old authentic places after the expulsion of the Turks, they had been in a process of degradation.

MAIN CHARACTERISTICS OF DEVELOPMENT OF LEGAL PROCEEDINGS

The traits of feudal law were also discernible in procedural law, perhaps even more sharply than in the field of substantive law to be discussed later. Obviously, equality before the law and uniform legal proceedings were completely out of the question in the age of feudalism. In accordance with social distinctions of feudalism, there were also noticeable differences between the individual legal proceedings. Legal contests of nobles, clergymen, townspeople and serfs were generally judged on by different types of courts and according to different rules of procedures.

Particularism was characteristic of the procedural law as well. On the one hand, courts of different judicial types and levels, curial courts, county *sedriae*, manorial courts

as well as courts of the urban bourgeoisie and the Church all adopted rules of procedure which differed from each other in many respects. On the other hand, if only because of the absence of a uniform legal regulation, often the local governments of the individual counties adopted different practices of judicial proceedings on their respective territory. Courts of justice of the privileged districts also followed various kinds of procedural law.

As regards judicial proceedings, a process conducted in the age of the Árpád dynasty could be compared with the procedure of Germanic lawsuits of the Carolingian age, which in the Bavarian and Saxon regions was still extant as late as the 12th century. The process itself was open and oral in nature, showing a real contest between the litigating parties (*litigium, duellum*), in the course of which the judge was rather an observer of events, his powers having been restricted to providing an opportunity to one or the other party to produce evidence. The process was rigid, subject to strict formalities. Characteristic of it were the practice of summoning the parties by the bailiff and the important role of the *pristaldus*, who as an advocate, or more or less as a representative, was played an active role in the process. Our knowledge of the most important elements of this procedure was acquired from an old Hungarian registry of trials known as the *Várad Regestrum* dating from the 13th century. The *Regestrum* supplies a great deal of invaluable information on processes and trials taking place in the late period of the Árpád dynasty.

With the development of socio-economic relations, and with the expansion of the feudal large estates, which largely coincided with the spread of literacy, more advanced forms of procedure were also developed, particularly under the reign of the Angevins and the Hunyadi House. The origins of a new, reformed law of procedure introduced under the Angevins can be traced back to Franco-Norman customs; in these new rules, however, some elements of the Byzantine-Sicilian procedural law were also present. Compared to the former Germanic form, this procedure attained a higher professional level. The strict formalism of the procedure had markedly abated by that time. The process now aimed to clarify the given case and to administer justice judicially. However, the ongoing processes were still essentially oral and widely public at the pre-judicial stage. Apart from the spread of literacy, an important trait of a process was the obligation of furnishing evidence. The presentation of substantive evidence, in a form that could be derived from the Norman law (*inquisitio*), played an important role. The judge's role also changed considerable, by his powers, he became the leader of a process. The





king ensured the uniformity of practice by the so-called mandates, instructions, in fact, he would often influence, *in concreto*, the legal proceedings. The formal patterns of written documents (*stylus curiae, curialis*) were also developed in such a central way, which markedly shaped the substantive law as well. This new order remained in effect until 1526. In the age of kings Louis I and Sigismund, records were kept regularly, and legal remedies also played an important role. King Matthias Corvinus reorganized the practice of inquisition, introduced the brief summons of the parties, and augmented the circle of legal remedies.

Since in the mediaeval Hungary an ecclesiastical judicature, separated from and competing with its secular counterpart, also existed, both the principles and terms of *ius commune* got – more or less – into the Hungarian customary law through the mediation of the former. From the early 15th century on, secular jurists also made use of the procedural means, which had been accepted and employed by vicars, ecclesiastical judges, in their struggles against feudal anarchy. Adopting the practice of appeal, sentence in default (contumacy), shortening the traditional lead-time of legal proceedings could all contribute to the internal order of the state by the assistance of the practising jurists. This also shows that the “practicians” kept a watchful eye on the steps the Doctors had taken.

It should be noted here that essentially there was no difference between the civil and criminal proceedings.

During the centuries following 1526, partly an increasingly sharp difference was taking shape in legal proceedings, depending on whether the cases of nobles or non-nobles had to be judged on, partly civil and criminal proceedings became more distinctly separated. Differing from civil actions in several respects, rules for criminal proceedings resulted mainly from the practice county *sedriae* in connection with actions against public delinquents.

In both of the mentioned proceedings, two basic types of processes (not counting the great variety of other types) worked out: the written and the oral process. However, the privileged strata of society obstinately insisted on their outdated privileges, and this factor literally stiffened the procedural law which increasingly lagged behind the socio-economic development anyway. Characteristic of both the civil and criminal proceedings, if nobles were involved, was the long lead-time of proceedings, that is, the extremely long protraction of cases.

Taking certain concrete measures during a particular case involved the increasing use of writing and written documents. In parallel with this, within the procedure it-

self, the oral, direct and public character of proceedings gradually faded in this most important type of processes to vanish completely by 17th–18th centuries.

CIVIL PROCEDURE

Civil and criminal actions had separated in the 16th century, and some minor modifications were also made by elaborating the details of certain institutions of procedural law. Following from István Werbőczy's *Tripartitum* to a considerable extent, the principles of procedural law had been established by the early 1550s, and remained essentially unchanged up to 1848.

In view of such factors as the intrinsic nature of cases, the special traits of the judicial organization the want of uniform rules for appealing and the status of the litigating parties in the feudal society, several kinds of civil lawsuits (long, short, principal, collateral, etc.) had worked out by the period of late feudalism. As regards the basic types of civil actions, it could be written or oral. Simple oral actions might be dealt with by the courts of district administrators, manorial courts, market and village courts. Considering that a nobleman could insist on written procedure even at the district administrator's court, oral procedure must have been restricted almost exclusively to civil cases of serfs. Thus the general principal type of a civil action was one arranged in solemn, regular and written form when all formalities were strictly observed.

Providing many opportunities for adjournments, objections and legal remedies, the usually lengthy written civil actions highlighted the role of advocates. The personal presence of the litigating parties was only an exceptional occurrence. The strictly observed, uniform procedure did not really exist even as late as the final period of feudalism, although certain stages of the civil procedure were more separated than in the previous period.

CRIMINAL PROCEDURE

In criminal actions, which had been characterized by the prevalence of the principle of inquisition, proceedings were instituted *ex officio* in the 16th century. Evidences necessary to the conviction of the defendant were gathered by the court acting in the given case by hearing the suspect, the witness, and also by house search, viewing the premises or sites, requiring constats, and so forth. The trial of a normal criminal case took place orally in a





short form (*summarie*) or in written form solemnly (*solemniter*).

The normal action was divided into two phases: a preparatory or investigative phase and the phase of proceedings before the court. Casually, mostly only in the written cases of nobles, the process of arraignment as an intermediary phase might also occur.

Except certain cases (such as flagrant delict, lese-majesty, counterfeiting, etc.), nobles and townsmen could not be arrested, and such individuals could be at large during the process until a grievously damning sentence has been delivered. And what is more, no action or accusation against a nobleman could be instituted without the authorization of the county assembly. At the same time, any suspected serf or urban plebeian could immediately be arrested, interrogated and usually kept under restraints during the whole process. Nobles, members of the urban bourgeoisie and intellectuals could long not be put to the torture, unless they were accused of lese-majesty or witchcraft. However, the German military authorities operating in Hungary in the 16th and 17th centuries also submitted nobles to the rack. The *Praxis Criminalis* included detailed rules for the specific kinds of torture. It was under the effect of this that the method of torture became increasingly spread. Vainly had Queen Maria Theresa and King Joseph I restricted and prohibited, respectively, the practice of torture, it remained in use until the early 19th century.

When the investigation founded the suspicion, the court decided on instituting action against the suspect and also on the form, oral or written, the given criminal action should take.

In addition to normal actions – like the judicial assemblies held by the Palatine or the *comes* by a royal command in the previous period – there were also some more specific and unusual forms of criminal procedure. For instance, on the ground of commonly known facts and in the form of an oral action, the itinerant district administrator with his co-judges condemned the captured criminals to death and had them executed. Later, from the late 17th century on, summary courts would also institute oral actions against criminals caught in the act or those resisting the arrest, and passed judgement on them on the strength of evidences by witness or of their own confessions.

DEVELOPMENT OF PRIVATE LAW

In discussing the development of private law, we can rely on a great variety of sources of knowledge, a good part of which have already been mentioned in context of the

sources of law and of legal science. Despite the large number of sources, a modern comprehensive work on the development of positive private law in Hungary is still badly needed.

Private law-type institutions of the early feudalism in Hungary (10th to 13th centuries) were in many respects similar to the contemporary legal institutions of West-Europe. This comes quite natural because of the similarity of the socio-economic systems and of the relatively closed circle of possibilities to solve legal problems. With their state founded, Hungarians explicitly took over the private law of the Roman-Germanic family of law, adjusting those rules, of course, to their own demands and to their own feature. The “ancient Hungarian” legal institutions, which might well be regarded as singular ones in some respects, gradually lost in importance with the final settlement of the nation and with the building of organizational structure of the Hungarian state. The legal institutions, which the Hungarians had brought along to their new homeland, have remained almost completely unknown to the posteriors as they were never put down in writing owing to the comparatively late spread of the general use of written records.

In accordance with the contemporaneous socio-economic and cultural conditions, the feudal institutions of private law formed a particular, closed system. Almost all legal relations – from property rights, possession (*seizin*) rights or rights of disposal, to inheritance or personal status – were related in one way or another to landed estates. This also meant that the distinction between private and public law was much vaguer at that time than in the early modern age or in the later centuries.

To form a notion of the early private law-type institutions of Hungarian law, reference should be made to the following characteristics.

The first centuries of the Hungarian state constituted the period of the dissolution of the gentilian society with the parallel development of the feudal estates and a uniform system of serfdom. However, despite the marked assimilation to the western material conditions in the age of the Árpád dynasty, the tribal-gentilian organization of society, characteristic of the ancient equestrian-nomadic peoples, still determined for a long time to come the characteristics of the early Hungarian family law and personal rights. Personal relations of the earliest period were characterized by the unlimited power of the leading male members of the gentilian “joint family” (*gens*) who acted as family heads. Consisting of the male relations descending from a common ancestor from the male line, the *gens* defended its free members and determined the





religious and legal life of the entire community. Though the gentilian ties gradually lost in importance from the 10th century, the existence of the *gens* as a legal community remained unquestionable. The position the individual had occupied within the society as a decisive factor was replaced in the later centuries by the individual's relation to the king. So it was the "distance" from the king that determined – in many variations – the structure of the society of the free who became highly differentiated themselves by their financial standing. The increasing separation of such groups as the high notabilities and magnates belonging to the king's entourage, warriors in the service of the king or of the *gentes*, or the agricultural population which was gradually reduced to a state of servitude, showed signs of the dissolution of the gentilian structure under the reign of the first kings. However, the *gens* as a phenomenon that determined the institutions of the law of property succeeded to retain its importance in the following centuries too (e.g. in respect of bans on alienation).

In the gentilian society goods were in common use, only movables of lesser value might be in private use. It was within the latter group of goods that the institution of property first appeared. The permanent settling of Hungarians, along with the related change in the way of life and the increasingly important wealth-creating role of landed estate also markedly contributed to the development of proprietary rights. With the gentilian organization declined, goods in private use turned into ones in private ownership, however, with the proviso that the assets which had originally been in a common gentilian use, should not be – in principle – freely disposed of. Originating from the old principles of the gentilian community, bans on the alienation of immovables and on the most important movables were in effect throughout the age of feudalism. With the primary aim to ensure the Church a freedom to acquire property of its own, the royal power took a stand for the right to dispose freely of properties. Historically, the clash of these two interests resulted in a compromise: namely, in a specific legal distinction between the "ancient" and the "acquired" properties. This distinction remained in use and determined the Hungarian law of property until as late as the 19th century.

Another important developmental trait of the early law of property was that the distinction between "ancient" demesne (*patrimonia*), which a *gens* had originally occupied and the fief (*feudum*), lands which had been held and then distributed as donations by the king, vanished relatively early as the royal power gradually strengthened. From the time of Hungary's first king, St.

Stephen, downwards, kings might also make provisions concerning the ancient gentilian demesnes. The beginning of the system of royal donations also dates back to St. Stephen's rule, which ultimately resulted in a fusing of these two types landed-estates, and this laid the foundations both of the feudal law of property and of that of inheritance.

According to the ancient legal thought, to wit, inheritance – within the gentilian property – had been a covenant running completely with the land, the successor inherited the property not because of his being a descendant of the former owner, but because he as a member of the *gens* had an equal right *in rem* to have a share in the common landed estate. Thus he did not inherit, but continued only "to share in" the estate. With this proviso in effect, the institution of testament could only with difficulties take root in Hungary. Testament formed an exceptional legal institution in the age of the Árpád dynasty, having been effective only in the case of fiefs (even then subject to royal permission) or very rarely in the case of gentilian estates or seigniories (subject to permission by members of the given *gens*). It can be dated from the 13th century that a new view appeared claiming that every estate had originally come from the king. With this view, the seigniority as donated estate became the decisive category of the law of property and the basis of the increasingly uniform law of real property.

As to the initial development of contract law, it may well be proposed that the former view of the mere secondary role of contracts in age of the Árpád dynasty because of the underdeveloped state of economy, is no longer tenable. As proved by the contemporary records, contract law started as early as then playing a unifying and uniforming role which generally characterized this branch of law in the other feudal societies. Demolishing the feudal dividing walls, contract law brought together the various social strata that had gradually taken shape in the feudal age (nobles, townspeople, serfs).

When we search for sources of law dealing with contract law among legislations dating from the age of the Árpád dynasty, we experience the same thing as in the case of other branches of law: legislation did not extend yet to cover private relations, legislation was virtually narrowed down to public-law issues. If there were still a few, exceptional legislations of this kind, those would formulate only certain bans on purchases, especially on certain trading transactions of merchants and on contracts of sale concluded on markets. From the 12th century on, the so-called consensual contract was the permanent form, that is, when the contract came about by





the mutual agreement and will of the contracting parties. Having been qualified as an important requisite even in Roman law, the free will was brought up as an explicit requirement in several contemporary documents. Contracts concluded not by free will were deemed invalid. Statement expressing the free will (*fassio*) generally had to be made personally at an authentic place. In this context, it should also be added that in certain cases the respective consent of the king and the relatives was also required. Hence it follows that entailment (*ius aviticum*) and the system of royal donations put serious restrictions on the contents of contracts.

INSTITUTIONS CHARACTERISTIC OF THE FEUDAL PRIVATE LAW

From the 13th century on, important changes were taking place from the aspect of both the private and proprietary law. The gradual and centuries-long development of the feudal society, leading to the successive appearance of three relatively uniform, though strictly separated social strata: nobility, townsmen or urban bourgeoisie, and the serfs, produced a formative effect on private law as well. At that time it was the institution of *familiaritas* in the first place which had a great effect on the transition of society as well as of law and order.

Having taken service with the king and feudal overlords, both secular and ecclesiastical, noblemen (*servients*, *preadialists* and *familiars*) became dependent on their lords. In principle they served on a voluntary basis, and in exchange for their service, their lords accorded them protection, land and often provision too. The so serving nobles in principle enjoyed equal liberties with the non-serving ones, but this really held true only of the public-law field. In private law, however, their freedoms were significantly restricted.

However, social progress in the 15th century, and particularly the considerate policy of King Matthias towards the nobility, tended to confirm the nobles – both those serving the high nobility and the independent lesser nobility – in their faith that they all belonged to a common nation. Their obligations to their overlords were increasingly forced into the background and took on a private law character. In his *Tripartitium*, Werbőczy failed even to mention this “familiar” relationship. These three social groups came under the jurisdiction of quite different courts. Accordingly, their respective substantive law also took different courses of development. Legal relations connected with the mutual relationship between the nobles and the serfs were particularly im-

bued with this feudal legal tradition. At the same time, the existence of these differences in feudal status groups constituted a public law issue as well, since the feudal private law was closely connected with public law. Thus differences in political rights were reflected by similar differences in private law, particularly in proprietary law, and within this, in rules governing inheritance.

Over and above the differences in feudal status groups, other characteristics of the feudal law of property included the entailment (*ius aviticum*), the system of royal donations and the socage-based relationship between the lord and the serf.

Differences in feudal status groups were manifest in the distinctions made between the respective proprietary rights of nobles, townspeople and the serfs. Whereas serfs were not permitted to own real estate since 1514, and town were collectively regarded as noble individuals, the proprietary relations of the other two groups were also imbued with some elements of the proprietary rights of nobles.

Counted for nobiliary were those – free – properties which were not burdened with *corvées* (*bona nobiliaria*, *bona et jura possessionaria*), and which could be acquired only by a nobleman. Entitled to possess with a nobiliary freedom were: the Holy Crown (that is, the state), magnates, high priests, pious foundations, noblemen and the royal free towns.

Within the group of “nobiliary properties”, special rules governed the crown lands and the ecclesiastical properties. Crown lands were those designed to meet the needs of the king and his court. Crown lands were not permitted to be alienated from the crown, except those properties which had been escheated to the crown (*bona fiscalia*), and which could be donated once more.

Ecclesiastical properties (*bona ecclesiastica*) could be freely held by the churches and by clerics, and were ultimately attached to high church dignitaries. However, the entitlement of the Hungarian Church to acquire property freely was heavily limited by the so-called “mortmain acts” of 1486 and 1496.

In the feudal Hungarian private law, property implied that the owner (excluding anyone else) has full, but not absolute, right to dispose only of the movables and the acquired immovables. The ownership of the ancient and donated landed properties always meant a limited right, because the property itself belonged directly to the *gens*, and ultimately to the “Holy Crown” as a symbolic main owner. Hence it follows that the feudal private law called the nobles – from the aspect of their lands – “possessor”, rather than “owner”.

The individual ownership of nobles was limited by





the entailment (*ius aviticum*) in the first place. Practically, it was a ban on the alienation and mortgage of landed properties designed to secure the subsistence of the family. This legal institution – in the case of alienating or mortgaging the property *inter vivos* – entitled the issues in tail to redeem it directly to themselves, these issues in tail, in turn, were obliged under this *ius* to offer the ancient property designed to be alienated for purchase by the relatives in their order of succession. According to legal customs preceding Werbőcy's age, when these sharing relatives did not wish to avail themselves of redeeming the given property, it had to be offered up to the neighbours (the process of this offering was termed as *praemonitio*). If this *praemonitio* was omitted by the issue in tail, the sharing relatives might make claim to the dissolution of the contract which the issue in tail had concluded on the alienation or mortgage of the property in question, and they could enforce their claim by legal course. From the 15th century downwards, neighbours could only make an offer for such a contract, and no claim might be asserted against the issue in tail. Their right to require a proper *praemonitio* softened into an option to purchase.

The above right of the sharing relatives could be repealed by introducing the so-called "dividing". The detailed rules for this dividing process were worked out by Werbőczy. Accordingly, first a stock had to be taken of the whole of the property to be divided, then the immovables were divided generally among the males only, while the movables between the males and females in equal shares. After having been so divided, the properties retained their "ancient origin" in character.

The most typical way of acquiring a property was that by donation. Donation was meant to reward, compensate for, more precisely to reciprocate the faithful services an individual had rendered to the king, the crown or to a high dignitary or feudal overlord; it was also meant to encourage him to make even more faithful services in the future by transferring property as donation from the king, the Palatine or by an individual of high social standing. The royal donation was by all means the most important. In this context, the escheat (*fiscalitas*) meant the king's right (*ius regium*) – which initially had been based on laws, then on customary law – that he could recover (or sort of inherit) the property of an extinct family or of an unfaithful nobleman.

The system of socage as one of the characteristics of Hungarian private law originated from the contemporary structure of agriculture. The land held by a feudal overlord was divided into serfs' holdings and seigniorial domestic lands under the direct management of the lord.

Both types of these landed estates were cultivated by serfs. The serf was bound to render certain services (rents), both in kind and in cash, in exchange for the legal and other effective protection his lord accorded him. The introduction of the "ninth" (*nona*; 1351) as a new version of the crop tax considerably contributed to the development of a uniform serfhood. The socage system also included the lord's jurisdiction, in both legal and administrative terms, over his serfs, and all these constraints became even more depressing after the great peasant uprising of 1514.

As concerns the inheritance of nobiliary property, it remained a covenant running with land, and the order of succession served to sustain the family estate. The law of inheritance of the nobility recognized the provision by will only as an exceptional possibility, even so restricted to movables and acquired properties. The guiding principle concerning the ancient property was that (in case of inheritance from half-bloods or ascendants) every family should keep what came from the given family. Since the acquired property, if testate, also turned into an ancient one, the significance of provision by will was practically next to nothing. Testamentary issues, in which real estates were also involved, the customary law removed from the competence of ecclesiastical courts to assign such issues to the royal courts. As shown by the practice of the adjudicative power, courts frequently applied the principles of Roman law.

In the first centuries of feudalism, contract law remained in close connection with the personal rights and substantive law. In compliance with Roman law, the complicated rules for concluding a contract were worked out in municipal law in the first place, but this was not to mean that the nobiliary law remained intact of the "modern" principles of contract law. As a result of the nobility's ever increasing involvement in commodity production, customary law, just as well as the decrees had to respond to the emerging new demands.

Mainly from the 16th century, the development of contract law was characterized by a certain dualism.

Obviously, the interests of the crown and gentilian family continued to put strong restrictions on the alienation of the nobiliary property. To support this effort, a specific nobiliary form of legal transactions was developed, namely that the alienation, pledging, exchange, dividing of nobiliary landed estates, or incidentally testaments thereof, might only be transacted at an authentic place, and of the legal statements made at such places, a written document was issued, and on this account this type of transactions was collectively termed as "*fassio*". An addition to the mentioned restrictions, this complex





form of transactions noticeably left its marks on the contract law of that age.

However, as proven by experiences in the judicial practice of customary law from the 16th century – nobles participating in the everyday circulation of goods and money ever more frequently concluded such contracts as followed the more advanced rules laid down in the contract law of *ius commune*. Here the effect of the more developed contract law of town deserves special mention. These municipal rules were under the necessities also applied in the legal transactions of nobles. This was so despite the fact that Werbőczy's *Tripartitum* remained silent as to this possibility of legal transactions.

Summarizing the explicitly Hungarian traits of the mediaeval judicial practice, Werbőczy's work had largely contributed to the centuries-long survival of the fundamental institutions of Hungarian private law in a form he had described. By its great authority, it also helped the continuation of certain obsolete institutions, though they were long outdated. Though the private law practice of courts was much aided by the readily available law-book, but it must be emphasized that – to an extent still unknown – judicature would often exceed the private law rules of the *Tripartitum*, in fact, it tended to adjust itself, step by step, to the economic needs. Naturally, in issues affecting major private law institutions with "constitutional law" relevance (such as entailment, donation system, etc.), the judiciary practice might not come into conflict with the "*Decretum*", but – as shown by the material of *Planum Tabulare* – it might furnish a basis for the gradual development of a modern private law. The 18th century legislature had increasingly recognized the necessity of modernization, but could not achieve more than a few partial results.

Hungarian private law in the early modern age continued to be characterized by the feudal conditions including the entailment, the donation system and the sockage.

Although a good part of the nobility had impoverished, with its living standards reduced to the level of his serfs, or trickled down to the towns and became "embourgeoisied" in its ways, yet the feudal distinctions did not abate, indeed, they became even sharper. The "prima nonus" of Werbőczy's *Tripartitum* (Part I, title 9), which declared the principle of a uniform nobility, drew a sharp dividing line between the nobles and non-nobles. However, in the slow process of embourgeoisement, this principle became ever more untenable, and the same applied to the entailment and the donation system. These institutions now burdened, rather than protected the nobiliary property; partly they degraded the

credit standing of nobles who wished to join in commodity production, partly caused immense financial losses to the members of the privileged strata who were involved in endless lawsuits connected with entailment issues. The sustaining of sockage put unbearable burdens on the peasantry. To wit, in addition to the usual corvées, with the formation of the "modern state", a further burden was imposed on peasants in the form of the compulsory military service. The royal will such as Maria Theresa's decree on sockage (1767) could but alleviate, and not remedy the complaints of serfs.

The necessity of modernizing the private law branch was recognized – besides the above-mentioned judicial practice – also by the legislation in the 18th century. In 1723, the legal requisites of testament-making were regulated, and the obligation of keeping records of public authenticity of mortgage burden was taken out from the sphere of municipal law to form part of national law. Attempts were made at the comprehensive codification of private law and at the adoption of the Austrian institutions of commercial law (based on *ius commune*), but these efforts failed to yield conspicuous results. The private law bill submitted by the so-called *regnicolaris* committee of the 1792 Diet failed to be enacted. Thus the further development of private law, and within this, that of contract and commercial law, remained – within the mentioned bounds – in the domain of courts and of the increasingly unfolding legal sciences.

DEVELOPMENT OF PENAL LAW

Our knowledge of the development of Hungarian penal law have been acquired from the following sources. The most valuable document of the practice of Hungarian penal law in the age of the Árpád dynasty is the registry which the Várad chapter as an authentic place prepared relating to its probation activity in the first half of the 13th century, more particularly: 1208–1235 (commonly known as the *Várad Regestrum* as has been referred to above in this study). This registry includes cases of ordeals by fire, a widely used method in that age. Forming remarkable sources of knowledge are legal rules pertaining to penal law; on the implementation of these laws, however, we have only sporadic information up to the 16th century, because it was only since then that the recording of sentences has become a common practice – apart from the earlier practice of a few towns. However, as concerns the changes in living conditions and the effectiveness of penal legislation, significant conclusions may be drawn from the development of subject-matters





of legal regulations. Apart from acts and laws, rules of customary law also played an important part in the struggle against delinquency. This also means that particularism was also an important characteristic of the penal law practice in Hungary in the mediaeval and early modern ages until as late as the 18th century. The body of knowledge that can be gathered from municipal law-books and statutes (from the 14th century), records of county courts (from the 16th century), as well as from the records of manorial courts (also from the 16th century), supplies valuable information on the development of penal law. Law books synthesizing the national customary law (such as *Tripartitum* in the first place) and the codification endeavours (such as *Quodripartitum*) all attempted to arrange penal statutes into a logical order. *Articuli Iuris Tavernicalisis* and *Planum Tabulare* do not contain remarkable principles to be followed in penal law. Issued by the Holy Roman Emperor Ferdinand III in 1656 for use by certain Austrian provinces, a regulation of criminal proceedings, entitled *Forma Processus Iudicii seu Praxis Criminalis*, was also based on customary law. This regulation was also printed in Hungary in 1687 and then attached to *Corpus Iuris Hungarici* in 1696. Though it had never been regarded as a law, yet it produced a great influence on the further development of Hungarian criminal proceedings up to the mid-19th century. This work, otherwise, may well be regarded as one heralding a certain new effort to codify the penal law. An outstanding representative of this effort, Mihály Bencsik, professor of law at the Nagyszombat university and deputy of the same town to the Diet of 1712-1715, submitted a draft to this effect, but it never became an act. The new demands made by the practice of the early modern age, however, could not be fully met by these "domestic" solutions, thus the judges would often have recourse to foreign legal solutions, most frequently to what is known as *Constitutio Criminalis Carolina*.

In the tribal-gentilial society, every behaviour that caused any harm to an individual (life, bodily harm, honour), or to the property of the individual or of the gentilial joint family, would entail a retaliation depending on the arbitrariness of the offended family or *gens*. In the case of injuries caused to an individual or of losses caused to property, the offended individual or his/her relatives or *gens* might refrain from retaliating, provided, however, that the offender paid the offended party a compensation (*compositio*) which the offender and the offended and his/her relatives had mutually agreed upon, or more precisely, bargained for.

In the period of the patrimonial kingship, penal law was basically compensatory in character. By virtue of his

power, the king persecuted only those behaviours, and attached penal sanctions thereto, which offended or endangered his country (power) and his Church (religion), and also those causing losses to his properties. The king as a rule left the remedy of most harms did to individuals to the individuals themselves and/or to their families.

In the feudal age, delicts committed by those who from the 13th century were commonly termed as "public evil-doers" (*malefactores publici*), were normally punished by death sentences. In the case of other delicts, the principle of compensation prevailed, in some cases in such a way that redemptive and compensatory obligations and penal sanctions were alternately applied as punishments. Accordingly, one sentenced to death would either be beheaded, or could redeem the capital punishment by paying a compensation to the offended or to the relatives thereof. In connection with this and under the effect of canon law, distinction between the groups of public and private delicts had also appeared in Hungarian law by the 14th century. Initially, ranked among public delicts were such ones as entailed clearly penal sanctions – as specified by Werbőczy under titles 14 and 15 of his *Tripartite* – and when redemption was out of place. Every other felony, in turn, ranked among the private offences. After the appearance of Werbőczy's work, it was not until the judicial reform of 1723 that the respective sphere of public and private delicts was delineated anew, but in practice, the situation brought about by legal regulation was further changed – especially in respect of non-nobles – by the customary law-based *Praxis Criminalis* from the first third of the 18th century.

Praxis Criminalis had been put into practice by county and manorial courts in their criminal proceedings back in the late years of the 17th century, and the procedural and substantive rules of this code were also enforced in respect of serfs and townspeople. Consequently, in their cases certain delicts, which according to the Hungarian law ranked among the private delicts, were qualified as public ones. In contrast, as the 1687 Diet rejected the legal confirmation of the status of the estates, the customary law of *Praxis Criminalis* could not be applied to noblemen. Consequently, any delict might be either public or private delict depending on the legal status of the offender. For example, a serf might be convicted of involuntary homicide by virtue of the substantive law of *Praxis Criminalis*, that is, in a criminal action, while a noble was condemned of the same offence in a normal civil action.

The notion of a delict had not been defined clearly even in the late period of feudalism, but from the 18th





century on, several – and several kinds of – definitions were proposed by outstanding Hungarian authors. These definitions usually made distinctions between the individual delicts and specified their important criteria according to whether they offended against the public (community) or only against an individual, or according to the kind of procedure, in which the perpetrator was (or might be) condemned.

In general, qualifying as a public delict (*delictum publicum*) was any felony which was injurious to the public, in the case of which proceedings had to be instituted *ex officio*. Public delict might be “capital” and “civil”, otherwise “civil political” and “criminal act” and “misdemeanour, infraction”, respectively.

Qualifying as a private delict (*delictum privatum, delictum civile*) was any delict that caused harm to an individual or losses to that individual’s property. In this case the offended might institute an action for compensation, that is, might make claim to a condemnation involving a fine. Since such overt delicts involved only one-sided, pecuniary obligations, these were collective termed as “forfeit money-offences” to distinguish these private delicts from the capital crimes.

In the modern penal law, a necessary element of any criminal act is one of the outward forms of guilt, namely contemplation, or else wilfulness (*dolus*) and negligence (*culpa*). However, at the early state of the historical development of Hungarian feudal law, usually the objective legal injury formed the only basis of punishment. The actual guilt of the offender was considered only in the case of certain delicts. In the case of homicide, partly the perpetrator’s guilt going with the legal injury, partly the legal injury in itself, independently of the guilt, served as a basis for punishment. As a public delict implied contemplation, purely penal sanctions were attached only to delicts which were wilfully committed. With private delicts, in turn, the objective offence continued to form the basis for punishment, that is, offender’s guilt was left out of consideration.

In addition to contemplation, in some delicts, *Praxis Criminalis* also considered negligation, regarding it as a lighter form of guilt, that is, in perpetrating a *crimen* sometimes a *culpa* was also sufficient to punish an offender. Outstanding Hungarian jurists in the 18th and 19th centuries tended to take standpoints corresponding to those of *Praxis Criminalis*. Thus in considering certain delicts they also regarded a slighter degree of negligence as being sufficient to punishment.

Forming a legal basis for punishment was the objective legal injury, that is, the one which was guiltily and wilfully caused. Under the feudal law, the latter was tan-

amount to violating law, to ignoring the divine and human laws, or to resisting the former.

Punishment aimed at retaliation and deterrence, that is, it did not only aim to retaliate a delict committed previously – because “they did wrong” (*quia peccatum est*) – but also to prevent both the offender and others from committing a new, or any other, delict, that is, that “they should not do wrong” (*ne peccatur*) at all. As concerns the aim of punishment, the mediaeval and the early modern Hungarian jurisprudence and legal practice made a clear distinction between the typically retaliating and typically deterring punishments. Belonging to the former type were the pecuniary and the *talio* punishments.

The *talio* punishment (*poena talionis*) was nothing else but a punishment proportional to and executed in the same way as the offence caused. *Talio* punishment were applied both in the period of the patrimonial kingship and in the age of ripe feudalism. Belonging to this group were – among others – such punishments as the beheading of the perpetrator of wilful murder or burning the delinquent alive by intended order.

The typical deterring punishments included maiming of the offender’s body, corporeal punishment and disgracing.

The *talio* punishments like maiming the body, disgracing and others were at the same time “reflecting punishments” as well. The latter were leaving lasting injuries, scars and other marks on the offender’s body that were also designed to indicate, that is, to reflect the crime he had committed. The severed hand, arm, ear, nose and branding the face and other parts of body with a hot iron all referred to such delicts as perjury or bodily injury (punished by severing of members) or as larceny or witchcraft.

The feudal and early modern age penology made a further distinction between the ordinary and extraordinary punishments (*poena ordinaria et extraordinaria*). Ordinary punishment denoted what might normally be imposed on the perpetrator of the given crime under the country’s acts or customary law. For instance, beheading formed for many centuries the ordinary punishment for wilful murder.

Extraordinary punishments were lighter than the ordinary ones to be imposed on a certain delict. Considering that public delicts ordinarily entailed capital punishment, their extraordinary punishment must have been lighter than that. The degree and kind of extraordinary punishment was not explicitly fixed either by law or by customary law, its assessment was left to the consideration of the acting judge. Therefore the extraordinary punishment was also termed as one “depending on the





judge" or "left to mitigation by the judge" or "left to the assessment of the judge" (*poena arbitraria*).

Especially in the period of the patrimonial kingship, but in the feudal age as well, it was basically the act itself, that is, the overt criminal act that underlay the determination of the punishment to be imposed. Other circumstances, mainly those having been in connection with the perpetrator were not, or only secondarily, taken into account. From the late 17th century, perhaps due to the effect of *Praxis Criminalis*, in assessing punishments for public delicts, several other – possibly extenuating or aggravating – circumstances were then also considered. Dealing with the individual delicts, *Praxis Criminalis* itself specified the related extenuating or aggravating circumstances in separate groups.

The most important groups of delicts were as follows:

a) public capital crimes (*crimina*) such as infidelity (high treason), lese-majesty, offences against the country's public safety, offences against public authenticity, heresy, offences against life (wilful homicide and murder), "sins of debauchery" (adultery, bigamy, concubinage, fornication, habitual prostitution, sodomy), offences against property (larceny, robbery), witchcraft and blasphemy

b) public civil delicts included several lesser misdemeanour, trespasses such as official misdemeanour, contempt of court, abuses by lords, commercial offences

c) Forming a special group were the private delicts (*delicta privata*) such as the arbitrariness which, if committed against a nobleman (major arbitrariness), entailed capital punishment, and it was qualifying as lesser arbitrariness, if the offended was not a nobleman. This group also included dishonour, causing harm to things of others, breach of honour and similar cases.

HUNGARIAN CHURCHES AND THEIR LEGAL LIFE

Analysing the public law status and administration of the Hungarian Catholic Church in the middle and early modern ages is subject to be dealt with by another study in this volume. Thus the rules of *ius ecclesiasticum*, which governed the place of the Church within the state, will not be analysed here. At the same time, it seems worth discussing here (beyond the questions so far examined) the role the *ius canonicum* played in the everyday life of Hungary's population in those centuries. Virtually a state within the state, the Church also had a law of its own. In the middle ages when everyone was sub-

jected to two separate systems of law, the problem of demarcating the canon law from the secular one was of a great moment. This demarcation posed not only a theoretical but also a practical problem to every devout Christian. Namely, these two legal systems were applied by two judicial hierarchies as well. Consequently, in any given case it had to be decided whether the ecclesiastical or the secular court was competent to give judgement on the case and to execute the resulting sentence. Since the Church always led in formulating its own rights, the practical side of the problem was to determine the point where the jurisdiction of ecclesiastical courts ceased or where that of the secular ones commenced. Initially, the dividing line drawn between the divine and the human law had shown the superiority of canon law. Later, however, the superiority of canon law lessened throughout Europe, including Hungary, and the exact delineation, in fact, limitation of the scope of ecclesiastical jurisdiction became a requirement. This process continued until the situation has completely changed. This change in Hungary was going on in the following way.

The competence of an ecclesiastical court was in principle determined either by the personage of the litigating parties (*ratione personae*) or by the subject-matter of a case (*ratione rei*). In Hungary, the principle of the privilege of clerics (*privilegium fori*) had played an important role ever since the early period of legislature. Legal regulations dating from the early 13th century repeatedly corroborated this privilege. Issued in 1222 to the clergy, a Charter of liberties specified the circle of those enjoying the privilege, extending it to practically every clergyman. A layman was supposed to institute any action against a clergyman before an archbishop, bishop, archdeacon, deacon or other ecclesiastical judge. A cleric, in turn, had to do the same in a secular case before a secular judge. As could be observed in other European countries too, secular actions in rem were removed from the jurisdiction of ecclesiastical courts. Under the Bereg agreement, King András II ensured the adjudicative power of the Church in all cases of clerics, "*exceptis iudiciis terrarum*". However, he had to confirm the ecclesiastical nature of actions in matters concerning marriage and dowry.

In the late 13th century, the jurisdiction of ecclesiastical courts had been taken for granted, so no further regulation was needed. Matrimonial cases were quite naturally regarded as falling within ecclesiastical jurisdiction. Furthermore, it was not the laymen who were prohibited from ecclesiastical proceedings, but the clerics were not permitted to file a claim in matters falling within ecclesiastical competence with secular forums or





to maintain actions, give responses and undertake guarantees and responsibilities at those forums. Should they still do so, they would be subject to excommunication in just the same way as the secular judges who had forced them to do so. Resorting to secular forums was especially banned in matters concerning the offences of clergymen and alms given for ecclesiastical purposes. An ecclesiastical procedure had by all means to be conducted in strict compliance with the canons. From that time on, the rules of Roman procedural law had to be fully observed at the ecclesiastical courts. The spheres of competence as they had taken shape by the 14th century were mutually held in respect, and the cases falling within the other court's competence were also mutually transferred. The first more detailed description of competences was included in a diploma issued by King Louis I in 1344. Accordingly, falling within ecclesiastical competence were the matrimonial cases and the related matrimonial property issues such as dowry, engagement presents and the daughter's quarter. The removal of these issues from the secular competence, in fact, followed a tradition dating from the age of the Árpád dynasty. Offences of clerics and women also qualified as ecclesiastical issues. Offences of clerics belonged to this category on account of *privilegium canonis*, while those of women on account that women were conceived by the ecclesiastical judiciary as persons needing defence. It must have been based on similar consideration that cases of the rape of virgins – and of women in general – fell within ecclesiastical jurisdiction. Judging on cases of adultery was shared between these two kinds of legal forums: in such cases, instituting the civil action belonged to the ecclesiastical, while the trial itself to the secular court. Last wills also belonged to the clerical sphere. In actions in rem a bishop was not permitted to impose punishment on his opponent, but might retaliate any other ecclesiastical offence by excommunication and *interdictum*. And even though the ecclesiastical court might not give judgement on an explicit possessory action, it might appraise the daughter's quarter and arrange for its hereditary transfer, and this was regarded as part of its normal activity.

While the adjudicative power of ecclesiastical courts had remained largely unregulated and the conflicts in questions of competence had not been solved on the grounds of customary law in the 14th century, from the first years of the 15th century the state attempted to settle this problem.

Until then, there had been no arbitrator in the dis-

putes over the ecclesiastical and secular competences, indeed, it was the Pope as the highest instance who decided on questions of principle, and the theory of canon law had made it possible to declare any issue as belonging to the ecclesiastical sphere.

Though in practice the secular court had been able to interfere with the ecclesiastical procedure, but for lack of an underlying principle, it was only King (Emperor) Sigismund's resolute ecclesiastical policy that could bring about a radical change in this field. Created upon request by royal towns and communities, article XIV of his *decretum* of 15 April 1405 declared the principle that ecclesiastical courts were not permitted to deal with and decide on secular matters, and reversely. Moreover, the king and the country's grand judges were only entitled to give judgement on disputes between the secular and ecclesiastical judges. The fact that the royal court was vested with the competence to decide on jurisdictional conflicts was more consequential than it seemed in itself, because thereby the ecclesiastical courts also became part of the nation-wide judicial organization.

In the second part of the same century a whole series of laws exhaustively regulated the sphere of competence of ecclesiastical courts, which by and large agreed with the related customs of the previous centuries. Most of the related laws empirically listed the "nine cases", while others only mentioned a few of them.

It was only Act III of 1462, which was probably edited by a notary proficient in canon law, that tried to base the regulation on some principles. Accordingly, falling within the competence of ecclesiastical court were as follows: 1) issues related to the sacraments; 2) problems of faith and heresy, including suspicion of the latter; 3) testaments and the related complementary legal transactions; 4) matrimonial affairs, taken in a broad sense, especially claims to dowry, bridal gift, daughter's quarter, provided the claimant would not make claim to landed estate; 5) any legal contest, substantive or personal, related to the delivery of the ninth¹⁶; 6) actions against those violating the ban on usury and interests; 7) affairs of widows and orphans, except claims to landed estates; 8) violation of oath and perjury (that is, actions deriving from contracts concluded under oath), including the legal contests related to the punishments imposed; 9) any other issue where the disciplinary power of the Church was in place.

In addition to removing the possessory actions from the competence of ecclesiastical courts, the feudal legislation also sought to threaten with punishment those exceeding the powers which had previously been defined

16 See footnote supra 8.





by law. Later laws also renewed the principle of separating the ecclesiastical from the secular judicature.

With its authority greater than that of laws, the *Tripartitum* clearly showed the nobility's adverse attitude towards the ecclesiastical judicature. Werbőczy refrained from answering the question of what issues fell within the competence of ecclesiastical courts, so he failed to deal with the "nine cases" of legal regulation. However, he deemed it appropriate to refer to certain cases where the restriction of the ecclesiastical competence seemed to be necessary. The *Tripartitum* includes – among other things – the ancient legal principle that ecclesiastical courts were not entitled to give judgement on possessory actions, consequently any diploma issued or judgement given in this matter was not binding on anyone. In its tendency, the *Tripartitum* unambiguously sought to push the ecclesiastical judicature into the background.

In connection with the ecclesiastical judicature, the 15th century government's ecclesiastical policy and legislature aimed to exercise a sort of tutelage over the ecclesiastical courts, to restrict their field of operation, and to reduce them to a state of subordination. The period of the Jagiellon dynasty, that followed the early absolutism of King Matthias, saw the appearance of public opinion in the legislature as a means of coercion of that age. The state had several options to influence the ecclesiastical courts, here instead of enumerating all of them, only one is mentioned, namely that judicial orders issued by the royal chancellery could halt the ecclesiastical proceedings at any stage of the action.

By the end of the 15th century, it had become an established practice that all legal contests of the urban bourgeoisie had to be commenced before the magistracy, and from there were the claims of ecclesiastic nature transferred to the ecclesiastical courts. The struggle of the urban bourgeoisie to prevent the ecclesiastical courts from interfering with issues pertaining to urban proprietary rights also resulted in serious restrictions of ecclesiastical judicature in the testamentary field. At any rate, the decisive moment was that the towns and mar-

ket towns tended to augment their adjudicative power at the expense of the ecclesiastical courts, and to achieve this, they did not shrink even from resorting to force.

The extremely high expenses the ecclesiastical proceedings involved in that age formed an important factor of the wide-spread dissatisfaction with the ecclesiastical procedures, this particularly held true of proceedings continued at the Roman *Curia*. The prepossession of ecclesiastical courts towards the rich and mighty, the confusions caused by the frequent papal legations and the more favourable position of the privileged all largely contributed to the rise of a prejudice against such courts in the country. Soon after the Mohács defeat (1526), Hungary as a state lost its sovereignty for centuries. As a consequence of the reformation, the organization of Hungary's mediaeval Church also collapsed.

In the period of counter-reformation, the ecclesiastical judicature also underwent changes, but it could never regain its former importance. It was only during the Turkish occupation, when the secular courts could not work properly, that the ecclesiastical courts could get along somewhat better. Act XV of 1647 narrowed down the competence of ecclesiastical courts to the formal problems of testaments and to issues connected with matrimony and the violation of oath. Within these narrow bounds, however, they might give judgement even on the matrimonial problems of Protestants.

Though the Hungarian Calvinists had synodical courts in some places in the 17th century, but they ceased by the end of the same century under circumstances unknown – probably due to the increased religious oppression. Matrimonial cases of Protestants – as this was the only field where they differed from the rest of the country's population in terms of private law – were remitted by the *Carolina Resolutio* to the ecclesiastical courts. However, this abuse was ceased by Joseph II in 1786 when the competence of ecclesiastical courts was restricted to the Catholic and inter-marriages. With the introduction of the civil marriage in the late 19th century, ecclesiastical courts almost completely lost their importance, slight as it were.

DEVELOPMENT OF HUNGARIAN LAW AND EUROPE

It can be only hoped that from all what has been discussed above it appears despite its several special traits appearing mainly in its particular legal institutions, principles or in some different traits of Hungarian legal

culture, Hungarian law always bore the marks of the traditional European legal system throughout its development in the middle and early modern ages.

Joining in the European environment relative late,





Hungarians could find certain patterns in their original, natural forms, which they found appropriate, feasible and advantageous to follow. Having been wearing away among several European great powers for a long time, the Hungarian nation could also use these patterns fairly well in its struggle to retain or regain its sovereignty under the pressure of those powers. Of the universal norms that formed part of the common European cultural heritage, the most important were those regulating the everyday life. The acceptance of the "rules of game" of the Christian Church and the way it transmitted the scholastic knowledge also involved that circle of legal principles within which Hungarian law could find its proper place among the other European legal systems. The effect of the scholarly laws on Hungarian law in the middle ages is unquestionable. The extent of this effect may be disputed, but the fact itself is not. The principles of the Roman-based law of canonical procedure became an immanent part of the mediaeval Hungarian law. Besides the local specialties of *familiaritas*, rules of the European seigniorial law were also taken into account. Similarly to their other European peers, Hungarian jurists also drew on the inexhaustible source of Roman law. They may have done so to a somewhat lesser extent than others in Europe, but it was never disputed that despite some singular traits, the territories under the sovereignty of the Hungarian king belonged to the broad scope of validity of the European *ius commune*. And owing to the nature of the emerging legal problems, this could not have been otherwise. All what we know of the late mediaeval Hungarian customary law, the *approbata Regni consuetudo*, shows that the scholarly laws could fill up the gaps, to which the domestic rules with their specific contents induced by the particular Hungarian circumstance (custom, law, statutes, privileges) did not extend. The politically-motivated idea of separatism is – as has been mentioned – of a later and explicitly nobiliary origin. However, the legal principles of western (imperial) origin were important for the urban bourgeoisie that carried a slight political, but so much the greater economic weight. This is shown by data on Hungarian

students attending universities, both at home and abroad, and also by the widespread use of law-books in the early modern age. The high popularity of Werbőczy's *Tripartitum*, often referred to as "the Bible of the nobility", apparently turned the attention of the nobility, which enjoyed the monopoly of applying the law, to the specifically Hungarian institutions of law. But the system of Hungarian private law could not have been able to work without the continual presence of the *ius commune* in the background, almost like a "subterranean stream". Werbőczy did not regard himself his *Tripartite* as a step forward towards a legal separatism, in fact, what he wanted was to collate his work with the European legal practice in an effort to meet the changing demands of his age, and by this, to consolidate the Hungarian law and to furnish a basis for its renewal. The authors of the *Quadripartitum* deemed it important at the time to declare that the imperial law was no longer valid in Hungary.

The absurdity of political resistance to foreign law was well shown by the fact that the European public opinion of that age could not perceive at all the demand for legal independence which had been articulated by the Hungarian nobiliary circles. On the contrary, as Arthur Duck, an outstanding English learned lawyer in the 17th century, put it¹⁷: "every Hungarian is convinced of the fact that all Hungarian laws originate from imperial (Roman) sources, in the first place, from the imperial (Roman) law: Hungary's customary law is arranged by the standards and method of the *ius commune*." Indeed, the slowly developing Hungarian jurisprudence showed the acceptance of the modern European legal notions in the early modern age by a "*tacita receptio*" resulting from a legal practice that often referred to old customs and general legal principles. The Hungarian legal life received the European common law not through great legislative acts, but through a wise consideration of what society really needed. Perhaps even against their political convictions, Hungarian learned lawyers, by their professional education, felt free to draw on this "subterranean stream".

17 Original text is in Latin language. (Editor)



nológiája és topográfiaja 996–1948 (Chronology and topography of Hungarian secondary schools from 996 to 1948). Budapest, no imprint; PIRIGYI, István. *A magyarországi görög-katolikusok története* (History of Greek-Catholics in Hungary). Nyíregyháza, 1990; RADIC, Emlilan. *Die orthodox-orientalischen Partikularkirchen in den Ländern der Ungarischen Krone. Eine rechtsgeschichtliche Abhandlung*. Budapest, 1886; RÉVÉSZ, Imre. *Egyháztörténelem* (Ecclesiastical history). 2 vols. Budapest, 1955; SZIGETI, Jenő. "És emlékezzél meg az útról ..." *Tanulmányok a magyarországi szabadegyházak történetéből* ("And remember the way ..." Studies on the history of the free churches in Hungary). Budapest, 1981; TIMKÓ, Imre. *Keleti kereszténység – keleti egyházak* (The Eastern Christianity – eastern churches). Budapest, 1971; ZOMBORI, István (ed.). *Magyarország és a Szentszék kapcsolatának 1000 éve* (Thousand years of relationships between Hungary and the Holy See). Ed. by the Working Panel on the Hungarian Encyclopaedia of Ecclesiastical History. Budapest, 1996; ZSILINSZKY, Mihály. *A magyarorhoni protestáns egyház története* (History of the Hungarian Protestant Churches). Budapest, 1907; VENETIANER, Lajos. *A magyar zsidóság története a honfoglalástól a világhíború kitéréséig* (History of the Hungarian Jewry from the Hungarian Conquest [A.D. 896] to the outbreak of World War I). Budapest, 1922.

BÉLA SZABÓ. Development of law in Hungary: the first eight centuries

BÓNIS, György, DEGRÉ, Alajos and VARGA, Endre. *A magyar bírósági szervezet és perjog története* (The history of Hungarian judicial organization and procedural law). Budapest, 1961; DÓSA, Elek. *Erdélyhoni jogtudomány* (Jurisprudence in Transylvania). Kolozsvár, 1861; ÉRDUJHELYI, Menyhért. *A közjegyzőség és a hiteles helyek története Magyarországon* (History of the notary public function and the medieval authentic places in Hungary). Budapest, 1878; FAYER, László. *Az 1843-i büntetőjogi javaslatok anyaggyűjteménye* (Materials of the 1843 penal-law propositions). Budapest, 1896; FRANK, Ignác. *Principia iuris civilis Hungarici – A közigazgatás törvénye Magyarországon* (The law of public administration in Hungary). Pest, 1845; HAJNIK, Imre. *A magyar bírósági szervezet és a perjog az Árpád- és a vegyesházi királyok alatt* (Hungarian judicial organization and procedural law under the reign of kings from the Árpád House and the subsequent different dynasties). Budapest, 1899; HAJNÓCZY, József.

Dissertatio politico-publica de regiae potestatis in Hungaria limitibus (1791); *idem*. *De comitiis Regni Hungariae deque organisatione eorumdem dissertatio juris publici Hungarici* (1791); *idem*. *Extractus legum de statu ecclesiastico catholico in Regno Hungariae laetarum* (1792). *idem*. *De diversis subsidiis publicis dissertatio* (1792); HUSZTY, István. *Iurisprudentia Practica seu commentarius novus in Ius Hungaricum*. Budae, 1745; KASSICS, Ignác. *Enchiridion seu extractus benignarum normalium ordinationum regiarum* (A collection of norms), 1724–1824, no imprint; KELEMEN, Imre. *Institutiones iuris privati Hungarici* 1814, and in Hungarian. KELEMEN, Imre and CZÖVEK, István. *Magyar hazai polgáris magános törvényről írt [sic!] tanítások* (Instructions written about Hungarian private law). Pest, 1822; KITONICH, János. *Directio methodica processus iudicarii ... Tyrnaviae*. 1619; *Id.*. *Centuria dubietatum – et regulae iuris antiqui patrii et canonici*. Tyrnaviae. 1619 (?); KOLLÁR, Ádám. *Historia diplomatica iuris patronatus apostolicorum Hungariae regum* (1761); *Id.*. *Iurium Hungariae in Russiam minorem et Podoliam. Bohemiaeque in Oswicensem et Zatoriensem Ducatus Explicatio*; *Id.*. *Historiae Jurisque publici Regni Hungariae Amoenitates*. 1783, no imprint; KOMÁROMI, András. *A magyarországi boszorkányperek oklevéltára* (Collection of records on Hungarian witchcraft trials). Budapest, 1910; KOVACHICH, Márton György and KOVACHICH, József Miklós. *Vestigia Comittorum*. Pesthini, 1790; *Id.*. *Supplementum ad Vestigia Comittorum...* 3 vols. Budae. 1798–1801; *Id.*. *Lectiones variantes decretorum comittalium ... Pesthini*, 1816; *id.* *Sylloge decretorum comittalium incluti regnie Hungariae*. 2 vols. Pesthini, 1818; KÖVY, Sándor and FOGARASI, János. *A magyar közpolgári jogtudomány elemei* (Rudiments of Hungarian civil law). Pest, 1843; MEZNERICS, Iván. *A megyei büntető igazságszolgáltatás a XVI–XIX. században* (Criminal jurisdiction in Hungarian counties in the 16th–19th centuries). Budapest, 1933; SZABÓ, Béla. "Előtanulmány a magyarországi joghallgatók a külföldi egyetemeken a XVII–XVIII. században készült disputációinak elemzéséhez" (Prolegomena to the analysis of disputations of Hungarian law students attending foreign universities in the 17th–18th centuries). In: *Publicationes Uniersitatis Miskolciensis*. Miskolc, 1993; SZENTIVÁNYI, Márton. *Corpus Juris seu decretum generale ... Tyrnaviae*. 1696; SZLEMENICS, Pál. *Közönséges törvénytészi polgári magyar törvény* (Hungarian civil law for ordinary courts of justice). Pozsony. 1823; *Id.*. *Fenyítő törvénytészi magyar törvény* (Hungarian penal law for penal courts). Buda. 1836; SZOJKA, Kamill. *A földesúri bírás-*



kodás az Árpád-kori Magyarországon (Soke [manorial judicature] in Hungary in the age of the Árpád dynasty). Budapest, 1944; VUCHETICH, Mátyás. *Institutiones iuris criminalis hungarici*. Buda, 1819; WERBŐCZI, István. *Tripartitum opus juris consuetudinarii incltyi Regni Hungariae*. Vienna, 1517.

ANDRÁS GERGELY. Rise of the modern Hungarian state – 1790–1867

BÁCSKAI, Vera and NAGY, Lajos. *Piackörzetek, piac-központok és városok Magyarországon 1828-ban* (Market districts, market centres and towns in Hungary in 1828). Budapest, 1984; BALLAGI, Géza. *A nemzeti újjászületés kora (1815–1847)* (The age of the national renewal, 1815–1847). Budapest, 1897; BENDA, Kálmán. *Emberbarát vagy hazafi? Tanulmányok a felvilágosodás korának magyarországi történetéből* (Philantropist or patriot? Historical studies on the age of the Hungarian Enlightenment). Budapest, 1978; BEREND, Iván T. and SZUHAY, Miklós. *A tőkés gazdaság története Magyarországon 1848–1944* (History of the capitalist economy in Hungary, 1848–1944). Budapest, 1974; DEÁK, Ferenc. – *beszédei* (Összegyűjtötte Kónyi Manó) (Collected speeches of Ferenc Deák. Coll. and ed. by Manó Kónyi). Budapest, 1903; ERDŐDY, Gábor. *A magyar kormányzat európai látóköre 1848-ban* (The European political horizon of the Hungarian government in 1848). Budapest, 1988; F. KISS, Erzsébet. *Az 1848/49-es magyar minisztériumok* (Hungarian ministries in 1848–1849). Budapest, 1987; FÉNYES, Elek. *Magyarország statistikája* (Statistics of Hungary). 3 vols. Pest,

1842–1843; GERGELY, András. *Egy nemzetet az emberiségnek. Tanulmányok a magyar reformkorról és 1848-ról* (A nation to mankind. Studies on the Hungarian Reform Era and on 1848). Budapest, 1987; GERGELY, András. *Széchenyi eszmerendszerének kialakulása* (The development of István Széchenyi's world of ideas). Budapest, 1972; GOOD, David. *The economic rise of the Habsburg Empire, 1750–1914*. Berkeley. Los Angeles. 1984; GÖLLNER, Karl. *Die Siebenbürgische Militärgrenze. Ein Beitrag zur Sozial- und Wirtschaftsgeschichte 1762–1851*. Munich, 1974; KESSLER, Wolfgang. *Politik, Kultur und Geasellschaft in Kroatien und Slawonien in der ersten Hälfte des 19. Jahrhunderts*. Munich, 1981; KOSÁRY, Domokos. *A Görgey-kérdés története* (A history of the Görgey question). Budapest, 1995; LACKÓ, Mihály. *Széchenyi és Kossuth vitája* (Dispute between István Széchenyi and Lajos Kossuth). Budapest, 1977; SPIRA, György. *Kossuth és alkotmányterve* (Lajos Kossuth and his draft constitution). Debrecen, 1989; SZABAD, György. *Forradalom és kiegyezés választóján 1860–61* (At the crossroads: revolution or compromise, 1870–61) Budapest, 1967; SZÉCHENYI, István. – *válogatott művei* (Selected works of István Széchenyi. Ed. by György Spira). 3 vols. Budapest, 1991; TAKÁCS, Péter. *Deák Ferenc politikai pályája* (Ferenc Deák's political career). Budapest, 1994; STEIER, Lajos. *A tót nemzetiségi kérdés 1848–1849-ben* (The Slovak nationality question in 1848–1849). Budapest, 1937; URBÁN, Aladár. *Batthyány Lajos miniszterelnöksége* (The prime ministry of Lajos Batthyány). Budapest, 1986; VARGA, János. *A jobbágyi földbirtoklás típusai és problémái 1767–1849* (Types and problems of serfs' land tenure, 1767–1849). Budapest, 1967.

PART II

GÁBOR MÁTHÉ and FERENC PÖLÖSKEI.
The Hungarian bourgeois state – 1867–1944

BRAUNEDER, Wilhelm (ed.). *Juristen in Österreich 1200–1980*. Vienna, 1987; CSIZMADIA, Andor. *A magyar közigazgatás fejlődése a XVIII. századtól a tanácsrendszer létrejöttéig* (Development of Hungarian public administration from the 18th century to the introduction of the (local) council system [1950]). Budapest, 1978; DEGRÉ, Alajos. *A magyar gyámsági jog kialakulása a dualizmus korának gyámsági kódexéig* (De-

velopment of the Hungarian law of guardianship until the Code of Guardianship of the Age of Dualism). Budapest, 1977; DIÓSZEGI, István. *A hatalmi politika másfél évszázada 1789–1939* (One century and half in the sign of power policy, 1789–1939). Budapest, 1994 [Historia Könyvtár, ed. by Ferenc Glatz]; EGYED, Ákos. *Falu, város, civilizáció. Tanulmányok a jobbágyfelszabadítás és a kapitalizmus történetéből Erdélyben 1848–1914* (Village, town and civilization. Studies on the history of the emancipation of serfs and capitalism in Transylvania, 1848–1914). Bucharest, 1981; EÖT-

