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The Crown of St. Stephen as a Symbol of Legal Continuity and Hungarian Constitutionalism (Historical Background)

Abstract

In Hungarian history, the Crown of St. Stephen was an important relic symbolizing the unity of the Hungarian state. It was not merely a coronation jewel or symbol of royal prerogatives, but a respected element of the country's historic "millennial" constitution. Although the doctrine associated with it was a unique Hungarian constitutional theory, symbolizing national independence, it was flexible enough to serve various political ideas and ambitions. The Crown has always embodied the monarchical form of the Hungarian State, and its sacred character symbolized the strong alliance of the monarchy with the Catholic Church. Is this historical doctrine compatible with the values and requirements of modern Europe and the requirements of present-day Hungarian constitutionalism?

Keywords: the Crown of St. Stephen, constitutionalism, legal continuity, the doctrine of the Crown of St. Stephen

The Hungarian people saw the state as a community organized for the good of the whole, embodied in the Holy Crown, and therefore sees the Holy Crown as, on the one hand, a symbol of Hungarian statehood, which externally symbolizes the sovereignty and international independence of the Hungarian state *vis-à-vis* other states; and, on the other hand, embodies a power rooted in the nation, belonging to the king and the people together.¹

The doctrine of the Holy Crown was for a long time the basis of the historic, unwritten constitution of Hungary, on which the idea of the Hungarian state was built. According

¹ Timon, *Magyar alkotmány*, 103–4; Hantos, *The Magna Carta*; Pocock, *The Ancient Constitution*.

to historical tradition, Pope Sylvester II gave the Crown to Prince Stephen of Hungary, who was crowned with it in the year 1000. The Crown, which was recently transferred from the National Museum to the Parliament, has become the embodiment of the unity of the Hungarian State and the unity of the nation. The Crown represents transcendental power.² It can be interpreted in three ways: firstly, as a visible jewel made of gold and precious stones; secondly, as an “invisible, imaginary entity” under which the image of the Kingdom and the State was hidden. Finally, a third interpretation in the form of the cult of the Holy Crown referred to the legitimacy of royal power, state liberties or any other idea in the political community and was used by various actors expressing political aspirations.³ The doctrine of the Holy Crown became the key to the political and economic independence of the nation, and the content of the doctrine of the Holy Crown ensured for centuries the territorial integrity and survival of the lands of the Hungarian Crown with an emphasis on the national character of ownership.⁴

The purpose of this text is to provide a concise overview of the history of the Holy Crown doctrine in Hungary. The doctrine is firmly rooted in Hungarian law and continues to influence various concepts that arise at the intersection of politics, social science and law. Also, in recent years, the idea has come up several times, raising concerns for the European Union and Hungary’s neighboring states. The idea of the Crown is discussed as a subject of not only legal but also anthropological research.

The mention of the Crown as a symbol appears relatively early, as early as the time of St. Stephen. In 1027, St. Stephen, in his will, mentioned it as an embodiment of secular power sanctified by the church. Since the Middle Ages, St. Stephen’s Crown has become a national symbol. According to legend, it was given to Prince Stephen of the Arpadian dynasty (later beatified) by Pope Sylvester II in 1000. The Crown – as historical research shows – consists of two parts. The lower part is of Greek origin. In 1074, this part of the Crown was given to King Géza I by the Byzantine Emperor Michael VII Dukas. Later, it was combined with the lower part of the so-called Latin Crown.⁵ On the so-called Greek part of the Crown, which the Byzantine Emperor Michael VII Dukas sent to the Magyars, there is an inscription (γεωβιτζας πιστος κραλης τουρκιας – *Geōbitzas pistós králēs Tourkias*): *Geza, the faithful King of the Turks*. Emperor Michael VII referred to the Hungarian lands as the “land of the Turks”, which was later adopted by Arab historians and in later centuries by Hungarian linguists who attributed the Hungarian nation to Turkish origins. The Crown, consisting of a Latin and a Greek part, represents the connection of the state and the nation with both the West and the East. There are few countries in Europe that can boast of such traditions. The Crown survived as a symbol of the decline of the feudal state, but until the early 19th century, it symbolized the territorial and legal unity of the state. From the middle of the 19th century, all Hungarian citizens, including those of Slavic and Romanian origin, were associated with the concept of the Hungarian Crown.

The Crown then symbolized not only the king, but also the multitude electing the king, the church leaders and the knighthood (nobility). And this idealism guaranteed for

² Bertényi *et al.*, *Királyok könyve*, 28.

³ Teszelszky, “The Crown of Hungary”, 169–70.

⁴ Szladits, “A Comparison of Hungarian Customary Law”, 167.

⁵ Bertényi *et al.*, *Királyok könyve*, 28.

several centuries the people belonging to the Crown (the privileged layer) their rights and powers as a kind of constitution. Werbőczy's *Index Tripartitum*, codified in 1514, was promulgated as an unwritten constitution that contained, among other things, customary laws related to the idea of the Crown. Centuries after Werbőczy also preserved elements of the doctrine of the Holy Crown developed in the Middle Ages. According to this, the King, the Church hierarchs and the nobility were members of the Holy Crown.⁶ Serf peasants were not members of the Crown on an equal footing with the nobility, and this only changed in 1848. The Crown remained a symbol of the state to which all owed allegiance.⁷

The idea of the Crown as a separate legal entity stemmed from the historical development of the Hungarian State. A better understanding of the evolution of this mystical and mythical concept over the centuries requires a summary of the thousand-year existence of the Crown. As the idea evolved in times of peace, war and internal conflicts, jurists and historians voiced similar opinions, which gradually refined and became the prevailing doctrine, in which the Holy Crown as the supreme person retained its supreme position and embodied sovereignty even in times of a republican form of government. According to András Tamás, "the doctrine of the Holy Crown is even older than Bodin's concept of sovereignty."⁸

The consequence of this organic conception of law is that if one organ or factor of the principal power united in the sacred Crown is permanently impeded from acting, the other organ has not only the right but also the duty to replace it and ensure the continuity of the State. If the king is absent or there are impediments preventing him from holding office, the functions of public authority to which the king is entitled by virtue of the power of the sacred crown pass to the other component of the sacred Crown, i.e., the people and Parliament, on its behalf. The function of the National Assembly is to ensure that the powers vested in the King are exercised, partly directly and partly through temporary bodies created by the King (e.g., county government).

The Holy Crown was the source of the right of possession of estates (*Sacra Corona radix omnium possessionum*) in Hungary. Hungarian land ownership belonged to the Holy Crown in such a way that the nobility did not have full rights to the occupied land. Therefore, every landowner possessed land (*földbirtokos*) but did not own it (*földtulajdonos*).⁹ In Hungary, it was also forbidden to transfer land into the hands of nobles of foreign descent. The sacredness of the Crown came from the fact that the first ruler crowned himself with it on the Feast of the Ascension of the Blessed Virgin Mary, and thus offered the Mother of Christ, the Blessed Virgin, the symbol of this community, the Crown symbolizing the State. It was, therefore, the mystical symbol of this act of devotion. The first and most important principle of the doctrine of the Holy Crown was that it was received in mystical and public law not as an object or symbol of

⁶ Barna *et al.*, *Magyar állam*, 66–7.

⁷ The Hungarian statehood personified by the Crown consisted of a material part (territory) and a personal part, the people and the ruler. Together these elements constituted the *totum corpus Sacrae regni Corone*. On the basis of the doctrine, Hungary demanded from Galicia the return of the Halich lands, which the Kingdom of Hungary possessed in the 14th century. Similarly, Hungarian politicians refused to accept the separation of Slavonia and Transylvania from the state in the second half of the 19th century.

⁸ Tamás, "Közzjogi mítoszok", 466–8.

⁹ Szabó, *A magyar korona*, quoted after: Zétényi, *A Szent Korona*, 269.

symbolic power but as a living and holy person. This sacrament of divine origin and the resulting power was a feature of the Holy Crown and could not be transferred to any other object, living person or community (including a nation). On August 15, 1038, the Feast of the Assumption of the Blessed Virgin Mary, St. Stephen offered Hungary, in the person of the Holy Crown, to the Mother of God. As a result of this offering, the Virgin Mary is the Queen of the country (*Regina Hungariae*), and Hungary is the country of the Blessed Virgin Mary (*Regnum Marianum*). As late as 1941, Gyula Székfü wrote that the doctrine of the Holy Crown remained intact until the interwar period. The Holy Crown continued to be the symbol of the State to which every subject owed allegiance; disloyalty was a crime against the Crown; the territory of the State was also under its jurisdiction.

Hungarian elites saw the State as a community of destiny (*sorsközösség*), a community organized for the good of the whole, embodied in the sacred Crown. It united and symbolized the entire constitutional public authority, the legislative, executive and judiciary, and embodied the system of local government, the territory and the members of the country, so that territory and membership were closely linked, inseparable.¹⁰ The principle of the Holy Crown was also the eternal freedom of Hungary (*Hungaria semper libera*). The concept of freedom referred to constitutional liberties and political freedom internally, but also the independence of the state externally.¹¹

Legitimacy and Legal Continuity

A unique feature of Hungarian legal history is that the Holy Crown was necessary to fulfil the principle of legality in the national legal order. Another feature related to the doctrine of the Holy Crown was legal continuity (*jogfolytonosság*). It means that law-making while the country was under foreign influence was limited. In cases where the trinity Crown-King-Nation could not legally function and legitimate authority could not be exercised by the institutions described in the historical constitution, legal continuity could exist on the basis of partial legitimacy or common law principle.¹² Legal continuity was renewed after destructive foreign rule, e.g. in 1790, 1865, or turbulent transitions that changed the territorial shape of the countries of the Crown of St. Stephen, e.g. after 1920 (Treaty of Trianon), or after the rule of the Republic of Councils in 1919 (these governments were declared defunct in Horthy's time and all legal changes from the Bolshevik rule, erased).

In the 15th century, the Crown of St. Stephen, was explicitly recognized as a separate entity, distinct from the king, a legal person in its own right. At the beginning of the 16th century, Werbőczy, in his *Codex Tripartitum*, stated that the King and the collective of the people (the nobility) jointly exercise state power; they possess in mutual dependence the fullness of power. The source of royal power was the nation and, therefore, the nobility; all power was granted to the King by the act of coronation. The Crown was

¹⁰ Zétényi, *A Szent Korona*.

¹¹ Kmety, *A magyar közjog alapintezmenyei*.

¹² Zétényi, *A történeti alkotmány*, 162–70.

the embodiment of public power. According to Werbőczy, the nation was not divided into nobility and magnates, but the whole privileged class enjoyed equal rights (*una eadem nobilitas*).¹³

Originally, the king held all the land in the country as the paramount owner and superior. He had the right to grant land to subordinate lords as fiefs, who in turn gave land to their supporters and fiefs. In 1222, the nobility forced King Andrew II, one of the first rulers associated with the development of Hungarian constitutionalism, to issue the Golden Bull, i.e., a document in which the king guaranteed the nobility personal freedom and exemption from taxes but obliged them to military service. The bull also contained an *ius resistendi* clause, i.e., the right to oppose any illegal action by the king.¹⁴ Although the second bull of 1231 did not include the *ius resistendi* clause, it can still be considered the earliest medieval document in the formation of the Hungarian constitution. King Bela IV's predecessors (1235–1270) had given so much land to their supporters that when he took the throne, the royal domain had shrunk to a relatively small area. It was also from this time that the doctrine of the Holy Crown began to evolve. The Crown of St. Stephen began to develop into a concept separate from the person of the king, with independent rights and liberties, to which the inalienable royal estates belonged.¹⁵

In the 15th century, the Crown of St. Stephen, henceforth called the Holy Crown, was clearly recognized as a separate entity, distinct from the King, a legal person in its own right. By the beginning of the 16th century, the Holy Crown derived from St. Stephen was the ultimate source of power, all authority came from it, the monarch and the people could only exercise power as members of the Crown, “but the Crown/authority never rested either with the king or exclusively in the hands of the people. The Crown existed in its own right and was a separate entity”.¹⁶ The phenomenon of the Crown as a source of power separate from and above the King can also be called a materialization of the concept of the Crown, embodied by the sacred Crown as a living being.

Hungarian public law treated the Crown as an independent person. This was due to the mystical nature of the Crown, which meant that the Crown could not be replaced or substituted. In Hungary, a coronation was only legitimate if the coronation act took place using the Crown from the time of St. Stephen. The reign of Joseph II in Hungary illustrates these relationships well. The king took power thanks to the tradition of the Crown, but the people (in the sense: nobility) transferred their power not directly to the king, but to the Crown, because Joseph II tried to rule without respecting the provisions of the unwritten Hungarian constitution (for this reason he did not crown himself, earning in Hungary the nickname *kalpos király* – the King in the Hat).¹⁷

Law and the State were the basis of the political existence of the Magyars in Central Europe. The country has gone through different historical vicissitudes. For 150 years, it was under Ottoman and Habsburg rule. From the beginning of the 18th century, it came back under Habsburg rule,¹⁸ without absolute independence, but with a tendency

¹³ Kardos, *A szentkorona-tan története*, 16–7, 28–9.

¹⁴ Bodolai, *The Timeless Nation*, 31–4, 40–1.

¹⁵ Kardos, *A szentkorona-tan története*, 12–4, 29.

¹⁶ *Ibidem*, 56–60.

¹⁷ Bartonic, *A magyar királykoronázások*, 75–7.

¹⁸ Perjés, *The Fall of the Medieval Kingdom*.

to increase the importance of the Hungarian part of the State in relation to the Austrian half. The lack of a unified state since the beginning of the 16th century¹⁹ formed in the Hungarian elite the need for continuity of state institutions. This law became the element replacing the non-existent state. Over time, once Hungarians advanced to having a state after 1867 that was limited in its decisions, it served to emphasize the “uniformity” of the state’s borders. This is how the doctrine of the lands of the Hungarian Crown, the doctrine of the Crown of St. Stephen, took shape. The genesis of the doctrine is a series of legal acts, e.g. the blood pact (*vérszerződés*)²⁰ from the 9th century, the laws from the time of St. Stephen (the King’s Will), the Golden Bull of 1222, Werbőczy’s *Tripartitum* of 1514, the April laws of 1848 and the Austro-Hungarian settlement of 1867. The doctrine of St. Stephen’s Crown was a historical Hungarian Constitution similar to the English Constitution because it consisted of numerous provisions established throughout history, it was an idea signifying the continuity of the state and the nation.²¹

The doctrine of the Crown of St. Stephen was a product of noble political thought. It survived the reforms of 1848 and became an organic part of Hungarian political culture and an essential component of the collective consciousness of the nobility and in modern times, the middle class. With the extension of rights and freedoms to the peasants in 1848, they too became members of the Holy Crown. In other words, until 1848, the members of the Holy Crown were the king and the nobility; after the Springtime of Nations and also after the Austro-Hungarian settlement, the members of the Crown were the king and all those with voting rights (at the end of the 19th century about 6% of the population had voting rights).²²

The Presence of St. Stephen’s Crown in the Discourse of Law and State in the 18th and 19th Centuries

This old concept has gained importance in new times. It guaranteed historical continuity and a connection to old political traditions. The doctrine remained valid even after the collapse of the Austro-Hungarian monarchy.²³ The doctrine also emphasized the separateness of Croatia and Transylvania, which until the end of the Middle Ages were separate parts of the Hungarian Crown and from the end of the 16th century, Transylvania was known as the *Regnum Transilvanense*. The factor of territorial belonging, the fact of where one lives, what region and country one inhabits, was also extremely important in this specific identity. The first reference to national unity built by the subjects and the

¹⁹ After the Battle of Mohacs, the country was divided into three distinct parts for the next more than 150 years; i.e. the Kingdom of Hungary under Habsburg rule, the Principality of Transylvania and the lands occupied by the Turks.

²⁰ The pact was concluded by the chiefs of seven tribes (Nyék, Megyer, Kürt-Gyarmat, Tarján, Jenő, Kér, Keszi) electing a common chief for all of them in the person of Álmos. He resolved the question of succession in the tribal Mádár association and included a clause of resistance to authority.

²¹ Egresi, “Role of the Holy Crown”.

²² Petrassy, “A Szent Korona”.

²³ Kardos, *A szentkorona-tan története*, 112–50.

territory they inhabited appeared in a royal document from 1298. According to Tibor Joó, the concept of the Hungarian nation changed several times. Probably the first turning point was the extinction of the Arpad dynasty at the beginning of the 14th century. When the dynasty, in whose veins flowed the blood of the founders of the state, died out, the time came to refer to symbols. And such a symbol was the Crown of St. Stephen.

In 1867, in a book published under the title *Magyarország az Árpád-királyoktól az ősiségnek megállapításáig és a hübéri Európa*, Imre Hajnik wrote about the Hungarian Crown as a symbol of the legal continuity and unity of the Hungarian state.²⁴ In another of his works from 1875 (*Egyetemes jogtörténet a középkor kezdetétől a francia forradalomig* [A General History of Law from the Early Middle Ages to the French Revolution]) he made the first distinction between the nation expressed by the community of nobles and the nation formed as a result of the revolution of 1848–1849. The national community that took shape after 1848 and after 1867 was described by Hajnik as sovereign, constitutional and autonomous, and additionally connected to the doctrine of St. Stephen's Crown. Members of the nation after 1867 were all citizens of the state regardless of ethnicity.²⁵

According to contemporaries, the person of the first king, St. Stephen was a magical figure, equipped with extraordinary powers. The supporters of the Turanian theory emphasizing the Turkish roots of the Hungarian nation believed that the Hungarian Crown was the shamanic crown, because its first owner – St. Stephen, was a shamanic ruler. This thesis refers to the image of the king on the coronation mantle from the 11th century, where the ruler has six fingers. This has never been proved (in the basilica in Budapest, there is the ruler's right hand), but in the interwar period, the Protestant bishop László Makkai tried to make this thesis a scientific truth in his book *A táltoskirály* (The King-Priest).²⁶

From around the 14th century, the Crown as a symbol separated itself from royal power. In the last two centuries of the Middle Ages it became an image of superior power. This was probably because in Hungary, from the 14th century onwards, power often passed into the hands of foreign rulers, and from the 16th century onwards, part of the country passed permanently into the hands of the Habsburg dynasty. It was during their reign that the Holy Crown began to be identified with the noble state. The concept of the Holy Crown differed from similar concepts of European countries (the Kingdom of Hungary was the only *archiregnum* in Europe and the Hungarian King was an apostolic king). All inhabitants of the kingdom were obliged to obey and be faithful to the Holy Crown. Loyalty to the Holy Crown was even more important before loyalty to the king.

However, the importance of the Crown of St. Stephen did not increase until after the end of the Arpadian dynasty, despite the fact that the cult of St. Stephen dated back to the reign of St. Vladislav.²⁷ From the early 14th century, who would rule the state depended more and more on the nobility. Especially during the reign of Sigismund of

²⁴ *Ibidem*.

²⁵ Egresi, "Role of the Holy Crown".

²⁶ Kelemen, "The Hungarian Constitutional Court".

²⁷ St. Ladislaus – the son of the later King Béla I of Hungary and an unknown daughter of Mieszko II Lambert, King of Poland.

Luxembourg the principle became established that the common will of the king and the nobility (the nation in the feudal sense) was embodied in a mystical symbol, the Crown. At that time, other nations also belonged to the Crown, so the Crown did not embody the nation state. Still the idea of the Crown of St. Stephen was also equipped with the right to rebellion. In 1401, there was even a rebellion against the king and his imprisonment. There were also situations when the Crown acted as a subject of international law. In 1381, an agreement was made on behalf of the Crown with Venice without the king himself. In this agreement, Venice ceded Dalmatia to Hungary, which province was annexed to Croatia, which remained in personal union with Hungary.

In the first codification of customary law, i.e., Werbőczy's *Tripartitum*²⁸, Hungarian society was divided into the people (*populus*, *nép*) and the plebs (*köznép*). Society was divided only in terms of its rights, but no distinction was made between the different groups on the basis of the language used by their members. The nation empowered not the king directly but the Crown (*Jurisdictio Sacrae Regni Coronae*) and kings ruled the nation through it. This is why the royal coronation was so important in Hungarian public life and why it was surrounded by such splendour. Practically until the end of the 18th century, this state of affairs continued. In 1791, the phrase "political body" was used for the first time in scientific studies to describe the alliance between the nobility and the king (*Regni Hungariae corpus politicum*). The Hungarian Enlightenment was quite special because, as Ferenc Eckhart noted, it "held the works of Montesquieu and Rousseau in one hand and the feudal legal code *Tripartitum* in the other." This means that the states (the nobility) wanted to adopt only those principles of modern constitutionality to Hungarian conditions that upheld their privileges. To support this effort, they used the work *Tripartitum* by Werbőczy.²⁹

As Kölcsey noted,³⁰ abolishing serfdom, giving land ownership to free peasants, making them part of the nation, giving them civil rights and generally transforming the outdated administration according to a Western, mainly English model was the need of the new times. István Széchenyi, an aristocrat by birth and a great admirer of the English system of government, argued that Hungary could not be a happy developed country "until all the people are raised into the ranks of the nation". Lajos Kossuth, defending the ancient constitution, believed that expanding the concept of the Holy Crown meant not only giving rights to the excluded millions, but also strengthening and defending the constitution.³¹ A contemporary historian noted, "When the conception of the nation as a nobility with the acceptance of the people changed to a civil one, thus the feudal idea of the Crown changed to a civil one, built on the basis of egalitarian thinking about politics."³²

²⁸ The full name is *Tripartitum opus iuris consuetudinarii incltyti regni Hungariae*.

²⁹ Szijártó, *A diéta*, 35–7; see also Eckhardt, *A francia forradalom*.

³⁰ Kardos, *A szentkorona-tan története*, 18–20, 29.

³¹ Barna *et al.*, *Magyar állam*, 66.

³² Arató, "A magyar politikai", 444–8.

A Dualistic State

In the 19th century Hungarian scholars – drawing on historical tradition – developed the theory of the Hungarian Crown. The Crown as a legal and political artefact was connected with the history of statehood and state institutions. Already from the end of the 18th century, still during the reign of Joseph II, the Hungarian nobility emphasized the importance of their constitution, compared it with the English Great Charter and were convinced of the uniqueness of their institutions and rights claiming that there were only two free nations in Europe: the Hungarian and the English.³³ Let us emphasize that at the end of the 18th century, in Hungary “nation” meant those who sat in Parliament and made decisions, i.e., the nobility. After the changes brought about by the revolution of 1848–1849, the meaning of “nation” was transferred to the whole of society (unfortunately, political rights were still reserved only for a small part of the non-Hungarian population). Thus, one can agree with the thesis that the nobility in Hungary had an influence on political and national issues until 1945. The concept of a political nation, which was formed in the second half of the 19th century, was its work and was based on the limited access to political decisions of the non-Hungarian masses (in the period after 1867, only 6% of the population had the right to vote, at the time of Regent Horthy – 7%). The majority of the nobility and the middle class also came from within its ranks to hold office.³⁴

Hungarian politicians and lawyers throughout virtually the entire 19th century referred to the uniqueness of Hungarian constitutional design by contrasting Hungarian constitutionalism with Austrian absolutism after the fall of the revolution in 1849. As late as 1892, the liberal politician Gusztáv Beksics claimed that Hungarian institutions were even better than those of England, because the king and the people constituted the Holy Crown, while the king could only exercise such power as had been delegated to him by the people, i.e., the nobility. In the second half of the 19th century, the idea of a Hungarian crown seemed to be more convenient for Hungarian lawyers and constitutionalists. There was a widespread reference to previous centuries when the entire population was subjects of the Hungarian Crown. While in exile, Kossuth continued to speak of the uniqueness of the Hungarian political system,³⁵ at home even before the signing of the settlement with Austria, sovereignty based on the Hungarian Crown was written about, including the relationship of the king to the nobility. So already in 1862, it was openly communicated to Vienna that the nobility was able to come to terms with the court on the basis of equal treatment of the eastern part of the State. But coming back to

³³ Péter, “Montesquieu’s Paradox”, 83–4.

³⁴ Kövér, “Magyarország társadalomtörténete”, 114–5.

³⁵ Kossuth interpreted the freedoms granted in the ancient constitution as modern freedom according to the principles of natural law. He renewed the concepts of republican citizenship, the common good, the rule of law and political freedom in the context of democratic local self-government. Kossuth relied on the example of the United States of America to demonstrate that a multilingual society could effectively form a nation and establish and maintain national institutions. He did not elevate linguistic and cultural communities to the status of nations but combined the concept of a nation with independence and statehood, and placed a premium on political-organizational or civilizational criteria evolving during a long historical development. *Acs, Kossuth demokráciája*, 30–1.

the Hungarian Crown, in the second half of the 19th century even the doctrine of the Holy Crown was created. The culmination of this reverence for the Crown was the celebration of the millennium of the Hungarian state in 1896. From the turn of the century, the doctrine of the Holy Crown increasingly influenced political life in Hungary. The liberals were its weaker supporters, but the independence opposition used the doctrine to enlarge the rights and prerogatives of Hungarian political and legal institutions.

In the era of dualism, the concept of the Crown changed. While Werbőczy considered as a nation only the nobility owning landed property, from the beginning of the 18th century, this concept already included all nobility, from 1848, all burghers owning any property were included in the nation. Since 1848, the Crown became the property of the state again, which in 1861, Emperor Franz Joseph took advantage of by instituting a lawsuit against Kossuth for illegally printing banknotes with the image of St. Stephen's Crown.³⁶ The Kingdom of Hungary was called *archiregnum*³⁷ already in the first half of the 17th century, which was even more emphasized from the middle of the 19th century, because in the titulature the Hungarian ruler was the only apostolic king in Europe. This distinguished the rulers of Hungary. While other Christian rulers in Europe held episcopal ordination after their coronation, the Hungarian kings after their coronation were not only treated as successors of the apostles but were actually apostles on a par with Christ's apostles.³⁸ Even the last ruler of Hungary, Charles IV, bore the title of King of Jerusalem still held from the time of the Crusades and Andrew II. An apostolic ruler had the power to convert to the Christian faith, which in the second half of the 19th century no longer had any practical significance. What was important was that the Hungarian king also had the right of veto in papal elections,³⁹ and the last time Franz Joseph II exercised this privilege was in 1903.

The contemporary formulation of the doctrine of the sacred Crown came in the works of Imre Hajnik at the end of the 19th century. He presented the history of the idea of the sacred Crown using the tools of positivist historical science. He placed the beginning of the concept of the Holy Crown in the 14th century. The doctrine of the Holy Crown – after Hajnik, regardless of its original intention – played the role that most influenced social thinking at the time of the formation of Hungarian nationalism. The doctrine of the Holy Crown did not exclude the dualistic system established in 1867, but at the same time, it ideologically created the illusion of independence. Regardless of class and national affiliation, it united the king and the “equal” citizens, the entire “nation” of historic Hungary. According to Győző Concha, professor at the political faculty of the University of Cluj-Napoca and later in Pest, the “Hungarian race” should stand out from the surrounding nations because it had a unique ability to build statehood, it had the doctrine of the Holy Crown.

Scholars and great thinkers of the 19th century drew their views on the doctrine of the Holy Crown from Werbőczy's *Codex*. In his work, Werbőczy, the political leader of his early Republic, developed the theory of the “Hungarian nation” (*natio Hungarica*) to support the political aspirations of the Republic. In doing so, he repeatedly referred to

³⁶ Péter, “The Holy Crown of Hungary”, 485–90.

³⁷ Barna *et al.*, *Magyar állam*, 66.

³⁸ *Ibidem*.

³⁹ *Ibidem*.

the sacred Crown (*sacra corona*). Lawyers Imre Hajnik and Győző Concha, the creators of the doctrine of the Holy Crown – saw in the insignia the source of the theory of “noble democracy.” Moreover, one of the sentences in Werbőczy’s code about “members of the sacred crown” (*membra sacrae coronae*) was interpreted as a summary of the organic idea of the state, that “the king, the church and the nobility share power in the mystical being of the crown.”⁴⁰ From the second half of the 19th century, the aim of scientific research on the Crown was to maintain the political significance of the national idea by emphasizing the antiquity, uniqueness, but also the pagan traditions of the Hungarian tribes. Research on the Crown’s past was also stimulated by political needs of the time, such as the legitimization of Habsburg rule. Nevertheless, the doctrine of the Holy Crown only became a state idea after the dissolution of the Habsburg monarchy and a decisive doctrine in Hungarian political and scientific life in the 1920s. This development must be interpreted in the light of the political and social consequences of the Treaty of Trianon in 1920, when the country lost about 70% of its territory by the treaty and millions of Hungarians were stranded in territories annexed to neighboring countries. The Crown after 1920 became a symbol of Hungary’s territorial claims.⁴¹

The establishment of the sacred doctrine as a state idea was largely due to the work of law professor Ákos Timon (1850–1925). In 1902, he published a book on the history of the state and constitutional changes of Hungary, in which he analyzed in detail the relationship between the Crown and the national idea. He argued that the doctrine of the Holy Crown could be regarded as a special, independent Hungarian formation, which came into being thanks to the state-forming abilities of the nation.⁴² Timon also brought something new to the theses of Hajnik and Concha, expressing the mystery and mysticism of the Holy Crown in many forms. Also, the Hungarian Parliament, built at the turn of the 20th century, emphasized the uniqueness of the Hungarian nation and its thousand-year-old state. The building contained many historical references to medieval princes, kings and queens (including Prince Arpad and St. Stephen). Both the British and Hungarian Parliaments thus distanced themselves from Greek models of democracy. In particular, the building of the Hungarian Parliament illustrates the use of Gothic and ethno-historical motifs (including the element of St. Stephen’s Crown – the dome) to express the vision of a separatist, ethnic and decidedly Christian nation.⁴³ Ákos Timon also saw in the doctrine of the Holy Crown a justification for Hungarian imperial aspirations. The unity of the St. Stephen’s Empire, a politically unified structure, stood out from the other states in the region. Thanks to the doctrine of the Crown of St. Stephen, Hungary from the end of the Middle Ages onwards, despite a very turbulent history, was a state subject (*corpus*) with a stable structure, which cannot be said of the Balkan states, which were territorially and politically fluid. The Kingdom of Hungary had well-established state symbols: the sacred Crown symbolized the continuity and strength of state organs.⁴⁴ It was one of the earliest and longest-lasting symbolic concepts of the state in Europe

⁴⁰ Péter, “The Holy Crown of Hungary”, 452.

⁴¹ Kardos, *A Szent Korona-tan és a legitimizmus*, 38–247.

⁴² Timon, *Magyar alkotmány*, 103–4.

⁴³ Kantorowicz, *The King’s Two Bodies*, 338–9.

⁴⁴ Fodor, Pók, “The Hungarians in Europe”, 117.

(and in many respects it survives to this day), expressing a rule detached from royal power, a kingdom transcending dynasties and territorial unity.⁴⁵

Interwar Period (Regency of Miklós Horthy)

As never before, the idea and doctrine of the Holy Crown played an important role after World War I in nurturing the traditions and memory of the historic Hungarian state. The supporters of this doctrine even demanded that the government of Count Károlyi refer to the idea of the Holy Crown in its government programme. The communists who took power after Károlyi in spring 1919 had less respect for the Crown and wanted to return it to the museum and treated it as a symbol or even as an unnecessary object. The communist leader Béla Kun planned – as the Bolsheviks did after the October Revolution in Russia – to sell the Crown of St. Stephen in Munich.⁴⁶ After Admiral Horthy took power, the Crown was restored to its former significance. Hungary until the 20th century, exemplified a certain dualism in the formation of the national idea: between the royal power and the country. Characteristically, after 1918 and especially after the Treaty of Trianon (1920), the sacred Crown returned from the monarchy to the nation. The change of ownership of the Crown from a foreign monarch to the nation strengthened the value of the nation as representative of sovereignty. The Crown became an important symbol of unity for the territorially truncated nation.⁴⁷

The work of historian Gyula Székfű was an attempt to come to terms with the accusations of assimilation of nationalities that took place in the times of Hungary under the Habsburg Monarchy. He considered the idea of the Crown of St. Stephen to be the most important keystone connecting all nations in one political organism in the Middle Ages. He made a distinction between a nation-state consisting of one nation and the Hungarian idea of a state in which there was room for many nations and nationalities. According to this Hungarian scholar, the Hungarian state idea was a historical concept denoting a place for the peaceful coexistence of different nations and nationalities. The concept of nation and state propounded by Gyula Székfű was largely based on a historical theory of the state dating back to medieval times. According to this theory, the national border was much more important than linguistic and ethnic boundaries, and thus the “political nation” was sacred to Hungarians, while the “cultural nation” or “linguistic nation”, distinguished on the basis of the language used by the people, was only a spiritual concept. This explains why until 1920, so few Hungarian politicians considered the possibility of a federal transformation of the Crown of St. Stephen. Only Kossuth, after losing the uprising while already in exile, put forward the idea of a Central European federation. Another politician who also thought about such a solution was the radical Oszkár Jászi.⁴⁸

⁴⁵ *Ibidem*, 118.

⁴⁶ Bálint, “Szent István”, 80–2.

⁴⁷ Péter, “The Holy Crown of Hungary”, 507.

⁴⁸ Jászi criticized the national policy of the Horthy era which, by supporting the revision of the borders, raised legal demands for the reconstruction of a “thousand-year Hungarian state”. While in exile in the USA in 1929, Jászi claimed that this postulate was like an injection of morphine for the Hungarian people,

Jászi argued that in view of the emergence of two great political-territorial blocs, the Soviet Union and Germany, a Central European federation was necessary.

Ferenc Eckhart's research can be regarded as pivotal on the concept of the St. Stephen's Crown. In 1941 he wrote the work *A Szentkorona-eszme története* (History of the Doctrine of the Holy Crown), which is still considered to be the basic work on symbols in Hungarian legal doctrines. According to Eckhart, the whole country was under the jurisdiction of the Crown, which united the Kingdom of Hungary in symbolic unity. He claimed that Hungarians believed that the unity of the country was protected by the Crown, but he does not mention the sources from which this was derived. The term "crown" acquired a territorial interpretation as a result of a change in meaning.⁴⁹ In the 15th century, the Crown meant the Kingdom of Hungary, within whose borders the ruler had full power. From the fact that the Crown was ideologically linked to the idea of unity. The loss of a territory was considered a "violation" of the sacred Crown. As soon as the King regained the lost part of the land, he retook the Crown. This act was judged as a "recovery" of crown property.

After the Austro-Hungarian settlement, the concept of a political nation was generally accepted in Hungarian politics. This nation included not only the Magyars, but also representatives of other nations living in Hungary, provided that they respected the "Hungarian state idea", the "idea of the indivisibility of the lands of the Crown of St. Stephen". The non-Hungarian nations living on the territory of the Crown of St. Stephen represented the "German model of national development" – cultural nationalism. The theory of the nation to which Hungarian politicians adhered was linked to political institutions. The origin of both these schools of thought can be traced back to the philosophical achievements of Jean-Jacques Rousseau and Johann Gottfried Herder. The former emphasized the role of the nation as a political community, while for the latter the understanding of the nation as a cultural community was of particular importance. On this basis, about a hundred years later, the German historian Friedrich Meinecke formulated two concepts of the nation: a political one, often referred to interchangeably as a civic one, and a cultural one, also referred to as an ethnic one.⁵⁰

This point of view persisted even in the days after the Treaty of Trianon. Count Albert Apponyi, when representing Hungary at the Paris peace negotiations, represented exactly this point of view. Apponyi even described the Magyar presence in Central Europe as a "providential duty" rather than a civilizing mission. He compared the order established by the Hungarian state to the *pax Romana* in ancient times. According to Apponyi, the Hungarian state for more than 1000 years (with the exception of the Turkish occupation), was an indivisible organism, and the nation and territory of the Hungarian Crown formed a natural unity, and only as such could it serve mankind in the centuries to come. According to Apponyi, Hungary can only fulfil the role of guarantor of stability in the region if its soul and body are united because for Hungary, the body is its territory, while the soul is the nation.⁵¹

in order to divert attention from the real wounds of the nation. More widely: Nagy, "Az 1920. Évi magyar békeszerződés", 56–8; Kopyś, *Oszkár Jászi*.

⁴⁹ Timon, *Magyar alkotmány*, 64–5.

⁵⁰ Meinecke, *Weltbürgertum und Nationalstaat*, 3–5.

⁵¹ Apponyi, "Magyarországnak", 6.

The doctrine of the Holy Crown was the result of scientific research but also of speculation by many jurists and historians. Lawyers Ernő Nagy, Győző Concha, Károly Kmety and Ákos Timon worked on its development. At the beginning of the 20th century, supporters of the Holy Crown doctrine argued that the term monarch should not be used. According to the proponents of the doctrine, “crown” and “nation” were identical concepts, so that it was the Crown that inherited the new ruler, not the ruler the Crown. Győző Concha believed that the sovereignty of the state was objectified in the form of the sacred Crown. The monarch was only a participant in this sovereignty by being entrusted with it by the people, and the people were formerly synonymous with the privileged strata; in modern times their representation was by election. For many centuries – according to Concha – the idea of sovereignty was realized in Hungary through the concept of the Holy Crown.⁵² Textbooks on Hungarian law and history from the turn of the 20th century were saturated with theses on the doctrine of the Holy Crown of St. Stephen and its influence on state institutions. For example, Károly Kmety’s 1900 textbook – repeatedly reissued at the beginning of the 20th century – clearly stated that the nation was completely united to the Holy Crown and Hungary was a nation-state (Hungarian: *nemzetállam*), which meant that only the Hungarian nation was the ruling nation and only it could set the course of political change in the country.⁵³

After the Treaty of Trianon, the concept of the Crown became the basis for the justification of territorial revision, and the doctrine of the Holy Crown became a symbol of the settlement of legitimate territorial claims. Economist Károly Kmety addressed this semantic meaning of the Crown, who believed in positive changes in the future “that would restore the former territorial integrity of the Holy Crown.”⁵⁴ The concept grew, although critical voices also appeared in relation to the Crown, such as Oszkár Gellért’s article “Farewell to the Holy Crown” in the journal *Nyugat*, in which he stressed the irrelevance of the Crown in public law. However, we must remember that since 1930 even the Hungarian courts have been passing judgments in the name of the Crown of St. Stephen.⁵⁵ Even the far-right leader of the Arrow Cross Party, Ferenc Szálasi, used the Crown in his own interests, taking the oath of the nation’s leader in the name of that very Crown.

After 1945

The law of 1946 introduced a republican system of government in Hungary, and on August 20 1946 (ironically on St. Stephen’s Day), the first constitution in the country’s history (the Little Constitution) was adopted. It is also noteworthy that the Hungarian Republic, between 1946 and 1949, established the so-called Kossuth coat of arms,

⁵² Concha, “Közjog és magyar közjog”, 55–7.

⁵³ Kmety, *A magyar közjog kézikönyve*, 62–4.

⁵⁴ Kardos, *A Szent Korona-tan és a legitimizmus*, 46.

⁵⁵ Péter, “The Holy Crown of Hungary”.

without the Holy Crown, as the symbol of the state, thus signalling the end of the period of monarchy.⁵⁶

From March 27 1945 to January 5 1978 the Crown was outside Hungary.⁵⁷ Until 1970 the Hungarian authorities did not know the whereabouts of the Crown. It was taken after World War II to Austria (for fear that it might fall into the hands of the Soviet army) and then to the United States. In 1978, the administration of President Jimmy Carter returned the insignia to Budapest. Characteristically, however, the János Kádár regime intensified its efforts to regain it, treating it as an important element of legitimacy for its rule.

The idea of the Crown was withdrawn from political discourse for several decades. Some Hungarian scholars believe that there are opportunities to apply the doctrine of the Holy Crown anew in the new conditions after 1989. According to them, the Crown is not only related to the monarchical system. Only the political actors have changed after 1989: the highest authorities are still elected by the people, just as the “political people”, i.e., the nobility, did centuries ago. Belonging to the Holy Crown was equal and independent of race, religion, devoid of any discrimination.⁵⁸

One Hungarian politician wrote several years after the surrender of the Crown that the American gesture was a nod to the Hungarian people, not the government. After 1978, hundreds of thousands of people came to admire the Holy Crown and other regalia displayed in the National Museum. This set off an unforeseeable transformation in Hungarian society. An ancient relic, without which power would not have been legitimate in previous centuries, performed a true miracle even in a socialist society. By paying homage to the coronation insignia, Hungarians rebounded from Communist brainwashing, shook off their complexes of national inferiority and shame, and discredited their national heritage and traditions. The Holy Crown gave them the strength to think independently and proudly about their national achievements.⁵⁹

After the political transformation of 1989–1990, the idea of the Crown was reintroduced into political discourse. There is a revival of the cult of St. Stephen and the tradition of the Holy Crown, also in political discourse, which does not necessarily extend to constitutional law. However, the doctrine has supporters. István Kocsis wrote in his book on the doctrine of the Holy Crown that it is not just a museum exhibit, not just a relic of Hungary’s glorious past, but an important and enforceable public law. According to him, the doctrine of the Holy Crown has never been rejected by any legally elected Hungarian national assembly and continues to be a subject of state power.⁶⁰

The vision of the solemnity of the crown “uniting the whole nation” played a significant role in the decision to move it in January 2000 from the National Museum to the Parliament building. This was done based on the so-called Crown Act (No. I of 2000), commemorating the first king of Hungary to be crowned a thousand years earlier. In 2001, the new government passed a law granting extensive rights to the Hungarian mi-

⁵⁶ Schweitzer, “Állami és nemzeti jelképek”, 70.

⁵⁷ It remained outside Hungary for a long time only between 1572 and 1608, but then, this was by the will of the rightful Hungarian king, and the coronation insignia were kept in Vienna and Prague.

⁵⁸ Petrassy, “A Szent Korona”.

⁵⁹ See *Magyar Nemzet*, January 10, 1998.

⁶⁰ Kocsis, *A Szent Korona tana*, 11–2.

nority from Central European countries, and at that time, the symbolism of the Crown was also used. The document granted to cardholders was confusingly similar to a passport, and – allegedly for this reason – the outline of the Holy Crown was placed on its cover, once again arousing associations, as if this symbol referred to all the lands and citizens of the former Hungarian State, and therefore aroused separatist hopes.⁶¹

The text of the Hungarian constitution adopted in 2011 is characterized by ideology, historicism and terminological archaism. Researchers of legal issues perceive this phenomenon as the reincorporation of the Holy Crown into the constitutional text and a return to the concept of a historical constitution. In the 2011 Basic Law, the mention of the Holy Crown appears twice – first in the preamble and then in the normative section on state symbolism.⁶² In the 2011 Constitution of Hungary, we read: “We honour the achievements of our historic constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungarian statehood and the unity of the nation”⁶³. In addition to the democratic changes of 1989, the text of the constitution mentions constitutional traditions, namely the historical constitution, as the basis of Hungarian statehood. Some scholars trace the roots of the historical constitution to the founding of the state in the year 1000 or even to the time before the conquest at the end of the 9th century (which was the dominant view among Hungarian legal historians before World War II). It is thus irrefutable proof that this doctrine is still functioning in the Hungarian political space.⁶⁴ This is despite the existing contradictions between the current Hungarian constitutional order and historical traditions (e.g., unicameral Parliament, constitutional adjudication, republican form of government, state neutrality). The use of concepts such as nation, society and historical continuity and their incorporation into legal mechanisms has already found a name in the academic world – populist constitutionalism. This phenomenon is not visible to the naked eye, but in Hungary after 2010, it appears between the lines in constitutional analyses and other legal texts. The reference in the new Hungarian Basic Law to the historical constitution as a constitutional tradition that is a source of law is very far from the legal positivist approach that was typical of Hungarian law and jurisprudence, even during the socialist regime. Critics of these tendencies believe that the historical constitution is substantively incompatible with the current democratic constitutional order, even in cases where legal continuity is emphasized in political discourse.⁶⁵ Meanwhile, after 2010, despite the fact that the doctrine of the Holy Crown is not an official interpretation of law in Hungary, the idea often appears as an independent entity in official and unofficial government communications. This can be seen in the new right-wing concept of the nation, which is based on a common culture, language and common destiny. The Hungarian authorities have moved from a noble nation to a civic nation within the current borders as well as beyond in order to create a contemporary concept of a cultural nation.

⁶¹ Halász, “The Holy Crown”, 60.

⁶² *Ibidem*, 53.

⁶³ Hungary’s Constitution of 2011 with Amendments through 2016. https://www.constituteproject.org/constitution/Hungary_2016.pdf?lang=en (accessed: 24.08.2018).

⁶⁴ Gárdos-Orosz, “The Reference to Constitutional Traditions”, 33.

⁶⁵ Szente, “A 2011. Évi Alaptörvény”, 6–8.

In addition to the aforementioned 2011 constitution, the amended constitution of 1990 also had veiled references to the Crown doctrine. Article D of this law, specifies that Hungary will work towards the restoration of a “united Hungarian nation”, and the state will then support their efforts to preserve Hungarian culture and develop co-operation between the diaspora and the Motherland. A few years after the amendment was passed, this article was applied in the so-called Antall doctrine.⁶⁶ The Basic Law of 2011 begins with the words “we members of the Hungarian nation”, which also refers to the Hungarian minority living in the Carpathian Basin area of the former Crown of St. Stephen. The constitution thus emphasizes that the historical state and contemporary legal principles are interrelated. Theorists of state history and Hungarian law view the Crown as a concrete legal entity representing supreme and indivisible power, exercised by the executive.⁶⁷ The doctrine of the Holy Crown has experienced a real renaissance in Hungary since the regime change after 1989. In Hungarian scientific circles, the corridors of Parliament and so-called “esoteric” circles. It is also being debated whether the idea of the Holy Crown still lives within the modern constitutional and economic framework, and, if so, what new content it fills. We see a completely different approach to the St. Stephen’s Crown in the purification ceremony performed by a shaman from the Tuva Republic who was invited to the Hungarian Parliament on March 21 2012 with the approval of the government. In the presence of folk singer Éva Kanalas, Oiun Adigzi See-Oglu performed the ceremony with the Crown in order to protect it and bring positive energy to it for the benefit of the Hungarian people.⁶⁸ The link between Christianity and Hungarian pagan mythology is demonstrated above all by the speeches of Prime Minister Viktor Orbán, first in 2000, in 2012 and again in 2014. For example, in his address to the people during the erection of the National Unity Monument in Ópusztaszer, the place where a thousand years ago, according to legend, feudal tribal chieftains met to form the Hungarian state, the Prime Minister combined mythological symbols: the Hungarian falcon (Hungarian *turul*) quotes from the New Testament and prehistoric tribalism, Christianity and ethnic elements in his speech.

Conclusions

Contemporary references in the Hungarian Constitution to the Holy Crown are limited only to embodying “the constitutional continuity of Hungarian statehood and the unity of the nation.” It is impossible to link the doctrine of the Holy Crown with the Hungarian constitutional tradition, as certain elements of the tradition (doctrine) are incompatible with the current constitutional situation. Firstly, the symbolism of the “Holy Crown of Hungary” refers to the tradition of the monarchy, and Hungary is a country with a republican system (Article B(2)). Secondly, using the doctrine to legitimize the territorial

⁶⁶ The first – centre-right – prime minister of the already free Hungary, József Antall (1990–1993), took office expressing that he would be the prime minister of 15 million Hungarians (10 million Hungarians in the country and 5 million living in neighboring countries and the West).

⁶⁷ Zlinszky, “A Szentkorona-eszme és története”, 7–34.

⁶⁸ Kürti, “Neoshamanism”, 237.

claims of pre-war Hungary is not possible, if only because Hungary has guaranteed the inviolability of the post-Trianon borders several times since 1945 (e.g. at the 1975 CSCE conference in Helsinki). Thirdly, the strong appeal to Christian tradition in the idea of a Holy Crown is incompatible with the constitutionally guaranteed separation of church and state (Article VII of the constitution). The doctrine of the Crown was revived at the turn of the 18th and 19th centuries and developed more fully in the 1830s. It was refined by legal historians and political theorists, including Imre Hajnik, Győző Concha and Ákos Timon, and Count Albert Apponyi, who used theses of the doctrine to defend the rights of Hungary during the signing of the Treaty of Trianon. Several lessons from the discourse on the historical constitution, even today, are used. One of the most important features of the historical constitution, its dualistic character where the nation (*nemzet*) and the state (*ország*) represent two balancing scales, is very often mentioned. In the present day, with the reality that 3–4 million Hungarians live outside the borders of Hungary, this may lead to the creation of a cross-border nation under the authority of the Crown of St. Stephen.

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