

ROMAN LAW AND THE DEVELOPMENT OF HUNGARIAN PRIVATE LAW BEFORE THE PROMULGATION OF THE CIVIL CODE OF 1959

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1. Roman law and Medieval Hungarian customary law¹

Although Hungary (the kingdom of Hungary, *regnum Hungariae*) had close relations with the Byzantine Empire (*Imperium Romanum Orientis* or *pars Orientis Imperii Romani*), the fact that King Stephen I (St. Stephen, 1000-1038) and his country embraced western (Latin) Christianity made the penetration of Byzantine (Roman) law (*ius Graeco-Romanum*) into Hungary impossible. It was only emperor Justinian's codification (528-534), especially the *Codex Iustinianus* and some novels (*Novellae*), that made an impact on the laws (*decreta*) of St. Stephen, even if indirectly.²

The Transdanubian part of Hungary was under Roman control for almost four centuries. The provinces of *Pannonia prima* and *Pannonia secunda*, *Savia* and *Valeria*

- 1 T. Vécsey, *A római jog története hazánkban és befolyása a magyar jogra* (The History of Roman Law in Hungary and its Impact on Hungarian Law), MS (Budapest, 1877-1878); Z. Pázmány, *Il diritto romano in Ungheria*, (Pozsony, 1913); I. Zajtay, *Sur le rôle du droit romain dans l'évolution du droit hongrois*, Studi in memoria P. Koschaker, vol. 2 (Milano, 1954); Gy. Bónis, *Einflüsse des römischen Rechts in Ungarn*, IRMAE V 10 (1964); idem, *A jogtudó értelmiség a Mohács előtti Magyarországon* (Hungarian Intelligentsia Versed in Law in the Period Prior to Mohács), (Budapest, 1971); idem, *Középkori jogunk elemei* (Elements of Hungarian Medieval Law), (Budapest, 1972); J. Zlinszky, *Ein Versuch der Rezeption des römischen Rechts in Ungarn*, Festgabe A. Herdliczka (München-Salzburg, 1972); I. Kapitánffy, *Römisch-rechtliche Terminologie in der ungarischen Historiographie des 12-14. Jh.*, Acta Antiqua Hungariae 23 (1975); B. Szabó, *Die Rezeption des römischen Rechts bei den Siebenbürger Sachsen*, Publicationes Universitatis Miskolciensis. Series Juridica et Politica, Miskolc IX (1994). For the role of Roman law in the medieval Hungarian state, see J. Gerics, *A korai rendiség Európában és Magyarországon* (The Early Feudal State in Europe and Hungary), (Budapest, 1987).
- 2 See G. Hamza, *Szent István törvényei és Európa* (The Laws of Saint Stephen and Europe), Szent István és Európa ed. G. Hamza (Budapest, 1991) and idem, *Szent István törvényei és a iustinianusi jog* (The Laws of Saint Stephen and Justinian's Law), Jogtudományi Közlöny 51 (1996). Cf. M. János, *Törvényalkotás Magyarországon a korai Árpád-korban* (Legislation in Hungary in the Early Period of the Árpád Dynasty), (Szeged, 1996).

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belonged to the western part of the Roman Empire. Romanisation included the sphere of law, as witnessed by several inscriptions.³

a) Roman law started having a direct influence in Hungary only during the age of the Glossators. Hungarian students were attending the University of Bologna (*Studium Bononiense*) by the thirteenth century. There was even a separate ‘Hungarian nation’ (*natio Hungarica*) at that university with about eighty students from the kingdom of Hungary (*regnum Hungariae*) attending the lectures (classes) of the glossators before 1301.

Other Hungarian students (*peregrinatio academica*) studied canon law in Paris and became acquainted with Roman law. A few Hungarians studied law at the universities of Padua, Oxford, and Cambridge amongst others. Hungarian students continued to go to universities abroad under the Angevin (*Anjou* in French, *Angioini* in Italian) kings (1308-1387). The first university in Hungary (the fourth university in central Europe after the foundation of the University of Prague (1348), the University of Cracow (1364) and the University of Vienna (1365)) was established at Pécs (*Civitas Quinqueecclesiensis* in Latin, *Fünfkirchen* in German) in 1367, and Roman law was probably taught there.⁴

As a consequence of these developments, the book of *formulae* (*Formularium*) by János Uzszai, rector of the University of Bologna around 1340, and Bertalan Tapolczai reflected some Roman-law influence. The terminology of legal documents at that time, as well as the chronicles written during the Árpád and Angevin dynasties, especially the *Gesta Hungarorum* of Simon Kézai at the end of the thirteenth century, also reflected the influence of Roman law.

The impact of Roman law was much less marked in the *ius scriptum*, that is the royal statutes and decrees. At the same time, certain principles of Roman public law (*ius publicum Romanum*) can be traced, for example, in references to the *plenitudo potestatis*, serving as a justification for the preponderance of royal power at the time of the Anjou dynasty and subsequently during the reigns of King Sigismund (1387-1437) and King Matthias (1458-1490).

b) From the fifteenth century onwards it was only wealthier intellectuals (churchmen i.e. *canonici* in particular) who could afford to study in Italy. Less well-to-do students went to Cracow or Vienna primarily to study canon law, but they also became acquainted with Roman law. Tradition has it that King Matthias himself took an interest in the question of the reception of Roman law in Hungary.

King Matthias attempted to codify Hungarian law by passing Act VI of 1486 (*Decretum maius*), whose preamble follows the structure and terminology of the

3 See K. Visky, *A római magánjog nyomai a magyar földön talált római kori feliratos emlékeken* (Traces of Roman Private Law in Roman Inscriptions Found on Hungarian Soil), *Jogtörténeti Tanulmányok* 5 (1983).

4 For the Hungarian *peregrinatio academica* at the faculties of law at European universities see B. Szabó, *Előtanulmány a magyarországi joghallgatók külföldi egyetemeken a XVI-XVII. században készített disputatióinak (dissertációinak) elemzéséhez* (Preliminary Study of the Analysis of Dissertations Prepared by Hungarian Students of Law Studying Abroad in the Sixteenth and Seventeenth Centuries), *Publicationes Universitatis Miskolciensis. Series Juridica et Politica* VIII 5 (Miskolc, 1993). For the beginnings of Hungarian higher education see A. Csizmadia, *A pécsi egyetem a középkorban* (The University of Pécs in the Middle Ages), (Budapest, 1965).

constitutio imperatoriam maiestatem and contains several Roman-law elements and terms. The *Decretum maius* was repealed six years later, after the death of King Matthias, under the reign of king Wladislaw II.

The great Spanish humanist of Valencia, Juan Luis Vives (1492-1540) maintained that the Hungarian King Matthias (*Matthias rex*) intended to give native or vernacular law (*ius patrium*) a new foundation through the reception of Roman law, but because of the difficulties inherent in this process, gave up his plan. Although Imre Kelemen still found this view credible in the early nineteenth century, Ignác Frank rejected it as lacking any foundation in the sources. However, it is undeniable that King Matthias' attempt to strengthen royal power especially in the last decade of his reign, was theoretically based on Roman-law principles.

A few Hungarian law-books surviving from the Middle Ages, written in German in the fifteenth century, especially those of Buda and Pozsony (Pressburg in German, Presbourg in French, now Bratislava in Slovakia) contain Roman-law technical terms, and refer to Roman-law institutions.

2. István (Stephanus) Werbőczy and the *Tripartitum*

The law-book of Chief Justice István (Stephanus) Werbőczy (c. 1458-1541) systematising feudal customs (*consuetudines*) was in Latin, which was the language of administration of the kingdom of Hungary (*lingua patria*), and it was entitled *Tripartitum opus iuris consuetudinarii inclyti regni Hungariae*. Showing the impact of Roman law in many respects, this general and comprehensive *decretum* was the first to set down native custom in writing. It was accepted by the Diet of 1514 and sanctioned by the king, Wladislaw II (1490-1516), but was never promulgated, so never formally became a source of law. Werbőczy's *Tripartitum* nevertheless became authoritative despite its failure to be enacted. Werbőczy had the *Tripartitum* printed in Vienna three years later in 1517, and himself sent it to the county towns. Since the county town tribunals (*sedes iudicariae*) were generally in the hands of the lesser nobility (*Kleinadel* in German), within a few decades the *Tripartitum* was widely used in the courts and became part of Hungarian customary law, especially after it was translated into Hungarian.

The *Tripartitum* was implemented in Transylvania, the 'second Hungary', which for 150 years after the feudal period had since 1541 been a semi-independent principality under a Hungarian prince under the rule of János Szapolyai, of whom Werbőczy was a leading supporter. Indeed, after the dissolution of the semi-independent Hungarian principality, King Leopold I (1657-1705) of Hungary who was also the emperor of the Holy Roman Empire, once he acquired the principedom, enacted the charter (*Diploma Leopoldinum*) of 1691 that recognised the *Tripartitum* as a source of law in Transylvania.

Judicial practice in Hungary also necessitated the inclusion of the *Tripartitum* in the sources of law of the kingdom. The authors of the compilation of Hungarian law, the *Corpus juris Hungarici*, in its edition of 1628, included the *Tripartitum*.

In the following centuries, Roman law made further appearances but was never formally received in the Hungarian legal system. Its principles and terminology came to be incorporated in Hungarian decisions primarily through the works of the *Quadripartitum*, which succeeded the *Tripartitum*.

As a law-book (*Rechtsbuch* in German, *coutumier* in French, *jogkönyv* in Hungarian) Werbőczy's work comprised contemporary feudal customary law and the royal decrees that used predominantly Roman terminology. However, the texts taken from Justinian's codification (compilation) were probably included only to increase the prestige of the *Tripartitum*. The links between the *Tripartitum* and Roman law are conspicuous in the following aspects:⁵

a) The division of the book into chapters on *de personis*, *de rebus*, and *de actionibus* follows the Roman-law tradition. Werbőczy nevertheless had to admit that it was useless to try to force Hungarian feudal law into the framework of *personae-res-actiones* (the system of the Institutes of Gaius).

b) Similarly, the general terms of Roman law, such as *ius naturale*, *ius publicum*, *ius privatum*, *ius civile*, and *ius gentium*, and its legal principles, such as *ius est ars boni et aequi*, were formally adopted, mostly in the *Prologus*, but are not incorporated in the regulations of the Hungarian *ius consuetudinarium* in the *Tripartitum*.

c) The impact of Roman law on the *Tripartitum* is also noticeable in its legal terminology, although this does not always accord with the original meaning; and in several legal institutions taken over from Roman private law, such as the division of guardianship into testamentary, statutory, and commissioned versions, certain rules concerning wills, paternal power.

Where Werbőczy gained his knowledge of Roman law and what the sources were of the Roman-law texts in the *Tripartitum*, is still a subject of debate among legal historians. His principal source must have been the textbook of Roman and canon law written by Master (*magister*) Raymundus⁶ at Naples in the thirteenth century. This must have been taken to Hungary and Poland in the course of the military campaigns waged in Naples by King Louis I (the Great) (1342-1382) around the middle of the fourteenth century. In Poland, the *Tripartitum* even became a national statute (*statutum*).

The so-called *Summa legum Raymundi* contained the customary law of the South Italian towns and the penal laws of the Angevin kings, and came to form part of the law-books of several royal free cities in Upper Hungary (such as Bártfa and Eperjes). There were also manuscript versions of it at Cracow and Wiener Neustadt. Recent research shows that Werbőczy's source must have been the one from Cracow, which leads us to conclude that he must have studied there.

5 See A. Földi, *A római személyi és családi jog hatása a Tripartitumra* (The Impact of the Roman Law of Persons and Family Law on the *Tripartitum*), *Jogtudományi Közlöny* 48 (1993) and idem, *Werbőczy és a római jog* (Werbőczy and Roman Law), Degré A. Emlékkönyv ed. G. Máthé (Budapest, 1995); G. Hamza, *Werbőczy Hármaskönyvének jogforrási jellege* (Werbőczy's *Tripartitum* as a Source of Law), *Jogtudományi Közlöny* 48 (1993) and idem *A Tripartitum mint jogforrás* (The *Tripartitum* as a Source of Law), Degré A. Emlékkönyv ed. G. Máthé (Budapest, 1995).

6 Experts are uncertain of the identity of the author of the textbook, since the name Raymundus appeared in a Cracow manuscript for the first time only in 1506. See E. Seckel, *Über die Summa legum' des Raymund von Wiener Neustadt*, *Beiträge zur Geschichte beider Rechte im Mittelalter*, vol. 1 (Tübingen, 1898); A. Gál, *Die Summa legum brevis, levis er utilis des sog. Doktor Raymundus von Wiener Neustadt*, (Weimar, 1926); Gy. Bónis, *Der Zusammenhang der Summa Legum' mit dem Tripartitum'*, *Studia Slavica Hungarica*, Budapest XI (1965).

3. Hungarian private law from 1514 to the nineteenth century⁷

At the time when the *Tripartitum* was written, economic development in Hungary was mostly confined to towns, but production for the market was already increasing on the estates of the nobility. These changes must have contributed to the compilation of the *Formularium Posoniense* by Prebend Imre Pápóczi in the 1530s. This collection of laws was intended to be a textbook and to regulate the improving economic conditions of the day through contractual formulas resembling Roman-law ones, and through his commentaries. The impact of Roman law may also be seen in the laws passed in the first half of the century.⁸

Werbőczy's *Tripartitum* that contained feudal private law and generally referred to Roman law formally without incorporating it, became 'the Bible or Holy Scripture of the nobility' for the following three centuries, paralysing the development of both law and legal science. Although in the sixteenth century the Hungarian humanists tried to effect at least a partial reception of the *Corpus iuris civilis*, they failed to break the power of the Hungarian customary law.

Iohannes Honterus (1498-1549) published his work *Sententiae ex libris pandectarum iuris civilis*, which is mainly of a didactic nature, in Brassó (Kronstadt in German, now Braşov in Romania) in 1539, with a view to acquainting the public with Roman law. In its preface, he emphasised the advantages of Roman law as against municipal custom, which was often uncertain. Another work by Honterus, based on Roman law and entitled *Compendium iuris civilis in usum civitatum ac sedium Saxonicarum collectum in Transsylvania* (1544), subsequently served as a basis for the municipal statutes of the Saxon towns of Transylvania. These statutes remained valid in the *Királyföld* (King's Land in English, *Königsboden* in German, *Fundus regius* in Latin) for three centuries after 1583.

Iohannes Sambucus (János Zsámboki, 1531-1584) was responsible for the first edition of the *Corpus iuris Hungarici* in 1581. Zsámboki included in this edition (as an appendix to the *Tripartitum* of Werbőczy) the legal principles found in the last title of the *Digesta* (50,17) under the subtitle *Regulae iuris antiqui*, which indicated their formal reception in the Hungarian legal system. The work of Iohannes Decius Barovius (János Baranyai Decsi, c. 1560-1601) entitled *Syntagma institutionum iuris imperialis sive Iustiniani et Hungarici* (1593) introduces the institutions of the *ius patrium* in the framework of Justinian's *Institutiones*.

In the seventeenth and eighteenth centuries, Roman law was primarily a subject taught at the universities, chiefly at Nagyszombat (today Trnava in Slovakia). The impact of Roman law was also discernible in works dealing comprehensively with Hungarian law.

7 A. Degré, *Elemente des römischen Rechts im Vermögensrecht der ungarischen Leibeigenen*, Einzelne Probleme der Rechtsgeschichte und des römischen Rechts, (Szeged, 1970); K.K. Klein, *Der Humanist und Reformator Johannes Honter*, (Sibiu, 1936).

8 Act XLIII of 1542 about affiliation shows, for example, the direct impact of the *SC Plancianum* of Emperor Vespasian; see T. Vécsey, *Az 1542. évi pozsonyi országgyűlés 43-ik törvénycíkké* (Act nr. XLIII of 1542 of the Diet of Pozsony), *Századok* 43 (1909).

The work of János Szegedy (1699-1760) entitled *Tripartitum iuris Hungarici tyrocinium* (1734) compared the institutions (*Rechtsinstitute* in German) of Hungarian and Roman law.

The reforms of the king of Hungary, Maria Theresia (1740-1780) had a marked effect on the teaching of law at the universities. The (first) *Ratio educationis* of 1777 provided that legal history, private law, criminal law and procedural law should be included in the teaching of Hungarian law, and that public law was to be a separate subject. The first treatise on the vernacular law for universities was written in 1751 by István Huszty (c. 1710 - c. 1772), professor at the Academy of Law in Eger (Erlau in German). This work did not develop basic Hungarian customary law, though it was used as a textbook for half a century.

The first step towards the codification of private law in Hungary was taken in the last decade of the eighteenth century. The Diet of 1790-1791 set up a legal committee (*deputatio juridica*) to prepare the necessary reforms. A criminal code (*codex de delictis eorumque poenis*) and a draft civil code (*projectum legum civilium*) were prepared for debate in the following Diet.

4. The science of Roman law and private law in the nineteenth century⁹

The (second) *Ratio educationis* of 1806 issued by the Emperor of the Holy Roman Empire and king of Hungary, Francis I (1792-1835) improved the teaching of Hungarian law (*ius patrium*) by separating the teaching of criminal law and private law.

Imre Kelemen (1744-1819), an outstanding scholar of civil law, frequently referred to Roman law, especially in his *Institutiones iuris Hungarici privati* (1814).¹⁰ Kelemen had a new approach. In the first volume of this four-volume work he dealt with the history of private law according to the royal decrees and statutes adopted by the diets; in the second volume he followed Werbőczy's system based on the *Institutiones (de personis, de rebus and de actionibus)*. He discussed the characteristics of Hungarian customary law. His *Institutiones iuris Hungarici privati* also refers to the influence of Roman law and canon law on a number of legal institutions in the Hungarian *ius patrium*. The influence of Savigny's branch of *Pandektistik* or *Pandektenwissenschaft*, prompted the first significant change in Hungarian law.

9 E. Pólay, *A pandektisztika és hatása a magyar magánjogtudományra* (The Pandectist School and its Impact on Hungarian Civil Law Jurisprudence), *Acta Universitatis Szegediensis de Attila József nomine. Acta Iuridica et Politica*, Szeged 23, 6 (1976); J. Zlinszky, *Wissenschaft und Gerichtsbarkeit. Quellen und Literatur der Privatrechtsgeschichte Ungarns im 19. Jahrhundert*, (Frankfurt-am-Main, 1997). For Ignác Frank, see L. Villányi Fürst, *Jogi professzorok emlékezete* (In Memoriam of Some Professors of Law), (Budapest, 1935); For Gusztáv Wenzel, see T. Balázs, *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae, Sectio Iuridica*, Budapest 31 (1990). For Gusztáv Szász-Schwarz, see K. Szladits, *Magyar jogászegyleti értekezések* (Studies Prepared for the Hungarian Association of Lawyers), (Kecskemét, 1934); For Elemér Balogh, see G. Hamza, *Balogh Elemér, a római jog művelője* (Elemér Balogh, the Roman Law Scholar), *Jogtudományi Közöny* 35 (1980).

10 This work was also published four years later, in 1818 in Vienna, in German as *Darstellung des ungarischen Privatrechts*.

Mátyás Vuchetich (1767-1824), a follower of the ideas of Karl Anton von Martini (1726-1800) and Franz von Zeiller (1751-1828), was the author of the works *De origine civitatis* (1806) and *Elementa juris feudalis* (1824). In these works dealing mainly with private and criminal law, Vuchetich traced the evolution of Hungarian customary law, taking into account the judicial practice of the Supreme Court (*curia*).

According to László Szalay (1813-1864), Ignác Frank (1788-1850), the first notable scholar of civil law in the nineteenth century, and professor at the University of Pest, may be considered 'the pioneer of a new era' despite his opposition to codification. In his work *Specimen elaborandarum institutionum iuris civilis Hungarici* published in Kassa (Cassovia in Latin) in 1823, which reflects the influence of natural law (*ius naturale* or *ius naturae*) as represented by Christian Wolff (1679-1754), Frank used Roman-law terminology to describe modes of land ownership. Roman (Latin) legal terminology may be found in several of his other works when he discusses issues in Hungarian law.

Frank expounded his principles in a major work in two volumes that appeared in Pest in 1829, the *Principia iuris civilis Hungarici*. Having examined the origins of Hungarian law, he concluded that it had been influenced by Roman and Canon law and also by French and German law. He asserted that the Germans had transmitted their civilisation and institutions to Hungary. He cited as examples of this assertion the institution of a National Assembly, legislative procedure, the privileges of the nobles, the status of the serfs (*servientes*), the institutions of feudal fiefs and grants, the mortgaging of lands, the dowry, the use of the blood-price, and the various types of court procedure. The *Tripartitum* of Werbőczy led him to believe that the system of civil procedure was brought to Hungary from France during the reign of Charles Robert (1308-1342).

The *Principia iuris civilis Hungarici* was undoubtedly the most comprehensive work on the Hungarian *ius privatum feudale*. Frank expanded on it in a work published in three volumes in Hungarian, entitled *A közigazság törvénye Magyarhonban*, (Buda, 1845-1847). This work was by no means a mere translation of the Latin book. *A közigazság törvénye Magyarhonban* updated the *Principia iuris civilis Hungarici* with references to new legislation and made use of historical documents that had been published in the meantime. With the help of these, Ignác Frank tried to explain the evolution of some rules of customary law, and sometimes criticised its surviving rules, explaining that they had originated under quite different circumstances and had had different objectives.

Ignác Frank's pupil, Gusztáv Wenzel (1818-1891) was a dedicated follower of the Historical School of Law (*Historische Rechtsschule*) and often referred to Roman law in his writings.

From the second half of the nineteenth century, the Pandectist School, and especially Jhering, through the works of Gusztáv Szászy-Schwarz (1858-1920), a civilian jurist of universal scope, increasingly impacted on Hungarian jurisprudence and the practice of the courts. Since almost all Hungarian Romanists and civilian jurists had been pupils of German Pandectists¹¹ they contributed to the spread of several elements of German Pandect law (*Pandektenrecht*) in legal practice.

11 E.g., Szászy-Schwarz and Mihály Biermann (1848-1889), a professor of law at Győr and Nagyszeben (Hermannstadt in Germany, now Sibiu in Romania) attended the lectures of Jhering; and Elemér Balogh (1887-1953), an outstanding expert on comparative law, was a disciple of Heinrich Dernburg in Berlin.

5. The role of Roman law in the codification of Hungarian private law¹²

Act XVIII of 1791 was the first step towards the codification of the Hungarian *ius privatum*. It required a legal committee to prepare a draft civil code (*Proiectum nonnullarum utilium civilium legum*). The draft was ready in two years, but was printed only in 1826. Neither its structure, nor its content reflected the impact of Roman law, and it could not be called a draft code in the true sense of the word. The *Code civil* could not be received in Hungary by a natural process, though László Szalay thought it to be an ideal model for a Hungarian codification. Political developments also prevented the second attempt at codification that was envisaged by Act XV of 1848.

The Austrian General Civil Code (*Allgemeines Bürgerliches Gesetzbuch für die Österreichischen Erbländer, ABGB*) was enforced in Hungary and Transylvania (Siebenbürgen in German) in 1853, so codification was out of the question until the Austro-Hungarian Compromise (*Ausgleich* in German, *Kiegyezés* in Hungarian) of 1867. The general part of the General Code of Private Law (1871) was prepared by the Romanist Pál Hoffmann and modelled on the Saxon Civil Code (*Bürgerliches Gesetzbuch für das Königreich Sachsen*) of 1863, reflecting primarily the influence of Georg Friedrich Puchta (1798-1846). This code was virtually a codification of all Pandectist doctrines. The draft law of succession by István Teleszky (1836-1899) of 1882 in both its structure and its theoretical basis stemmed from the Saxon Civil Code, which in turn relied on the Saxon law of succession and its institutions. István Apáthy's (1829-1889) Draft Law of Obligations of 1882, influenced by the Draft Law of Obligations for the German States (*Dresdner Entwurf*) of 1866, that prepared the way for the future *Bürgerliches Gesetzbuch (BGB)*, followed Savigny's theory of consensus concerning legal transactions (*Rechtsgeschäftslehre*), similar to Hoffmann's approach. The same applies to the draft of the general part by Elek György (1841-1902) prepared in 1880. The impact of the Pandectist School is not so marked in the partial draft of the law of things by Endre Halmossy (1882) nor in the draft concerning matrimonial law, the law of persons, and property law by Benő Zsögöd (*alias* Béni Grosschmid, 1852-1938).

The idea of a comprehensive civil code gained ground from 1895 onwards. One of its most consistent advocates was Gusztáv Szászy-Schwarz, who wished to base the codification of Hungarian civil law on Roman law.

The 1900 draft, whose structure and institutions resemble those of the German *BGB*, discarded the idea of partial codification. It consisted of four parts (the law of persons and

12 R. Dell'Adami, *Az anyagi magánjog codificatiója. I A nemzeti eredet problémája* (The Codification of Private Law. I: The Problem of our Nation's Origin), vol. 1 (Budapest, 1877) and idem, *Magánjogi codificatióink és régi jogunk*, vol. 1 (The Codification of Our Private Law and Our Ancient Law), (Budapest, 1885); A. Meszlény, *Magánjogpolitikai tanulmányok különös tekintettel a magyar általános polgári törvénykönyv tervezetére* (Studies on the Policy Concerning Private Law with Special Regard to the Draft of the General Hungarian Civil Code), (Budapest, 1901); G. Szászy-Schwarz, *A magánjogi törvénykönyvről. Tanulmányok és bírálatok* (On the Civil Code. Analysis and Criticisms), (Budapest, 1909); F. Mádl, *Kodifikation des ungarischen Privat- und Handelsrechts im Zeitalter des Dualismus*, Die Entwicklung des Zivilrechts in Europa (Budapest, 1970); A. Csizmadia, *Ungarische zivilrechtliche Kodifikationsbestrebungen im Reformzeitalter*, Rechtsgeschichtliche Abhandlungen, vol. VI (Budapest, 1974).

family, the law of obligations, the law of things, and the law of succession) but had no general section. Its first few titles concerned the law of obligations. With regard to legal transactions (*Rechtsgeschäfte*), it followed the theory of declaration (*Erklärungstheorie*). The impact of the German *BGB* was more noticeable in the next private-law draft of 1913, which was shorter and like the former one, had no general section.

The Draft Civil Code of 1928 (*Magánjogi Törvényjavaslat* in Hungarian), considered by the courts as a *ratio scripta*, and in the drafting of which Béla Szászy (1865-1931) played an outstanding part, reflected the strong influence of the Swiss *Zivilgesetzbuch* (*ZGB*) of 1907 and *Obligationenrecht* (*OR*) of 1881 (revised in 1907).¹³

6. Outstanding Roman-law specialists (Romanists) in Hungary in the nineteenth and twentieth centuries¹⁴

Roman law has been taught at Hungarian universities ever since the establishment of the faculty of law at the University of Nagyszombat (Tyrnau in German, now Trnava in Slovakia) in 1667. The first professor of Roman law at the University of Nagyszombat was Ádám Takács (Textor). The first surviving scholarly writings on the subject were by Ernő Frigyes Someting during whose professorship (1691-1695) the first open disputations on Roman law were held. Between 1733 and 1749 important contributions were written by János József Rendeke, the author of the oldest Roman-law textbook in Hungary, published in 1734. For a long time education at Nagyszombat (after 1777 in Buda and finally in Pest) was based on commentaries on the *Institutiones* and the *Digesta* of Justinian by foreign authors. Mihály Szibenliszt, professor in Pest, published a textbook of a high standard in 1829 (*Institutiones iuris privati Romani*), comparable to ones written in other parts of Europe.

The first Roman-law textbook in the Hungarian language by János Henfner (1799-1856) professor at the University of Pest, with the title *Római magánjog* (Roman Private Law) was published in 1855-1856 in three volumes.

The first professor teaching Roman law at the Western European level was Pál Hoffmann (1830-1907), a follower of Friedrich Carl von Savigny, with his 'school of

13 It is quite enlightening to consider the influence of the Pandectist School on strict liability. Based on the German *BGB*, though not on its literal translation, the draft Hungarian civil code of 1900 regulated liability on the basis of fault (*culpa*). Section 1486 of the draft of 1913 (based on the first draft (*Erster Entwurf*) of the *BGB* of 1887) mentioned damages on an objective basis. The famous § 1737 of the Draft Civil Code (*Magánjogi Törvényjavaslat*, abbreviated *Mtj.*) of 1928, regulating responsibility on the basis of equity (*Billigkeitshaftung* in German), followed the second draft (*Zweiter Entwurf*) of the *BGB*, however indirectly, making liability for damages on an objective basis possible in a subsidiary regulation.

14 M. Móra, *Über den Unterricht des römischen Rechts in Ungarn in den letzten hundert Jahren*, Revue Internationale des Droits de l'Antiquité 11 (1964); E. Pólay, *A római jog oktatása a két világháború között Magyarországon (1920-44)* (Teaching of Roman Law in Hungary Between the Two World Wars, 1920-44), (Szeged, 1972); G. Hamza, *A római jog oktatásának és művelésének történetéhez egyetemünkön* (To the History of the Teaching and Study of Roman Law at Our University), Acta Facultatis Politico-Iuridicae Universitatis Scientiarum Budapestinensis de Rolando Eötvös nominatae, Budapest 26 (1984).

legal thinking'. In the second half of the nineteenth century Roman law was taught in two parts, an 'institutions course' (*Institutionenkursus*) giving the history and a short summary of Roman law, and a 'pandects course' (*Pandektenkursus*).

The textbook of Alajos Bozóky (1842-1919), professor at the Academy of Law at Nagyvárad (Grosswardein in German, now Oradea in Romania), followed the nineteenth-century system of teaching Roman law, dealing with institutions and pandects separately. Some Romanists, like Pál Hoffmann from Budapest and Lajos Farkas (1841-1921) from Kolozsvár (Klausenburg in German, now Cluj-Napoca in Romanian) – both of whom were followers of Savigny – emphasised the importance of legal history. Others like Gusztáv Szászy-Schwarz from Budapest and Mór Kiss (1857-1945) from Kolozsvár, the followers of Rudolf von Jhering, approached Roman law according to the modern theory of the pandects, as distinct from the German Pandectist School, thus bringing Justinian's codification nearer to everyday practice. Tamás Vécsey (1839-1912), professor at the University of Budapest, took an approach that was between these two trends. The unfortunately unfinished book of Károly Helle (1870-1920) helped students become acquainted with the sources of Roman law.¹⁵

After World War I, the institutions and pandects were no longer taught together – only the former were taught. The same happened in the relevant jurisprudence. Géza Marton (1880-1957), an outstanding expert on civil law responsibility, who was well known all over Europe, took a 'historical-modernist' approach to teaching the dogmatics of Roman law. His textbook served as a basis for teaching Roman law at almost all Hungarian universities and academies of law for four decades. Kálmán Személyi (1884-1946), the renowned expert on the critique of interpolations (*Interpolationenkritik* in German), was professor at Szeged and at Kolozsvár.

In the years before World War II, professors of Roman law were the following: Albert Kiss (1873-1937), Nándor Óriás (1886-1992), Zoltán Pázmány (1869-1948), Márton Szentmiklósi (Kajuch) (1862-1932), and Zoltán Sztéhlo (1889-1975). Pázmány and Sztéhlo also taught juristic papyrology, as did Géza Kiss (1882-1970), who was professor of Roman law at Nagyvárad in the years prior to World War I and later at Debrecen, and András Bertalan Schwarz (1886-1953), professor in Zurich, Freiburg in Breisgau, and Istanbul.¹⁶

Outstanding Roman-law scholars in Hungary after World War II were Károly Visky (1908-1984), Róbert Brósz (1915-1994), Elemér Pólay (1915-1988), Ferenc Benedek (1926-2007) and György Diószdi (1934-1973).¹⁷

15 For Pál Hoffmann and Tamás Vécsey, see G. Hamza, cit., *Jogtudományi Közlöny* 35 (1980) and idem, *Emlékezés Vécsey Tamásra, a nemzetközi hírű jogtudósra* (Commemoration of Tamás Vécsey, the Legal Scholar of European Reputation), *Jogtudományi Közlöny* 40 (1985).

16 For Géza Marton, see G. Hamza, ed., *Tanítványok Marton Gézáról* (Pupils Remember Géza Marton), (Budapest, 1981); for Nándor Óriás, see Gy. Gátos, *In memoriam Óriás Nándor* (In Memoriam Nándor Óriás), *Jogtudományi Közlöny* 47 (1992); for András Bertalan Schwarz, see G. Hamza, *Schwarz András Bertalan emlékezete* (Commemoration of András Bertalan Schwarz), *Jogtudományi Közlöny* 34 (1979).

17 For Károly Visky, see G. Hamza, *Visky Károly (1908-1984)* (Károly Visky (1908-1984)), *Jogtudományi Közlöny* 39 (1984); for Róbert Brósz see A. Földi, ed., *Flosculi professori R. Brósz obliti*, (Budapest, 1990) and G. Hamza, *In memoriam Brósz Róbert (1915-1994)* (In Memoriam Róbert Brósz (1915-

Abstract

Although Hungary had close relations with the Byzantine Empire, the fact that King Stephen I (St. Stephen) (1000-1038) and his country adopted western Christianity made the penetration of Byzantine (Roman) law into Hungary impossible. Roman law had a direct influence in Hungary only during the age of the Glossators. The impact of Roman law was much less marked in the royal statutes and decrees, the *ius scriptum*. King Matthias made an attempt to codify Hungarian law by issuing Act VI of 1486 (*Decretum Maius*). The law-book of Chief Justice Stephanus Werbőczy (c. 1458-1541) systematising feudal customs in Latin, the language of administration of the kingdom of Hungary, was entitled *Tripartitum opus iuris consuetudinarii inclyti regni Hungariae*. It was never promulgated, so never formally became a source of law but nevertheless it became authoritative. Containing feudal private law, and usually applying Roman law only formally, it became 'the Bible of the nobility' for the following three centuries. The first attempt to codify private law in Hungary was made in the last decade of the eighteenth century. The Diet of 1790-1791 set up a legal committee to prepare the necessary reforms. The idea of a comprehensive Hungarian civil code gained ground from 1895 onwards. One of its most consistent advocates was Gusztáv Szászy-Schwarz, who wished Roman law to form the basis of a codification of civil law in Hungary. The Draft Civil Code of 1928, considered by the courts as *ratio scripta* (until the Civil Code of 1959 came into operation) reflected the strong impact of the Swiss *Zivilgesetzbuch* of 1907 and *Obligationenrecht* of 1881.

1994), *Jogtudományi Közlöny* 49 (1994); for Elemér Pólay and György Diószdi see G. Hamza, *In memoriam Elemér Pólay (1915-1988)*, *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae. Sectio Iuridica*, Budapest 32 (1991) and idem, *Emlékezés Diószdi Györgyre, a hazai jogtudomány európai hírű művelőjére* (Commemoration of György Diószdi, the Renowned Scholar of the Hungarian Legal Science), *Jogtudományi Közlöny* 39 (1984).