

**Different Concepts on the Doctrine of the Holy Crown in the Works of Ferenc Eckhart, Ákos Timon and Emma Bartoniek**

*Résumé*

The purpose of this study is to present the doctrine of the Holy Crown and its theses in Hungary. The Crown, originally the symbol of the king, embodies later the power of the king and the nobility, and since 1848 all people of the country are members of it. The Crown embodies also the country's territory. The biggest debate in this issue took place between two legal scholars, Ferenc Eckhart and Ákos Timon; this was the so-called Eckhart-debate. Ákos Timon was a public lawyer with nationalist feelings, according to others someone with feudalist ideas, whereas Ferenc Eckhart was a historian, representing the methodology of the positivist scientificity. Ferenc Eckhart wrote a book *A szentkorona-eszme története* (The History of the Holy Crown) as well, which has been considered a basic work ever since. The concept of Emma Bartoniek, whose work on this issue is a precise and valuable work, can be placed somewhere in between the other two.

*1. Introduction*

The doctrine of the Holy Crown has been enjoying a kind of revival since the political transformation in Hungary. In domestic scholarly circles, on the corridors of the Parliament and in esoteric circles it is in the focus of debates, whether the doctrine of the Holy Crown continues to live on under modern constitutional and economic circumstances, and if yes, what new message it could be attributed to. In the beginning the Holy Crown symbolized the royal power, in the age of Werbőczy the power of the king and the nobility and, finally, in 1848 the serfs became parts of the Holy Crown by law extension. Nowadays the Holy Crown goes on living as a public law symbol, as it became gradually the foundation of the public law sovereignty symbol developed through history. The doctrine of the Holy Crown came into the focus of attention in the 20<sup>th</sup> century, when Ferenc Eckhart, a professor at the University of Budapest, a historian, wrote an article on the Crown in 1931, thus becoming willy-nilly the emblematic figure of the debate raging on the issue of the Crown. The article arose indignation, the author reacted to the criticism by writing his ever since enduring work *A szentkorona-eszme története* (The history of the doctrine of Holy Crown) in 1941. The conceptual alterations of the doctrine of the Crown have been analysed in several forms by lawyers, historians and politicians. I bring into the focus of my present study the debate sparked off by Ferenc Eckhart. I analyse the debate between Ferenc Eckhart and the historical law school, and its outstanding representative, Ákos Timon, by comparing their views, and finally I present the views of the historian and bibliograph, Emma Bartoniek. Emma Bartoniek created something enduring by her analyses relating to the doctrine of the Holy Crown as well, though she has been remembered less than Ferenc Eckhart and Ákos Timon. The clash between Ferenc Eckhart, the historian, representing the positivist scientific methodology and the historical law school with an inclination towards national romanticism was necessary and unavoidable. Their views were contradictory at each point, which could be

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derived from the differences of two branches of science, spirits of age or two different personalities as well. To understand their dissenting concepts on the doctrine of the Holy Crown, we have to have a closer look at the principal theses of the doctrine,<sup>2</sup> i.e. its different semantic contents.

The basic theses of the Holy Crown can be summarized as follows:

- The ultimate power (legislation and governance) appertains to the Holy Crown,
- all royal prerogatives are enjoyed by the Crown,
- the ultimate right of patronage belongs to the Crown (*ius supremae patronatus*),<sup>3</sup>
- conferring power is based on the Holy Crown,
- those, who exercise power unite in the Holy Crown, in the beginning the king, later the king and the noblemen, followed by the free royal towns, and finally the serfs from 1848,
- the country's territory belongs to the Crown, but areas conquered or inherited, in which the Hungarian king became the ruler of another state did not become parts of the Crown,
- the Crown holds possessions,
- all rights(*radix*) of all possessions come from the Crown, the *radix* of all possessions is the Crown (*radix omnium possessionum*),<sup>4</sup>
- the Crown embodies the connection between Heaven and Earth.

In connection with the fundamental theses of the Holy Crown two of them require further explanation: the ultimate right of patronage, which refers to the appointment of ecclesiastical dignitaries, and the idea, that the Crown embodies the connection between Heaven and Earth.

In Act LXVII. § 4 of 1498 on exercising rights of patronage we can read about churches subordinated to the Holy Crown of the country. The latter, mystic meaning of the Crown's concept calls for some explanation: it expresses the idea, that St Stephen offered his Crown and country to Virgin Mary on Assumption Day. Virgin Mary accepted this offering, thus she established a connection between the Creator and the World Created. That's why Hungary is Mary's country, i.e. *Regnum Marianum*, or in other words *Sacra Pannonia*, i.e. the country of the Saints. All this is a present of God, there is no other Crown carrying the same message. The Crown was given to the king by the Pope, which supports the divine origin of the power.

## 2. *Ferenc Eckhart and the concept of the Crown*

Those dealing with the doctrine of the Holy Crown cannot ignore the analysis of the so called Eckhart-debate, which developed around the historian Ferenc Eckhart (1885-1957) relating to his article on the Holy Crown in the 20<sup>th</sup> century. This study was published in the compilation, *A magyar történetírás új útjai, (New Ways in the Hungarian Historiography)*, edited by Bálint Hóman. The scholarly debate raged between members of the school of legal history, especially between Ákos Timon and the representative of the scholar methodology of

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<sup>2</sup> Tóth Zoltán József: Megmaradásunk alkotmánya, A Szent Korona-eszme a magyar történelemben és közjogban, Budapest, HUN-idea, 2007. (a továbbiakban: 2007a)100.o.

<sup>3</sup> According to the traditional theory of canon law, the ruler gains his right from the Church to appoint bishops, abbots, preposts or to confirm such titles. Magyar Katolikus Lexikon.

<sup>4</sup> According to Act LXVII of 1498 no church property has to be given to the vouth, the uneducated, the handicapped and the unexperined, Acts of 1000 Years

positivist research<sup>5</sup>, Ferenc Eckhart; and it settled only by the 40s of the 20<sup>th</sup> century. In the meantime Ferenc Eckhart wrote his summary, *A szentkorona-eszme története, (The History of the Doctrine of Holy Crown)*, in 1941. In the fifties of the 20<sup>th</sup> century the second Eckhart-debate<sup>6</sup> raged, which is said to have contributed to the declining health and the death of Ferenc Eckhart. The third Eckhart-debate took place on the survival and the message of the doctrine of the Holy Crown after the political transformation and it has been going on until the present day: in scholarly circles, on the corridors of the Parliament and in esoteric circles dealing with the mystery of the Holy Crown.

Ferenc Eckhart, who based his findings on resource-research and, thus, his views on facts during his career, was a highly educated scholar, who spoke six languages. Ferenc Eckhart was born in Arad in 1885, he worked at the National Archives in Vienna after his studies and after the collapse of the Austro-Hungarian Monarchy he worked as a civil servant. He was appointed the head of the Hungarian Historical Institute of Vienna in 1928. Between 1929 and 1957 he became the head of the Department of Legal History at the Péter Pázmány University in Budapest – where one of his predecessors was Ákos Timon – and where he worked until the day he died. He had a widespread interest<sup>7</sup>, during his scholarly activities he dealt with the history of economics and medieval charters as well, he contributed to the Austro-Hungarian debates in the age of Dualism. He was engaged in the modernization of the historiography from 1931 already, during which he criticized Ákos Timon. Still, the criticism of the doctrine of the Holy Crown placed him in the focus of interest, though he had stated earlier as well, that the Hungarian constitutional development had to be examined in European context. His views were considered to be materialistic, his theses were questioned in parliamentary speeches, he had almost lost his job. It must be noted, that later he came under criticism for being clerical and a nationalist for referring to Christian sources of the doctrine of the Holy Crown.<sup>8</sup> It is apparent in what distorted, confused and alternating ways ideas and trends were interpreted in the Hungarian history. After 1945 authors analysing the scholarly activities of Ferenc Eckhart found the historiographic methods of Eckhart mainly positivist.<sup>9</sup> Istvan Stipta states that „the majority of the historians being active between the two world wars - headed by Ferenc Eckhart ... belonged to the school of intellectual history.” The positivist research in itself does not conflict with the intellectual history, so is said by many, József Zoltán Tóth among them.<sup>10</sup> At this point we come to a newer school, to the so called school of intellectual history, which similarly to the positivism, does not refuse data collection based on resources, but it still differs from the previous ones, because in shaping the historical events it attaches great importance to the manifestation of the human soul. In the research methodology of this school intuition occupied an important place. Ferenc Eckhart is

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<sup>5</sup> András Veres aptly writes about the positivist idea of science: The unconditioned respect for the facts and logical connections, the spell of the exactly defined methods, the over-crupulous deprivation of competences, the belief in the controllability of evidence based on logic and experiment. These criteria are mainly met by the natural sciences, so they became the standards and the scale. In: *A tudomány fogalmának és szerepének változatai Karinthy prózájában*, members.iif.hu/visontay/ponticulus/rovatok/hidverok/karinthy-tudomany.html-2014. november

<sup>6</sup> Tóth Zoltán József: *Az Eckhart-vita időszerűsége*, *Iustum Aequum Salutare* 2007/1. III. 153–163. A második Eckhart-vita az 1950-es években folyik le, amely célja az 1945 előtti magyar politikai és alkotmányos rendszerek (kivéve, amelyek forradalmiak voltak és haladónak nevezettek) megőrzése, elítélése. [ias.jak.ppke.hu/hir/ias/20071sz/ias\\_153\\_164.pdf](http://ias.jak.ppke.hu/hir/ias/20071sz/ias_153_164.pdf), 156.o. 2015.február 13.

<sup>7</sup> Török László Dávid: *Jogtörténetírás európai színvonalon: Eckhart Ferenc*, [http://ujkor.hu/portre/eckhart\\_ferenc](http://ujkor.hu/portre/eckhart_ferenc), letöltés ideje: 2015. január 29.

<sup>8</sup> Török László Dávid: i.m.

<sup>9</sup> Tóth Zoltán József: *Szemelvények a Szent Korona-tan 20. századi történetéből. Az Eckhart-viták története*. PhD értekezés, 38. o. [midra.uni-miskolc.hu/JaDoX.../document\\_5518\\_section\\_1167.pdf](http://midra.uni-miskolc.hu/JaDoX.../document_5518_section_1167.pdf), 2015. február 2.

<sup>10</sup> Stipta István – *Jogtörténet-Tudomány*, In: *Bevezetés a társadalomtörténetbe*, Bódy Zsombor, Ö. Kovács József (2006) Osiris Kiadó és Tóth: i.m. PhD. értekezés, 39. o. 2015.február 5.

characterized as positivist, though the posterity remembers him as someone, who surpassed the feudal-national school by applying the research methods of both the intellectual history and the positivism, i.e. his work was linked to both the intellectual historical school and the positivist scientific methodology.

We have to mention Ferenc Eckhart's book, *Magyar alkotmány- és jogtörténet* („Hungarian Constitutional and Law History”), Budapest, 1946 and the fact that he was the chief editor of the journal „Századok” (Centuries) between 1943 and 1945, and he was an ordinary member the Hungarian Academy of Sciences from 1943.

His work as a historian was acknowledged by Kuno Klebersberg, minister of education and by Gyula Szekfű. Klebersberg even stood aside him when the debate sparked off, but unlike him, Tibor Zsitvai, minister of justice, refused his views adamantly in the sessions of the house of representatives.<sup>11</sup>

Some decades after the death of Ferenc Eckhart the work of this historian was remembered with honour. „In 1986, there came the opportunity to slightly retribute his scientific oeuvre. A group of legal historians paid tribute to him in a memorial session, whose material was published in the *Jogtudományi Közlöny* (Journal of Legal Sciences.) In his once famous seminar room a plaque was placed to commemorate him and his membership of the academy was restored in 1989.”<sup>12</sup>

The views of Eckhart conflict at almost every point with the school of legal history<sup>13</sup>, for a better understanding the two differing views are listed here:

The summary of the views of Ferenc Eckhart:<sup>14</sup>

- The idea of the Crown symbolized the royal power till the end of the 14<sup>th</sup> century, so it did not symbolize state power of public law character, it expressed the joint power of the king and the estates only from the 16<sup>th</sup> century (according to Emma Bartoniek from the 13<sup>th</sup>-14<sup>th</sup> century already),
- the „faint separation” of the concept of the Crown started in the 13<sup>th</sup> century in relation to the Crown's properties,
- in international treaties the Crown has symbolized the state since the 14<sup>th</sup> century,
- he denied that the doctrine of the Holy Crown could be traced back to St. Stephen, the first formation of the doctrine of the Holy Crown could not be identified in his Admonitions,
- the Hungarian constitutional evolution did not have either more or less public law character than any other European one,
- the concept of the Holy Crown is not Werbőczy's invention, but the idea of connecting the Crown concept and the organic state idea can be attributed to him,
- the organic state idea derives from the corporative view of the Church, which sees the state as a body; the royal council saw himself as a body in the 15<sup>th</sup> century,
- he admitted, that the Hungarian way differs from all European evolution due to its „Turkish type”, but he insisted that the Hungarian legal evolution was not isolate, the idea of the Crown emerged by the Czech and the Polish, as well as in England and France,

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<sup>11</sup> Kardos: i.m. 59.o.

<sup>12</sup> Rác Lajos: Eckhart Ferenc (1885-1957) In: *Magyar Jogtudósok* (szerk.: Hamza Gábor) Budapest, 1999. Nemzeti Tankönyvkiadó Rt. 105-136. o.

<sup>13</sup> Another element of the conflict between Ferenc Eckhart and the school of legal history was the difference in their views about the Golden Bull as well, for Ferenc Eckhart it did not hold any interest for public law. Eckhart nézetei, In: Tóth Zoltán József: *Megmaradásunk alkotmánya*, (2007a) i.m. 76.o. és 175-185.o.

<sup>14</sup> Eckhart Ferenc: *Magyar alkotmány-és jogtörténet*, Budapest, Politzer Zsigmond És Fia, 1946. 46-52.o.76.o.93-95.o.114-120.o.188-194.o.254-256.o.

- the Crown as the owner of the royal possessions appeared in the 13<sup>th</sup> century,
- it appeared in Hungary and by the Czech at the same time, as a symbol of the state power,<sup>15</sup>
- the frequent stressing of loyalty between the king and its subjects, which was conferred to the Crown too, is typical of Hungary,
- a subject could prove his loyalty to the king mainly by military virtues,
- the concept of the Hungarian Crown developed under Polish and Czech influence, to compare the Hungarian conditions to the English ones is no more than „a phantasy of national arrogance,”<sup>16</sup>
- he agreed that the Crown, as a physical object, consists of two parts,
- he accused the school of legal history of lacking scholarliness.

### 3. *The concepts of the historical legal school and Ákos Timon*

Ákos Timon, lawyer, professor was born in Eger in 1850. He studied in Germany and in France, after graduation he lectured on canon law and legal history on Győr, later as a reader in Budapest. There he taught canon law, Hungarian and universal legal history as well. Ákos Timon belonged to the so-called historical legal school, he could present his views as head of the department of the university from 1891, because as of 1890 an independent department of constitutional and legal history was established in Budapest.<sup>17</sup>

Between 1899 and 1890 he was the Dean, between 1921 and 1922 the Rector of the Péter Pázmány University. Timon insisted on the originality of the Hungarian legal evolution, therefore his work was criticized several times, stating that his views could not be supported scientifically. The most often mentioned example of his scientifically arguable statements is stating that the effect and the greatness of the Hungarian legal evolution can be compared only with the English one. His views were further criticized for being out-dated and feudal – for example he had arguments with his contemporaries about the issue of the duel. Emma Bartoniek agreed with Eckhart, that Timon’s views could be challenged. His publications on the issue of the doctrine of the Holy Crown: *A szent korona és a koronázás jelentősége (The Importance of the Holy Crown and the Coronation)* (Bp., 1907), *A szent korona elmélete és a koronázás (The Theory of the Holy Crown and the Coronation)* (Bp., 1916. and 1920.) Timon died in 1925, so he did not live to see any of the Eckhart debates, so the debate did not take place between him and Ferenc Eckhart, but between his contemporaries, politicians and lawyers. So it was not a conflict between two persons, but in a broader context it was about the antagonism of two dissenting opinions, spirits of age and scientific methodologies.

Ákos Timon belonged to the historical legal school, which evolved after the Compromise of 1867 and was filled with nationalism. His views reflected the mood of the nation at that time. This historical idea appeared in the views of Friedrich Carl von Savigny and Georg Friedrich Puchta, so in the concept of the historical legal school (historische Rechtsschule). A Hungarian legal scholar representing this concept was Gusztav Wenzel. The historical legal school considered law as the product of the Volksgeist, so according to them the only purpose of legal history was the exploration and working up of the historical legal

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<sup>15</sup> Kardos i.m. 58.o.

<sup>16</sup> Eckhart Ferenc: Magyar alkotmány és jogtörténet, 1946. i.m. 240.o.

<sup>17</sup> Horváth Attila: A jogtörténetírás históriája, 2. Jogtörténet-tudomány és az egyetemi katedrák, <http://majt.elte.hu/Tanszekek/Majt/TanszekTortenet/JogtortTudTortenet2.html>, letöltés ideje: 2015. január 29.

traditions.<sup>18</sup> It meant an opposition to the school of natural law as well. The historical law school is not a uniform school, but a detailed presentation of it is out of the scope of this paper, as it must be discussed rather by legal philosophers or scholars of Roman Law. The school is often characterized by its tendency towards national romanticism and exaggeration. The positivist historical school lead by Auguste Comte appeared as an opposition to this concept, which formulated the principle that the world had to be explained by exact knowledge, avoidance of speculations, the denial of the decisive role of the Volksgeist, and the foundations of historiography on facts belonged to its basic standards.<sup>19</sup> „So in the second half of the previous century in the Hungarian science, and so in the historical science, not only the positivism was presented, but the nationalism rooting in romantic nobility too”. – as Lajos Rácz stated.<sup>20</sup>

The views of Ákos Timon were in line with the emotions of his Hungarian contemporaries, as following the Treaty of Trianon it kept the conscience of the Hungarians alive. „Since the declaration of the rule of law, the whole nation including all inhabitants in the area of the Holy Crown together with the king wearing the crown on his head make the unified public law entity, the living body, which our previous public law defined as the whole body of the Holy Crown (totum corpus Sacrae Regni Coronae), and which is called the state nowadays. Being a member of the Holy Crown is the strongest guarantee of the rule of law, and it does not allow any differentiation based on religion, race, social status....today, I can state, that the personality of the Holy Crown is the cliff, which the Hungarian constitution is based on, and whose firmness ensured the sovereignty and independence of the Hungarian state in spite of so much struggle.”<sup>21</sup>

The views of Ákos Timon on the doctrine of the Holy Crown can be summarized as follows:

- the concept of the Hungarian Crown is an odd one out in the European evolution because it is connected to a real and Holy Crown, which means a spiritual power independent from the royal power, he stressed the mystery of the Crown, he thought it was the most unique product of the Hungarian constitutional evolution<sup>22</sup>
- the Crown and the person of the king parted from the very beginning, so Timon did not accept the assumption, that the legal development of the Western countries had preceded the Hungarian legal development by centuries,
- the ultimate power, unlike in the concept of the Western nations, is a power conferred not to the king, but to the Holy Crown
- in case of having no king, the sovereignty lies with the nation and the national assembly
- the royal power is conferred to the king by the act of the coronation
- the Hungarian – unlike the Western European – constitutional evolution always had a strong public law character

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<sup>18</sup> Földi András: Adalékok a magyarországi jog természetrajzához, Adalékok a történeti jogi iskolának a magyar jogi romanisztikára gyakorolt hatása kérdéséhez, In: recepció és kreativitás, [http://www.phil-inst.hu/recepcio/htm/7/702\\_belső.htm](http://www.phil-inst.hu/recepcio/htm/7/702_belső.htm), letöltés ideje: 2015. január 29. és Horváth Attila: i.m.

<sup>19</sup> Horváth Attila: i.m.

<sup>20</sup> Rácz Lajos: Eckhart Ferenc (1885-1957) In: Magyar Jogtudósok (szerk.: Hamza Gábor) Budapest, 1999. Nemzeti Tankönyvkiadó Rt. 105-136. o.

<sup>21</sup> Timon Ákos: A Szent Korona és a koronázás közjogi jelentősége, Budapest,1907. Rákosi Jenő Budapesti Hírlap Újságvállalata, 12. o. In: Harvard Law library, 1932. <http://mek.oszk.hu/08600/08661/-2015.február.9.és> Timon: A Szent Korona elmélete és a koronázás, Budapest, 1920.Stephaneum, 3.o. és 14.o.

<sup>22</sup> Timon: A Szent Korona elmélete és a koronázás, 15. o. és Tóth (2007a) i.m.182.o.

- the Hungarian nation has monarchical inclination, which may be the stronger than any European one,<sup>23</sup>
- during the reign of Sigismund of Luxemburg already, the statement that laws must be passed by the king and the National Assembly jointly was realized in practice
- he agreed with Eckhart only on the fact that the doctrine was not Werbőczy's invention
- he denied that the Hungarian nation had adopted its legal institutions from abroad<sup>24</sup>
- the importance of the Hungarian constitutional evolution can be compared only to the English one, (Béni Grosschmid came to the conclusion, that the "estate" derived from the British crown is logically the same as the right of property derived from the Holy Crown),<sup>25</sup>
- this kind of personification of the Crown cannot be found anywhere in the world,
- the Hungarian spirit always possessed the strength of some public law attitude<sup>26</sup> and this concept too (Zsolt Zétényi agrees too),
- his views come near to the national romanticism.

Just like Ákos Timon *János Zlinszky* agreed that the Hungarian state had been characterized by a divided and controlled central power from the very beginning, the feudalism based on private authority did not evolve, but rather the estates of realm with a public law character. Adding, that connecting the Holy Crown to St Stephen was simply a political necessity.<sup>27</sup> *Zoltán József Tóth* also argued in favour of the uniqueness of the Hungarian Crown, according to him one cannot speak of a holy character of the Czech crown<sup>28</sup>, the crown is simply a symbol of the Czech monarch and the state, it is not connected to any kind of a real crown<sup>29</sup>, while we frequently stress the allegiance i.e. the confidential element between the king and his subjects. This personal relationship was identified by Emma Bartoniek and Ferenc Eckhart as well. Tóth is in the opinion that the concept of the Hungarian Holy Crown dates back earlier than those of the northern and northern-west Slavic crowns, it differs as to its content too because in the Slavic countries it embodies the relationship of the Crown's properties to the native country,<sup>30</sup> while ours the relationship of the subjects to the state. Zoltán József Tóth dates the birth of the symbol representing the state, which is independent from the king to the 11<sup>th</sup> century, Emma Bartoniek to the 13<sup>th</sup>-14<sup>th</sup> century, Eckhart to the 15<sup>th</sup> century. The views of Emma Bartoniek and Ferenc Eckhart have some parallelism with each other, as both regarded the Crown as a symbol of the medieval Hungarian Christian state, but they differ as to the dates of the separation of the Crown and the king. Bartoniek puts a stronger stress on the uniqueness of the symbol.

<sup>23</sup> Timon: i.m. 13. o. <http://mek.oszk.hu/08600/08661/-2015.február.9>.

<sup>24</sup> While the European traditions of coronation anointing the king with oil, the Hungarian tradition included coronation with the Holy Crown. The Crown, as symbol of the state appeared in the Treaty of Veneto for the first time in 1381.

<sup>25</sup> Grosschmid Béni: Werbőczy és az angol jog. Budapest, Franklin Társulat, 1928. 169-170.o.és Rózsa Dániel: A hagyományos magyar jog mint önfényű jogrendszer, 254.o. Iustum Aequum Salutare VI. 2010/3. [ias.jak.ppke.hu/hir/ias/20103sz/14.pdf](http://ias.jak.ppke.hu/hir/ias/20103sz/14.pdf)-2015.február 9.

<sup>26</sup> Timon i.m. 10.

<sup>27</sup> Zlinszky János: Történeti alkotmányunk fejlődése, Magyar Szemle, Új folyam, 2002. XI.3-4. [http://www.magyaraszemle.hu/cikk/20060815\\_torteneti\\_alkotmanyunk\\_fejlolese\\_1\\_resz](http://www.magyaraszemle.hu/cikk/20060815_torteneti_alkotmanyunk_fejlolese_1_resz) és Tóth (2007a) i.m. 181. o. és Magyar közjogi hagyományok és nemzeti öntudat a 19. század végétől napjainkig, Adalékok a Szent Korona-eszme történetéhez, ÚtraValó - Pázmány Péter Elektronikus Könyvtár [www.ppek.hu/.../Toth\\_Zoltan\\_Jozsef\\_Magyar\\_kozjogi\\_hagyomanyok\\_e..](http://www.ppek.hu/.../Toth_Zoltan_Jozsef_Magyar_kozjogi_hagyomanyok_e..) 95.o. 2015.február 5.

<sup>28</sup> Tóth (2007a) i.m.216.218.o.

<sup>29</sup> Eckhart Ferenc: Magyar alkotmány-és jogtörténet, i.m.117.o.

<sup>30</sup> Bartoniek i.m. 71.o.

#### 4. *Emma Bartoniek and the concept of the Crown*

Emma Bartoniek (1894-1957) a representative of the civil historiography carried out her scientific research among the walls of the Széchényi Library. She graduated in liberal arts at Péter Pázmány University in 1917. From 1916 she worked at the Széchényi Library already, and later, between 1934 and 1945 she was the head of the Department of Manuscripts of the Széchényi Library. Her name may sound less familiar than those of Ákos Timon and Ferenc Eckhart, which may be due to the fact that her lifework was performed not at the university lectern, so she did not get such big publicity. She worked and researched in the „solemnity” of the Széchényi Library. No wonder, that, based on her Curriculum Vitae, she cannot be listed among the representatives of any trend or school. Authors, honouring her personality and work, emphasize her introverted personality devoted to science, who dedicated all her time to research. Her writings, which are built on historical resources by logical reasoning, are enduring anyway, they are interesting and valuable readings for the posterity. In her biographies she is often remembered by a quotation, which depicts a scholar devoted to science. She wrote about herself. „I would not say, that I sacrificed my life to science; it was no sacrifice at all, but the greatest pleasure, and science gave me more than I gave to science.”<sup>31</sup>

Ferenc Eckhart referred to the views of Emma Bartoniek in his research on the doctrine of the Holy Crown as well.

Her work on the doctrine of the Holy Crown is *A magyar királykoronázások története. (The History of the Hungarian Coronations)* (Budapest, 1939). It is aimed at the general public, but its scientificity cannot be questioned in spite of its readability. Emma Bartoniek joined the Crown debate with her publication „Corona and regnum”<sup>32</sup> in the journal Századok (Centuries) in 1934 already, but her work *A koronázási eskü fejlődése 1526-ig (The Development of the Coronation Oath until 1526)* published in the Journal Századok in 1917 was written on a similar topic, as she discussed the issue of the royal power and the oath. Other works of her to be mentioned are: *Árpádok trónöröklési joga (Succession in the House of Árpáds)*, (Századok, 1926) *A királyi hatalom eredete (The Origin of the Royal Power)* (Századok, 1936) and *A magyar királyválasztási jog a középkorban (The Right of the Hungarian Royal Elections in the Middle Ages)*. (Századok, 1936).

Actually, Emma Bartoniek was motivated to study the doctrine of the Holy Crown by the Eckhart debate, as she had been studying the issue for one and a half decades before, so her basic intention was not to take stand on any side. She published her views on the Crown according to her own field of interest.

The views of Emma Bartoniek are somewhere in between the views of the school of legal history and those of Ferenc Eckhart. Her findings can be summarized as follows:<sup>33</sup>

- The Crown appeared in the Admonitions, but it was not called holy,
- in the Admonitions the Crown still belonged to the king, but the notions of the king and that of the state were identical at that time,
- the royal power was extended by the extension of the concept of the Holy Crown,

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<sup>31</sup> Szilágyi Ágnes Judit: *Érdekes személyiségek, emlékezetes viták a magyar történetírásban*, 27 történetiszportré, Palatinus, 2007. 95.o.

<sup>32</sup> Szilágyi: i.m. 99.o.

<sup>33</sup> Bartoniek Emma: *A magyar királykoronázások története*, Budapest, az Akadémiai Kiadó Reprint sorozata, 1987. 173. és 67-85.o.

- linking abstractions to concrete objects is common in the culture of other European nations,
- in the 13<sup>th</sup> century it happened to be mentioned as the country's Crown,
- the Crown expresses the allegiance between the king and his subjects, this idea stands in its focus, while from the 14<sup>th</sup> century the Crown embodies the relation of the territories to the homeland,
- Crown's superiority over persons has been noticeable from the beginning,
- the royal power is conferred to the Holy Crown by the „people”, and this power falls from the Holy Crown to the King by consent of the people,
- a special importance is attached to it in the fights of the estates,
- the idea of the unification (of the king and the estates or of Hungary and its territories) evolved under the universalistic approach of the Middle Ages, when the Pope was thought to be the terrestrial head, the believers the limbs - this image is the image of corpus mysticum Christi, but it could have evolved in the antique scholarship as well, in which the state was seen as a body,<sup>34</sup>
- the concept of the state as a “living orgasm” can be found at other places as well,
- the Czech and Polish traditions are similar to the Hungarian ones, the Polish crown is holy as well, but it is referred to only in the 14<sup>th</sup> century; the Hungarian doctrine dates back earlier,
- the idea, that the Crown is the heir to all properties, evolved in the 15<sup>th</sup>,
- as to its content the Hungarian doctrine of the Crown differs from all others
- she thought, the doctrine of the Holy Crown had faded into the background in the 16th-17th century, in the 18th century even more, the nobility at that time had shown no interest in it at all,
- in the 16th-17th century the Crown is mentioned as the source of all rights of property,
- as far as the coronation ceremony concerns St. Stephen followed the German formula, in which handing over the sword and the sceptre preceded the handover of the crown,
- there are similarities between the Hungarian, Polish and Czech coronation ceremonies,
- Ákos Timon knew the organic state theory only from the works of Werbőczy and from charters from the Middle Ages, and so his theory of the Holy Crown is based on unsound reasoning,
- Similarly to Ferenc Eckhart, Emma Bartoniek did not dare to write about the role of the Holy Crown after 1919 either,<sup>35</sup>
- Emma Bartoniek shared the view, that the Crown consisted of two parts physically.

According to Emma Bartoniek the Crown belonged undoubtedly to the people and not to the king in the 14th century. She thought, this was reflected in the story about losing and mysteriously finding the Holy Crown. It happened in 1305, when Otto of Bavary lost the Crown somewhere in Austria, when the Crown hidden in a case fell off the carriage he was travelling with. Later Otto's men found the Crown, and his contemporaries considered this fact as a proof of Providence. They thought, Hungary could not lose its Crown sent by an angel.<sup>36</sup> With regard to the fact, that Emma Bartoniek thought that the doctrine of the Crown

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<sup>34</sup> Bartoniek: i.m.77.o.

<sup>35</sup> Kardos József: i.m. IX. o. In: A magyar királykoronázások története

<sup>36</sup> Bartoniek: i.m. 61-62.o.

could be traced back to St. Stephen, Zoltán József Tóth is in the opinion, that the views of Ákos Timon, that the buds of the doctrine of the Holy Crown were present already at the very beginning of the foundation of the state, can be supported by the statements of Emma Bartoniek and partly by the research findings of Eckhart.<sup>37</sup> Emma Bartoniek realized the importance of the concept when she wrote „the deep roots of this theory, which Timon had only a faint idea of, get back to the Admonitions, to the 10 commandments of good governance of our king St Stephen, and spread into the widest strata of the Hungarian nation at the beginning of the 20<sup>th</sup> century. For this reason we have not been able to shape our idea of the Hungarian state without the doctrine of the Holy Crown up to now. Our liberated brothers and their lands return to the Holy Crown, the Hungarian judiciary passes its verdicts in the name of the Holy Crown, expressing the most unique feature of the Hungarian Holy Crown, the essence of its idea: the Crown's superiority over persons, the in itself perfect symbolism of the abstract Hungarian state standing above everything and everybody.”<sup>38</sup>

## 5. *Conclusions*

Today the question to be answered in connection with the doctrine of the Holy Crown is not who was right about the historical details, but rather what message and importance the Crown has in the 21st century. In spite of the differences in the concepts of the Holy Crown I think, that it can be asserted that the doctrine of the Crown, as it is, is a public law sovereignty concept symbolizing the Hungarian statehood, which cannot be compared to any other crown doctrines.

It ensures legal continuity in the Hungarian legal development and constitutional order. It helps us to preserve our national identity in a globalized world order. The view, supported by several authors, that it matches the spirit of the Hungarian nation in every aspect may be true, as the doctrine of the Holy Crown gave hope to the territorial revision of the country in bad times, even if the chances for returning the former parts to the home country were and are still unreal.

Within constitutional frames the doctrine of the Crown and the Crown itself may express some attraction to the monarchy and some kind of false symbol of the counterpoint to democracy only for those, who have no deeper knowledge of the doctrine of the Holy Crown. (the form of state and the form of government of monarchy may obviously mean democratic governance, as it can be seen in many European countries) The Crown is not a symbol attached to any political party, not a means of daily politics, it does not mean that the country needs a king or that only Hungarians can be members of it.<sup>39</sup> The Crown, as a sovereignty concept, symbolizes the whole nation and answers the question who the main power belongs to. The power is practiced by the whole nation in direct and indirect forms as well.

Certainly, it is a disputable symbol and concept, which came into the crossfire of the daily political debates and, consequently, people representing different values have attributed different explanations to it. It has to be noted that among those who criticize or use the symbol in their public debates there are only a few, who managed to expound and explain the concept and theses of the Holy Crown.

The concept of the Holy Crown embodies the unity of the nation and symbolizes the territory of the state. Actually it can be considered as one of the sovereignty theories, as *Gábor Máthé* refers to it, as it symbolizes the agreement between the ruler and the people. The nation confers the rights to the Crown, this is the first contract to have been made, the second one is the fact of the coronation itself. If exercising sovereignty becomes impossible,

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<sup>37</sup> Tóth: Megmaradásunk alkotmánya, i.m.183.o.

<sup>38</sup> Bartoniek: i.m. 173.o.

<sup>39</sup> Tóth (2007A) i.m.123. o. So it is not a national imperium.

the nation is entitled to take actions.<sup>40</sup> Many represent the view that the doctrine of the Holy Crown came into conflict with reality when the Crown was placed on the head of rulers, whose rise to power by the will of the people is highly questionable. In connection with it we can say that the doctrine of the Holy Crown resolved this dilemma as well, as far as it enabled a democratic change of power: According to András Tamás, “*the sovereignty of the estates of the realm enjoyed by the king did not solve the nation’s sovereignty if it did not correspond to the doctrine of the Holy Crown, but rather suppressed it.* Liberal minds tend to regard the doctrine of the Holy Crown as a mystery of the estates of the realm- he added. From the viewpoint of the Hungarian statehood it is a misinterpretation, especially in relation to the fact that the statehood, its independence, (sovereignty in fact) may come into conflict with the actual order that can be temporarily maintained by force ....”<sup>41</sup> The doctrine of the Holy Crown does not accept unlawfully established systems and the exercise of power by force. These contradict the idea of freedom enjoyed by the whole nation. The doctrine of the Holy Crown does not acknowledge the kings unconditionally, because the unconstrained practice of power of the absolutist rulers is just as unacceptable as the reign of occupants over the nation.<sup>42</sup>

So the Crown symbolizes the power of the nation, and the limited existence of the power, so the fact that the „rulers” just exercise power as members of the Crown. It is simply a sovereignty theory, which has its own historical features. Other nations have their own characteristics relating to their institutions and principles. A typical feature is that e.g. in the United States the principle of the separation of power is closely connected to the rule of law or the fact that the British constitutionalism can be traced back to centuries and the present idea of democracy is „rooted” in documents like the Magna Charta Libertatum, which cannot be interpreted in the present world word by word. Though, nobody questions the democratic system in Great Britain. So one does not have to aim at the word-by-word interpretation of the law and the unconditional legal continuity, because this could lead to abolishing the national documents and symbols of all nations, saying that they do not meet the spirit of the present.

The Holy Crown is not a product of conscious legislation, but rather a sovereignty concept with independent life crystallized in historical evolution. It is a public law principle, which enriches the cultural-legal diversity of Europe, as it is stated in the National Credo of the Fundamental Law as well. „We believe that our national culture substantially contributes to the diversity of the European unity.” The legal continuity between the transformation in 1989 and the historical constitution is detectable – as *Gábor Máthé* concludes – the transformations in 1946 and 1989 seem to reject the doctrine of the Holy Crown and the historical constitution, still those changes can be interpreted as something, which upholds and cherishes our traditions i.e. the legal continuity can be pointed out.<sup>43</sup>

The object of this study in this topic was mainly the presentation and comparison of the views of three outstanding former authors, historians and legal scholars. The differences in the way of thinking between Ferenc Eckhart and Ákos Timon can be good illustrated by the following quotation published in the book of *Zsolt Zétényi*, who wrote, that Hajnik and Timon were lawyers, devoted believers and practitioners of the Hungarian public law. They loved and found the public law in history, while Eckhart, the historian, was looking for the

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<sup>40</sup> Máthé Gábor: A Szent Korona-eszme-parafrazis, In: Eckhart Ferenc emlékkönyv, szerk.: Mezey Barna, Budapest, Gondolat Kiadó, 2004. 282.o.

<sup>41</sup> Tamás András: Közjogi mítoszok. In: *Formatori Iuris Publici*, ünnep kötet Kilenyi Géza professzor hetvenedik születésnapjára. Pázmány Péter Katolikus Egyetem Jog- és Államtudományi Kar, Szent István Társulat, Budapest, 2006.475.o.

<sup>42</sup> Tóth Zoltán József: Az Alaptörvény szellemisége: a Nemzeti hitvallás értékei, a jogfolytonosság és az Alapvetés, *Polgári Szemle*, 2014. október – 10. évfolyam, 3-6. szám, [http://www.polgariszemle.hu/?view=v\\_article&ID=567](http://www.polgariszemle.hu/?view=v_article&ID=567), 2015. február 13.

<sup>43</sup> Máthé: i.m. és Tóth: Szemelvények a Szent Korona-tan 20. századi történetéből, i.m. 157.o.

empirically researchable, in charters living history in public law. Where he did not find history, he denied the existence of public law.<sup>44</sup>

*Andor Csizmadia's* approach in relation to the differences between the views of lawyers and historians is quite interesting: He says that "the teachers of legal history with legal education usually follow positivists methods, the majority of their works is based on printed material, and only occasionally, to a smaller extent they use sources in charters.... The sceptre scholar of legal history with education in history knows the results of historiography, but he seemingly lacks legal education, and even more the legal practice and, consequently, the legal way of thinking. Even works, which are excellent works from a historical viewpoint, miss the opportunity to solve the legal problems of the era. The difference turns to be a similarity if we examine the presence of the historiography schools. The views of the professional legal historians are strongly bound by the realities of law and legal development... No wonder, that despite the influence of the schools, the positivist methods are present more or less in the works of almost all legal scholars. And as the authors attempting classification sooner or later admit: to classify legal scholars into historical trends is really difficult."<sup>45</sup>

Ferenc Eckhart took over the chair of the department of legal history in 1929 and he thought that time had come to reform the views of Timon and others, which had characterized the Hungarian legal history. Ferenc Eckhart's writings were followed by such upheaval that many demanded that he must be deprived of his sceptre. Following the attacks Eckhart was defended by historians like Elemér Mályusz, Sándor Domanovszky and Emma Bartoniek among them. Ákos Timon's views date back earlier than the ideas of Eckhart and Emma Bartoniek. In my opinion the couple of years gone by between their lives (Ákos Timon died in 1925, Eckhart and Bartoniek in 1957) were long enough for Ferenc Eckhart and Emma Bartoniek to meet new ideological trends, new lines in history, which out-dated the spirit of the age. Though the views of Timon are considered out-dated today, they harmonized with the spirit and disposition of his age.

The works of Emma Bartoniek are valuable and precise works for the posterity. She dealt with Middle Ages history, bibliography, and the history of the Hungarian historiography. Her views are identical with the ones of Ferenc Eckhart at several points, but they differ at other points as well, that's why I think that they are somewhere in between the ideas of Ákos Timon and Ferenc Eckhart. Not underrating the lasting and world quality works of Ákos Timon and Ferenc Eckhart, which are imprints of history at the same time, I think one may say that Emma Bartoniek represented the most objective viewpoint in this debate, her views lack all presumption or pursuit for justification, her statements, as written by József Kardos<sup>46</sup>, are supported the most convincingly, her research is precise and liable.

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<sup>44</sup> Zétényi Zsolt: *A Szentkorona-eszme mai értelme*. Püski, Budapest, 1997. 144.o.

<sup>45</sup> Csizmadia Andor: In: Horváth Attila: *A jogtörténetírás históriája, 2. Jogtörténet-tudomány és az egyetemi katedrák*, <http://majt.elte.hu/Tanszekek/Majt/TanszekTortenet/JogtortTudTortenet2.html> (Letöltés:2015. január 29.)

<sup>46</sup> Kardos József: *Előszó az 1987. évi kiadáshoz*, In: Bartoniek Emma, VI. o.

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