| Chapter 4 |

Collections of Customary Law in East Central Europe Using the Example of *Opus Tripartitum*

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ABSTRACT

Customary law dominated at the beginning of the development of all legal systems, and this status persisted until the times when they were equaled by laws of the authorities disposing of necessary state power. However, even then, customs were not instantly sidelined, and these two sources were engaged in competition for centuries. Mention was topical, with certain exceptions and individualities, even regarding the legal systems of Central and Eastern Europe. The most widely known compilation of this provenance was Stephen Werbőczy's collection of customary law from the second decade of the 16th century that became famous under the name *Opus Tripartitum*. Using it as an example, we can demonstrate typical legal development in this period, not only for the Kingdom of Hungary but also for several neighboring countries. The main goal of this article is to point out the historical development of its origin, identify the authorial spirit in which it was written, and clarify the conflict between customary and written law, which was resolved determinatively by reason of this compilation in favor of the first for the next centuries.

KEYWORDS

codification efforts, Stephen Werbőczy, *Opus Tripartitum*, structure of the compilation, legal custom, law, reasons for non-promulgation, obligatory force, dominance and weakening of the achieved positions, other countries of Central and Eastern Europe.

Introduction

Practically all contemporary legal systems were initially constructed on the legal customs that dominated as the sources of law until the times when they were equaled by the laws promulgated by the authorities with power over given territories and the communities residing there. Their task was not immediately accomplished; on the contrary, customary law often remained in effect for entire centuries alongside other sources of law, often acting as contemporary rules of constitutional laws expressing the normative principles to which all other rules, not omitting written laws, must conform. This status was reflected in almost all legal systems, and the countries of

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Central and Eastern Europe in the Late Middle Ages and the early modern history period were not exceptions in this sense. Since the Middle Ages lasted longer in the Kingdom of Hungary than elsewhere, legal custom dominated there for much longer, until the middle of 19th century, in contrast to Austria, for example. In spite of the gradual strengthening of the position of other sources of law, legal custom retained more vitality and a greater ability to meet social needs, in comparison with the royal decree (*decretum*) issued by the king with the approval of the estates convened at the diet, royal privilege, and court decisions.[1] Credit for this development is mainly attributed to the protonotary of the High Court, Stephen Werbőczy († 1541), who held this position from the beginning of the 16th century. He presented a magnificent work entitled *Tripartitum opus iuris consuetudinarii inclyti Regni Hungariae* to the diet of Hungary in 1514. It contained Hungarian customary law enriched with certain authorial changes and conclusions that favored the lower class nobility over the upper class nobility. Although this compilation did not receive the royal great seal, it nevertheless acquired immediate authority and shaped Hungarian law up to 1848 at the latest in the areas of substantial as well as procedural law.[2] This is evidenced by the fact that practically all court manuals and other handbooks related to customary practice published in those times were summaries of or commentaries on the text of *Opus Tripartitum*. Moreover, the work has been edited and issued more than 50 times to date.[3]

1. Historical background

Although the Hungarian rulers promulgated several laws under the rule of the Árpád dynasty, legal customs remained the most important source. In this period, we may divide these into customs with effect at the national level (common law) and particular customs. As a matter of interest, we may mention that whereas Western Europe was dominated by local laws and had only complementary national laws, the opposite situation prevailed in the Kingdom of Hungary. The ascendancy of legal custom endured even during the reign of the first Hungarian king Stephen I (997/1000–1038) that issued his own law code, markedly influenced by Frankish Carolingian law and pervaded by a Christian spirit.[4] Alongside royal laws and customs, of which the most important

1 Cf. Péter, 2003, p. 101.

2 As an example, we may mention generally accepted provisions guaranteeing the Hungarian nobility possession of land and individual privileges, as well as procedural directives that royal courts followed without reservation. This collection did not lose influence, even in 1848 with the formal abrogation of noble-hood and traditional forms of land possession and later was used to support the Hungarian demands on statehood in the Habsburg monarchy. One of the fragments found its way to the socialist Civil Code of 1959. See also Eörsi, 1966, p. 137.

3 Cf. Gönczi, 2003, p. 98.

4 This work was partially influenced by Justinian's Roman law, albeit indirectly. The researchers typically reflect within this context on the *Codex Iustinianus* and parts of *Novellae constitutiones*. Cf. Hamza, 2014, p. 383. Christian elements were evident especially in the rules of criminal law

guaranteed the nobility's privileges, other sources of law started to emerge as early as these times, for example, the rules of municipal law.[5] Courts were later strengthened in terms of putting their own legal customs and style into practice; they even acquired a role in law making.[6] Nevertheless, the Hungarian legal system was characterized by customs' special status and superiority, and this endured to the half of the 19th century. This is especially evident from acceptance of the fact that royal laws had to be legitimized by legal customs. This source of law encircled the legal system to the influence of Roman-canon law (*ius commune*) and by scrupulously protecting the nobility's rights also contributed considerably to political particularism.[7] Concerning its character, it had from the beginning all the characteristics of traditional theory as well as historical definitions as non-written source of law derived from community whose members consider it to be generally binding and sanction its violation.[8]

Although the Angevin dynasty made several attempts, the most significant efforts came from the representatives of central legislative power who sought to interfere with the regulations on social relationships by means of their own laws in an attempt to suppress customary law from the times of Sigismund of Luxembourg (1387/1410–1437).[9] After his death, the diet of Hungary assumed an important position as a body representing the kingdoms' estates, and from those times, it was accepted that laws may be passed by a properly convened diet after adjustment by the king, his signing, and the impressing of his seal. King Matthias Corvinus (1458–1490) adopted a similar attitude, somewhat inspired by Justinian's Roman law; he tried to codify Hungarian law, issuing his laws in so-called *Decretum maius*, in an effort to restrain the influence of customary law.[10] His goal was also to enforce the radical centralization of the country's administration to suppress the upper class nobility's determining influence on the motion of the state and their guaranteed

that assessed criminal offenses not only as breaches of the law, but also as sins. Church sanctions were thus usually attached to secular punishments. Cf. Múcska, 2004, pp. 40–41.

5 The most developed cities in the Kingdom of Hungary rid themselves of their dependence on local feudalists and became directly subordinated to the king. As an example, we may mention that in the 15th century, about 30 cities achieved this goal. From the legal point of view, independence was manifested especially in the existence of independent municipal courts, where the representatives of the city gradually replaced the nobility. The individual municipal laws that developed, influenced from the beginning by Roman law, enabled the expansion of business activities. Cf. Gergely and Máthé (eds.), 2000, p. 131, and pp. 134–135.

6 Cf. Rady, 2012, pp. 450–481.

7 See also Bónis, 1972.

8 Cf. Schelle and Tauchen (eds.), 2016, pp. 718–720.

9 The expression of his centralistic politics strengthened royal claims toward the church that manifested, for example, in the nobility being excepted from paying church tithes (1415), but also in the decree of the Council of Constance (1414–1418) on 'the highest right of patronage of the king' (1417), which Sigismund negotiated with the College of Cardinals. In 1404, he put into practice, with effect for the whole of Hungary, the so-called royal placet (*placetum regium*), according to which any papal document could be published in the kingdom without his approbation. Cf. Kumor, 2002, p. 112.

10 Cf. Pekarik, 2011, p. 24; Hamza, 2014, p. 384; Schelle et al., 2007, p. 825 and Kindl, 2004, p. 627.

untouchability.[11] However, his weak, hesitant successor Vladislaus II of Hungary (1490–1516) succumbed to their pressure and restored all of their original privileges, even abrogating the mentioned source of law.[12] The sovereign found a way to improve the legal system by drawing up the country's customary law and declaring this intention in Articles No. 6/1498 and 10/1500.[13] The struggle to synthesize the national law was especially connected with the need to elucidate the legal system and the courts' application practice, since the parties before the courts commonly referred to different rules that directly or indirectly contradicted each other.[14] After an unsuccessful attempt to entrust the task of collecting valid customs to the protonotary Adam Liszkai, King Vladislaus II finally extended his request to include all *decreta* published in the kingdom and asked the protonotary Stephen Werbőczy to execute this mission.[15]

2. Authoring and working on the collection

According to the majority of scientists, the individuality of elaboration in *Opus Tripartitum* reflects not only the then legal-political situation in the Kingdom of Hungary but also, in several aspects, reflects the author's personality as well as his education, legal thinking, and goals. Since the final form (especially the prologue) of his work partly evokes at least fundamental knowledge of the institutions of Roman law, most polemics in the scientific community were related to the site of his university studies. Nevertheless, it is generally accepted that he spent only few months at the university in Kraków.[16] Although such an attitude was unextraordinary, the length of the studies naturally depended entirely on the student's will and the sufficiency of his resources and did not in any way disqualify him from future legal practice.[17] Stephen Werbőczy developed his skills by learning about Hungarian legal practice, as reflected in his activities as a politician, officer, judge, diplomatist, and juridical scholar – and finally as the author of *Opus Tripartitum*.[18] Concerning his political orientation, during his career, he advocated for the rights of the lower

11 Cf. Article No. 21/1486.
12 Cf. Hubenák, 2001, p. 9; Kuklík and Skřejpková, 2008, p. 79.
13 Cf. Štenpien, 2009, p. 98.
14 Cf. Rady, 2005, p. XXXII. The strengthening codification efforts were, in general, oriented in three ways: collecting and systemizing Hungarian laws for the sake of compiling the collection of laws (*collectio decretorum*), recording customary law, and collecting court decisions. Cf. Švecová and Laclavíková, 2018, p. 468.
15 Since Articles No. 31/1504 and 20/1507 specifically addressed the necessity to record decrees, everything implies that the codification of customary law had already started. Cf. Csiky, 1899, p. 28.
16 Cf. Kubinyi, 1999, p. 559. It is principally not accepted that he studied in Buda, Bratislava, Padova, Vienna, or even Bologna and spoke Greek or Italian. Cf. Rady, 2006, p. 107.
17 See also Brundage, 2008, pp. 219 ff.
18 He learned about Hungarian legal practice while working as a royal archivist, where he became acquainted with a quantity of legal documents. Cf. Pekarik, 2011, p. 23.

class nobility and endeavored on a long-term basis to strengthen their influence in the royal curia and attain for them the same position in the royal council and in terms of holding the highest state offices as members of the upper class nobility.[19] As the peak of his career, we may designate the short-term position he held as the palatine (*Regni Hungariae palatinus et servus*), which was the second most important office after the royal one.[20] Regarding the assessment of his personality, as was typical for important official authorities, it was ambiguous. On the one hand, he is often described as a bad, self-serving politician that sold his language and country and indirectly caused the catastrophe of Mohács; on the other hand, the fact that he was a good lawyer is fully accepted and was proven when Hungary confronted the absolutism of the Habsburg dynasty.[21] Since that time, he has often been compared to the most famous personalities in the legal sciences, including Aurelius Hermogenianus, Henry de Bracton, Tribonianus, and Ulpianus.[22] As is usual in such cases, the truth is apparently somewhere in the middle. Nevertheless, his position in the history of the Central European legal science is unshakable.

As pointed out, Stephen Werbőczy was entrusted with recording customary law and other relevant rules, as he was one of the most recognized legally educated men in the Kingdom of Hungary and had worked as a protonotary of the High Court, coupled with his role as a prominent politician and a representative of the interests of the lower class nobility.[23] His task was to logically and systematically organize valid laws, legal customs, and other generally binding or individual legal acts, among which we may mention the charters of privileges and legal material accumulated by court practice.[24] Under the term 'customary law,' Werbőczy imagined practically all substantive and procedural rules that exercised authority in the kingdom through the courts, even without formal approbation.[25] Therefore, a vast amount of material had to be gathered relating to the real causes. These were then excerpted, indexed, and collected to compile a final text consisting of 700 manuscript pages.[26] Concerning the beginning of the works, legal historians usually agree on the year 1505, when the king commanded the collection of the kingdom's customs for the third time. On the other hand, they argue that the final product reveals several signs of haste; specifically, the text contains a number of contradictions and deficiencies

19 Cf. Luby, 2002, p. 55.
20 Cf. Rady, 2005, pp. XLII and XLIV.
21 Cf. Luby, 2002, p. 82.
22 Cf. Wallaszky, 1768, p. 15.
23 In the times of the presentation of *Opus Tripartitum*, he worked in the royal chancery for more than two decades and held the position of chief judge for 12 years. Cf. Rady, 2005, p. XXXIV.
24 Cf. Gergely and Máthé (eds.), 2000, p. 143.
25 Cf. Rady, 2006, p. 104.
26 Cf. Štenpien, 2009, p. 98. The last edition in Latin text had more than 200 dense pages. Cf. Bak, 2003, p. 5. Considering the language, *Opus Tripartitum* is written in barbarized Latin, interlaced with a number of foreign terms of Slovak, Hungarian, and other origin. This is also evident from the author's stylistics. Cf. Luby, 2002, p. 83.

implying limited time.[27] Although Stephen Werbőczy declared many times that it was his intention to replicate the traditional Hungarian customs, several excerpts prove that he imprinted his own interpretation of many sources in an effort to reflect the contemporary (typically political) views, remove the inconsistencies, or improve the original text.[28] Some parts of the collection indicate that the compiler adjusted them not only in the sense of *de lege lata* but also *de lege ferenda*, and for this reason, we may discuss individual revision and legal modernization.[29]

Stephen Werbőczy finished his codification in 1514, and in the form of a solemn royal bill, proposed it under the title *Opus Tripartitum iuris consuetudinarii inclyti regni Hungariae* or 'The Customary Law of the Renowned Kingdom of Hungary in Three Parts' to the national diet that congregated on 18 October, 1514. The diet's members subsequently created a 10-man committee to investigate the work for objective correctness as well as content.[30] When they concluded that the law code corresponded in every sense with Hungarian traditions, the work was presented to a general meeting of the diet, which approved it unanimously by acclamation.[31] The decree the diet issued included a plea to the king to promulgate the code, confirm and seal it, and then disseminate it to all the districts in the kingdom.[32] The diet's delegates put this request before the king. The king did not consider it necessary to examine the work more closely, and he approved it on 19 November via a solemn bill.[33] In addition, he promised to send copies of *Opus Tripartitum* to the country's districts.[34] However, the sovereign did not keep his promise. He neither appended the seal to the solemn bill containing the collection's text nor did he promulgate it by distributing it through the royal chancery.[35] The collection therefore did not meet the requirements for validation and on that basis could not formally come into effect and have obligatory legal force.[36] Stephen Werbőczy was not discouraged by the king's attitude; he found an alternative. First, he made moderate changes to *Opus Tripartitum*, including the addition of a salutation to the reader (*salutatio*) and a dedication to the ruler. In 1517, he printed the work at his own expense at printer Johannes Singrenius' Viennese letterpress and disseminated it in the districts and country courts.[37]

27 This conclusion is accepted in spite of the older legal historians' statements that the collection resulted from time-consuming work. Cf. Bónis, 1941, p. 4.
28 Cf. Bak, 2003, p. 6.
29 Cf. Rady, 2002, p. 33.
30 Cf. Luby, 2002, p. 82.
31 Cf. Fraknói, 1899, p. 68.
32 Cf. Article No. 63/1514.
33 Cf. Švecová and Laclavíková, 2018, p. 469.
34 Cf. Schelle et al., 2007, p. 783.
35 Cf. Gergely and Máthé (eds.), 2000, p. 143.
36 Cf. Pekarik, 2011, p. 85.
37 The original version of the manuscript was not preserved, but the facsimile edition of the Viennese exemplary was published by Armin Wolf in Frankfurt in 1969. See also Rady, 2006, p. 104.

3. *Opus Tripartitum*

3.1. Structure and content

Concerning structure, Stephen Werbőczy chose a three-part division, which was typical for those times considering the number's association with perfection (with reference to the Holy Trinity). He might also make the original choice to proceed in accordance with Roman lawyer Gaius' classical textbook *Institutiones*. A prologue (*prologus*) with 16 titles preceded the individual parts of the work. This is usually described as a theoretical-legal introduction to the collection.[38] Whereas individual parts may be characterized as the outcomes of Hungarian legal practice or the author's personal contributions, the prologue represents a low quality compilation of the older works with which he was directly familiar or had at his disposal.[39] Stephen Werbőczy addressed truth, law, sources of law and justice, and generally accepted legal and theological principles. The prologue is recognized as more theoretical than legal.[40] In the first part (*pars prima*), divided into 134 titles, he dealt with almost the entire area of substantial law, including personal, donative, pledge, hereditary, and partly also contractual law, concentrating almost exclusively on the nobility.[41] Herein, he addressed, for example, the principles and fundamentals of the nobility's possession of land and possibilities of its deprivation on the king's behalf after the commission of certain delinquencies (especially 'contagion of infidelity'or feudal infidelity). The second part (*pars secunda*), consisting of 86 titles, was mostly oriented to the sources of law and procedural law. Here, after the presentation of basic types of law sources, he explained individual trials and the typically applied legal remedies.[42] In the third part (*pars tertia*), structured into 36 titles, he dealt with special particular laws, especially municipal, Transylvanian,

38 The collection was originally divided into parts and titles. The generally accepted division of the titles into principia and paragraphs is the work of lawyer Joannes Szegedi who taught in the first half of the 18th century at the Faculty of Law of the Trnava University in Trnava. Cf. Kadlec, 1902, p. 92.

39 The author explained that he would like to negotiate herein on 'certain remarkable matters' (*quaedam notabilia*) relating to the text as a whole. Within its frame he discussed the nature of law; its division, origin and goals; the relationships between *ius*, *lex*, and *consuetudo*; and the duties of a good judge. In this part, he proceeded in accordance with scholastic methods and individual *quaestiones* then structured into *distinctiones*. Cf. Rady, 2006, p. 106.

40 Cf. Cieger, 2016, p. 133.

41 Cf. Hamza, 2014, p. 387.

42 Although the majority of procedures corresponded to the older patterns of generally accepted Roman-canon procedure, they suggest various peculiar procedural law institutions unknown to the Western jurisprudence built on *ius commune*. Cf. Hunyadi, 2003, pp. 25–35. Of them, we may mention so-called *repulsio*, when a nobleman could draw sword and defend himself against a bailiff executing a judicial decision, and *reoccupatio*, which allowed a dispossessed nobleman to take possession of his property by force within 1 year from expulsion. In a certain aspect, the second remedy evokes some Roman-law interdicts, or the procedure to protect possession presupposed by canon law through *remedia spolii* (*exceptio spolii* and *actio spolii*). I addressed this problem in the monograph Vladár, 2014.

Croatian, Slavonic, and rules regulating the status of bondsmen. The majority of researchers agree that from a systematic point of view, this had to be integrated in previous parts; they have even pointed out its considerably chaotic nature.[43] In the conclusion (*operis conclusio*), Stephen Werbőczy explained his language and chosen terminology in more detail.[44]

3.2. Sources

Although Stephen Werbőczy asserted elaboration of his work in accordance with the Hungarian customs, and we may more or less agree with such a statement, most scientific polemics were related to the sources used while compiling the prologue. As a non-expert in Roman law, he declared his interpretation of the Kingdom of Hungary's customary law in accordance with the Roman-law principles, following the divisions accepted by classical Roman law, which were then *personae*, *res*, and *actiones*.[45] As evident from the antecedent chapter, this resolution failed because of several peculiarities of the Hungarian legal system.[46] On that account, the first and longest part of the *Opus Tripartitum* actually combines *personae* and *res*, since the author himself admitted the impossibility of separating one from the other. The second part contains mostly *actiones*.[47] In spite of this, the abovementioned indicates that at least the prologue was elaborated using several Romanist ideas and bases.[48] Insufficient knowledge coupled with the individual character of Hungarian law meant that *Opus Tripartitum* did not become the mediator of Roman law in the Kingdom of Hungary, and the largest traces of Roman-law erudition could be found in municipal law.[49] As the majority of researchers have proven, Stephen Werbőczy made indirect references to Roman law in his work through other private-law compilations, among which we may make particular mention of *Summa legum*, which was written in the 14th century by the Italian lawyer Raymundus Parthenopeus and published in 1506 also in Kraków.[50] That moved the author to indirectly incorporate Justinian's *Digest* and

43 Within this context, we may speak about the institutions of *homagium*, legal self-defense, the delinquency of the theft of horses, etc. Inclusion of particular rights is explained by the author's intention to interconnect the causes tried in individual parts of the kingdom with the jurisdiction of the central royal courts by means of appeal, bill of reviver, or transferring the case to the royal court for the sake of 'more considered verdict.' Cf. 3,3,3; 3,3,6 and Rady, 2005, p. XXXVII.

44 Cf. Luby, 2002, p. 84.

45 Insufficient knowledge and misunderstanding of several institutions of Roman law are evident, for example, from the fact that he often borrowed civilian terminology to describe the matters in a manner completely distinct from their original sense. Cf. Bak, 2003, p. 7.

46 Cf. Rady, 2003, p. 47.

47 Cf. Rady, 2006, p. 105.

48 Cf. Ibbetson, 2003, pp. 16–20; Hamza, 2014, p. 386.

49 Cf. Gergely and Máthé (eds.), 2000, p. 135. On the other hand, in the Kingdom of Hungary, Roman law had direct influence in the time of the glossators, when students frequently studied at the university in Bologna, where even the individual 'Hungarian nation' (*natio Hungarica*) existed. Cf. Hamza, 2014, p. 384.

50 Cf. Rady, 2006, p. 108, n. 22; Bónis, 1965, pp. 373–409; Seckel, 1898.

mention Gaius' *Institutiones*; the author even referenced the works of famous glossators Accursius († 1263), Azo († 1230), Bartolus de Saxoferrato († 1357), and Albericus de Rosate († c. 1354). Although the majority of researchers agree that the prologue had to present the compiler's erudition, contemporary researchers have proven the contrary. On the other hand, several indications of haste and a vague attitude to the compilation inspire the question of whether the prologues of such works were read at all.[51] Similarly, we may examine the texts of the classical antique writings generally used in the works of that time that appeared indirectly in *Opus Tripartitum* through the medium of humanists.

Although the majority of researchers agree that Stephen Werbőczy had the same attitude while working with church texts, several indications point to his basic knowledge of theology and canon law.[52] The latter eventually completely dominated the Roman-canon procedure that he had to master as a judge.[53] In the prologue, we find several extensive passages taken verbatim from the works of famous theologians and canonists. Of them, we may mention, first and foremost, the canonist Gratian, since preliminary distinctions of his *Concordia discordantium canonum* (*Decretum Gratiani*) provided the author of *Opus Tripartitum* with an enormous amount of material, specifically pertaining to the elaboration of the theoretical-legal fundamentals of such important topics as legal custom.[54] He also derived several characteristics of the law from Thomas Aquinas' († 1274) classical *Summa theologica*, as is also evident in other parts of his work. Stephen Werbőczy even included references to other canonistic works, including, for example, Hostiensis' († 1271) *Summa aurea*. On the other hand, we may mention that although he accepted canon law, he only respected it in its sphere of competence.[55] The collection includes several quotations from the Church fathers; the majority of researchers agree that they were incorporated into *Opus Tripartitum* mediately.[56] As a matter of interest, we may note that in the prologue, Stephen Werbőczy did not hesitate to use such individual church sources as rhetorical and predicatory treatises, for example, the work of Pelbartus Ladislaus of Temesvár

51 Cf. Rady, 2005, p. XXXIV.
52 This is evident, for example, in his attitude to the institution of the derogation of law. Cf. Bušek, 1946, p. 95.
53 Cf. Hubenák, 2001, pp. 110–111.
54 Cf. D. 1, c. 4–5.
55 In addition, he expressly accepted papal jurisdiction in the territory of Hungary. On the other hand, he pointed out several distinctions between secular and church-law rules that manifested, for example, in his treatise on marriage impediments. The author of *Opus Tripartitum* excluded church courts from decision making in certain matters of major importance, for example, possessory causes. Canon law maintained its dominance in the areas of marriage and family and personal law (definitions of age or blood relations) and determined several aspects of hereditary and criminal law (especially in procedures related to morality and honesty). Concerning the next development, in the 17th century, the competence of church courts was reduced to testamentary causes, marriage matters, and perjury. Cf. Gergely and Máthé (eds.), 2000, pp. 143, 147, and 166.
56 Cf. Rady, 2006, p. 110.

(† 1504).[57] Even though some authors point out the adequate representation of the original texts in the prologue, others correctly call attention to the fact that even these passages may not automatically be considered original. These could also be arranged using the same method for taking over sources that are either unknown or completely lost at present.[58]

3.3. Legal custom and its relationship to the law

As is evident from the whole conception of the *Opus Tripartitum*, it practically constructed Hungarian law on centuries of customary law foundations, and the collection derives its obligatory force from this.[59] To justify this attitude, Stephen Werbőczy had to delineate the conception of law, in accordance with these premises. *Ius*, in his interpretation, consisted of approved community customs and usages, and the task of statutes was to record and promulgate customary law that had already been considered binding.[60]Although he admitted that *ius* is changeable in cases of necessity and such change should be natural and originate in the society. The author of *Opus Tripartitum* indirectly asserted that law ought not to be created by the sovereign and not even by courts, since their practice is proof rather than reason generating *ius*.[61] The authority of *ius non scriptum* was then *tacitus consensus populi*, meaning that the lawgiver had to reveal and express and judge had to apply. In accordance with Stephen Werbőczy's conviction, all customary law in the Kingdom of Hungary was preserved in his compilation.[62] It is all the more interesting that *Opus Tripartitum* almost never refers to legal customs, and its rules are, from the formal point of view, presented as quasi-written laws. In the prologue, the author expressly mentions his resolution to describe the laws and customs that received approval from the Hungarian kings (*leges et consuetudines approbatas*).[63] Although the majority of researchers admit that the treatise on the custom is derived from the work of the famous Romanist Bartolus de Saxoferrato, closer analysis indicates that his doctrine was almost entirely taken

57 Cf. Švecová and Laclavíková, 2018, p. 469.
58 Cf. Félegyházi, 1945, p. 109.
59 Cf. Péter, 2003, p. 101.
60 In the Kingdom of Hungary, even public law was regulated by legal customs. Within this context, we may mention institutions such as succession in the royal office, coronation, royal oath, inaugural bill, constitution, or the Hungarian diet's sphere of authority. Cf. Péter, 2005, pp. XIV–XV.
61 Cf. Eckhart, 1931, pp. 279 and 283. Although the majority of scientists agree that judiciary practice was only one of the external forms of customary law, these legal principles contained in court decisions were then applied in the same court even in subsequent cases in the sense of precedents. Cf. Gergely and Máthé (eds.), 2000, p. 142.
62 Cf. Bak, 2003, p. 9.
63 Cf. Trip., Prol. 10. On custom, he in the concrete treatises in three articles entitled as follows: *Quid sit consuetudo*: *et quae sunt necessaria ad consuetudinem firmandam?*; *Quomodo differt lex a consuetudine*: *et de triplici virtute consuetudinis* and *De lege et statuto*: *ac consuetudine contraria quid sit sentiendum*. Cf. Trip., Prol. 10–12. Distinctively, we may also mention the sixth article from the second part, with the title *Unde traxit originem consuetudo nostra in iudiciis observanda*. Cf. Trip. 2,6.

from the classical canonists.[64] Even its definition and introductory theoretical treatise Stephen Werbőczy borrowed from Gratian's *Decretum*.[65]

Although, from the definition that a legal custom is a law constituted under the authority of usages recognized by law, when the law is missing, is not possible to deduce it, the author of the *Opus Tripartitum* defined its canon-law and some Roman-law fundamentals elsewhere with three conceptual attributes, namely rationality (*ratio*), prescription (*praescriptio*), and repetition of actions (*frequentia actuum*).[66] Regarding rationality, Stephen Werbőczy referred to its tendency to support the real goal of *ius*. If the rightful goal of human law is the common good, legal custom following it has to share the same rationality.[67] It was typically accepted as rational when it did not contravene *ius naturale, ius gentium*, or *ius positivum*.[68] Regarding prescription, a lapse of at least 10 years from the first time the action was performed was requested.[69] The author argued that legal custom could not be introduced immediately but had to be put into practice gradually.[70] It ultimately acquired the strength of law through prescription, the institution traditionally applied to *iura in re*.[71] Of course, the request proved the existence of the people's longstanding silent consent, which was necessary for its recognition and performance in terms of the adequate repetition of actions.[72] As a matter of interest, we may mention that whereas the prologue generally refers to customary Hungarian law originating in usages, the text commonly refers to the national law of the individual parts of the Kingdom of Hungary (Hungarian, Dalmatian, Croatian, Slavonic, or Transylvanian law, etc.).[73] The majority of these *iura* originated in the authoritative decisions of the authorities of that place and not in the people's usage.[74]

As mentioned, in the *Opus Tripartitum,* the term *consuetudo* often subsumed even other sources of law, since the king's aim was to combine the kingdom's statutes, decrees, laws, and customs in one compact compilation.[75] Stephen Werbőczy asserted

64 We may illustrate using the sentence *Consuetudo est ius quoddam moribus institutum, quod pro lege suscipitur, cum deficit lex*, which was incorrectly ascribed to Bartolus. This definition was put into legal practice by Gratian, who referred in his collection to the older work of the church father Isidore of Seville († 636). Cf. Dec. Grat. D. 1, c. 5 and Etym. 2,3,10. Within this context, it is appropriate to remind readers that Gratian's work obtained the nature of law through legal custom as a private collection. I already addressed these questions in the textbook Vladár, 2017, pp. 273 ff.

65 Cf. Rady, 2006, p. 134.

66 Cf. Kuklík and Skřejpková, 2008, p. 69.

67 Cf. Kovács, 2016, p. 51.

68 Cf. Inst. Iust. 1,2,1.

69 Cf. Bartolus, Rep. ad D. 1,3,31.

70 Cf. Trip., Prol. 11.

71 Cf. Gergely and Máthé (eds.), 2000, p. 133.

72 The author of *Opus Tripartitum* expressly declared that the repetition frequency is not needed if it is possible to prove the community's silent consent and the application of custom for a sufficiently long time. Cf. Trip., Prol. 10,7.

73 Cf. Kovács, 2016, p. 50.

74 Cf. Bak, 2003, p. 23.

75 Cf. Bónis, 1941, p. 4.

that he extensively reflected *decreta*, especially those promulgated under King Vladislaus. Several researchers agree that the majority of the material elaborated in his work reflects the principles and procedures recorded in charters, procedural formularies, and other similar sources.[76] The biggest controversies in the scientific literature are related to Stephen Werbőczy's conception concerning the relationship between customs and laws. As is evident, the logic underlying his methodological and mostly politically motivated attitude forced him to give *constuetudo* a prominent place among his sources, regardless of whether these competed with royal edicts, charters of privileges, court decisions, or *decreta regni*.[77] In his opinion, not even the law itself is legislated, created, or presenting the community's will because it represents *ius*, which already exists in the given society's frame of approved customs.[78] Moreover, statutes only record and declare customary laws previously recognized as binding. Even in this respect, we find some inconsistencies between the scholarly treatise in the prologue to the collection and the normative text itself.[79] In the prologue, which was influenced by canon-law and Bartolistic attitudes, Stephen Werbőczy initially asserted that *consuetudo* and *decretum* are sources with the same legal force.[80] On that account, if statutory law follows custom against law, statute has to prevail. On the other hand, if statute precedes established custom, latter must dominate. At the same time, he noted that generally accepted custom abrogates statutes that are valid throughout the Kingdom of Hungary, whereas local custom prevails only in the given territory.[81]

In addition to the derogatory and abrogatory functions, the custom could also interpret and complement law. From the interpretation point of view, it was, for example, possible to interpret problematic provisions of the law through legal

76 Cf. Rady, 2005, p. XXXIII.

77 Cf. Trip. 2,6. To more closely examine the detailed characteristics of the individual sources of law, see Gergely and Máthé (eds.), 2000, pp. 136 ff. It is also evident that the author of *Opus Tripartitum* perceived the legal system as a whole as falling under the term *consuetudo*. It was not only laws that he subjected to the criterion of custom; he also ranked royal privileges that the community had recognized for a sufficiently long time, as well as the decisions of the royal courts that could establish new customs, in this system. Cf. Trip. 2,6,10–11.

78 Cf. Péter, 2003, p. 102.

79 Cf. Ibbetson, 2003, pp. 20–22.

80 Cf. Péter, 2005, p. XIV. Whereas according to Bartolus de Saxoferrato, the strength of *lex* and *consuetudo* originated in people's approval whether expressed or silent, the rules of canon law requested correspondence to the Divine law and consistency with rationality and faith. Cf. Dec. Grat. D. 1, c. 1 and 5. Bartolus de Saxoferrato's opinion on this should be perceived primarily within the context of efforts to confirm Italians cities' right to constitute their own law in opposition to the imperial laws. After all, other Romanists postulated in the spirit of classical Roman law the priority of written law ahead of customary law. Cf. Ryan, 2000, pp. 65–89; Ullmann, 1940, pp. 265–283; Bónis, 1971, p. 334. Later commentators also emphasized that legal custom must not oppose the Divine natural law and the rights of third parties. Cf. Švecová and Laclavíková, 2018, p. 476.

81 Cf. Trip., Prol. 12. See also Luby, 2002, p. 61.

custom.[82] The complementary function manifested in the process of filling up the existing *lacunae iuris* within the frame of appreciating the legal conditions *per analogiam*.[83] It is therefore evident that in the normative text, the author of *Opus Tripartitum* abandoned the opinions expressed in the prologue and started to perceive *lex* and *consuetudo* as two individual sources of *ius*; he accepted them rather as two elements constituting one organic unit capable of mutually complementing and influencing. This is also apparent based on his statement that the oldest laws in the Kingdom of Hungary were gradually transformed into legal customs.[84] Stephen Werbőczy understood the procedural innovations of Hungarian law constructed in the 14th century in the same way on the basis of Roman-canon procedure that accordingly acquired the character of custom and became a firm part of the Hungarian legal system.[85] On that account, legal custom could, for example, sanction written laws and even abrogate them indirectly in cases when *decretum* was surmounted by practice.[86] It is therefore evident that the full legal character could only be associated with law that proceeded into usage, gradually meeting the conditions set by legal custom, and on that account, indirectly acquired the attributes of a legal custom and became one. In conflict with the prologue, the author of *Opus Tripartitum* finally asserts that only the latest law could unconditionally abrogate older custom at all events, since it is not possible to determine whether it was issued for the good of society and therefore bears the sanction of custom.[87]

Of course, this attitude and delimitation of the relationship between law and custom had repercussions on the overall conception of power in the Kingdom of Hungary, especially with reference to the relations between the nobility and Crown.[88] Stephen Werbőczy thus initially recognized the unmediated relations between the ruler and his noble subordinates. He similarly accepted that the sovereign *de facto* created the nobility, since only he could grant land, which is the only mark of real nobility. It follows from this fact that only the king could take away the soil in the case of the extinction of the noble line or defrauding by presence of the mark of infidelity.[89] In turn, he asserted that even the king is created by the nobility, since the Hungarian nobility's traditional right to elect the king is indubitable and has lasted for centuries. The venerable feudal bonds based on reciprocity in the Kingdom of Hungary reflected

82 Cf. Švecová and Laclavíková, 2018, p. 472. Therefore, if the meaning of the law remained obscure, it was necessary to turn to the custom as for the best interpretation. Cf. Paul. D. 1,3,37. See also Bak, 2003, p. 19. In the absence of law, legal custom may be perceived in the sense of *imitatio legis*, since it performs the same functions as law. Cf. Trip., Prol. 11,5 and Bartolus, Rep. ad D. 1,3,31.
83 Cf. Trip., Prol. 11,4.
84 Cf. Trip. 2,6,9.
85 Cf. Trip. 2,6,12–13. See also Bak, 2003, p. 8.
86 Cf. Trip. 2,2,9.
87 Cf. Trip. 2,2,10.
88 Cf. Hubenák, 2001, p. 111.
89 Cf. Rady, 2005, pp. XXXVII–XXXVIII.

the principles of fidelity, duties, favor, and freedom.[90] The conceptual attitude and specification of the sources of law also prepared a starting point for Stephen Werbőczy for the important statement that if all noblemen enjoy the same freedoms, they must be equal to each other (*una et eadem nobilitas*). It is this statement that most likely caused the king's non-promulgation of the *Opus Tripartitum*.[91] Although it follows from the aforesaid that the nobility should not dispose of the right to participate in lawmaking and limit royal *plenitudo potestatis*, the author presented a dualistic construction, according to which the acceptance of law required the approval of the sovereign as well as that of people.[92] Finally, he laid out two methods of making law: The king either convenes the nobility ('the people') to examine the submitted draft law, or the nobility itself presents the proposals considered to be useful for the common good to the king for his approval, and these become law after his approbation.[93]

3.4. Procedural law

In the area of procedural law, several traditional institutions were established in the Kingdom of Hungary that typically corresponded to the legal development of the states of Western Europe. Except for the acceptance of Roman-German law, it is necessary to examine mentions of Roman-canon procedure adopted in the 12th and 13th centuries to satisfy the needs of *ius commune* as a whole and set the standards for modern procedural law.[94] In medieval society, it became the significant factor that surmounted older court customs of national laws and by virtue of its perfection and preciseness considerably influenced the shape of procedural law in almost all continental legal systems (including Anglo-American).[95] In spite of this, particularism endured in Hungarian procedural law, since courts of various types and levels accepted and applied various kinds of procedural rules.[96] These insufficiencies were

90 Cf. Trip. 1,3,7.

91 Cf. Luby, 2002, p. 83. Under the term 'nobility,' Stephen Werbőczy referred to the whole Hungarian governmental category, that is, secular as well as ecclesiastical. This doctrine was also applied in Poland, where it became the basis for the nobility's collective land privileges. It is indeed evident that in this respect, the author of the *Opus Tripartitum* completely failed to notice the lower class nobility's dependence on the representatives of the upper class nobility. Cf. Bak, 2003, p. 10; Hubená, 2001, p. 182.

92 Cf. Trip. 2,5 and 2,2,1.

93 Cf. Gergely and Máthé (eds.), 2000, p. 137.

94 It originated in the church courts' extensive use of Roman law and was the product of the synthesis of Roman-law (partly even German law, especially Langobard) and canon-law elements. Cf. Kantorowicz, 1938, p. 123; Evans, 2002, p. 93. For more detailed information about the Roman-canon procedure and its influences on medieval and modern legal culture, see Nörr, 2012; Litewski, 1999.

95 Cf. Brundage, 2008, p. 156. From the Kingdom of Hungary's point of view, we may mention that the majority of researchers credit canon law, especially regarding the division of delinquencies into public and private during the 14th century. Even the concept of delinquency was based on public-law principles (*quia peccatum est*) with the aim of preventing other members of society from doing wrong (*ne peccatur*). I addressed this problem in the scientific article Vladár, 2020, pp. 185–223.

96 Among them, we may mention, for example, curial courts, provincial *sedriae*, haligemots, municipal courts, and church courts. Cf. Gergely and Máthé (eds.), 2000, p. 155.

usually balanced by customary rules in official practice, specifically by sporadic royal impacts through miscellaneous mandates or instructions that exerted a real impact on the development of the given courts' *stylus curiae*.[97] In the older procedural law, non-differentiation between civil and criminal procedure was also typical.[98] This status was more or less conserved even in the *Opus Tripartitum*, which did not provide more detail while specifying the procedural directives.[99] Essentials of the summons (*libelli*), rules regulating the beginning of a trial including the stages allowing the application of *exceptiones* or *allegationes* and interlocutory, as well as final judgment, are thus only insinuated in this work. Only in the second half of the 16th century were procedural principles (minimally in the area of private civil procedure) generally accepted on the basis of *Opus Tripartitum*, which developed and remained unmodified in the Kingdom of Hungary until 1848.[100]

4. The reasons for non-promulgation, authority, and obligatory force

As mentioned, despite Stephen Werbőczy's efforts, the sovereign did not sanction *Opus Tripartitum* in the form prescribed for law. The reasons for this decision are still scientifically disputed. The majority of researchers point, within this context, to the upper class nobility's resistance to recognizing, through acceptance of the principle *una et eadem nobilitas*, their equality with the lower class nobility, which would endanger the unlimited power they enjoyed freely until that time.[101] The matter of interest is that in the salutation to the reader, the author himself explained the situation in which the king was impeded from sanctioning and promulgating the work properly because of other political duties and his worsening health condition.[102] Although some sources indicate that the work met only with critical acclaim, others assert that it achieved appropriate authority and the title *Decretum* even in advance of its private promulgation in Vienna.[103] There is no need to omit the fact that the diet confirmed its content as law and instructed the kingdom's courts to judge according to its principles and procedures.[104] Overall, Stephen Werbőczy's actions after failing

97 Cf. Péter, 2005, p. XI. The royal impacts are typically recognized as the most important in the process of adapting the procedural rules to the Western standards. This may be illustrated in the recognition of the inquisitorial procedure according to Western examples in the times of Matthias Corvinus. As a matter of interest, we may even mention that the later code Ferdinand III (1637–1657) published in 1656 under the title *Forma processus iudicii seu Praxi Criminalis* for the Austrian countries was *de facto* built on customary law. See also Gergely and Máthé (eds.), 2000, pp. 156 and 162.
98 Cf. Hubenák, 2001, p. 111.
99 Cf. Rady, 2005, p. XXXV.
100 Cf. Gergely and Máthé (eds.), 2000, p. 156.
101 Cf. Kuklík and Skřejpková, 2008, p. 69; Luby, 2002, p. 82; Rady, 2005, p. XXXIX.
102 Cf. Trip., Lectoribus salutem.
103 The publishing procedure lasted a record-breaking 40 days and cost a few hundred guldens. See also Hirsch, 1974, pp. 36–40.
104 Cf. Rady, 2005, p. XL.

to obtain royal approval are unsurprising. He elaborated his compilation on the principle that the authority of law comes primarily from its application and actual usage.[105] The authority of *Opus Tripartitum* increased especially because of the fact that it had almost no competition, as evidenced by its prominence in the decisions taken by the kingdom's courts.[106] Above all, it was especially notable that court practice requested the inclusion of Stephen Werbőczy's work in the system of generally recognized sources of law. Similarly, jurisprudence explained the rules in the form of questions and answers, with specific reference to the rules contained in the *Opus Tripartitum*.[107]

Although efforts to collect a given kingdom's laws were typical in the Late Middle Ages, and several works similar to Stephen Werbőczy's collection were compiled, those works only sporadically retained the authority of law. *Opus Tripartitum* enjoyed lasting success and influenced Hungarian law and legal practice for centuries, despite never having been promulgated as law and failing to receive the royal seal. We may also illustrate this by pointing to the fact that casuistry after 1588 refers expressively to legal action founded on no less authority than *Decreti Tripartiti partem secundum titulum quiquagesimum*.[108] Its success is also proven by the existence of several editions, as well as its inclusion in the Hungarian compilation of laws *Corpus iuris Hungarici*, of which it became an integral and permanent part after 1626.[109] Lastly, this work enjoyed excellent authority not only within the Kingdom of Hungary, where, after the Battle of Mohács (1526), it consolidated not only the legal but also the social system, but extended its influence to other countries. Of them, we may refer to the northern part of Croatia, or Transylvania, where Emperor Leopold I (1658–1705) recognized it as a source of law in 1691 in his *Diploma Leopoldinum*.[110] A similar situation existed in Poland, where *Opus Tripartitum* became a public statute (*statutum*).[111] The Hungarian nobility defended their privileges against the representatives of the Habsburg monarchy using arguments derived from *Opus Tripatitum*. Stephen Werbőczy then became the defender of the Hungarian *avita constitutio*, the political and legal structure of the social order applied in the Kingdom of Hungary regardless of its longstanding obsoleteness. This work lost its special position as late as the 19th century, when it did not mesh with the liberal program underlying the creation of Hungarian civil society, which required the transformation of the old constitution and the end of

105 Cf. Trip. 2,2,9.
106 See also Rady, 2015.
107 Cf. Štenpien, 2009, p. 99; Gönczi, 2003, p. 89.
108 See also Rady, 2005, p. XLI.
109 Cf. Malý and Sivák, 1992, p. 234. The work's popularity may be illustrated by the fact that in the Kingdom of Hungary, it became the second most frequently printed book after the Bible. Cf. Štenpien, 2009, p. 99.
110 On that account, *Opus Tripartitum* was in 1698 included in the main collection of Transylvanian laws, known as *Approbatae et compilatae constitutiones*. Cf. Gergely and Máthé (eds.), 2000, p. 143.
111 Cf. Hamza, 2014, p. 385.

the medieval system of privileges.[112] However, the legal customs in *Opus Tripartitum* retained authority even in the 20th century, since some lawyers granted it not only the power to interpret but even to supply or abrogate written law.[113]

Regarding the reasons for *Opus Tripartitum*'s obligatory force, we may primarily mention that after its dissemination to individual courts, they started to apply it directly and unconditionally in their decision making.[114] In addition to Stephen Werbőczy's authority, it was also helpful that the Hungarian diet's 1517 decree instructed every district to judge according to the country's written law that had recently been sent to them.[115] Later legislation was similarly accepted, as may be illustrated by an article from the same year requesting that the kingdom apply *iura regni scripta*.[116] The following theories constituted, in part, the reasoning behind this compilation's obligatory force. First, it was concretely asserted that *Opus Tripartitum*'s obligatory force derived from the fact that it consisted of legal customs that were already binding prior to their presentation in written form.[117] The mentioned arguments may be rejected because court practice applied the objective compilation as a whole, without referring to the original sources.[118] Another claims that it obtained the validity of law through the people's consent (*consensus populi*), relating to the original customary law before its inclusion in the *Opus Tripartitum*. Another theory points out the existence of subsequent laws that recognized this compilation as generally binding without any reservations.[119] Although several of them may be rebuffed by a number of arguments, we may, in all conscience, agree that *Opus Tripartitum* was appreciated in court practice, later legislation, and jurisprudence, thus acquiring the status of a generally accepted source of law, status analogous to few times mentioned

112 Within this context, the majority of researchers argue that several civil rights, legal regulations on police and public employers, and also a part of criminal law were, even after 1867, regulated by custom law. Cf. Péter, 2005, pp. XX–XXI and XXV.

113 See also Kérészy, 1935.

114 Cf. Luby, 2002, p. 84.

115 Cf. Article No. 41/1518, § 5.

116 An analogous attitude was also preferred in Articles No. 21/1548, 24/1588, 15/1608, 2/1622, 18/1635, 1/1638, 16/1647, 25/1715, 6/1723, 48/1725, 40/1729 etc. Other suggested its revision, for example, No. 21/1548. These endeavors' imperfect outcome was, after all, the compilation *Quadripartitum opus iuris consuetudinarii Regni Hungariae* of 1553. The matters of interest are that the organization system for the matter of the *Opus Tripartitum* turned the scale, even in this work, with one difference: the division of the first part into two parts and the placement of personal rights at the beginning of the compilation. In addition, this work, despite certain enhancements and the introduction of some Roman-law institutions, was *de facto* considered to be the only revised edition of Stephen Werbőczy's compilation. See also Hamza, 2001, p. 54; Kuklík and Skřejpková, 2008, p. 68; Gergely and Máthé (eds.), 2000, pp. 145–146. Low originality manifesting only in partial and more or less marginal modernization of the *Opus Tripartitum* thus did not diminish the exclusivity and importance of this compilation for the Hungarian modern legal system. Cf. Švecová and Laclavíková, 2018, p. 470; Luby, 2002, p. 55.

117 Cf. Szlemenics, 1817, p. 41.

118 See also Zlinszky, 1983, pp. 49–68.

119 Cf. Luby, 2002, p. 85.

Gratian's *Decretum* in canon law.[120] This may be especially demonstrated by the fact that the courts decided in accordance with the *Opus Tripartitum*, considering it to be the normative text and the legal not merely factual foundation of every delivered judgment. Similarly, jurisprudence acceded to it, refusing to accept it only as result of the opinions of private jurist.[121]

5. Compilations of customary law in other countries in Eastern and Central Europe

As indicated, *Opus Tripartitum* was the result of codification efforts that also started to appear in the rest of Europe from the Late Middle Ages. From the validity viewpoint, it acquired the status of a source of law in several countries, not only in those attached to the Kingdom of Hungary. In summary, we may refer to Transylvania, northern Croatia, the northern part of Serbia (primarily Vojvodina), and also Poland.[122] Of course, it was not the dominant source of law in these countries and only supplemented the rules applied there. Distinctively, we may mention Croatia within this context, where from the 13th century to midway through the 15th century, several customary-law codes were compiled, some of which could have influenced Stephen Werbőczy in terms of content and formality.[123] These conclusions are all the more relevant since Croatian and Hungarian laws were, minimally with reference to property and family law, almost identical.[124] The aforementioned may be especially explained by mutual influencing of Croatia and Hungary that was also reflected in the area of law making. Namely between the years 1102 and 1527, Croatia passed laws on its own national congregations (*congregationes regni Slavoniae*) led by the officer entitled 'ban' that convoked nobility and passed laws, often without any

120 I addressed this problem in the monograph Vladár, 2009, pp. 128 ff.

121 For a close examination of the individual theories and arguments in the high-class treatise, see Pekarik, 2011, pp. 89 ff.

122 Cf. Bak, 2003, p. 6; Kovács, 2016, p. 50.

123 The authors of Croatian compilations typically made provisions for the recognized sources of *ius commune*, like Justinian's *Digesta*, decrees of the ecumenical councils, Gratian's *Decretum*, and other canon-law compilations, combining secular law and canon law on the behalf of the whole society. Cf. Karbić, 2003, pp. 38, 41, and 44.

124 Within this context it is necessary to remark that individual sources often varied in dependence if they were passed in the inland or in the more or less independent Adriatic marital territory. Mentioned was evident primarily in the dominance of social structures. Whereas nobility prevailed in the inland, on the seashore citizens dominated that led in the relevant period almost independent life in several aspects. Especially the development in the inland was practically identical with Hungary, whose part the Kingdom of Croatia was since 1102. Therefore it is not surprising this fact found its reflections also in its legal development. Adriatic was all the more influenced by the Northern Italian regions (primarily Venice) and that is evident primarily in the legal sources compiled in Latin, respectively Italian. The matter of interest is that Venetians did not want to change violently the Slavonic customs and usages, but helped to collect and compile them in a way that was helpful to their aims as a whole. Cf. Sigel, 2001, pp. 43, 83, and 87.

involvement of the Hungarian king. Mutual interconnection of these countries was then guaranteed by sending the Hungarian deputies to these congregations and in the presence of Croatian deputies on the Hungarian ones.[125] Principal domination of the nobility in this country was reflected especially in the confirmation of rights and privileges of the Kingdom of Croatia of 1492 that were compiled unambiguously from noblemen's viewpoint and concentrated practically all the power in the kingdom into the hands of higher clerks, aristocracy, magistrates and nobility.[126] Whether Stephen Werbőczy, engaged in lengthy preparation for the task of codifying Hungarian customary law, was not inspired by the mentioned Croatian law codes is therefore worth considering.

Regarding concreteness, several researchers likened *Opus Tripartitum* primarily to the law code of Poljica, which remained valid in the south-east of Croatia until the fall of the Republic of Venice in 1797. This one was compiled after 1140 and, similarly as a work of Stephen Werbőczy and several other law codes of this provenance, starts with an introductory preamble. It presents that from the contentual viewpoint it consists especially of original customary law and was written in the time of negotiations on potential submission of Poljica to the representatives of the Venetian Republic.[127] This source had only a few introductory sections. The process of addition of other rules started after 1475 and was finished in 1655. Primarily its content and the author's overall attitude reveal several parallels with Hungarian customary law and with *Opus Tripartitum* directly. However, whereas Stephen Werbőczy wrote in Latin, the author of law code of Poljica used Croatian language (čakavian dialect) in Cyrillic. In contrast to *Opus Tripartitum*, this work moreover exhibits several serious insufficiencies even in the systematic organization. From the structural viewpoint the law code of Poljica was organized into articles that could be structured into paragraphs. Several articles were then thematically unified into common titles, though without any evidence of systematic intention or superior elaboration. Looking at the content of this work, the first part deals with the composition of the county magistracies and judicial procedure (art. 1–22). There follows several rules added between 1475 and 1482 against

125 It was typical on the occasions of royal coronation, entering into alliance with other states or when considering common action against enemy. Cf. Sedlar, 2011, pp. 280 ff.

126 See also Bogišić, 1872, pp. 131–171.

127 Primarily on such account this source of law exhibits even several parallels with the law code of Novigrad (after 1450), as well as with the law code of Vrana (1454). Even these became part of the legal activity tending to organize the laws and customs of those parts of Croatia and Dalmatia under the control of Venice. The fact that Stephen Werbőczy was acquainted with mentioned sources suggest several indications, namely their systematic of organization. Similar to the *Opus Tripartitum*, the *proemium* of the law code of Novigrad moreover deals with the relationships between justice, law, and order. The law code of Vesprinac (around 1507), which consisted of original customary law valid before ceding of given territory in 1465 to Habsburg dynasty, could be also related to Stephen Werbőczy from the ideological viewpoint. The impacts of *Opus Tripartitum* may then be found in the compilation called 'Renewal of brotherhood of the noblemen of Turopolje' (1560) intended to restore the rights of the noble community of that place that became the foundation of its legal organization until the 19th century. See also Karbić and Karbić, 2013, pp. 43, 58–59, 61, 71, and 83.

the background of the Ottoman threat.[128] In 1485, Article 30 that treated on Church matters was incorporated, but also contained the rules of criminal law, hereditary and property law (regulating especially the legal regime of noble property), as well as procedural and commercial law. The significance of this source and its wide use is evident primarily from the large number of preserved manuscripts and its translations into German, Russian, English or Spanish.[129]

Considering other Slavonic sources somehow similar to *Opus Tripartitum*, from the Czech territory we may mention Knihy devatery (O práviech, stúdiech i deskách země české knihy devatery – Nine books on the laws, courts and tables of the Bohemian country) from the turn of the 15th and 16th centuries, compiled by the professor of the university of Prague and secretary of the country record-office (*tabulae terrae*, i.e. predecessor of contemporary real estate register) Viktorin Kornel of Všehrd, denoted by several scientists to be one of the best Slavonic lawyers of those times.[130] Although he acquired the noble title, he was a town inhabitant, and thus naturally followed the preservation of the rights of the citizens that was then strongly attacked by nobility. In an effort to help them he sympathized even with peasants, simultaneously supporting the royal power that was intended to be their closest ally in the battle against nobility.[131] Despite resistance from the nobility that succeeded in his withdrawal from the record-office and compelled him to leave politics, Viktorin Kornel of Všehrd finished his work.[132] In a similar manner as Stephen Werbőczy, although with different political orientation, he chose the systematic approach and included only rules that were generally accepted by people, magistrates, rulers, as well as by legal practice. In his prologue, Viktorin Kornel of Všehrd highlighted the Czech country for disposing its own court for the people and public. Also on that account he included in the first book of his work procedural-law treatment on the organization of individual courts, with the exception of the high court, whose status was specified in the second book. The third book then deals with procedural law in more detail, primarily explaining actions and position of officers working at the court of the country. The other five books were mainly targeted on private (especially property) law, and partially on criminal law (including short procedural-law treatment). The last book finally defines the nullity of legal acts of a judge, plaintiff, defendant, and witness. The author's scholarship is evident not only from the given systematic, but also the content of his compilation that indicates (primarily while dealing with legal relationships) his brilliant orientation in Roman-canon law in several fragments.[133]

128 See also Laušić, 1991.
129 Cf. Karbić and Karbić, 2013, pp. 59–60.
130 Cf. Luby, 2002, p. 83; Bílý, 2003, p. 170; Veselý, 1934; Štenpien, 2009, p. 99; Schiller, 1902, pp. 56 ff.; Gönczi and Wieland, 2013, pp. 16–19; Kuklík and Skřejpková, 2008, p. 58.
131 Cf. Sigel, 2001, p. 54.
132 Of course, against this background, it is not surprising that it never acquired the status of binding source of law. Cf. Merhaut et al., 2008, pp. 1531–1532.
133 Customary law started to be infiltrated in the Czech territory with foreign ideas (derived especially from Roman-canon law) in the 13th century. As a whole it lost its validity after the Battle of White Mountain (1620). Cf. Sigel, 2001, pp. 44, 46, 49, and 51.

The individual importance of this source is also clear not only in the efforts of the author not only to describe the customary law of that place, but also to explain it more clearly and improve it, namely in the sense of removal contradictions and offering his own solutions to the most pressing questions.[134] In addition, it was the last legal work dealing with the Czech law of the country.[135]

Concerning Poland, we may liken *Opus Tripartitum* first and foremost to the compilation Korektura Taszyckiego (*Correctura statutorum et consuetudinum regni Poloniae*) of 1532, not least because of the very similar manner in which it records the older customary rules. From the contemporary viewpoint it is particularly significant in terms of its indication of all sources of incorporated rules. In the introduction, the author primarily generally focuses on the sources of law. The first book then explains the political organization of state, as well as administration of justice. The second deals with procedural law, whereas the third is dedicated to the law of persons, primarily family law. The fourth book considers on the contractual obligations and criminal law, whereas the last contains procedural-law formularies, especially those concerning real estates. Considering the validity of this work, despite its respectable quality, the diet finally refused it (especially because of political machinations).[136] From other Polish compilations, we may compare *Opus Tripartitum* even to Księga elbląska from the second half of the 13th century, as it contains customary law of northern Poland recorded in German. From the contentual viewpoint, it contained primarily substantial and procedural criminal law, not omitting the organization of the courts in the country.[137] Similar to the task of compilation of Stephen Werbőczy performed in the Kingdom of Hungary, the so-called Statuta Vislica of 1347 written in Latin was the first codification of existing legal customs applied in the Greater Poland and Lesser Poland Province. This made provisions for the old customary law and primarily contained the rules of state administration and criminal law. Its main objective was to unify the rules of the Polish crown and this goal was achieved after its enlargement when other sources of law were added. Against this background in particular, this compilation was a significant precursor of the next development of Polish law.[138] From the contentual viewpoint, it primarily included the rules from the area of state administration and criminal law, and even a small part of private law. Most contain not only the text of the rule itself, but also the explanation of its origin, including specification of the reason for its existence and benefits of its application for the whole society.[139]

134 Cf. Malý et al., 1999, p. 83.
135 Cf. Adamová and Soukup, 2004, pp. 90–92.
136 Concerning Poland, the law-making was realized usually by the decrees of the diet and, analogous to the Kingdom of Hungary, it was accepted that the nation is represented by the nobility. Cf. Giaro, 2011, p. 42. Regarding the status of legal custom in Poland in the period from the 16th to the 18th century, see Kowalski, 2013; Płaza, 2002.
137 The name of this compilation is derived from the place where the only manuscript was found in the 19th century. See also Vetulani, 1960, pp. 195–232.
138 Cf. Schelle et al., 2007, p. 783.
139 Cf. Sigel, 2001, p. 72.

As discussed above, the content of *Opus Tripartitum* is first and foremost from the contentual viewpoint very similar to other medieval law codes containing various types of secular-law sources, not only those coming from the territory of Central and Eastern Europe. Several researchers agree that Stephen Werbőczy's work may be called an 'official compilation of customary law' ('recueil officiel de coutumes'), a category that was widely expanded in the 15th and 16th centuries in France, Germany, and the Netherlands.[140] From the most widely known compilations of Western provenance, we may refer especially to the German Sachsenspiegel and Schwabenspiegel, the English compilations of Henry de Bracton and Ranulf de Glanville, as well as to the French Philippe de Beaumanoir's code. Omitting English (and Scandinavian) sources of law, the combination of domestic legal customs with the sources of Roman-canon law was often typical for Western compilations and this fact was evident primarily in the constitutional and procedural law.[141] However, closer analysis also reveals that mentioned influences may also be found in several sources of law from the territory of Central and Eastern Europe, namely of those countries on the borders of East and West.[142] However, we cannot consider them as attempts to restructure the private law on a basis of Roman-law models in the continental West.[143] The aforementioned is inconceivable in the case of sources from South-Eastern Europe and Russia, because these countries partly opened to the Western influences well after, if at all.[144] This development was particularly related to the individual religious, social and economic aspects, not omitting the state politics.[145] From the economic viewpoint, whereas the Western market economy was created by the rising merchant class in conjunction with the king, in Central and Eastern Europe, the prevailing nobility managed to

140 See also Hamza, 2001, p. 54.
141 Cf. Sigel, 2001, p. 51.
142 In this respect we may mention primarily Croatia where Western and Eastern influences were mixing; this fact is evident from various compilations from there. Cf. Karbić, 2013, p. 85.
143 Most researchers find the main reason for this development in the long-term dominance of legal custom at the expense of other sources of law (Hungary, Croatia, Romania etc.). From overall viewpoint, we may note that whereas the Catholic countries were a somewhat more open to the Roman-canon ideas, namely in spite of common perception of Roman law as the law of the Emperor, the Orthodox Slavonic states inclined rather to the Byzantine models. See also Simon, 1988, pp. 73–106. In this manner, we may consider the Serbian Dušan's Code of 1349 that collected Serbia's customary rules and combined them with generally recognized sources of Byzantine law (not omitting canon law). Cf. Schelle et al., 2007, p. 866. From the contentual viewpoint, it included public, state, and criminal law in particular. See also Burr, 1949, pp. 198–217; Adamová, 2006, p. 41.
144 These processes can be illustrated with the legal development in Russia, where legal custom was preserved in all periods, even after the unification of law on national level, when approximately three quarters of population lived according to ancient customs and usages in the 19th century. Cf. Sigel, 2001, pp. 20–21, 30–32, 36, 39–40, and 90. See also Pelikán, 2000. In several countries of South-Eastern Europe, old law (primarily customary) was conserved in connection with the loss of political autonomy on behalf of the Ottoman Empire (especially Bessarabia and Greece). Cf. Giaro, 2011, pp. 12, and 14.
145 Several scientists also assert that Slavonic law has much more in common with English law than with the law of the continental Western Europe. Cf. Sigel, 2001, p. 90.

neutralize the royal power on behalf of their own political liberties (*libertates*).[146] As indicated, in Hungary, the work of Stephen Werbőczy determinatively ministered this development.

Conclusion

As indicated, the Late Middle Ages and early modern times may be described as a stage of legal stabilization from which even the area of Central and Eastern Europe was not excepted in this context. Whereas Western countries built their legal systems upon the premises of *ius commune* and transformed their own legal customs in its spirit, in the Kingdom of Hungary, this source of law dominated from the second decade of the 16th century in the form expressed in Stephen Werbőczy's work. Although written law was gradually advanced in Western Europe, Hungarian law remained in the customary form.[147] Although several representatives of jurisprudence were conscious of the fact that legal custom may be evaluated, first and foremost, as a relic of the Middle Ages, at the same time, they adjudicated it the value of heritage from ascendants and also in several aspects of national identity.[148] The change did not happen even when the sovereigns of the Habsburg dynasty acquired the Hungarian throne in 1526, although written law gained bigger authority.[149] Customary law prevailed even though *Opus Tripartitum* was commonly published (in later editions) along with *decreta* and other various supplemental materials that also reflected the compilation's provisions.[150] The majority of scientists did not hesitate to admit that thanks to this *status quo*, a number of obsolete and archaic institutions remained in force, and the modernization of Hungarian law was practically impossible.[151] Although Stephen Werbőczy endeavoured to meet the time constraints and consolidate and renew the law, he ultimately contributed to its backwardness and also to the fact that the Middle Ages lasted until

146 See also Adams, 2005; Brudel, 1992; Lindemann, 2015.
147 Cf. Schelle et al., 2007, p. 826.
148 Cf. Gönczi, 2003, p. 89; Cieger, 2016, pp. 123–150. As an example, we may mention that in the law valid in Slovakia and Carpathian Ruthenia, custom was maintained as a source of substantial civil law, thanks in part to *Opus Tripartitum*, until 1 January 1950. See also Prusák, 2001, p. 198.
149 For example, Emperor Leopold II (1790–1792) expressly conceded that Hungary should be 'governed and administered' by its king following *propriis legibus et consuetudinibus*. Cf. Article No. 10/1790. The immutability of these rights was also confirmed by Article No. 3/1827 and by Emperor Ferdinand I's (1830/1835–1848) 1830 diploma. In like manner, Franz Joseph I (1848–1916) promised in his coronation oath to observe '… exceptions, privileges and legal customs' in Hungary. Cf. Article No. 2/1867. See also Péter, 2003, pp. 105–106.
150 Cf. Péter, 2005, pp. XV and XVI, n. 12. The next development proved that science *de facto* accommodated Werbőczy's doctrine, even though it classed legal custom after law in some commentaries. See also Švecová and Laclavíková, 2018, pp. 473–477.
151 This may also be demonstrated by the fact that although courts frequently modernized law through their decision making, judicial practice could not essentially oppose *Opus Tripartitum*. Cf. Gergely and Máthé (eds.), 2000, p. 161.

the 19th century in this field in the Kingdom of Hungary.[152] In addition, the special conception of legal custom in *Opus Tripartitum* in the sense of reflecting social reality not only hampered legal practice, it also led to legal insecurity and several abuses of law.[153] Even so, this compilation managed to exert continual influence not only on legal practice itself, but also on Hungarian political thinking and the development of legal conscience.[154] Although *Opus Tripartitum* did not become law, it represents the main work of Hungarian medieval law, with several overlaps with neighbouring countries.[155] Despite the numerous insufficiencies, we may thus consider Stephen Werbőczy's compilation to be the most important medieval as well as modern source of law from Middle and Eastern Europe.[156] The most interesting polemics about the character of Hungarian law appeared in the scientific literature in the 19th century addressing the background of the influences of the then German lawyers. The understanding of the term 'Volksgeist' in several aspects especially evoked Werbőczy's attitude to law and indicates the reflection of the functioning of the Hungarian legal system during the creation of this term.[157] However, several Hungarian legal historians glorified the particularity of Hungarian customary law as a personification of the national character and spirit ('Volk'), and the majority rejected these opinions. With reference to later development, it would be worthwhile to repeatedly revalue them, specifically through the prism of the development of Hungarian law and its continuity in the 20th century.[158]

152 Cf. Péter, 2005, p. XIII.
153 Cf. Ibbetson, 2003, p. 13; Hubenák, 2001, p. 112.
154 Cf. Gergely and Máthé (eds.), 2000, p. 143.
155 Cf. Švecová and Laclavíková, 2018, pp. 469–470.
156 Several scientists even assert that overall, the 16th-century Statutes of Lithuania cannot be equated with *Opus Tripartitum*. Cf. Sigel, 2001, p. 81.
157 The representatives of the German historical school of jurisprudence confirmed that even legislation may be designated, in relation to a given country's legal customs, only as a secondary phenomenon. Cf. Péter, 2005, p. XII; Pinz, 2014, p. 143; Hattenhauer, 1998, p. 487; Falada, 2016, pp. 141–142; Sommer, 1934, pp. 459–467.
158 Cf. Péter, 2003, p. 110.

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