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Customary Law in Hungary: Courts, Texts, and the Tripartitum. By Martyn Rady. Oxford: Oxford University Press, 2015. 266 pp.

In nineteenth-century Hungary, the history of Hungarian law was often compared with the history of English law. The contention was made that in both places local tradition maintained its primacy. Roman law was not slavishly adopted, and both countries had strong parliamentary traditions. After all, the observation was made, the Magna Carta and the Golden Bull, the foundations of English and Hungarian constitutional law respectively, both dated to the same era, 1215 in the case of the Magna Carta and 1222 in the case of the Golden Bull. In the twentieth century, German historian Fritz Kern, one of the founders of the comparative study of the history of constitutional law, drew a parallel between the history of the Hungarian and the English parliaments in his typology of European parliaments. Today, we speak of this question from different perspectives. The phrase “adoption of Roman law” became another one of the many outdated historical concepts that proliferated at the turn of the century. Hungarian law in the late Middle Ages and *Jus commune* were so intertwined that it is both pointless and impossible to speak of an opposition between them. The Magna Carta had no influence whatsoever on the Golden Bull. Today, we know significantly more concerning the mechanisms of European parliaments than was known one-hundred years ago. That we are unable, our increasingly detailed stock of learning notwithstanding, to compose the kinds of broad statements that were made at the end of the nineteenth century and the beginning of the twentieth is another question entirely. Today, no one would expect a British historian to provide a comparative study of the history of English and Hungarian law. So we are left with synthesis. The book by Martyn Rady, the first study of Hungarian customary law in English, is just that.

Rady offers a focused examination of Hungarian customary law. The so-called *Tripartitum*, the first summary of Hungarian customary law, is at the center of his inquiry. The *Tripartitum* was written by István Werbőczy, one of the magistrates in the royal court of justice and a man who later had an influential career as a politician. He completed the *Tripartitum* in 1514, and three years later he submitted it to a printing press. The *Tripartitum* is not technically a book of statutes for two reasons. First, it is not a summary of previously existing laws, but rather a collection of the norms of customary law at the time. Second, it never actually became law. It was simply a legal work that had been

compiled by a private individual for practical use. Rady is one of the most highly esteemed scholars on medieval history in Hungary and Central Europe. He has innumerable publications, including a book on Buda in the Middle Ages and the medieval Hungarian nobility. This book, which is in no small part the fruit of earlier research and publications, was conceived when Rady participated in the translation and publication of laws from the Jagiellonian era and the *Tripartitum* for a series entitled *The Laws of Hungary*.

Until the twentieth century, legal tradition in Hungary was dominated by customary law. Rady's book certainly does not stop at 1514, when Werbőczy wrote the *Tripartitum*. He examines the history of Hungarian law until 1959, when the first code of Hungarian civil law was proclaimed. In his assessment, it was not until 1959 that the rule of *consuetudo* in Hungary came to an end. As a characteristic example, he refers to the publication of the *Tripartitum* in 1897 (as part of the celebrations marking the millennial anniversary of the arrival of the Hungarians in the Carpathian Basin in 896), in which the editors used bold typeface to set off sections that they regarded as prevailing law (as was done at the time when any Hungarian book of laws was published). In the case of the *Tripartitum*, some 70 pages of the text, i.e. more than one-third, were regarded as statutes in force (the document was 160 pages, not including the 25-page Prologue). According to Rady, however, this practice was little more than an "empty fiction." Rady reflects on the contentions that were made in the nineteenth century concerning the similarities between the English and the Hungarian constitutions. In his view, this was a "spurious parallel" (p.240). As this ascertainment exemplifies, Rady's conclusions are simple. When he finds something too artificial, he does not adopt even a century-and-a-half old concept like H.S. Maine's widely used concept of "fiction."

The organization of the book is logical. The historical introduction and a section in which Rady clarifies what he means by customary law are followed by a presentation of the *Tripartitum*. This is followed by a presentation of the sources of common law: charters, legislation, and a description of the courts. There is a separate chapter on the intricate interconnections between the nobility and the king, as well as a separate chapter on crimes and a presentation of medieval rules of procedure. These chapters are followed by sections dealing with the Early Modern Era and the Modern Era, including the political and institutional changes in the new era, processes of codification that took place after *Tripartitum*, and a presentation of jurisdictions in the eighteenth century. The book concludes with a chapter entitled "Custom and Law in the Modern Period."

Rady's assessment of customary law is founded on the most up-to-date literature on legal history. He does not content himself with the repetition of an opposition between law and custom, an opposition used even by Werbőczy himself. On the contrary, he provides a very precise, understandable presentation of the complex relationship between written law and customary law (p.8).

Rady's task was not made much easier by Hungarian historians. Following the socialist reorganization of the sciences, the study of the history of governments and systems of government continued to thrive, but the study of the history of law faltered. The sections of Rady's book that address topics that other historians have already examined are the most thorough and convincing. Like the vast majority of Hungarian legal historians and historians, Rady attributes considerable significance to a few of the tracts from the *Tripartitum*. However, apart from the preface and the sections that are of political and social significance, he only writes in detail on the *titles*, which concerned the rules of inheritance. Rady provides a short and clear description of the courts of the royal presence (p.51), as well as a convincing section on processes of codification after the *Tripartitum* (chapter 10), in which he presents the essence of the Early Modern works. There is no description, however, of the royal court system in the period between 1541 and 1691. This is not a mere matter of chance. To this day Hungarian historians have failed to address the subject adequately. In 1541, Hungary was divided into three parts: the middle swath of the country was occupied by the Ottomans, Transylvania became an independent principality, and a slender strip in the west and the north remained under the rule of the Habsburgs as the Hungarian kings. In this part of the country the old court system remained in place, though by the time the country was liberated of Ottoman rule in 1691 the courts had undergone major transformation.

Rady's book, however, is by no means a simple abridgment or collage of the existing secondary literature. He raises new questions and examines the conclusions of the works he consults, comparing them with the primary sources. He uses both published and archival sources. His description of the relationships between witch trials and public prosecution represents a very important contribution to the history of criminal law in the Early Modern Era (p.119). He also makes the accurate observation that the contention according to which the barons blocked the passage of the *Tripartitum* into law because it did not recognize the superiority of the rights they enjoyed over the rights of the lesser nobility is unpersuasive (p.18). This contention is as widespread as it is unconvincing.

Rady writes in a clear, comprehensible style. He avoids complicated modern legal terminology and words that are fashionable in some of the tendencies in the writing of legal history, even though they often obscure the point of an inquiry. There are some small mistakes, but they do not undermine the essence of the book. For instance, the Magyars and the Onogurs were not two peoples who melted together. Rather, the two terms were used to denote the same people (p.1).

Customary Law in Hungary is far more than a new monograph on the history of old Hungarian law. Rady's use of sources is original and does not get lost in the details. He adheres consistently to his initial goal: how and why did customary law remain the decisive thread of Hungarian law until the twentieth century? By adopting this approach, he sets a high standard for those who seek to follow in his footsteps. Any attempt to characterize old Hungarian law without consulting this book would be quite unthinkable.

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