

Gábor Hamza

The Life and Scientific Work of James Bryce, Author of "The Holy Roman Empire"



Summary

Dr. iur. DDr. h. c. Gábor Hamza, professor of law, full member of Hungarian Academy of Sciences, analyses James Bryce's work titled *The Holy Roman Empire*, pointing out its significance in the first half of the 21st century

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James Bryce was born in Belfast, the capital of Northern Ireland, on 10 May 1838. He died in London on 22 January 1922, aged 84. His father was a schoolmaster in Belfast, Ireland. Bryce was educated at primary school in his home town and then at the Belfast Royal Academy. He completed his secondary education at the High School of Glasgow.

His undergraduate studies were at Glasgow University and Trinity College, Oxford, all with distinction. After completing his studies in the United Kingdom, England and Scotland, he furthered his education abroad at the University of Heidelberg (now Ruprecht-Karls-Universität), founded in 1386, in Germany.

The Holy Roman Empire, published in 1864, was a highly regarded work in professional circles in Europe and beyond at the time of its publication and remains so today, in the first half of the 21st century.

In the context of his work *The Holy Roman Empire*, it should be noted that, historically,

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the "First Empire" (Erstes Reich) was the "Holy Roman Empire" (Sacrum Romanum Imperium, Heiliges Römisches Reich, Holy Roman Empire, Saint-Empire Romain, Sacro Romano Impero, Sacro Romano Imperio, etc¹. The "Second Empire" (Zweites Reich) and was founded, or rather proclaimed, on 18 January 1871 in the Hall of Mirrors (salle des glaces) of the Palace of Versailles and remained in existence until November 1918. In this sense, the Weimar Republic was an "intermezzo", a "Zwischenreich", between the Second Reich and the Third Reich (Dufraise, 1997).

According to Arthur Moeller van den Bruck, the German people are (also) predestined to leadership in Europe by their past, which is closely linked to the Holy Roman Empire (Sacrum Romanum Imperium). The German author notes that the Holy Roman Empire² never manifested in a tangible, real political community (politische Gemeinschaft) throughout its history.

The Holy Roman Empire is characterised by the almost exclusive dominance of territoriality (territorialitas), which has resulted in centuries of territorial fragmentation (territoriale Zersplittertheit). This undoubtedly hinders the free and unhampered development of the German ethnic group, and is also a considerable obstacle to the German identity.

The unofficially named "Second Reich" (Zweites Reich, or das Bismarcksche Reich) of 1871 - despite the political unification and the economic and legal unity that inevitably followed as a result - does not represent a change in this respect. The state (Staat) is still an organisation for its own sake and a "foreign body" in relation to its citizens (Staatsbürger, cives).

James Bryce returned to Oxford in 1870, where he became a fellow of the prestigious Oriel College. Between 1870 and 1893, for almost a quarter of a century, he taught Roman law (civil law) as Regius Professor of Civil Law at the long-established Oriel College (Collegium Oriense), founded in 1326 in the 14th century during the reign of King Edward II (1307-1327) on the initiative of Adam de Brome (Hamza, 2022)³. In his lectures he pointed to the survival of Roman law, emphasising its relevance.

A noteworthy publication of his in 1885, along with Lord Acton (John Dalberg-Acton, 1st Baron Acton) (1834-1902) the highly regarded *The English Historical Review*, made both of them a household name country and almost the whole British Empire. James Bryce joined the Liberal Party while a professor at Oxford University. He was a member of the House of Commons from 1880 to 1907, later serving as Secretary of State for Foreign Affairs, Chancellor of the Duchy of Lancaster and Minister of Trade in the last, fourth premiership, of William Ewart Gladstone (1809-1898) from 1892 to 1894.

James Bryce's initiative was instrumental in the creation of the British Department of Education in 1894. From the outset, Bryce was an outspoken opponent and critic of the Second Boer War (1899-1902).

Partly as a result of this, during the premiership of Sir Henry Campbell-Bannerman (1905-1908), fellow outspoken critic of the Second Boer War, he became Chief Secretary of Ireland. He held this politically important portfolio for almost two years until his appointment as Ambassador.

In 1907, he was appointed Ambassador of the United Kingdom to the United States of America (USA). During his tenure in Washington D.C., he also did much to improve and ex-

pand US-Canadian relations. It is worth mentioning that a mountain peak in Canada, which still bears his name, was named in his honour.

James Bryce returned to the UK five years later, in April 1913. On 1 January 1914 he created the County of Bryce, of which he became the first Viscount (Viscount Bryce of Dechmont).

Later that year, in 1914, he was elected a judge of the International Court of Justice at The Hague. After the First World War, Bryce was involved in determining the amount of reparations to be imposed on the German Empire under Section 231 of the Versailles Treaty (Kriegsschuldartikel). It is also important to note that James Bryce was a strong supporter of the League of Nations (League of Nations, Société des Nations, Sociedad de las Naciones, Società delle Nazioni, Völkerbund).

Two major works of James Bryce were published also in Hungarian. The first work was *The Holy Roman Empire*, translated by Ármin Balogh and revised by Henrik Marczali (Budapest, 1903). The book was published with the support of the Hungarian Academy of Sciences. His other work, published in Hungarian, was *The Democracy of the United States of America*, translated by Róbert Braun (Budapest, 1922) and published in the year of James Bryce's death.

In the introductory part of his book *The Holy Roman Empire*, he stresses that his primary purpose in writing the work was to present and depict the “*Sacrum Romanum Imperium*” not as a state but as an institution, pointing out the peculiarities of its ideals and ideological foundations unique in the history of mankind, not only of Europe.

He points out that in 1806 Great Britain did not recognise, or rather refused to recognise, the dissolution of the Holy Roman Empire. In his view, the Holy Roman Empire lives on as an idea without a corpus. In legal terms, a sovereign monarch's abdication of power without the consent and approval of the constitutional bodies does not and cannot abolish or dissolve the state or state formation of which he is the head, the supreme ruler or leader.

In the last section of this brief overview, it is worth emphasizing that James Bryce, following in the footsteps of Sir Henry Sumner Maine (1822-1888), does not only apply the historical method in his works on archaic law.

James Bryce, who had reasonable grounds to express certain doubts about democracy, considers the application of the historical method to be a guiding principle for the analysis of the political institutions of the modern age, that is, of the time of his authorship, when he wrote his works. The historical view clearly dominates the volume of studies on democracy, synonymous with popular government.

The author, whose political thinking Sir Ernest Barker describes as “melancholy conservatism” (which, in our view, is a little exaggerated) emphasises, for example, the specific historical conditions without which the Constitution of the United States of America could not have been written in the last decades of the 18th century (Hamza, 2021).

Naturally, the role played by Roman law in England should not be overlooked in the analysis of the relationship between James Bryce and Roman law. While in Germany, for the representatives of the “*Historische Rechtsschule*”, Roman law - and, as a consequence of its reception, the Roman legal tradition - is most closely connected with modern jurisprudence,

for James Bryce this actuality is not so much in evidence.

In our view, James Bryce was not, and could not have been in a position to attribute to the Roman legal tradition (or more precisely to traditions) the same importance and role as, for instance, the most prominent representative of the Historical School of Law (*Historische Rechtsschule*), Friedrich Carl von Savigny (1779-1861), did in relation to Germany.

Our research does not contradict the undeniable fact that the Regius Professor of Civil Law at Oxford was undoubtedly greatly influenced by the ideas of Friedrich Carl von Savigny and the eminent representatives of the "Historische Rechtsschule" founded by the great German jurist. It would be a mistake, however, to ignore completely in the analysis of this influence certain specific features of Roman civil law, or more precisely of the continuity of the Roman legal tradition or traditions in England, which are generally not sufficiently taken into consideration even today.

James Bryce considers Roman law, whose institutions he compares with those of the common law, to be the legal system in force in the world, in Europe and outside Europe, even after the codification of private law, going beyond the statist approach he condemns and considers reprehensible in both public and private law.

NOTES

- ¹ The historical-philosophical and state-theoretical aspects of the *Sacrum Imperium* in the Middle Ages and the Renaissance.
- ² On the international legal status of the Holy Roman Empire, see: Fr. Berber: *Internationale Aspekte des Heiligen Römischen Reiches*. In: *Festschrift für Th. Maunz zum 80. Geburtstag*. Munich, 1981. The Idea of *Renovatio Imperii* and the Holy Roman Empire, taken from the Hungarian Literature see Földi- Hamza, 2022.
- ³ As regards the role and importance of Roman law, especially private law, in Europe, taken from the most recent Hungarian literature

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