The self-defense in the Tripartitum and the European ius commune

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Abstract

In this paper the author intended to elucidate the origin of the doctrine contained in the Tripartitum on self-defence. As it is shown, there is no reason to discriminate between the Prologue and the other parts of the Tripartitum, as old Hungarian legal Historians did so. Important citations from the ius commune, from Bartolus and Baldus, were incorporated not only in the Prologue, but also in the three other parts of the Tripartitum. We have shown that the doctrine of the self-defence derived from the ius commune was incorporated in the third Part of the Tripartitum, and these legal ideas from the learned law had a huge importance in the everyday legal practice, they were not a display of legal knowledge and learning. The above-mentioned and discussed sources of Werbőczy are evidences that Werbőczy was not a half-educated and isolationist jurist of a backward country, but he was fully acquainted with the European legal science. The legal knowledge of Werbőczy was a modern and up-to-date legal knowledge.

***Key words**: criminal law; self-defence; Werbőczy; Tripartitum; ius commune.*

1. Introduction

In 1514 Stephen Werbőczy presented the *Tripartitum opus iuris consuetudinarii inclyti regni Hungariae* to the Hungarian legislative assembly, the diet. The Tripartitum was sent to inspection to committees, and the diet authorised the king to seal and distribute it. Finally, the king approved the text. Although the Tripartitum was not sealed and distributed, it acquired legal authority by the force of use and custom. In 1517 it was printed in Vienna.

The Tripartitum is the most important Hungarian law-book from the Middle Ages. This law-book retained legal authority until 1945. It was an important part of the customary Hungarian constitution, an unchangeable monument of the fundamental rights of the Hungarian nobility and the symbol of the independence of the Hungarian State.

The sources of the Tripartitum have been researched since the 19th century, at least in modern times. The first historian who engaged himself in this field, was an Austrian, Johann Adolf Tomaschek. In 1883 he published an extensive study on the *Summa legum Raymundi* and its relationship to Werbőczy's Tripartitum.[1] Tomaschek stated that the Summa legum was a compilation of an Austrian author, and important parts of the Tripartitum were copied from this Summa.

Hungarian legal historians have firmly rejected any speculation about the influence of any foreign legal system on Hungarian law, be it Austrian or European (*ius commune*). As they explained, the Tripartitum was a law-book of specifically Hungarian legal institutions, and was not influenced by foreign legal systems. The Kingdom of Hungary did not receive Roman law at all, its legal system remained essentially customary and Hungarian.[2] If there are some copied sentences from the Roman law in the Prologue, it is because Werbőczy intended to impress his audience by a display of legal knowledge, but the remaining three parts are the true Tripartitum, the true compilation of Hungarian law, where there is no trace of Roman law or foreign influence.[3]

After the dissolution of the Habsburg Monarchy, perhaps, we can fully appreciate the merits of Tomaschek without any nationalistic influence. I think, he did not want to undermine the authority of the Tripartitum.

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1 Tomaschek, J. A., *Über eine in Österreich in der ersten Hälfte des XIV. Jahrhunderts geschriebene Summa legum und ihr Quellenverhältnisse zu dem Stadtrechte von Wiener-Neustadt und dem Werbőczyschen Tripartitum*, in *Sitzungsberichte der phil-hist. Klasse der kaiserlichen Akademie der Wissenschaften in Wien* 105 (1883) 241-328.

2 Timon, Á., *Magyar alkotmány- és jogtörténet*, Budapest 1917, 304.

3 For further elements, see Bónis György: Der Zusammenhang der Summa Legum mit dem Tripartitum, in *Studia Slavica Hungarica* 11 (1965) 373.; Bónis György: *Középkori jogunk elemei*. Budapest, 1972, 237-249.; Bónis György: *Einflüsse des römischen Rechts in Ungarn*, Ius Romanum Medii Aevi V.10., Milano, 1964, 71.

Although the main conclusions of Tomaschek were confuted by German and Italian legal historians, he deserves our appraisal, because he discovered this unpublished manuscript, and he called our attention on it. Certainly, the anonymous author of the Summa legum has nothing to do with Austria or Wiener-Neustadt, as it is a derivative compilation from the *Summa decretalium* of *Goffredus Tranensis*, as it was shown by Besta.

After Tomaschek, the sources of the Tripartitum remained a very debated question. Seckel demonstrated that the Summa legum was widely diffused in Eastern Europe.[4] József Félegyházy wrote a book on the influence of canon law on the Tripartitum, where he tried to identify not only canonical, but Roman law sources, as well.[5] He found citations from Gratian, Liber Extra, Hostiensis, Thomas Aquinas, all authors from the 12-13th centuries. Recently, David Ibbetson and Martyn Rady has made some valuable contribution, but these regard only the Prologue of the Tripartitum.[6]

Is it thinkable that Werbőczy did not use other than 12-13th century sources? Is it thinkable that there are 'two Tripartitums', the Prologue and the remaining three Parts, the true Tripartitum?

In the 500th anniversary of the Tripartitum, I think, it is time to pay attention to Italian commentators, as well, if we want to paint a more detailed picture regarding the sources of the Tripartitum. It is obvious that we cannot pretend to do all this huge work in this paper, and we can only highlight some interesting points from the Tripartitum, and we cannot publish here our investigations on the whole Tripartitum, but, I think, it is worth trying.

2. The self defense in the Tripartitum III. 21-24.

The issue of the legitimate self-defense has been one of the most debated question in criminal law for centuries. The ancient Romans' criminal law was rather rude and the penal law was not a separate branch of law in Rome. In the Middle Ages, the Glossators made a new branch of law of which one of the first text-books was the Tractatus maleficiorum of Albertus Gandinus.[7] The penal law reached a considerable scientific level at the time of Werbőczy, and many treatises of penal law were available to him. The chapters of self-defense indicate that Werbőczy was acquainted with this legal literature, at least as to the legitimate self-defense.

In accordance with the Glossa[8], any person attacked by another, should have the right to counteract aggression against his own person or his goods, only if a controlled amount of blameless force (*cum moderamine inculpatae tutelae*) was used. Self-defense, therefore, requires a) proportionality, b) immediacy, c) intention of defending.

3. The proportionality requirement

Aggression can be repelled by many ways. The defender was required to choose the less harmful way of defending. The proportionality requires that the harm to be prevented significantly outweighs the harm that will be inflicted. The defender has to estimate the dangerousity of the assailant. The proportionality is assessed mainly by establishing which instruments and weapons were used, what was the physical force of the defender and aggressor like. An unarmed attack is not permitted to be fended off with arms, but a person may defend himself with weapons against an attack with arms. The legitimate defense ought to take into consideration the physical force of the attacker, and for this reason, if an assailant can cause such a harm, that could be prevented by the weaker defender only with arms, it is deemed that the legitimate defense is conducted in due proportion, if he uses a sword. It is very difficult to assess the proportionality, because on the other side there is only a potential harm, as the attacked person is not obliged to expect the end of the attack, in order to know clearly what is the real intention of the attacker. As Bartolus stated, it suffices to approach another with an unsheathed sword to begin to defend himself. Werbőczy[9] has a similar opinion, when he states that "if a person approaches another with an unsheathed sword it may at once be presumed that he plans either to kill him or to inflict a wound."[10]

4. The in continenti requirement

As the Gloss stated, the second requirement of the legitimate self-defense is the immediacy of the defense. The legitimate self-defense situation lasts as long as the unlawful attack. It ceases, if the unlawful attack ends. The unlawful attack, therefore, must be unended, when the self-defending action is going on. As it is stated by the Gloss, returning the blow after interruption is not an act of self-defense, but rather of vengeance. Those actions that aim to revenge, and not to self-defense, do not fall within the scope of legitimate self-defense. If someone has been struck, and the attacker runs away, but the offended person starts to pursue him, to return the blow, this is not an act of legitimate self-defense, but rather of revenge. According to Werbőczy, „if he has been already struck, and the striking stopped for a time,

4 Seckel, E., *Beiträge zur Geschichte beider Rechte im Mittelalter*, 1. kötet, Tübingen 1898, 497-498.; Rebro, K., *Summa Legum Raimundi v. metskom práve na Slovensku*, in Sbornik filozofickej fakulty Univerzity Komenského 15 (1961) 155-170.; Rebro, K., *I manoscritti della Summa Legum Raimundi Parthenopei in Slovacchia*, in *Atti del Convegno Internazionale di Studi Accursiani*, Bologna, 1963, III. kötet, Milano 1968, 955-980.

5 Félegyházy J., *Werbőczy Hármaskönyve és a kánonjog*, Budapest 1942.

6 Rady, M., *The Prologue to Werbőczy's Tripartitum and its Sources*, in *English Historical Review* 121 (2006) 104-145.

7 Kantorowicz, H., *Albertus Gandinus und das Strafrecht der Scholastik*, II. kötet, Berlin,Leipzig 1926.

8 Gl. *moderatione* ad C. 8.4.1., *unde vi*, l. *possidenti* (Lugduni 1627, coll. 2054.): „Moderamen circa tria attenditur. Primum, ut si armis inferatur violentia, et armis repellatur. Si sine armis, simili modo repellatur. (....) Secundum, ut in continenti flagrante adhuc maleficio violenter invasor repellatur. ... Tertium, ut ad defensionem, non ad ultionem seu vindictam. ... Item circa illud quod dixi de moderamine, primo quaeritur: Quid si pugnus unius plusquam alterius ensis percutit? Respondeo: defendat se ense propter inequalitatem virium, cum vim vi repellere omnia iura proclament. (...) Item numquid est necesse ut prius percuti expectes? Quidam dicunt quod sic. (....) Tu dic quod sufficit terror armorum, vel iactatio percussionum."

9 Tripartitum III.21.1.: „Nam, qui gladio evaginato alterum aggreditur, statim praesumitur, quod aut necem illi inferre, aut lethalia vulnera infligere machinatur."

10 The English translation of the Tripartitum is quoted in this article from S. Werbőczy, *The Customary Law of the Renowned Kingdom of Hungary in Three Parts* (the Tripartitum), ed. and trans. by János M. Bak, Péter Banyó and Martyn Rady, Budapest and Idyllwild, 2005.

then he had no right to return the blow after the interruption; for by doing so, it may be considered and judged that the return blow was not an act of defense but rather of vengeance: unless, the person struck was perhaps acting to escape other fresh blows which his attacker intended to repeat and continue. In other words, there is a difference between defense and vengeance: defense takes place at once; vengeance after a delay."[11] As it appears clearly, Werbőczy adheres to the Gloss.

It is an act of legitimate self-defense, if the unlawful attack has not been yet commenced, but there is a possibility that it can be carried out. If somebody was threatened to be killed, then the possibility of an unlawful attack is actual. Therefore, it was deemed as a self-defense situation by the Gloss, if the person was of the habit of putting his threats into effect. But if he was a weacker person or without arms, it was not deemed a self-defense situation. This was the opinion of Bartolus, as well.[12]

Baldus had a different opinion. He stated that a person who threatens to attack, did not started the commission of the crime, the verbal menace, therefore, can be only proportional with the verbal self-defense, but with the physical one cannot. According to Baldus, in the case of verbal threats, everybody should expect, and it is not permitted to re-attack.[13] There is only one exception, which is unknown to the Gloss. According to Baldus, it is permitted to carry out self-defending action against a verbal menace, only if the delay would be dangerous, because the person who threatens to attack is waiting for others to join him.

Werbőczy dedicates a separate paragraph to the question. As Werbőczy has it, "it must be said that although it is not permitted by the law and approved custom of our realm to attack another in response to threats or menaces (except in case and act of arson, where the person who threatens to set fire to and burn down a city, village, or another person's house is usually punished by death), nevertheless, by common law, if the man who threatened to kill another usually puts his threats into effect, and especially if he is powerful and has the habit of beating others, then (because the same act can be presumed again from his side) self-defense as well as attack is allowed, in order to avoid being killed. However, if the person is not of the habit of beating others or of putting his threats into effect, then it is permissible to argue with him and resist him by words, and not by arms or sword. Except perhaps if he is waiting for others to join him."[14]

It is clear from the Tripartitum that Werbőczy has accepted the doctrine of the ius commune of self-defense. Werbőczy refused to adhere to the Gloss, and he did not accepted the views of Bartolus, either, but he followed the doctrine of a later commentator, Baldus. Werbőczy did not accept the teachings of the Gloss or Bartolus, because it was not sufficient for him that the assailant is able to put his threats into effect, as it sufficed for the Gloss or Bartolus. Werbőczy mentions an important exception, which was formulated by Baldus, because for Werbőczy it is legitimate to repel the defender, who is waiting for others to join him, because the delay would be dangerous.

The use of these words makes it undeniable that Werbőczy was acquainted with the commentary of Baldus on the Codex Iustinianus, or at least he used a textbook drawn on Baldus. We could mention here the commentary of Angelus Aretinus[15] on the Institutes, which is not entirely identical, but many keywords are the same.

5. Intentionality of defense

As the Gloss states, the third requirement of the legitimate self-defense is the intention of defending. If there is no intention of defending, the counteracting conduct amounts to revenge. The intention of defending may be inferred from the circumstances. The unproportional defense is always an indication of revenge. The Gloss presumed the intention of defending, if the unlawful attack was going on. Werbőczy requires the intention of defending, as well, as he states that "regarding the protection of body and person, self-defense can be done and is allowed only immediately and before the wrong is completely finished or in the same fight and struggle during the commission of the first crime: that is, before the attacker (or the person who struck first)

[11] Tripartitum II.21.6.: „Si autem fuit jam percussus, et cessavit actus percussionis per aliquam moram: tunc non est sibi licitum repercutere post moram. Quia hoc modo non defensio, sed vindicta potius illa repercussio censetur atque judicatur. Nisi forte percussus faceret, ut evaderet alias percussiones, quas aggressor de novo facere et continuare praetendebat. Et sic differentia est inter defensam et vindictam, quia defensa sit in continenti, vindicta autem post moram infertur."

[12] Bartolus, *Comm*. in C. 2.19.9., *de his quod metus causa*, l. *metum* (Lugduni 1552, fol. 95va): „ Quando minae inferuntur, debet inspici persona inferentis minas. Sunt enim quidam potentes et ita mali quod illud quod dicunt, consueti sunt facere, tunc esset iustus metus ex minis et iactationibus, ut supra eo. l. si donationis. Si vero erat quidam homo, quod consuevit multum dicere et modicum facere, tunc non esset iustus metus."

[13] Baldus, *Comm. (rep.)* in C. 8.4.1., *unde vi*, l. *possidenti*, n. 16 (Venetiis 1615, fol. 134vb): „Sed numquid solis minis minatus possit percutere minatorem? Glossa dicit quod sic, si consuevit minas suas minator exequi, nam tales minae terrorem inferunt, ut l.j. si quacumque et l. 1 si rec. provin. Nam consuetudo et qualitas personae debet attendi in talibus, l.j. si quis imp., l. si de act. et obl. facit quod nota ff. de arb. l. licet (D. 4.8.15). Mihi videtur contra, quia licet minetur, non incipit delinquere facto, sed tantum verbo, nec procedit ad actum proximum, et ideo verbis resisti contrario verbo debet, non ad manus et ferrum veniri, facit quod no. in Spec. de accu. ver quid si vocavi te latronem. Verumtamen si in mora expectationis esset periculum, ex quo liquet de animo, starem cum glossa."

[14] Tripartitum III.23.1-2.: „Dicendum, quod licet de regni nostri lege et approbata consuetudine, propter minas et comminationes non sit licitum cuipiam alterum offendere (praeter combustionis et incinerationis articulum atque casum, in quo quilibet civitatem aut villam, vel alterius domum succendere, ignisque voragine conflagrare minatus, morte damnari solet): de lege tamen communi, si homo ille, qui minatus alteri mortem, solitus est minas suas executioni demandare, praesertim si fuerit potens et alias consuetus percutere (quia verisimiliter hoc idem praesumitur etiam de isto), mortis evitandae gratia admittitur defensa, pariter et offensa. Verum si non fuit solitus alias percutere, nec minas suas executioni demandare: tunc verbis quidem resistere, et ei contradicere permittitur, sed non ferro vel gladio; nisi forte ille expectaret socios, et mora periculum esset allatura."

[15] Angelus Aretinus, *Comm*. in Inst. 1.2.2., *de iure naturali, gentium et civili*, § *sed ius quidem civile*, n. 9 (Venetiis 1609, fol. 15va): „Quid si minatus est mihi, an possum eum licite offendere? Bar. in d.l. metum C. quod me.cau. dicit, quod si ille erat homo consuetus minas suas executioni mandare, quod est iustus metus, alias non, facit quod notat Bar. in l. de pupillo § si quis ipsi praetori. ff. de no. op. Sed Baldus in l. 1. C. unde vi, dicit, quod immo verbis est resistendum, et non ferro, nisi ille expectaret socios, et mora esset pericula allatura."

departs from the scene. For, as previously explained, if it is done afterwards, it cannot be called self-defense but vengeance."[16]

Another important question treated by Werbőczy in the Tripartitum was the duty of retreat. The unlawfully attacked person is often able to escape or to withdraw, but in these cases the self-defending action would be unnecessary and unproportional. It may be asked: the right of self-defense can be invoked by somebody who could have been retreated himself? There was a lot of discussion among the Glossators on the duty of retreat. Everyone was required to withdraw when retreat would not endanger his honour. The clerical persons were always required to withdraw, but the military persons were not.[17] Bartolus thought, that no one is required to retreat, and everyone has the right to counteract aggression.[18] Baldus taught, that if the injury affects only his property rights, everyone is entitled to expel foreign invaders, but in case of an attack against persons, it is legitimate to counteract, only if escaping endangered his life or his honour. If there is a danger of being attacked from behind, there is no need to retreat.[19]

Werbőczy holds the duty of retreat to be mandatory for everyone, although the text is not clear, and we could also presume that only the retreat in case of an attack against life was required by Werbőczy, but in case of an attack against property rights, it was not, as stated Baldus. In fact, Werbőczy explains[20] that one has to withdraw, if he can escape without a harm of his person and honour, hence we can deduce, that he has not to withdraw, if he can escape without a harm affecting his property rights, as Baldus stated.

In case of violent crimes, it is often impossible to elucidate who was the aggressor and who was the defender, who bate the other for the first time, that is who was the defender and who was the assailant. According to the Gloss, both are to be acquitted.[21] Baldus states, that everyone is an unlawful assailant, therefore punishable. According to Werbőczy, if it does not emerge clearly from testimony or otherwise which blow preceded the other, then the guilty will fall on the person who provoked the other to fight and to strike a blow. Werbőczy's opinion is identical with the teachings of Angelus Aretinus.[22]

In Tit. 24 of Part III, Werbőczy puts a further question: whether one can come to the help of another unlawfully attacked person. This chapter is fully in accordance with the ius commune. According to the natural law, only the attacked person has the right to defend. The legislator must carefully weight, if he extends or not the right to defend to other by-standing people. However, this can be dangerous, because these violent fights and firing can result in an all-in-wrestling. The commentators of the ius commune were aware of this danger, and hesitated to extend the right to defend to everybody. A special affection was required by the Gloss[23], and it was the reason why the Gloss acknowledged the right to defend the son, the parents, the spouse or the concubine. However, according to the Gloss, a stranger who is called on for assistance, can not come to the aid of an attacked person.

As Baldus taught,[24] if the attacked person is asking for help, every person, even a stranger is permitted to come to the aid of another to defend him from attack, as Bartolus taught already. Werbőczy follows the doctrine of the commentators saying that "anyone, even a stranger, who is called on for assistance, can always come to the help of a person he sees placed in mortal peril."[25] The source deriving from the ius

[16] Tripartitum III.22.1.: „Quantum igitur ad corporis et personae tutelam: debet fieri et admitti defensa in continenti, et ante consummatam injuriam, vel in eadem pugna et contentione, flagrante adhuc primo crimine, antequam scilicet aggressor vel primus percussor de loco recedat. Nam si postea fieret: non defensa (prout praenarratum est), sed vindicta diceretur."

[17] Huguccio Pisanus, *Summa Decretorum*, Tom. I. Distinctiones I-XX, Vatican City 2006, 42.: „Ex his omnibus patet quod nullus debet repercutere."; Goffredus Tranensis, *Summa* in X. 5.12., *de homicidio*, n. 6 (Venetiis 1586, fol. 205ra): „Ad hoc dicunt quidam quod licet laicis, clericis vero non. Ego credo quod clericis et laicis licet iniuriam propulsare et repercutere."

[18] Bartolus, *Comm*. in C. 8.4.1., *unde vi*, l. *possidenti*, n. 8 (Lugduni 1552, fol. 110rb): „Si ego potui evadere fugiendo, et nolui, sed volui resistere, an liceat? Et quidam distinguunt: Aut est persona cui fuga est verecundia, aut non. Mihi videtur indistincte dicendum, quem non debere fugere, nam aliquem fugatam esse est iniuria, ut l. item apud, § j. ff. de iniur., ergo propulsanda ista iniuria."

[19] Baldus, *Comm. (rep.)* in C. 8.4.1., *unde vi*, l. *possidenti*, n. 12 (Venetiis 1615, fol. 134ra): „Sed pone quidam fecit insultum contra me. Ego poteram a facie eius fugere. Non feci hoc, sed percussi eum. Queritur an puniar? Videtur quod sic, quia aliter poteram me defendere, scilicet fugiendo, et terga vertendo, et quilibet tenetur rumores fugere, nec se eis accomodare, ut ff. de poe. l. capitalium, § solent. Item ponere manus ad arma debet esse ultimum refugium et ultimum subsidium. Solutio: aut violentia infertur circa res ad earum occupationem vel destructionem, et non debet quis fugere, quia fuga trahit secum periculum. (....) Aut circa personas, non respectu rerum occupandarum, tunc aut fuga importat periculum, ut quia inimicus est sibi ad spatulas, et terga vertendo posset de facili vulnerari, tunc non debet fugere. (...) Aut fuga importat periculum honoris, et idem secundum Iacobum quia quilibet tenetur et debet honorem suum tueri, et omni lucro preferre, ff. si quis omis. cau. test. l. Iulia. Aut fuga nullum importat periculum, sed cautelam quandam, tunc debet quis fugere, quia sibi non nocet, et alii prodest."

[20] Tripartitum III.21.4.: „Quod si vero aggressus cum honore et salvatione personae suae aggressorem evadere poterit: tunc evadere et minus malum, ne maius sequatur, evitare tenetur."

[21] Gl. *sibi* ad D. 9.1.11., *si quadrupes pauperiem fecisse dicatur*, l. *cum arietes* (Lugduni 1627, coll. 1014.) „Sed quid si non apparet quis fuerit aggressus? Responde: neuter alteri tenetur, arg. infra ad legem Aqui. l. scientiam § cum instrumenta."

[22] Angelus Aretinus, *Comm*. in Inst. 1.2.2., *de iure naturali, gentium et civili*, § *sed ius quidem civile*, n. 7 (Venetiis 1609, fol. 15rb): „hoc casu potest intelligi quod praesumatur culpa in eo, qui provocavit."

[23] Gl. *nam iure* ad D. 1.1.3., *de iustitia et iure*, l. *ut vim* (Lugduni 1627, coll. 15.): „Sed quid si ob tutelam rerum suarum? Responde idem, dummodo cum moderamine, ut C. unde vi, l.j. (C.8.4.1). Item quid si ob tutelam alterius? Responde affectionem considerari."

[24] Baldus, *Comm. (rep.)* in C. 8.4.1., *unde vi*, l. *possidenti*, n. 12 (Venetiis 1615, fol. 134ra): „Queritur an cessante qualibet speciali affectione, possit quis assumere defensionem hominis ignoti? Et videtur quod non, quia gl. l. ut vim, dicit affectionem ponderari, sed ad ignotum nulla est affectio saltem singularis et notabilis. In contrarium videtur, praesertim si offensus exclamat: accurrite, accurrite. Primum, quia in defensionem rerum hoc licet, ut no. in lege 3 § eum igitur, de vi et vi ar., infra tit.1. l. 1, ergo multo magis in defensionem personarum."

[25] Tripartitum III.24.: „Adhuc quaeritur: an alius alium possit adjuvare? Dicendum, quod sic. Nam si pro tutela rerum, et haereditatum mearum possum amicos et fratres convocare: longe fortius pro corporis et personae meae defensione. Unde quilibet, etiam extraneus, dum in adjutorium acclamatur, poterit illum, quem in periculo vitae constitutum viderit, semper adjuvare."

commune is betrayed by a sentence where there is a reference to the defense of property rights, as a justification, because the application of the Roman norm for the defense of property to personal self-defense was an often used argument by the glossators and commentators.

6. Conclusions

Which conclusions can be deduced from this research? Above all, it became clear that the source of the Tripartitum was not the ancient Roman law, because Werbőczy did not quote and use the sources of Roman law, but the authors of the *ius commune*, that is the glossators and commentators who were the most up-to-date legal sources of that time. The glossators and commentators have substantially transformed and changed the Roman law. In the Tripartitum there is no close adherence to Roman law. Roman terms are used to describe medieval institutions. The texts of the commentators are applied to produce arguments to answer the needs of the Hungarian medieval society.

We have shown that Werbőczy used the legal sources of his own time, he was not behind his time. He was not backward or behind his time regarding canon law sources, as well. He used not only 12-13th century old canonical literature, but he studied decretalists from the 14-15th centuries, e.g. Johannes Andreae, Antonius de Butrio, and Dominicus de Sancto Geminiano. However, the proportion of canonical sources was not as important as Félegyházy and other Hungarian legal historians thought. Werbőczy paid much more attention to the civilian sources than the canonical ones. Bartolus and Baldus exerted much more influence on Werbőczy than the canonists did, whose importance is represented by the fact that they intermediated the doctrines of the civilians, instead of giving his own contribution.

The above-mentioned and discussed sources of Werbőczy are evidences that Werbőczy was not a half-educated and isolationist jurist of a backward country, but he was fully acquainted with the European legal science. The legal knowledge of Werbőczy was a modern and up-to-date legal knowledge.

We have shown, as well, that there is no reason to discriminate between the Prologue and the other parts of the Tripartitum. Important citations from the ius commune from Bartolus and Baldus, were incorporated not only in the Prologue, but also in the three other parts of the Tripartitum. We have shown that the doctrine of the self-defence derived from the ius commune was incorporated in the third Part of the Tripartitum, and these legal ideas from the learned law had a huge importance in the everyday legal practice, they were not a display of legal knowledge and learning.

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