

## BOOK REVIEW

*Hamza Gábor–Nótári Tamás: Mit hoz a Múlt? Jog és kultúrtörténeti tanulmányok I.* [What Brings the Past? Studies on Legal and Cultural History I.]. Korona Kiadó, Budapest, 2006. 503 pp.

The joint volume of studies of Gábor Hamza, Academician Professor of ELTE and Tamás Nótári, Associate Professor of KRE was published in the autumn of 2006. The selection gathers twenty works published earlier, so it allows to study these papers together written in 10 years and not easily available individually, and to become familiar with the works of the two authors in a subtler form. The volume presents the studies in chronological order; most of them, as a matter of fact, cover subjects of Roman law; the reader will find a total of 8 writings on this subject. The other thematic unit of the volume comprises 6 studies on medieval subjects. The last 4 papers leading to the modern age and our present day are closed-in style and as a framework–by Gábor Hamza’s study entitled *Comments on the role of Roman law in training lawyers*.<sup>1</sup> The last work in the volume, a study that raises a monument to the memory of the internationally renowned classical scholar and Byzantinist *Samu Szádeczky-Kardoss*<sup>2</sup> is a worthy memorial by the former student Tamás Nótári to his master not only with this obituary but perhaps with the whole volume. Below you will find a detailed analysis of two studies on Antique subjects of each of the authors; the rest of the studies will be commented upon only briefly within the framework of general remarks made on the entire volume.

<sup>1</sup> Cf. Hamza G.: A hazai jogászképzés történetéhez (The History of the Teaching of Lawyers in Hungary). *Magyar Jog* (1986) 21 sqq.; Megjegyzések a római jog szerepéről a jogászképzésben (The Role of Roman Law in Legal Education). In: Márta O.–Szabó B. (eds.): *Festgabe für János Zlinszky*. Miskolc, 1998. 569 sqq.

<sup>2</sup> Emlékezés Szádeczky-Kardoss Samu professzora (In Memoriam Prof. Samu Szádeczky-Kardoss). *Jogtörténeti Szemle* 1 (2005) 44 sqq.; In memoriam Samuelis Szádeczky-Kardoss piissimam. *Vox Latina* (2005) 142 sq.; Szádeczky-Kardoss Samu (1918–2004). *Aetas* 4 (2005) 182 sqq.

## I. Gábor Hamza: Cicero's *De re publica* and Antique philosophy of the state

“Rome—contrary to the Greeks—created only one specific work on the theory of the state: Cicero’s dialogue entitled ‘On the State’”, writes László Havas.<sup>3</sup> Yet, this work was published in Hungarian only in 1995<sup>4</sup> owing to Gábor Hamza, although the great *orator* worked more on it than on any other of his works. In addition to the hard labour of translating this work into Hungarian, in view of the composite nature of the text, the translator had to carry out the far from easy task of interpreting and processing the work too. “Quite often it was usual to misinterpret and underestimate Cicero’s life work and qualify it partly lacking independent thought, eclectic and partly conservative or retrograde”, writes László Havas.<sup>5</sup> Also thoughts provoking is what Gábor Hamza writes in his study: “The analysis of Cicero’s works, primarily dialogues outstanding in terms of the philosophy of the state have been analysed mostly from philosophical aspect. Unfortunately, historical and legal approach is often forced into background.”

Right at the beginning of his study, the author points out this contradiction in the assessment calling the attention to the necessity of treating the works in terms of legal history. The first part of the study describes the historical environment of the creation of *De re publica*, recognising that the age of Cicero is of great significance in the history of thinking and was a turning point in historical aspects. Concerning Roman philosophy of state, the 1st century B.C. can be considered a period of paramount importance owing to the connection made between Greek and Roman philosophy of state by Polybius. Contrary to Plato’s and Aristotle’s concept setting the city state in the centre and idealising it, Polybius now presents states that have grown beyond the condition of a polis, and are becoming empires—Sparta, Carthage and Rome—as examples to be followed, seeing the latter an existing, not utopian ideal state. The merit of the so-called Scipio circle that followed Polybius is immense in laying the theoretical foundations of the need to make changes that Rome, politically still operated under city state conditions, faced. Beside theory and thinking, however, just as important are the efforts to make changes in *praxis*,

<sup>3</sup> Havas L.: A politikai közgondolkodás főbb vonásai Rómában (Mainstream of Political Thinking in Rome). In: Havas L.–Óbis H.–Szűcs G.–Ujlaky I. (eds.): *Róma – Egy világbirodalom politikai, erkölcsi és történelmi eszméi I. (Roma – Political, Moral and Historical Conceptions of an Empire I)*. Debrecen, 1998. 5–57.

<sup>4</sup> Hamza G.: *Cicero. Az állam* (Cicero. The State). Budapest, 2007<sup>3</sup>.

<sup>5</sup> Havas: *op. cit.* 18.

on the level of historical events. Sulla's title *dictatori (dictator rei publicae constituendae causa)* adopted and exercised in a new form of public law, the power alliance called the two "triumvirates", Caesar's eternal *dictatorship* all reflect the inefficiency of institutional frameworks as well as the need and efforts to change them.

In the second and third parts that present Cicero's philosophy of state, Gábor Hamza sums up the author's philosophical work and its significance in the history of philosophy with excellently selected excerpts. The call for creating relation between, synthesis of the Greek and Roman philosophy of state, the old city state organisation and the new empire state, and *populares* and *optimates* attaining balance of strength in the field of politics and society is one of the most important elements of Cicero's philosophical oeuvre. The notion of rotation, appearance in a blooming and declining stage of the three forms of constitution (kingdom, aristocracy, democracy) had been present since the beginning of Greek thinking. However, the excerpt quoted in the study properly underlines the characteristic Roman approach asserting that forms of state are filled with content by statesmen, suitable persons. Therefore, in the operation of states it is the personalities, *magistrati* fulfilling leader's offices, continuously replacing each other that the success, life of the state depends on. Here we cannot give a detailed description of the outstanding significance Romans attributed to *magistrati*, specific persons and ancient morals (*mores maiorum*).

The fourth part of the study (The bases of the ideal state in Cicero's thinking) points out: Cicero follows Roman approach to the extent that he does not present the ideal state as a utopia but finds it in Rome. The notion of the "mixed constitution" (*mikté politeia*) considered by him fundamental has been present since the greatest figures of Greek thinking; however, contrary to the Greeks Cicero works it out not on a theoretical basis. Cicero comprehends the organisational and moral (not power!) crisis of the Roman state, and makes an attempt to solve it relying on traditional Roman values: (*auctoritas, traditio, mores*) but integrates into them philosophical approaches of Greek origin just as the requirements of new social layers and power factors. The recognition and the elaboration of the theory of *concordia* and *consensus*, which can be interpreted in several ways, is Cicero's great achievement, it stays on a theoretical level though. Along with the thinkers of his age, neither does he recognise the rapid growth of the social role and weight of power of the army. The army of the age of the Republic was distributed among the three powers *populus, nobilitas* and *magistrati* equalising each other both in terms of the state and authority. By the 1st century, however, it had become a permanent institution that basically determined the power relations of the future owing to

both of its physical force and level of organisation more uniform than that of any other social group. Neither is—the often misinterpreted—best citizen, *princeps civitatis* or *moderator rei publicae* characterised by Cicero a monarch under the framework of the republic, or a supreme commander exercising his power in a disguised form but the restorer of the values, institutions of the *res publica*, a practical and political creator of *concordia* and synthesis that saves the order of the state in crisis. The replies of history to the crisis of the Roman Republic are known. After Cicero, who created synthesis on the level of theory, it was Octavianus Augustus who implemented the renewal of the state organisation in practice that brought further development for the empire through preserving old institutions where possible and taking political reality into account.

At the end of his study, Gábor Hamza describes the philosophical influence Cicero produced on the thinking of later ages, well representing the basic principle of the volume of studies formulated several times which asserts that intellectual values of past epochs are worth examining as much in their influence as in themselves. It is a special asset that the carefully selected notes attached to the paper serves not only literature on Cicero's oeuvre and works on the philosophy of state but calls the attention to works that analyse the most important political and historical issues of the age of the author.

## II. Gábor Hamza: Institutions of Direct Democracy in the Antiquity and Civics

Gábor Hamza's other study discussed below contains not so much a detailed analysis of its subject but the related problems raised, and provides highly valuable guiding on the relevant literature and scientific standpoints.<sup>6</sup> The study discusses the Greek/Roman offices, institutions responsible for representing direct democracy, more specifically, controlling power, which were considered exemplary by thinkers of later ages, who tried to revive them in their own systems. Below, two of these institutions will be discussed in detail: the institution of the Roman *tribunatus*, and the institution of *defensor civitatis* of the late period of the Empire.

<sup>6</sup> Cf. Hamza G.: A közvetlen demokrácia ókori intézményei és a politikatudomány (Institutes of Antique Immediate Democracy and the Political Sciences). *Jogtudományi Közlöny* (2005) 76 sqq.; A közvetlen demokrácia antik intézményeinek továbbélése a politikaelméletben (Reminiscences of Antique Immediate Democracy in Political Sciences). *Parlamenti levelek* 1999. fasc. 6. 35 sqq.

The institution of the popular tribune of the Roman Republic established in 494 built a new determining element into a political structure that had existed for centuries. In the state organisation of the Republic based on the separation of the power of the *magistrati*, the *senatus* and the popular assembly, the office of the *tribunus plebis* sharing the licences of all the three institutions was a quite new component. It is beyond doubt that *tribunatus* is an element of accord (*foedus*) between the *patricii* and the *plebeian*; consequently, it is an office created primarily for political rather than state organisation related reasons; its key feature was that only the *plebeian* were allowed to apply for it. However, through the continuous opening up of promotion to traditional *magistratures* its such role decreased, and the function of limiting, controlling the power of *magistratus* could come to the foreground. In this respect, it is indeed a question of paramount importance—as the author points out—whether the *tribuni* were entitled to intervene against measures taken by *magistrati* and prevent them, i.e., whether they had the option of exercising *intercessio* that the *magistratus-collegae* were permitted to do. It is another important question if the *tribunicia potestas* enjoyed by them can be considered of equal value with *imperium* exercised by high *magistrati* (*consules, praetores*). It may refer to the outstanding importance of *tribunicia potestas* that Octavianus Augustus also exercised it in spite of not being (because of his *patricius* origin he was not allowed to be) a popular tribune.

These two questions—the problematic issues of *tribunus*'s *intercessio* and *potestas*—would deserve detailed analysis because without them the licences of the powers of the *tribunus* limiting the power of the popular assembly and the *senatus* (*ius agendi cum plebe-cum patribus, ius intercedendi*) are more emphatically highlighted and the rights limiting the power of the *magistratus* are thrust into the background. Without them stressing the role of *tribunatus* limiting and controlling power might be exaggerated.

Considering the *defensor civitatis* of the late period of the Empire a prefiguration of the modern *ombudsman* might bring similar dangers. The collection of *annona*, the key tax constituting the most important part of financial administration was assigned in this period to the powers of *praefectus praetoriones*, the supreme administration holding civil governments together. Simultaneously, cities carrying out the actual duty of collecting tax lost their independence from the governments of provinces. It was through tax collection, a duty of city council members, *curiales*, that the central power tried to shift a part of the local administration tasks it was to fulfil on social layers that could still be burdened in terms of their financial performance. In the determination of their organisation and operation the leadership of the empire also had a say to an increasing extent.

The municipal offices having become increasingly unpopular due to growing duties were maintained by the central power through a series of coercive measures. Membership in the governing body of the city was made obligatory for the sons of council members and those who had a certain amount of property. It was not allowed to leave the city without the governor's permit; if somebody stayed outside the city for more than five years his property devolved to the city. Compliance with rules and enforcement of possible coercive measures were assigned to governors; that is, the key players of local administration were opposed to each other. The bodies of cities tried to collect the taxes levied on them primarily from the population of the countryside. Large estates enjoying immunity, increasingly growing provincial areas taken out of the scope of tax collection reduced the circle of taxpayers to a great extent. Yet the greatest part of tax burden was to be carried by the population of cities and *curiales* who were personally responsible for collecting taxes. Consequently, coercive measure taken by the State against *curiales* became stricter.

To avoid the new method of tax collection and increasing burdens put on the population and municipal leaders, the population of cities and municipal officials themselves tried to flee to the countryside. By strictly binding social groups to their abode, the State could obviously do no more than slow down this process. Along with the gradual decline of cities, the former fortunate distribution of duties and community of interest ensuring growth between the central administration and local self-governments terminated. The fate of the layers of municipal leaders was subordinated by the government of the empire to the interests of the army, the bureaucracy and big landowners in the provinces intertwined with them. Officials of the empire began to appear in the governing bodies of cities formerly having extensive autonomy. The *curator* was the municipal official sent by the provincial centre who coordinated tax collection carried out by the city. By that the State lost both the most important group linking the population and layers of leaders, and the basic units of regional administration.

It was this unfortunate process the leaders of the empire wanted to mitigate by organising the office of the defender (*defensores civitatis*) in 364, who would have had to defend the population in the provinces against the practice of shifting tax burden applied by municipal officials. However, once *curiales* had got into a difficult situation, they also had to be defended against the governors of provinces by the defender. Nevertheless, defenders were personnel of the central power—since they were appointed by the *praefectus praetorio* for five years—that is, they fulfilled duties similar to the *curator* rather than enforced municipal interests. The system of selection of defenders was later modified:

they were no longer appointed by the *praefectus praetorio* but were elected by *curiales* and bishops. Yet the office could not fulfil the role assigned to it.

Anastasius replaced defenders with a new official, *vindex* subordinated to the *praefectus praetorio*, who also fulfilled the duty of assessment and tax collection, so he was responsible for the financial administration duties that until then had belonged to *curiales*. However, the persons fulfilling the office soon became corruptible, bribable. For this reason, Iustinianus terminated the institution of *vindex*, and assigned the duty of tax collection again to *curiales*. Besides, his measure to make the defender the head of the city aimed at restoring a part of municipal autonomy. Now the defender was independent of the *praefectus praetorio*. He was elected for two years from *curiales*, the competent bishop in the region acted as his controlling body. The defender as the head (*arkhón*) of the city supervised each field of municipal administration. He chaired the meetings of the *curia*, acted as judge, and assisted *curiales* in collecting taxes. Nevertheless, cities becoming freer in terms of their self-government continued to be subordinated to the governors of provinces and the *praefectus praetorio*. The latter defined the amount of the tax to be collected, officials had to turn to him for guiding on taxation issues.<sup>7</sup>

Thus, in the history of *defensores* it is absolutely necessary to distinguish regulation before Anastasius from the regulation of Iustinianus. Dispensing with detailed analysis, it might be established that it is at most the latter that can be considered an “antique legal protection body”.

These two offices—the *tribunatus* and the *defensores*—clearly shows that the institutions which can be considered the antique prefiguration of direct democracy should be approached with great care and in a subtle form. Nevertheless, Gábor Hamza’s study provides an excellent starting point for this investigation. It makes the analyser’s work extremely easy that it describes key points of approach and principles of evaluation in a concise form yet reflecting extensive knowledge.

### III. Tamás Nótári: Religious aspects of the Roman concept of authority

Tamás Nótári’s study analyses the religious, political and public law aspects of the Roman concept of authority with exemplary thoroughness, magnificently separating the concepts fundamental regarding the subject but often causing

<sup>7</sup> According to NI. 128.1. (545.) it was the *praefectus praetorio* who considered the exchange rate between the tax in kind and its value in money, and one had to ask the *praefectus praetorio* to certify the amounts of the taxes imposed on the territories, cities.

difficulties in interpretation: *auctoritas*, *numen*, *genius* and *imperium*. In the investigation of Roman public law it is indispensable to present a clear view of, understand the connecting points of holding offices, undertaking political roles and religion. This rather difficult task is made easier for us by the author through providing a superb treatment of the subject.<sup>8</sup> The detailed analysis of the concept of *numen* standing in the centre of the study examines the aspects of the concept significant in terms of public law one by one setting out from the etymology of the word. Of these, in our analysis we shall make comments on the role of the concept of *numen* played in exercising supremacy focusing on the institution of *triumphus* and the concept of *numen Augusti* integrated in the early emperor cult.

This dual character of the term *numen* as a human feature expressing superhuman skills yet related to earthly persons clearly exemplifies the ambivalent view of deifying humans in the Roman mind. In Roman thinking holding offices, assuming dignities, what is more, the operation of state institutions is a superhuman activity based on superior skills that stand beyond the human world, which is, however, separated by several confines from raising those who perform it to the level of gods, from their epiphany. The skills of leadership, governance had been superhuman features since the beginning of Roman history, and were interwoven with religious images, symbols. The Roman *magistrati* inherited the sacred character of kings preceding them as much as Augustus took over these sacred elements to represent his power. It is associating office-holding with superhuman skills from which the striking character of the Roman mind—contrary to the Greek—can be deduced, which asserts that the success, prevailing of the Republic depends on the persons holding the offices rather than the institutions. Namely, they possess *numen*, more specifically numinous force that is able to fill official power, *imperium* or *potestas*, with content. In the Greek world we find no traces of this distinguished respect and sacredness that surrounds *magistrati*.

Among the traditions of the Republic this superhuman character was expressed perhaps the most spectacularly by *triumphus* due to triumphant commanders and by the symbols related thereto. The development of the *triumphus* ceremony can be connected to the introduction of the Jupiter cult on the Capitolium in 509 B.C.. Triumphal marches adhering to original religious traditions were held until the end of the 3rd century. The *triumphi* held later

<sup>8</sup> Nótári T.: Numen és numinozítás – a római tekintély fogalom vallási gyökerei (Numen and Numinosity – Origin of Roman Concept of Authority). *Aetas* (2003) 33 sqq.; Nótári, T.: On Some Aspects of the Roman Concept of Authority. *Acta Juridica Hungarica* (2005) 95 sqq.



cannot be considered a continuation of sacred tradition. During the time of the *triumphus* the triumphant commander was given exceptional, almost divine respect. For this one day he was allowed to put on *toga palmata*, the clothes of the Jupiter statue on the *Capitolium*, and *toga picta* decorated with golden stars that was worn over it. The *triumphator* was driving a two-wheeled, *quadriga* pulled by four horses, the same as the one that decorated the tip of the temple on the *Capitolium*. Yet the act of putting on the divine vestments did not mean being transformed into a god since the *triumphator* offered a sacrifice in Jupiter's temple and during this act he took off his symbols of power. In the *triumphus* it is not Jupiter but his statue that the commander personifies. The aforesaid commander's capes are taken off the statue of the chief god on the *Capitolium*, the *triumphator*'s face is painted vermilion to make him look similar to Jupiter's statue made of clay. The commander's stiff posture on the triumphal carriage looking straight ahead is highly statue-like. The fact that he only appears to be a god is emphasised by one of the most characteristic accessories of the triumphal march, the slave standing behind the *triumphator* on his *quadriga*, who continuously reminds him of his mortality (*hominem te memento! Hoti anthrópoi eisin!*).

The cult of rulers of the early period of the Empire was expressed by the assembly of symbols surrounding the officials and commanders of the Republic, manifesting respect gathered around the person of *princeps*. The symbols of the Republic were only secondarily, gradually accompanied by a set of sacred tools of eastern origin. The author properly emphasises that the cult of rulers rooted in the traditions of the Roman Republic and religion must be sharply separated from eastern type notions. Augustus also used sacred elements expressing numinosity to support his own power with transcendence. While doing so he created a new quality through expropriating and monopolising the set of sacred tools *magistrati* were entitled to rather than by inventing new symbols. Therefore, the influence of eastern elements produced on the Roman concept of the ruler—often overemphasised in literature—should be evaluated only in accordance with their significance.

Even in the case of Augustus the tradition of *triumphus*, the highest respect due to living humans stands out of sacred elements. The primary *princeps* was first given the right to wear a commander's wreath in all of his public appearances; then, he obtained the privilege to put on *triumphator*'s clothes on the first day of each year. By that he wanted to make the narrow, single day content of the respect due to the commander permanent and to concentrate it around his person.

The transcendental quality of the *princeps* of the early period of the Empire also properly reflects the caution of the Romans observable in their handling

the divine respect due to humans. In his life Augustus did not become divine, *divus* but received the title *Divi filius* after Caesar who had become Divus Iulius. In the adoption of the name *Augustus* in 27 B.C. certain sacred images also played a part. Following the reign of Caesar and Augustus, it became a tradition to make the rulers of the early period of the Empire divine *divus* after their death through a resolution of the senate, in the form of *consecratio*. The cult of rulers who had become divine was conducted by a six-member committee of priests (*seviri augustales*) set up for this purpose in each city. Rulers who had ancestors made divine supported the cult of the cult of their ancestors since by that they could legitimise their own divinity (as sons of god, *divi filius*). The cult of Caesar, then of Augustus had their own priests, cultic places.

The transitional nature of the essence of the "Augustan Caesar" between the two worlds is superbly grasped by the author through opposing and comparing the pair of concepts *numen Augusti* and *genius Augusti*. In this comparison he expounds that the *princeps* has both *genius* and *numen* but does not become in his life either *numen* or *genius*. Thus, the Roman mind "authorises" earthly persons to have only divine traits but not divine essence. By the ceremony of making them divine, dead Emperors obtain divine essence and do not become divine.

The author closes his highly ripened study supplemented with rich notes with a quite stylistic and thoughts provoking final part, in which he calls the attention to the neurotic relation of Roman thinking to numinosity and the sense of *tremendum maiestatis*.

#### IV. Tamás Nótári: Campaign strategy in ancient Rome

The *Commentariolum petitionis*, i.e., the *Handbook for applicants for offices* written in 64 B.C. is the oldest campaign strategy document that has been preserved for us. In this handbook Quintus Tullius Cicero, younger brother of the orator/politician Marcus Tullius Cicero gives advice to his elder brother on how Marcus can win *consul*'s dignity. The up-to-date translation of the work into Hungarian was published owing to Tamás Nótári in 2006. In the first part of the subsequent study on the translation, analysed below, he examines the genre related and historical issues of the text.<sup>9</sup> Originally, the text is a private letter,

<sup>9</sup> *Hogyan nyerjük meg a választásokat? Quintus Tullius Cicero: A hivatalra pályázók kézikönyve* (How to Win an Election? Quintus Tullius Cicero: *Commentariolum petitionis*). Translation, notes, preface by Nótári, T. Edited and study by Németh, Gy. Szeged, 2006.

and not a work called commentary (*commentarius*) in Latin literary terminology. The author, Quintus Tullius Cicero calls it also only *commentariolum* and at the end of his letter he asks his brother Marcus to share his comments with him so that the work could be published later as a real *commentarius*. In the second part of his study Tamás Nótári describes the opposing views on the issue of authorship; nevertheless, he points out that—if for nothing else than for lack of evidence—Cicero junior should be considered the author of the work.

In the parts that consist of the analysis of the content of the work Tamás Nótári highlights the institutions of the elections of the Republic of Rome having special significance: *collegia*, *clientela* and *ambitus*. While describing them he outlines the political careers of the two Ciceros. By that the method of the treatment of the subject becomes quite new since the author does not provide a description of election rules, traditional institutions, does not answer to the questions “How to apply?” or “How to become *magistrati*?” but gives an insight into the reality of Roman elections, analyses the factors that actually influenced events and decisions, replying indeed to the question “How to win?”. Namely, winning the elections required in addition to—in many cases instead of—advantageous skills (oratory expertise, aptness) and virtues required on the level of traditions, primarily financial and “human” support, which was attained in many cases with morally and legally dubious tools. The *collegia* established by private persons were originally communities of defence of persons who lived at a given settlement or belonged to one religious cult; later on they undertook to take part in political fights too. They campaigned for the benefit of *patroni* who paid them, quite often they represented the interest of their patrons and weakened their opponents with actions on the verge of legality.

The *patronus-cliens* relation used also for election purposes had already lost its original character in the period under review. Instead of winning the service of the *cliens* who owed gratitude and respect to the *patronus* for his pecuniary support, it was more advantageous for the applicants for offices to win the leaders of *collegia*. “Convincing” the saluters (*salutatores*) who acted as opinion leaders in the campaign and contacted candidates one by one was also of greater significance than using *clientela*. Anyway, once the *patronus-cliens* relation had become loose, the behaviour, party affiliation of *clientes* became unstable, dependant on financial services.

---

33 sqq. See Nótári, T.: Quaestio de ambitu. *Collega* (2001) 43 skk.; *Cicero. Négy védőbeszéd* (Cicero. Four Speeches). Translated, preface and notes by Nótári, T. Szeged, 2004; *Jogtudomány és retorika – Cicero pro Murena. Jogtudományi Közöny* 26 (2001) 470 sqq.; Nótári T.–Németh Gy.: Választási kampánystratégia az ókori Rómában (Electional Strategy in Ancient Rome). *Jogtudományi Közöny* (2006) 268 sqq.

Nótári's study clearly points out that winning *magistrati* required considerable financial performance and political compromises even from such a person with features of moral highness as Marcus Tullius Cicero. An example for the latter is the compromise Cicero entered into with his former opponent, his later fellow *consul*, Antonius. To restrain election related frauds, bribery, attempts were made also in Rome, but due to the very nature of the system these attempts could be only contradictory half-measures.

A good example for this contradictory nature is that legally sanctioned election fraud, *ambitus* was distinguished from morally despised but not punished unethical campaigning, *ambitio*. Relations based on financial services: *clientela* and *salutatio* were not considered *ambitus*; that is, under their cover election bribery, pay offs could be implemented. Consequently, relevant laws and resolutions of the *senatus* could sanction only the phenomena that were outside the allowed scope of support (recruiting party adherents for money; distributing free tickets to gladiators' games; excessive hospitality; etc), but they were not able to take action on the merits against hidden corrupt practices. At the very end of the study, the author describes the development and operation of the court of justice adjudging election fraud cases (*quaestio ambitus*). Tamás Nótári's paper provides a magnificent insight into the political conditions of the late period of the Republic, making our vision developed about the age more subtle–realistically and seeing the essence.

Among the other papers on antique subjects in the volume Tamás Nótári's study entitled *Weighing of souls and fates in Homer and Vergil* puts one of the most ancient and most known symbols of administration of justice, the scales, in the centre of its analysis.<sup>10</sup> In various representations we can often see Iustitia with scales in her hand; scales as the means of administration of justice, the symbol of justice can be found in many places in Greek literature. Nótári analyses loci in the Iliad to examine the concept of law and justice(ness) as it is presented in Homer. By extensive analysis of the symbols of scales he provides additional information on the subject. Tamás Nótári's paper entitled *Hesiod and the beginning of the philosophy of law* highlights a few concepts instructive for legal history and philosophical analysis from excerpts of the main works of Hesiod, who lived at the turn of the 8th and 7th B.C., *Theogonia* (*Birth*

<sup>10</sup> Cf. Nótári T.: A mérleg mint az igazságszolgáltatás jelképe Homérosznál (The Scale as the Symbol of Jurisdiction in Homer's Iliad). *Collega* (2002) 43 sqq.; Vallástörténeti megjegyzések az Aeneis XII. 725–727. sorához (Comments on the Religious Aspect of Aeneis XII. 725–727.). *Belvedere Meridionale* (1999) 4 sqq.; The Scales as the Symbol of Justice in the Iliad. *Acta Juridica Hungarica* (2006) 249 sqq.

of the Gods) and *Erga kai hémerai* (Works and Days).<sup>11</sup> Perhaps the most valuable part of the study is the examination of the occurrence and role of *diké*, one of the most diverse concepts of antique legal history in Homeric epics and Hesiod's *Erga*. In his paper entitled *The spear as the symbol of power and property in ancient Rome* Tamás Nótári provides the analysis of another important symbol of legal history, the spear (*hasta*) in terms of the history of symbols.<sup>12</sup> Setting out from Gaius's description of *legis actio sacramento in rem* the author examines the symbolism of the spear and the rod, illustrating it with parallels from the history of law and religion and analogies. Gábor Hamza's paper entitled *Alien influences in Roman law from the Twelve Table Law to the classical age of Roman law* surveys one of the most significant periods of the development of law embedded in the connections of the entirety of the history of antique law.<sup>13</sup> By highlighting institutions taken over from other ancient laws less underlined in the literature he provides new points of approach for the treatment of the period of Roman law analysed to the greatest extent.

Among the studies on medieval legal history, first we can read Tamás Nótári's paper entitled *Virgil – bishop and author of parodies*.<sup>14</sup> Virgil,

<sup>11</sup> Cf. Nótári T.: Hésiodos jogkonceptiója (Hesiod's Concept of law). *Jogtudományi Közlöny* (2005) 328 sqq.; Bürgergemeinschaft und Rechtsgedanke bei Hesiod. In: Németh Gy.–Forisek, P. (ed.): *Politai et Cives. Epigraphica III. Hungarian Polis Studies 13*. Debrecen, 2006. 7 sqq.

<sup>12</sup> Nótári T.: *Festuca autem utebantur quasi hastae loco. Acta Facultatis Politico-Iuridicae Universitatis Budapestiensis de Rolando Eotvos nominatae* (2004) 133 sqq.

<sup>13</sup> Cf. Hamza G.: Idegen hatások a római jogban a XII táblás törvénytől a római jog klasszikus koráig (Foreign Influences in Roman Law from the Twelve Tables to the Classical Age). *Jogtudományi Közlöny* (1996) 319 sqq.; Észrevételek az antik római hadtörténet jogi és gazdasági vonatkozásairól (Comments on Legal and Economic Aspects of Antique Roman Military History). *Jogtudományi Közlöny* (1996) 83 sqq.

<sup>14</sup> Cf. Nótári T.: *A salzburgi historiográfia kezdetei* (The Beginnings of Historiography of Salzburg). Szeged, 2007; *Források Salzburg kora középkori történetéből* (The Sources of Early Medieval History of Salzburg). Szeged, 2005; Adalékok Virgil apát és püspök bajorországi működéséhez (Remarks on Bishop Virgil's Activity in Bavaria). In: Marton, Sz.–Teiszler, É. (eds.): *Medievisztikai tanulmányok*. Szeged, 2005. 99 sqq.; On bishop Virgil's litigations in Bavaria. *Acta Juridica Hungarica* 48 (2007) 49–70. Két forrás a kora középkori Salzburgból, Notitia Arnonis – Epistola Theotmari (Two Sources from Early medieval Salzburg). *Aetas* (2004) 72 sqq.; Salzburg neve a kora középkori forrásokban (The Name of Salzburg in Early Medieval Sources). *Collega* (2005) 48; Az univerzum képe Aethicus Ister Cosmographiájában (The Idea of Universe in the Cosmographia of Aethicus Ister). *Belvedere Meridionale* (2005) 38 sqq.; Gesta Hrodberti. In: Havas, L.–Tegyei, E.: *Classica – Mediaevalia – Neolatina*. Debrecen, 2006. 131 sqq.; Virgil és Bonifác – egy konfliktus jogi és irodalmi síkjai a kora középkorban (Virgil and

bishop of Salzburg of Irish origin (749–784) is noted for creating the earliest works of the historiography of Salzburg: *Gesta sancti Hrodberti confessoris*; *Libellus Virgilii* and *Liber confraternitatum*. First, the author analyses the Bavarian home and foreign affairs conditions of the period; then, he follows up the confrontation between Virgil and Bonifacius. In his study he discusses primarily Virgil's activity in Bavaria in detail. Tamás Nótári's study entitled *An early medieval show trial—the dethronement of Tasilo III* analyses the show trial of the Bavarian duke Tasilo III, more specifically its legal background.<sup>15</sup> Tasilo III, the last duke of the Agilolfing dynasty, which ruled in Bavaria for two centuries, was deprived of his throne by Charlemagne not in a military clash but in a show trial arranged in 788. The Frankish ruler first isolated Tasilo both in home and foreign affairs; then, in 787 made him his vassal. The main charges brought against Tasilo were unfaithfulness to the liege lord, and leaving the royal army without permission. The study gives a detailed analysis of Tasilo's oath of allegiance, so the reader having provided information on the lawsuit gets an insight into the most important elements of medieval feudal law too.

The title of the eleventh study of the volume is *The trial of Metod in the Council of Regensburg*.<sup>16</sup> Tamás Nótári's paper first describes the concept of

---

Bonifacius—Legal and Literary Aspects of a Conflict in Early Middle Ages). *Jogtudományi Közlöny* (2007) 100 sqq.; Virgil püspök bajorországi jogvitáinak margójára (Remarks on the Litigations of Bishop Virgil in Bavaria). In: Mezey, B.–Révész T. M. (eds.): *Tanulmányok Máthé Gábor 65. születésnapja tiszteletére*. Budapest, 2006. 369 sqq.

<sup>15</sup> Cf. Nótári T.: III. Tasziló trónfosztása – adalék egy koraközépkori koncepció perhez (Tassilo III's Dethronement – Contributions to an Early Middle Ages Show Trial). *Jogtudományi Közlöny* (2005) 503 sqq.; Tassilo III's dethronement – contributions to an early-middle-age show trial. *Publicationes Universitatis Miskolciensis. Sectio Iuridica et Politica* (2005) 65 sqq.; Személyállapot és társadalomszerkezet a kora középkori Bajorországban (State of Persons and Social Structure in the Early Medieval Bavaria). *Acta Facultatis Politico-Iuridicae Universitatis Budapestinensis* 42 (2005) 163 sqq.; III. Leó pere és az Salzburgi Érsekség megalapítása (The Trial of III. Leo and the Establishment of the Salzburg Archbishopric). *Collega* (2005) 55 sqq.; A kora középkori Salzburgi birtokjegyzekek margójára (Remarks on the Early Medieval Notitiae of Salzburg). *Jogelméleti Szemle* (2006) www.jesz.ajk.elte.hu

<sup>16</sup> Cf. Nótári T.: *Conversio Bagoariorum et Carantanorum*. *Aetas*, 2000. 93 sqq.; Avarok a Kárpát-medencében – Szádeczky-Kardoss Samu: Az avar történelem forrásai (Avars in the Carpathian Basin – Samu Szádeczky-Kardoss: Sources of the Avarian History). *Belvedere Meridionale* 12 (2000) 110 sqq.; On the Avar Related Chapters of the *Conversio Bagoariorum et Carantanorum*. *Chronica* (2005) 26–39. Megjegyzések a *Conversio Bagoariorum et Carantanorum* avar vonatkozású fejezeteihez (Comments on the Avar Related Chapters of the *Conversio Bagoariorum et Carantanorum*). In: Balogh, L.–Szakra, D. (eds.): *Tanulmányok a középkorról*. Szeged, 2001. 67 sqq.; *De Consultis Bulgarorum*.

Christianisation of Carantania and Pannonia, and presents the missionary efforts made by the Pope, the Byzantine Emperor and the Eastern Frankish ruler in Bulgaria. Here the legal history element is the description of the circumstances of Metod's trial in Regensburg. The author focuses on the charges formulated in *Conversio* and their background, and the further stages of Metod's teachings from the viewpoint of the legal historian. Tamás Nótári's fourth writing on medieval subjects is entitled *The fight between Christianity and the Islam in the world view of Enea Silvio Piccolomini (Pope Pius II)*.<sup>17</sup> The study describes the thinking and practical activity of Aeneas Sylvius Piccolomineus, the later Pope Pius II (1458–1464), the excellent Humanist and significant ecclesiastical politician. Both of the two sources analysed by the author are permeated with fear from the expansion of the Turks and ecclesiastical policy urging to take action against it. One of them is a speech addressed to an assembly held in Frankfurt in 1454 on the destruction of Constantinople and the war to be started against the Turks; the other source is his letter written already as the Pope to Mohamed Sultan, in which he expounds his views on the Islam quite lengthily.

In his study entitled *St Stephen's laws and Europe*<sup>18</sup> Gábor Hamza writes an appreciation of the first Hungarian king's role in legal history. He underlines that his significance lies in his consistent actions to create the bases of

---

*Collega* (2002) 47 sqq.; Róma és Bizánc missziós kísérletei a IX. századi Bulgáriában. (Missionary Work of Rome and Byzantium in the 9<sup>th</sup> Century in Bulgaria). *Belvedere Meridionale* (2005) 22 sqq.; A Salzburgi Érsekség és Metód konfliktusa a *Conversio Bagoariorum et Carantanorum* tükrében (The Conflict Between the Archbishopric of Salzburg and Metod in the *Conversio Bagoariorum et Carantanorum*). *Belvedere Meridionale* (2005) 37 sqq.; On the Avar-related chapters of the *Conversio Bagoariorum et Carantanorum*. *Chronica* (2005) 26. sqq.

<sup>17</sup> Cf. Nótári T.: Szemelvények Aeneas Sylvius Piccolomini „Európa” c. művéből (Fragments of “Europe” by Aeneas Sylvius Piccolomini – introduction and translation). *Documenta Historica*, 42. Szeged, 1999; Timur Lenk és I. Bajazid Aeneas Sylvius Piccolomini „Európa” című művében (Timur Lenk and I. Bajazid in “Europe” by Aeneas Sylvius Piccolomini). *Belvedere Meridionale* (1999) 89 sqq.; A török terjeszkedés állomásai Aeneas Sylvius Piccolomini „Európa” című művében (Stages of Turkish Expansion in “Europe” by Aeneas Sylvius Piccolomini). *Aetas* (1999) 149 sqq.; Aeneas Sylvius Piccolomini szónoki művészete (Rhetorics of Aeneas Sylvius Piccolomini). In: Weisz E. (ed.): *Középkortörténeti tanulmányok*. Szeged, 2003. 103 sqq.; Die Geschichte des Grafen Ingo bei Enea Silvio Piccolomini. In: *Varietas Gentium–Communis Latinitas*. XIII International Congress for Neo-Latin Studies. Budapest, 2006. 96.

<sup>18</sup> Cf. Hamza G.: *Sanctus Stephanus et Europa – Szent István és Európa – Saint Étienne et l'Europe*. Budapest, 1991; Szent István dekrétumai és a jusztiniánusi törvényhozás (Decrees of I. Stephan and the Legislation of Justinian). *Jogtudományi Közöny* (1996) 418 sqq.; Szent István törvényei és Európa. In: Hamza, G. (szerk.): *Sanctus*

uniform Hungarian legal system. A new aspect of the method of approach applied and the consequences drawn by Gábor Hamza is that relying on an extensive material of sources he convincingly proves that St Stephen's laws represented not only the creation of Hungarian legal unity but the universality of *ius*, which included the elements of Roman (Byzantine) law, and Europeanness that could organically unite new elements with the traditions of *consuetudo*. All this advanced the integration of our country into Europe to a decisive extent. Gábor Hamza's paper entitled *Accursius and the beginnings of European jurisprudence* analyses the life work of the great medieval jurist.<sup>19</sup> When creating *Glossa ordinaria* Accursius obviously relied on the compilation of glossaries of his predecessors, so especially on the works of his master, Azon teaching at the University of Bologna, yet his work can be considered original. The study provides excellent additional information on the significance of Accursius, the first epoch-making figure of medieval jurisprudence hard to overestimate.

Each of the four studies leading to our present age is the work of Hamza Gábor. In chronological order the first of them is *The appearance of the Macedonian issue in European politics*.<sup>20</sup> In accordance with the Preamble of the Constitution adopted on 17 November 1991 of Macedonia, which declared its independence on 25 January 1991, Macedonia is the national state of the Macedonian people, which ensures equal rights and permanent coexistence for each ethnic minority. All this includes the right of ethnic minorities to cultivate their special cultural and national assets. This regulation makes this young state with a small territory exemplary among European and especially Balkan peoples. This is one of the reasons why the author describes the little known development of Macedonian history and law. In his study entitled *The develop-*

---

*Stephanus et Europa*. Budapest, 1991. 24 sqq.; Die Gesetze (Decreta) Stephans des Heiligen und Europa. In: *Szent István és Európa – Saint Étienne et l'Europe*. Budapest, 2001. 33 sqq.; Die Gesetzgebung Stephans des Heiligen und Europa. In: *Ungarn-Jahrbuch* (1995–1996) 27 sqq.

<sup>19</sup> Cf. Hamza G.: Accursius és az európai jogtudomány kezdetei (Accursius and the Beginnings of European Jurisprudence). *Jogtudományi Közlöny* (1999) 171–175.

<sup>20</sup> Cf. Hamza G.: A macedón kérdés az európai politikában I. (Question of Macedonia in European politics I). *Magyar Szemle* (2001) 202 sqq.; A macedón kérdés az európai politikában II. (Question of Macedonia in European politics II). *Magyar Szemle* (2001) 192 sqq.; Macedónia és a föderáció lehetősége a Balkánon (Macedonia and the Possibility of Federation on the Balkan). In: „*Nem akarunk csonka Európát...*”. Budapest, 2002. 143 sqq.; A macedón kérdés megjelenése az európai politikában (The Appearance of the Macedonian Question in the European Politics). In: „*Nem akarunk csonka Európát...*” *op. cit.* 149 sqq.



*ment of the constitution of the United States of America and Europe* Gábor Hamza describes the development of the constitution of the U.S., and simultaneously analyses the codes made in Europe.<sup>21</sup> The subject is approached from a special aspect to the extent that not only does it analyse the development of the constitution of the North-American state but demonstrates the influence produced by political thinkers and philosophers of state of ancient and modern Europe (Plato, Aristotle, Cicero, Sallustius, Sir Edward Coke, John Milton, John Locke, Hugo Grotius, William Blackstone, Montesquieu) on the creation of the fundamental law in force for the longest period in the history of law.

In his study entitled *Sir Henry Maine and comparative jurisprudence* Gábor Hamza provides additional information on Sir Henry James Sumner Maine's epoch-making work published in 1861 "Ancient Law, its Connection with the Early History of Society and its Relation to Modern Ideas".<sup>22</sup> The creation of the discipline of comparing law and the conditions of its education is perhaps more important than the work itself. The starting point of the latter was provided by the chair set up for Maine in 1869 in Oxford. Gábor Hamza's last study on the modern age is *The idea of the "Third Empire" in German philosophical, literary and political thinking in the 20th century*.<sup>23</sup> It is a great

<sup>21</sup> Cf. Hamza G.: Az Egyesült Államok alkotmányfejlődése és a modern alkotmányosság (Constitutional Development of the USA and Modern Constitutional Law). In: Mitchell, R.: *Az Egyesült Államok alkotmánya* (The Constitution of the United States). Budapest, 1995. VII sqq.; Az Egyesült Államok alkotmányának és alkotmányfejlődésének sajátosságai (Specialities of the Constitution of the United States and its development). *Jogállam* (1996) 125 sqq.; A római jog hatása az Amerikai Egyesült Államok jogfejlődésére (Impacts of Roman Law on Constitutional Development of the USA). *Jogtudományi Közöny* (2003) 234 sqq.

<sup>22</sup> Cf. Hamza G.: Maine és az összehasonlító jogtudomány (Maine and the Comparative Jurisprudence). *Acta Facultatis Politico-Iuridicae Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae* (1987) 7 sqq.; Sir Henry Maine et le droit comparé. *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae, Sectio Iuridica* (1991) 59 sqq.; Sir Henry Maine és az összehasonlító jog (Sir Henry Maine and the Comparative Law). *Jogállam* (1998–1999) 326 skk.; Sir Henry Maine et le droit comparé. *Orbis Iuris Romani* (2005) 7 sqq.

<sup>23</sup> Cf. Hamza G.: A „Harmadik Birodalom” eszméje a német filozófiai és politikai gondolkodásban (The Idea of the "Third Reich" in the German Legal, Philosophical and Political Thinking). *Magyar Tudomány* (1999) 779 sqq.; Die Idee des "Dritten Reichs" im deutschen philosophischen und politischen Denken im 20. Jahrhundert. *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae, Sectio Iuridica* (1997) 11 sqq.; Die Idee des "Dritten Reichs" im deutschen philosophischen und politischen Denken des 20. Jahrhunderts. *Zeitschrift der Savigny-Stiftung* (2001) 321 sqq.; The Idea

merit of the work that it corrects, presents a subtle interpretation of the images, notions incorrectly or imprecisely formed in public knowledge regarding the National Socialist Germany. The name “The Third Empire”, for example, was not the name of Germany; what is more, it was just the Propaganda Ministry of the German Empire that prohibited the official use of the term in 1939. From then on Germany’s official name was “Empire of Greater Germany”. That is, the new kind of use of the word Empire—contrary to historical predecessors—did not emphasise continuation with earlier empires but the existence of a state with new quality, which was in this quality the first and only such state.

When evaluating the volume of studies critical comments should be made only with regard to the typographical implementation. The exterior of the book is aesthetic; the cover representing Cicero’s speech against Catilina is a witty choice. However, the type-size and space between lines used in editing the texts of the studies are inappropriate; the placements of notes at the end of the writings is not expedient either in the event of papers so richly supplied with notes. The selection, clear arrangement of headings (in this case, more precisely, footings) very important in compiling volumes of studies is not proper either.

The joint volume of studies of Gábor Hamza and Tamás Nótári not only makes our legal history knowledge richer by providing new information but also offers numerous new viewpoints in the scope of examination and research highly extensive in terms of subjects. It is a special feature of Gábor Hamza’s studies that in them one of the most acknowledged Hungarian scientist of Roman private law enriches our knowledge in the field of *ius publicum*. In Tamás Nótári’s papers we can witness and use the benefits of the fortunate and for the legal literature fertile meeting of the erudition of the legal historian and classical scholar.

*Miklós Kelemen*

---

of the “Third Reich” in the German Legal, Philosophical and Political Thinking in the 20<sup>th</sup> Century. *Diritto e cultura* (2001) 127 sqq.