

The emergence and limits of state supremacy: A comparative analysis of the powers of the Prince of Transylvania and the Habsburgs holding the Hungarian royal title

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Abstract

This article outlines the historical and theoretical background of the evolution of sovereignty and monarchy, that is, its Roman-Germanic roots, as well as the constitutional history of Hungarian and Transylvanian sovereignty, and discusses the limitations of the ruler's power, in particular the fundamental role of Transylvanian electoral conditions, on the basis of which the Transylvanian princely state was given a manner of rule of law. The paper contains a comparative analysis of royal and princely powers.

Keywords: Hungarian and Transylvanian sovereignty, Transylvania, Habsburgs, Ottoman Empire

1. Introduction

The aim of this article is to outline the theoretical background and the development of the supremacy of the state; therefore, the antecedents of *res publica* and *principatus* must be discussed. However, as the background of intellectual history is beyond the scope of this paper, only a limited outline of the history of ideas is addressed and thus is not comprehensive.¹

Perhaps with the only exception of the Venetian state,² sovereignty in the development of the medieval state was predominantly embodied in the sole rulers – princes, kings, emperors and sultans – and thus the sovereignty of the principal power was manifested in a monarchical framework.

In addition to the foregoing, the study outlines the limits of sovereignty, with particular reference to the status and role of the Assembly of the Estates and the Princely Council of the early modern principality of Transylvania as an example. This study also presents a comparative analysis.³

After outlining the theoretical background and Romano-Germanic historical antecedents, the Hungarian beginnings of sovereignty are presented, followed by the Transylvanian aspects. This is justified by the fact that the Hungarians became part of the European system of relations that had already been established before the occupation of the Carpathian Basin.

The status of the Transylvanian Prince is also discussed in this context.

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¹ 'Those that fail to learn from history are doomed to repeat it.' (Winston Churchill)
<https://liberalarts.vt.edu/magazine/2017/history-repeating.html> (accessed: 23.10.2021.)

² The term 'Perhaps' is justified by the fact that the Venetian republic was also headed by one man: the Doge.

³ The translations in this paper are the author's translations, which are – in necessary cases – footnoted in the original language.

2. The emergence of autocratic supremacy

As Péter Erdő points out, sovereignty was defined at the end of the Middle Ages and the beginning of the early modern age by Jean Bodin – describing the concepts used earlier, such as *maiestas imperii* – who clarified the concept of sovereignty.⁴

In her study, Györgyi Máté notes that, compared to other scholarly works on state theory, Bodin's reception in Hungary and Transylvania in the sixteenth century was weakened by a number of factors, and thus its reception is uncertain.⁵ It should be stressed that the Tripartitum⁶ already existed at that time, which considered the sovereign – in this case the prince – as the ultimate material source of law:⁷

Yet we do not say all these things to be statutes of the people, but especially of the prince, because if the consent and confirmation of the prince do not in both cases accompany them, these decrees have no force. Nevertheless, these decrees are very often called by their common name the decrees of the country.⁸

Among contemporary notables, István Szamosközy, who studied in the West, and István Illésházy may have been familiar with Bodin's theory.⁹ In the First Book of Bodin's work,¹⁰ starting from biblical and Platonic bases, he defines the *res publica*, or state, as the public interest (German: *Vom gemeinen Nutzen*), and the main attributes of the state: (a) sovereignty, which must be understood as supreme power; (b) the existence of families; (c) the common things and characteristics that bind families together; and (d) the state must have sufficient territory to provide the basic conditions for the existence of its citizens (food, housing and protection). Bodin uses the analogy of the family and state, because family is the basis of the state and, in addition, households, which are under the control of the head of the family, are a model for governmental activity in the state or activity of the head of state.

In Bodin's opinion, sovereignty is the highest level of state supremacy, characterised by full legislative power. Sovereignty is exercised absolutely and continuously by the sovereign, as God's vicegerent on earth, and citizens are bound to obey the sovereign's commands. The latter line of thought also had biblical foundations, which we find in the following New Testament quotations:

13:1 Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. 13:2 Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. 13:3 For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do

⁴ (Erdő 2015, 46)

⁵ (Máté 1981, 65.)

<http://acta.bibl.u-szeged.hu/945/> (accessed: 18.03.2021.)

⁶ Tripartitum or Hármaskönyv: the Customary Law of the Hungarian Kingdom collected by István Webőczy in 1514.

⁷ (Varga Zs. 2015, 27)

⁸ (Márkus 1897) Chapter II., Section 3., § 5.:

‘Mégis mindezeket nem a nép, hanem különösen a fejedelem statutumainak mondjuk azért, mert ha a fejedelem beleegyezése és megerősítése mindkét esetben azokhoz nem járul, eme rendeleteknek semmi ereje nem leszen. Mindazáltal általános néven eme rendeleteket igen gyakran az ország végzeményeinek nevezzük’.

⁹ (See Máté, Gy. 1981, 66–67)

¹⁰ (Bodini 1592)

(The whole of First Book has been used in this study, as indicated by the length of the text, accessed: 15.03.2021–02.04.2021.: <https://tinyurl.hu/LeVu>)

that which is good, and thou shalt have praise of the same: 13:4 For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil.¹¹

According to Bodin, only God and the laws of nature stand above the sovereign ruler. It is also worth pointing out how much the Roman Catholic Bodin, in this respect, thought like Calvin,¹² who in the Institutes explains the following:

...Eighth Commandment. Thou shalt not steal. ... This commandment, therefore, we shall duly obey, if, contented with our own lot, we study to acquire nothing but honest and lawful gain; if we long not to grow rich by injustice, nor to plunder our neighbour of his goods, that our own may thereby be increased; if we hasten not to heap up wealth cruelly wrung from the blood of others; if we do not, by means lawful and unlawful, with excessive eagerness scrape together whatever may glut our avarice or meet our prodigality. On the other hand, let it be our constant aim faithfully to lend our counsel and aid to all so as to assist them in retaining their property; or if we have to do with the perfidious or crafty, let us rather be prepared to yield somewhat of our right than to contend with them. And not only so, but let us contribute to the relief of those whom we see under the pressure of difficulties, assisting their want out of our abundance. Lastly, let each of us consider how far he is bound in duty to others, and in good faith pay what we owe. In the same way, let the people pay all due honour to their rulers, submit patiently to their authority, obey their laws and orders, and decline nothing which they can bear without sacrificing the favour of God. Let rulers, again, take due charge of their people, preserve the public peace, protect the good, curb the bad, and conduct themselves throughout as those who must render an account of their office to God, the Judge of all.

¹³
....

It is also necessary to point out that in Calvin's opinion, the supreme king or judge is God himself, according to the cited Institutes.¹⁴

¹¹ (The Holy Bible 1611, hereinafter referred to as Bible) Romans 13, 1–4.

Augustine also points out in *The City of God* that the creation of the empire is the result of God's will, just as the sword, which in the biblical quotation represents power, is the result of God's will (approval). See (*Aurelius Augustine*) https://www.gutenberg.org/files/45304/45304-h/45304-h.htm#Page_135 (accessed: 02.08.2021.) A further connection can be found between the symbol of the sword in the Pauline theology and the two swords doctrine of Gelasius (cf. Chapter 3). See more (Henne, P. S. 2012, <https://journals.sagepub.com/doi/abs/10.1177/0022343312456225> accessed: 06.09.2021.)

¹² Compared to Calvin, Luther only considered the separation of church and secular government to be important. (Egresi, K. – Pongrácz, A. – Szigeti, P. – Takács, P. 2016, 199)

¹³ (Calvin 1599, <https://reformed.org/master/index.html?mainframe=/books/institutes/> accessed: 13.09.2021.)

¹⁴ The following quotes support this interrelation: ... '40: 7 *The grass withereth, the flower fadeth: because the spirit of the LORD bloweth upon it: surely the people is grass. 8 The grass withereth, the flower fadeth: but the word of our God shall stand for ever.*' ... '40: 13 *Who hath directed the Spirit of the LORD, or being his counsellor hath taught him?*' ... '40: 17 *All nations before him are as nothing; and they are counted to him less than nothing, and vanity.*' ... '40: 23 *That bringeth the princes to nothing; he maketh the judges of the earth as vanity.*' ... Bible, Isaiah 40: 7, 8, 13, 17, 23

(The above is confirmed by another correlation: ... '90:4 *For a thousand years in thy sight are but as yesterday when it is past, and as a watch in the night. 90:5 Thou carriest them away as with a flood; they are as a sleep: in the morning they are like grass which groweth up.*' ... Bible, Psalms 90: 4–5 – worth thinking about (*sine ira et studio*) because on the basis of fate-transforming and holistic examples: 476 fall of Rome – 1453 fall of second Rome (Constantinople), beginning of the rise of third Rome (Moscow); 622 the 'flight' (Hegira) of Muhammad

According to Bodin, the estates can advise the sovereign, but the sovereign has the right to make the final decision. As a legislator, the sovereign is not, in principle, bound by his own laws, but Bodin argues that he must obey them for political reasons. This line of thought has its antecedents in Roman law, which has been transposed into canon law as a legal principle, and the outstanding principle that served to justify the absolute power of the pope (*potestas absoluta*): *Princeps legibus solutus est* (the princeps is above the laws) because, according to the Roman legal deduction, the laws of the emperor are sacred (*sacrae*) and eternal (*in omne aevum*), his will is the only law: *Quod principi placuit, legis habet vigorem* (what pleases the princeps has the force of law).¹⁵ According to Bodin, no citizen can demand that the ruler obey the law, his sovereignty in this respect is truly expressed in the attributes of independence and supremacy, as Károly Kisteleki explains.¹⁶ Bodin also elaborates on the various features of princely sovereignty: (a) unlimited legislative power, (b) the right to decide on war and peace, (c) the right to appoint supreme officials, (d) the role of a supreme court, (e) the right to pardon, (f) the right to demand allegiance, (g) the right to mint money, (h) the right to determine weights and measures and (i) the right to grant privileges. As a quasi-compensation for this, the sovereign monarch is obliged to guarantee the internal and external security of his subjects, their property and their families; it should be pointed out here that the latter idea is very similar to the Calvinist ideal already quoted. Thus, the sovereign is bound only by treaties with other sovereign princes. The sovereign is obliged to keep public promises made to his subjects, and a further limitation on the sovereign's power is that, except in times of danger, even the sovereign cannot freely impose taxes on the people at will, nor can he arbitrarily confiscate his subjects' property; among the limiting factors, the literature highlights the Salian Frankish laws on inheritance.¹⁷

Gábor Bethlen's contemporary, the Protestant thinker Grotius, in his *On the Law of War and Peace*, defined sovereignty, the sovereign power, in such a way that the sovereign's actions are not subject to the right of another, that the decision of another person cannot override his own; hence, the sovereign power can change its own decisions at will. He denies and seeks to refute the view that sovereignty always belongs to the people; there is always interdependence between the king and the people; the actions of the sovereign cannot be judged by their moral rightness because this could lead to confusion; and that he idealises a patrimonial kingdom where the sovereign has the power of the state. He denies the right to resist the monarch, he suggests to tolerate, rather than resist by force. War against supremacy is generally not permitted, except in certain exceptional cases.¹⁸ Bodin, Calvin and Grotius have a very similar understanding of the denial of the right to resistance.¹⁹

– around 1622 the beginnings of Ottoman decline; 814 Charles I – 1814/1815 Napoleon I; 843 Treaty of Verdun – 1848/1849 beginnings of 'new' eastern 'Frankish' state; around 920 'A sagittis Hungarorum libera nos, Domine!' 'Lord save us from the arrows of Hungarians' – 1920 Trianon, 955 Augsburg, Hungarian defeat – The defeated Hungarian Revolution of 1956; 960 the beginning of the rise of imperial China (Song dynasty, brought a new Confucian flowering in China, characterised by the people being guided by the behaviour of the rulers: 'The ruler is like the wind, the subjects are like grass. When the wind whistles over the grass, it must bow.' Von Glasenapp 1975, 169, 180-181, 186.) – 1949 the beginning of the rise of 'new' China; 997 Vajk Hungarian ruler: Western orientation – 1998 Hungarian EU accession negotiations)

¹⁵ (Kisteleki 2015, 458)

¹⁶ (Kisteleki 2015, 461)

¹⁷ (Szmodis 2020, 162 http://jesz.ajk.elte.hu/2020_1.pdf accessed: 16.03.2021.)

It is worth mentioning that the restrictive nature of the Lex Salica (i.e. that a woman could not inherit) was removed by the Pragmatica Sanctio, a rather great regulatory feat in relation to the Habsburg House. (On the latter see Szentpáli-Gavallér 2020)

¹⁸ (Paczolay, <https://tinyurl.hu/O7cL/> accessed: 27.04.2021.)

(See Grotius 1689, 18–21. <https://tinyurl.hu/0F3S/> accessed: 27.04.2021.– 10.05.2021.:

'... Quam nam summam vocas potestatem in civitate, cujus consensum expressum in bello inferendo, probabilem vero assensum in propulsando requiri doces? Summa potestas illa dicitur, cujus actus alterius juri non subsunt,

3. Romano-Germanic roots

For centuries, the state of ancient Rome was a republic. Accordingly, sovereignty was exercised by the *senatus* and the *res publica*, and the expression of this and of Roman statehood was the SPQR, or *Senātus Populusque Rōmānus*, meaning the Senate and the Roman people, for the *populus Romanus* was the state itself, while the *senatus* was the permanent holder of state sovereignty.²⁰ The beginnings of medieval autocracies are linked to the Latin-Roman *princeps*. The origin of this term goes back to before the rise to power of Octavian, who established the principate as an institution based on the ‘ruinous’ institutions of republican Rome. In republican Rome, the term was used as ‘*princeps senatus*’, conferred on the most prestigious senator, and in time evolved into the office of *princeps*.

Before Octavian’s victory, he formed an alliance establishing the second triumvirate, and used it to gain autocracy in the guise of a republic. In 27 BC, the Senate granted Octavian the title of Augustus, indicating his greatness, majesty and sanctity, but for all his power and title, Octavian refrained from holding the position of king, claiming to be no more than *princeps*, which at this time simply meant ‘first citizen of the state’.²¹ Tacitus describes Augustus’ principate, family and immediate environment in the following sentences:

...Augustus meanwhile, as supports to his despotism, raised to the pontificate and curule aedileship Claudius Marcellus, his sister’s son, while a mere stripling, and Marcus Agrippa, of humble birth, a good soldier, and one who had shared his victory, to two consecutive consulships, and as Marcellus soon afterwards died, he also accepted him as his son-in-law. Tiberius Nero and Claudius Drusus, his stepsons, he honoured with imperial titles, although his own family was as yet undiminished. For he had admitted the children of Agrippa, Caius and Lucius, into the house of the Caesars; and before they had yet laid aside the dress of boyhood he had most fervently desired, with an outward show of reluctance, that they should be entitled ‘princes of the youth’ and be consuls-elect...²²

In parallel with Károly Kisteleki’s opinion, it can be stated that the supreme power was concentrated in the *princeps*, unlike Augustus and his successors who, although they preserved the externalities and institutions of the republic in a sham way, rendered the *res publica* itself viable and functional with monarchical content.²³ From the above, it is clear that Augustus was not stingy with the granting of titles within his family, ensuring that trusted people close to him were given status. This was both generous and logical, as it was a matter of trust for each position.

adeoq a nullo superiore irriti reddi possunt. Cui convenit haec summa potestas? ... Deinde personis, uni vel pluribus, pro cuiusque, gentis legibus aut moribus, quibus cura civitatis specialius est comissa. ...’.)

¹⁹ The author agrees with these views, but believes that the most appropriate state in peacetime is a democracy based on the modern division of powers, where the freedom of the individual is exercised in such a way that it is limited by respect for the freedom of other individuals.

²⁰ (Brósz – Pólay 1976, 37)

(In the pre-republican era of kingdom in Rome, the king was – mainly under Etruscan influence – a judge, commander and high priest, with the senate acting as an advisory body.)

²¹ (Mousourakis 2015, 18)

²² (Tacitus 14-15)

<http://classics.mit.edu/Tacitus/annals.1.i.html> (accessed: 19.10.2021.)

²³ (Szentmiklósi 1858, 46)

Moving forward in time to the beginnings of the Germanic states on Roman soil, living alongside the Romans, the Germanic princes (*Germanenfürsten*) were given Roman patrician titles and ranks.²⁴ By granting titles, the Romans not only showed respect for the Germanic princes but also that they were subject to the Roman state. With this subordination, the seeds of a true system of feudal relations appeared. In the centuries that followed, a distinction was made between the position and status of prince (princeps) and king (rex) within the circle of rulers.²⁵

Following the foregoing, it is also worth mentioning that Nicolo Machiavelli in *The Prince* expresses the following views on the mixed form of government:

...But the difficulties occur in a new principality. And firstly, if it be not entirely new, but is, as it were, a member of a state which, taken collectively, may be called composite, the changes arise chiefly from an inherent difficulty which there is in all new principalities; for men change their rulers willingly, hoping to better themselves, and this hope induces them to take up arms against him who rules: wherein they are deceived, because they afterwards find by experience they have gone from bad to worse. This follows also on another natural and common necessity, which always causes a new prince to burden those who have submitted to him with his soldiery and with infinite other hardships which he must put upon his new acquisition....²⁶

The Middle Ages, while maintaining the idea of mixed government, contributed to the transformation of the monolithic structure of power by the assumption of dual majesty, or dual authority, the foundations of which had already existed in the Roman and Germanic predecessors of the dual kingdom and the parallelism of the authority in times of war and peace.²⁷ Here, the former is the justification and acceptance of absolute power, the latter of which is subject to law, leading to Janus-faced sovereignty. This dichotomy resulted in the doctrine of the two swords in the relationship between church and state, and in other respects led to the theoretical distinction between king and crown, of which the Hungarian doctrine of the Holy Crown is a good example. In this respect, royal or princely absolutism could be opposed by the customary law of the country, that is, the law of the land, or *ius consuetudo*. The resistance of the nobility, based on customary law, was a counterweight to the power of the monarch (prince). In Miklós Szabó's correct view, it was after the Renaissance and the Reformation, which justified absolutism, that the way was opened for the division of powers.²⁸

4. The beginnings of Hungarian sovereignty

An important precedent, parallel to the dual authority in the Hungarian context, is the principedom associated with the Árpád era. As Dezső Dümmerth describes, the logical consequence of the Hungarian tribes becoming independent from Khazar rule in the ninth

²⁴ (Jörs 1893, 7–8.)

²⁵ The two terms are used synonymously in the dictionary (Burián 1907, 136).

²⁶ (Machiavelli, 1998 <https://www.gutenberg.org/files/1232/1232-h/1232-h.htm> accessed: 20.10. 2021.)

²⁷ (Szabó 1997, 193)

(Dual or multiple authority not only had Roman and Germanic but also religious antecedents, such as the trichotomous character of the doctrine of the Trinity: the Father, the Son – Jesus Christ – and the Holy Spirit.)

²⁸ (Szabó 1997, 193)

century AD was the election of Álmos as Grand Prince²⁹ aimed at establishing a one-man leadership.³⁰ This status of early principality also had a sacral character, inherited by his son Árpád and his family. In the period immediately preceding the occupation of the Carpathian Basin, there were two other prominent chief officers in addition to the Grand Prince:³¹ (a) Gyula (greater dignity) and (b) Horka (the one with lesser power).³²

In the administrative territory of the Kingdom of Hungary, founded by the House of Árpád, a ducatus (hereinafter, ducatus) was established several times, covering a certain area within the Hungarian state (e.g. Transylvania or Slavonia), at the head of which the king's close blood relative as a dux exercised almost similar rights as a prince or the king himself.³³

From an administrative point of view, the development of the public institution of the Transylvanian voivode within the administrative unit of the Kingdom of Hungary, in addition to the institution of the ducatus, which was established during the Árpád dynasty, is significant. According to the Encyclopaedia, the institution of the Transylvanian voivode can be defined as follows:

The title of voivode (Slavic: *vojvoda* [as much as] *general*) was once held by the princes of Moldavia and Walachia, who later replaced their title with that of hospodar; it was also the name given to the chiefs of the provinces in the Polish Kingdom (in Latin *palatinus*). Until Transylvania was transformed into a separate principality, this was the name given to the governor of the Transylvanian parts, whose powers were similar to those of the Banus and extended to the whole civil and military administration. Verbőczy ... lists the Transylvanian V. [=Voivode] among the flag-lords of the country, who was next in rank after the Croatian-Slavonian-Dalmatian Banus.³⁴

In comparison, the legal lexicon of the early 1900s is terse:

Vajvoda, Vajda, formerly the name of the governors of the provinces belonging to the Hungarian crown: Vajda of Transylvania ..., who was also a flag-lord ... was not one of the great judges of the country ... was obliged to swear an oath of allegiance to the king ... was obliged to provide a band of soldiers ...³⁵

²⁹ In Hungarian: *kende*

³⁰ (Dümmerth 1980, 103–105)

³¹ (For more on this, see: Tóth <https://tinyurl.hu/UAq1/> accessed: 09.12.2020.)

³² This system of triple rule harkens back to the Romano-Germanic predecessors of multiple rule, such as the Roman imperial tetrarchy.

³³ (Csizmadia – Kovács – Asztalos 1998, 40)

³⁴ <https://mek.oszk.hu/00000/00060/html/104/pc010438.html#3> (accessed: 17.12.2020.)

‘Vajda (szláv vojvoda a. m. [=annyi mint] hadvezér) címet viselték hajdan Moldva és Oláhország hűbéres fejedelmei, kik címüket utóbb a hoszpodáréval váltották fel; így nevezték a lengyel királyságban a tartományok főnökeit is (lat. palatinus). Erdélyország külön nagyfejedelemséggé átalakulásáig így nevezték az erdélyi részek kormányzóját, kinek hatásköre olyan volt, mint a bánoké s kiterjedt az egész polgári és katonai igazgatásra. Verbőczy (I. R. 94. sz.) az erdélyi V.-t [=Vajdát] az ország zászlósa közt sorolja föl, ki rangban a horvát-szlavon-dalmát bán után következett’.

³⁵ (Dr Márkus 1907, 848)

‘Vajvoda, Vajda, korábban a magyar szt. koronához tartozó tartományok kormányzóinak neve: Erdélyi Vajda ..., aki zászlós úr is volt ... nem tartozott az ország nagy birái közé ... a királynak hűségesküt tartozott tenni ... egy bandériumot tartozott kiállítani ...’.

5. The development of the status of the Transylvanian Prince and the autonomy of the Principality of Transylvania – a ‘watershed’ between king and prince

After this background, the development of the status of the Transylvanian prince should also be mentioned. In the aftermath of the tragedy of Mohács (1526),³⁶ King János Szapolyai held Transylvania and the eastern parts of the country, while King Ferdinand secured his rule in the western parts.

The territorial division was in no small part due to the fact that János Szapolyai had previously held the office of Voivode of Transylvania (1510–1526), in which he was able to concentrate extraordinary governmental and military power in his own hands, which ensured his authority over the territory in later years. In this sense, the role of the Transylvanian voivode was a key factor in the public history of Transylvania, since Szapolyai’s position was largely determined by his former position as a Transylvanian voivode. After many years, the Peace of Várad³⁷ was concluded, the most important element of which was the legal basis for the division of the country into two parts, stating that both kings had full sovereignty over the part of the country over which they ruled. Following this series of events and the fall of Buda in 1540, the Kingdom of Hungary was divided into several parts. At the end of January 1542, before the Transylvanian estates assembled in Marosvásárhely,³⁸ a letter of command from the Sultan was read out by György Martinuzzi,³⁹ which was in fact addressed to the widowed Queen Isabella. In this letter, Sultan Suleiman decreed that he would hand over the whole of Transylvania to the queen and her son immediately, and gave György Martinuzzi full powers and the governorship of the country.

During the 1540s, Martinuzzi was in constant correspondence with the imperial courts of Europe, including Emperor Charles V, from whom he hoped to liberate the divided country, but this hope was thwarted by the Treaty of Adrianople (1547), which turned Transylvania into a clear Ottoman sphere of influence.⁴⁰

In relation to the following decade and the constitutionality of the emerging state, Szádeczky used the following formulation:

... Transylvania was briefly (1551) annexed back to Hungary, but five years later, the Transylvanian estates re-elected John Sigismund as prince. The new form of government of Transylvania was established at the Diet of Kolozsvár⁴¹ held at that time (November 1556). From this time onwards, Transylvania and the counties beyond the Tisza that belonged to it began to live as an independent state and independent elective principality, which lasted until the death of Prince Mihály Apafi I in 1690.⁴²

³⁶ The battle ended in a decisive and overwhelming Ottoman victory, in contrast to Hunyadi’s victory at Nándorfehérvár (the present-day Beograd) in 1456.

³⁷ The present-day Oradea.

³⁸ The present-day Târgu Mures.

³⁹ György Martinuzzi: Hungarian cardinal, original name Juraj Utje-šenović, byname Brother George, Friar George, Latin-Hungarian Frater György, or Latin Frater Georgius, (born 1482, Kamitic, Croatia—died December 17, 1551, Alvinc, Transylvania, Hungary now Vințu de Jos, Romania), Hungarian statesman and later cardinal who worked to restore and maintain the national unity of Hungary.

<https://www.britannica.com/biography/Gyorgy-Martinuzzi> (accessed: 21.10.2021.)

⁴⁰ (Oborni, <https://epa.oszk.hu/00400/00458/00127/3638.html> accessed: 12.10.2020.)

⁴¹ The present-day Cluj-Napoca.

⁴² (Szádeczky, <https://tinyurl.hu/vh3p/> accessed: 19.12.2020.)

‘... Erdély ugyan rövid időre (1551) visszacsatoltatott Magyarországhoz, de az erdélyi rendek öt év múlva János Zsigmondot ismét fejedelmökké választották. Az ekkor (1556 november) tartott kolozsvári országgyűlésen megállapították Erdély új államformáját. Innen kezdődik Erdélynek és a hozzá tartozott Tiszán túli

The result of the international political games, however, was achieved later in 1570 when, as a temporary end to the constantly changing internal war situation, negotiations between Ferdinand and János Zsigmond resumed, with the aim of settling the public law situation in Transylvania and defining the title of János Zsigmond as a monarch. These issues and the relationship between Transylvania and the Kingdom of Hungary were not fully settled until the Treaty of Speyer (1570–1571). In this context, it is worth quoting Barna Mezey's summarising thoughts, which characterise the status of Transylvania and the principality:

... The rulers of the Transylvanian state before Gábor Bethlen consistently considered Transylvania as part of the Hungarian kingdom, and linked their ideology of rule to the doctrine of the Holy Crown, thus creating a contradiction between the Habsburgs' recognition of the Hungarian monarchy and their own anti-Vienna policy. In the 1570 Treaty of Speyer, János Zsigmond recognised Maximilian I as the legitimate ruler of Hungary and renounced the use of the royal title. For an extended period, Zsigmond Báthory held only the title of Voivode of Transylvania. The Principality of Transylvania was an independent state, unconnected to the Vienna administration, but its princes generally sought to have their election approved by the rulers of Vienna. But even so, the princely ideology did not recognise the Habsburgs as vassals of Transylvania, and regarded the country as the heir and depositary of the medieval Hungarian state ...⁴³

In light of the above, the Treaty of Speyer, concluded in 1570–1571, thus completed the long process of Transylvania becoming a state and at the same time defined its inter-state relationship with the Kingdom of Hungary. In December 1570, the first 'interstate' treaty was signed, which recognised that a new country had been formed from the eastern part of the Kingdom of Hungary, separate from it but still belonging to it, thus creating a special state and a special public status for Transylvania. Under the Treaty of Speyer, János Zsigmond renounced the title of king by choice and took the title of Prince of Transylvania in its place. In the treaty, the Austrian side recognised the limited sovereignty of the prince over the territory under his rule, but it was also stated that Transylvania and the territories attached to it would remain part of the Hungarian Crown, and that the prince of Transylvania would recognise the supremacy of the Hungarian king over himself.⁴⁴

6. The prince and the government organisation, absolutism vs. constitutional monarchy, central government, comparison of princely and monarchical power – limits of power⁴⁵

vármegyéknek önálló állami élete s független választó fejedelemsége, mely 1690-ig, I. Apafi Mihály fejedelem haláláig fennállott...'

⁴³ (Mezey 1998, 66)

'... Az erdélyi állam Bethlen Gábort megelőző irányítói Transsylvaniaiát még következetesen a magyar királyság részének tekintették, uralmi ideológiájukat a szentkorona-tanhoz kapcsolták, ellentmondást hordozva ezzel a Habsburgok magyar uralkodókénti elismerése és saját Bécs-ellenes politikájuk között. János Zsigmond az 1570-es speyeri egyezményben elismerte I. Miksát Magyarország törvényes urának, s lemondott a királyi cím használatáról. Báthory Zsigmond hosszabb ideig csak az erdélyi vajda címet viselte. Az Erdélyi Fejedelemség független, a bécsi közigazgatás apparátusához nem kapcsolódó állam volt – fejedelmei általában mégis igyekeztek választásukat jóváhagyatni Bécs uraival. De a fejedelmi ideológia mégsem ismerte el a Habsburgokat Erdély hűbérurainak, az országot a középkori magyar állam örökösének és letéteményesének tekintette. ...'

⁴⁴ (Oborni <https://epa.oszk.hu/00400/00458/00127/3638.html> accessed: 10.12.2020.)

⁴⁵ In view of the fact that the idea and the system of checks and balances emerged after the period under study, in the eighteenth century, I will therefore try to outline the limits of the sovereign's power as their quasi-precedents.

Like the neighbouring Romanian states, the Principality of Transylvania was a sultanically vassal state, which the Sublime Porte (hereinafter referred to as Porte) considered as conquered by the sword and liable to pay taxes. It paid 10,000 and 15,000 gold florins annually to the Porte, and sent gifts of almost equivalent value to the Sultan, the Grand Vizier and other dignitaries of the dynasty.

Nevertheless, it was sufficient for the Ottoman power that Transylvania should remain separate and not unite with the western Hungarian state, and the Porte was not bothered by the fact that Transylvania, with its limited sovereignty, played the role of an 'independent' state, and to this end the princes sent their sovereign envoys abroad and made alliances with other states. The Ottomans only intervened in Transylvanian internal affairs when fighting arose which threatened the maintenance of relations with the Porte.⁴⁶

6.1. *The prince and the organisation of the state*

The Principality of Transylvania was based on a special estate structure, which was expressed by the three nations⁴⁷ and the local administration based on the Partium.⁴⁸ Before outlining the situation of the central government, the issue of princely absolutism will be discussed.

6.1.1. *Princely absolutism vs. constitutional monarchy*

In Szádeczky's opinion, the prince of Transylvania ruled constitutionally.⁴⁹ The most important feature of the early British constitutional monarchy was the operation of checks and balances, and in modern times, the primacy of the British Parliament (over the British monarch).⁵⁰ In contrast to this, Ferenczy defines as a characteristic of absolute monarchy that the prince controlled the functioning of the state to the exclusion of all other organs of state,⁵¹ which is supported by the fact that the prince was the source of the key positions, and that the assembly of the estates (Diet), for example, was a factor limiting power. However, in some cases, the limitation of the prince's power was a conflict between the nation and the prince's power, such as the resistance of the nation of Saxons in the earlier period. The Britannica goes even further than Ferenczy, claiming that despotic rule existed in medieval Transylvania:

... in 1613 the Sublime Porte (the Ottoman government) imposed the election of Gábor Bethlen (1613–29), who proved the most competent of all the Hungarian princes of Transylvania. *At home, Bethlen's rule was thoroughly despotic*; through his monopoly of foreign trade and his development of the principality's internal resources, he almost doubled his revenues, devoting the proceeds partly to the upkeep of a sumptuous court and partly to the maintenance of a standing army. Keeping peace with the Porte, he often intervened against the emperor in the Thirty Years' War (1618–48) and safeguarded the rights of the Protestants in Royal Hungary. Under the Treaty of Nikolsburg (Dec. 31, 1621), Bethlen gave up the royal title along with the Holy Crown of Hungary. (He had been elected king by

⁴⁶ (Eckhart - Degré 1953, 45)

⁴⁷ The three nations: Hungarian nobility, Székely community, Saxons.

⁴⁸ Partium (Részek): those counties over which the Transylvanian princes ruled as 'lords of Parts of Hungary'.

⁴⁹ (Szádeczky work cited)

⁵⁰ (Gönczi – Horváth – Stipta – Zlinszky 1997, 258–282)

⁵¹ (Dr Ferenczy 1905, 145–146)

the Hungarian estates in the lands under his control in 1620 but declined to accept the crown, even though the Porte approved his election.) ...⁵²

Contrary to previous, Lajos Rácz distinguishes between the Transylvanian electoral conditions (hereinafter: conditions) – types A, B and C – presenting in detail their background in public law, state theory, political and military history. As a result of the historical development of these three types of conditions, and also referring to the fact that the weakening of princely power led to the creation of a princely power bound to a degree that bordered constitutional monarchy.⁵³

Sharing this opinion, it can be stated that in a certain sense – based on the above – the Transylvanian constitutional system predates the era of British constitutionalism and, of course, its results, even with a more far-reaching perspective, it can be said that the above also represents the forerunner of the modern rule of law, because ‘... the starting point of the rule of law is that the measure of all activity – that of the state as well as that of the people – is law, which the state is obliged to observe. ...’.⁵⁴ In this case, the ruler representing the state also performed his duties under the constraints of these conditions because in this sense they functioned as limits. This point of view is reinforced by the fact that the conditions thus imposed were, from a regulatory point of view, in a certain sense general in character, and thus met the standard of the *lex generalis*.⁵⁵ In this connection, Schauer argues that in order to interpret law and rules in general, a distinction must be made between the general and the particular, although he notes that the general is often only a collection of the particular, as illustrated by the simple example of (a) the particular: ‘this tree’, and (b) the general: ‘the trees’.⁵⁶ Following the Schauerian and mathematical logic: *group A* is very similar to *group A*, even if there are some differences, but also similar to *group A*, so that the three very similar groups can be generally called ‘*groups A*’, and hence the fact that during the reign of the princes of Transylvania all the respective conditions actually played the role of *lex generalis*, thus ensuring historical continuity.

6.1.2. The Prince of Transylvania

In the Principality of Transylvania, the dignity of the prince was granted by his election. The Porte had some influence over the election: notification was required before the election, the Ottoman Sultans exercised the right of confirmation, and in several cases appointed a prince before it could take place. The Transylvanian estates tried to ‘circumvent’ this Ottoman right, and thus to weaken the right of appointment by receiving the Turkish envoys only after the election, and then taking over the declarations of appointment from them.⁵⁷ The prince had to be of Transylvanian origin. The Sultan exercised his right to confirm the elected prince by issuing a solemn charter and sending the following insignia of princely dignity: (a) a mounted horse, (b) a royal staff, (c) a flag, (d) a sword, (e) a cap with a coat of arms and feathers and (f) a caftan. Among these ceremonial objects, there were some with symbolic meaning; for example, the flag expressed that the prince was a vassal of the Sultan, and the caftan was a symbol of loyalty to the Porte, which limited the supreme power, that is, the sovereignty of the prince was limited.

⁵² (<https://www.britannica.com/place/Hungary/Royal-Hungary-and-the-rise-of-Transylvania#ref411255> accessed: 15.10.2021.)

⁵³ (Rácz 1992, 162–182)

⁵⁴ (Küpper 2007, 347)

⁵⁵ (Küpper 2007, 348–349)

⁵⁶ (Schauer 1991, 647–648)

⁵⁷ (Eckhart – Degré 1953, 45–46)

The powers of the prince generally covered those of the Hungarian king, but his powers as a ruler also depended on his person as the prince. He was primarily responsible for conducting foreign policy, which was a major challenge in the dual Habsburg-Ottoman dependence. As previously mentioned, various conditions were imposed on the election of the prince, the most important of which was that he should maintain 'friendly' relations with the two powers, especially the Porte and likewise maintain peace with the two Romanian princes. The complexity of the situation is also shown by the fact that the Porte constantly tried to force the princes to maintain friendly relations with the friends of the Ottoman state. Despite the fact that international law in the modern sense did not exist at that time, the will of the Porte was already a 'norm of international law' that was binding on the states, despite their agreement.⁵⁸ The prince could also send envoys to the Porte, but their legal status was not equivalent to that of envoys from other states, because they were considered subjects of the Porte. In terms of the judicial aspect, the role of the prince was similar to that of the Hungarian king. In the area of military defence, the prince was obliged to ensure the defence of Transylvania, which is why it was important that most of the princes also held the title of the Székely⁵⁹ community's chief leader,⁶⁰ which was primarily a military post. Thus, a declaration of war, the conclusion of peace, and the formation of alliances with the rulers of other states was the exclusive right of the princes. As a kind of security for the foregoing, the prince administered the revenues of Transylvania, the taxes and regalia voted at the assembly of the estates.

The aforementioned electoral conditions were also understood at the time to play a constitutional role, as contemporaries considered the conditions to be constitutional. These conditions were shaped according to either what had been observed in relation to the previous prince or the personality of the new prince, and electoral conditions were also established for those princes appointed by the Ottomans. From the fact that the conditions were established for each of these princes, we can conclude that they had a normative effect.⁶¹ These electoral capitulations always included the guarantee of the main freedom, that is, the right to vote and that the prince was not permitted to determine his successor. In a certain sense, the reign of Gábor Bethlen was an exception to this, because he named his wife as heir to the throne, but also appointed a kind of governor to her in his testament. Other important princely obligations under the terms of the election were (a) to guarantee the practice of the four established religions,⁶² (b) to guarantee freedom of expression in the assemblies of the estates, (c) to guarantee the liberties of the nobility, (d) to guarantee personal freedom and (e) uphold the laws of the country.

In connection with the foregoing, it is worth noting that the purpose of limiting and controlling power was to prevent the development of despotism, that is, to place power at the service of the common good, or else of those subject to it, as a means of which the government's subordination to the rule of law was used.⁶³ Interpreted in this way, the depository of power must be governed by law and, until amended, the depository of power is bound by the laws in force. It was in this spirit that the Transylvanian orders applied the aforementioned conditions in the election of princes, in light of which the significant changes of the eighteenth century, that is, the idea of the constitution and constitutionalism – in fact, the acquisition and exercise of power on the basis of the constitution – was also preceded by

⁵⁸ (Kardos 2010, 61)

http://epa.oszk.hu/01200/01273/00056/pdf/Vilagossag_2010_tavasz_057-066.pdf (accessed: 20.02.2021.)

⁵⁹ (Rarely: Székler according to Ország – Futász – Kövecses 2006, 1318, or sometimes: Szekler – for example: <https://translate.google.com/?hl=hu>)

⁶⁰ The title in question: Székely ispán.

⁶¹ (Küpper 2007, 347)

⁶² These religions in Transylvania were: Roman Catholic, Reformed, Lutheran and Unitarian.

⁶³ (Szabó 1997, 191)

the constitutional structure of the Transylvanian estates, as mentioned earlier.⁶⁴ Thus, the constitutional approach characteristic of the Transylvanian princely era gives an emphatic constitutional colour to the monarchy of Transylvania, which is more akin to the ideals of the Western constitutional monarchies that would emerge in the following centuries. Thus, it is perhaps no exaggeration to claim – with reference to Lajos Rácz’s observation, already referred to above – that the Transylvanian monarchical system was unique of its kind, ahead of its time, and even ahead of the British constitutional system.

6.1.3. *The Prince and central government*

The most important executive body of the government after the prince was chancellery. The first office of the state was chancellor, which was established in 1550. The chancellor combined the roles of the president of the council of state and the first adviser to the prince, whose powers included: (a) administrating the most important affairs of state; (b) presenting both the prince’s and the council’s proposals for the assemblies of the estates; (c) representing the prince and administering the exercise of the princely rights, that is, issuing and countersigning the prince’s chartersigning documents; (d) a role in the granting of titles and coats of arms;⁶⁵ and (e) the prince responded to foreign envoys through the chancellor.⁶⁶

As far as the chancellery is concerned, it can be said that it has not fulfilled the function of management in the modern sense,⁶⁷ which is leadership exercised by a higher body over a lower body. Although the period under discussion is already in the early modern era, which includes a period of great discoveries, it is not yet possible to speak of government in the modern sense of the term. It is also worth pointing out that the title of ‘procancellarius’,⁶⁸ which became established in the Báthory era, continued to be used, but its existence and function survived until the seventeenth century. The duties of the procancellarius – see, for example, Márton Berzeviczy, thus broadly included (a) acting as a deputy to the chancellor and (b) performing diplomatic duties. However, the function of the chancellery cannot be examined in a simplistic way because the activity of the protonotarius also persisted for a time as a consequence of the earlier period.⁶⁹ Another significant fact of legal history is that, in accordance with the precedents, the princely chancellery was divided into two ‘departments’: *cancellaria maior* and *cancellaria minor*.

The electoral conditions discussed in detail above may have contained additional provisions on the composition and powers of the Princely Council, a feature that strengthens the constitutional character of the conditions.⁷⁰ The chancellor, who presented the council’s business and the documents to be discussed, played the most important role in this body. The importance of the Princely Council is also indicated by the fact that it met at the court of the prince in Gyulafehérvár,⁷¹ either of its own free will, or, when an important matter arose, at his invitation. It was up to the ruler, however, whether he accepted the opinion of the Princely Council. The Princely Council was not subject to control by the estates; this right belonged exclusively to the prince.

⁶⁴ A work published in the nineteenth century went further, when it stated that the Kingdom of Hungary was a hereditary and constitutional monarchy. (Von Szepesházy – Von Thiele 1825, XXVII.)

⁶⁵ (See Kóta 1991, 17 and Bárczay 1897, 42)

⁶⁶ (Eckhart – Degré 1953, 46–47)

⁶⁷ (Dr Berényi – Dr Martonyi – Dr Szamel 1978, 27)

⁶⁸ (Fejér, http://real.mtak.hu/39690/1/EME_EM_2016_1_FejerTamas_Procancellariusi.pdf accessed: 19.12.2020.)

⁶⁹ (See more: Bogdándi 2012, 135–143)

⁷⁰ (Eckhart – Degré 1953, 47)

⁷¹ The present-day Alba Iulia.

In Szádeczky's view, the Transylvanian prince ruled constitutionally, and this seems to be confirmed and suggested by the fact that, as described above, thus the conditions were regarded as a basic law. Alongside the prince, the Princely Council consisted of twelve members chosen from the social strata of the three political nations and whose hearing was necessary when important matters were to be settled. Its members, known as councillors, elected and appointed the chief officials of the state and court and, for the most part, the ambassadors sent abroad.⁷² According to Ágnes R. Várkonyi's dissenting opinion, Bethlen organised the Princely Council according to his interests, factoring in the political, religious, ethnic and property relations of aristocratic society and supplementing it with experts. In my opinion, this latter interest-based approach is logical because, in a certain sense, the activity in such a council (body) presupposes in any case – as in ancient Augustan practice – a trusting character. It is not possible to argue for one or the other position, since there is truth in the opinions expressed from both points of view.⁷³

A treasurer at the head of the treasury managed the state's revenue. The activities of the chambers attached to the Treasury remained of paramount importance, given the income from the salt mines. Thus, this system of administration in Transylvania was organised into two parts: (a) the mining chambers and (b) the salt chambers.

Similarly, the Transylvanian courier post played a vital role – both in the everyday and diplomatic sense. There was a short, but continuing link between the Transylvanian and Hungarian royal postal services – as testified by the account books.⁷⁴ Although the two postal networks operated in diverse ways they were also organisationally linked. In addition, the Transylvanian courier service had the character of a public service tax, from which some privileged classes could be exempted.⁷⁵ A good example of the latter is the exemption of Tokaj in 1629 from the burden of postal services – post office, provision of accommodation.

It should not be forgotten that the government also required court officials, among whom should be mentioned: (a) the chief courtier, who was in charge of the court guard; (b) the court captain and vice principal, who were the commanders of the bodyguard – blue and red, according to their dress; (c) the commander-in-chief; (d) other internal court officers – the chief caretaker, chief steward, etc.; (e) internal staff (e.g. noble chamberlains) and (f) external court officers (e.g. master equestrian).

In terms of administration, the estates gained decisive influence through their rural self-governing bodies in the counties, towns, Székely and Saxon seats, and the role they played in the administration of the field towns and villages was a further area of influence.⁷⁶

Among the military dignitaries,⁷⁷ according to social structure discussed above, there are the captaincies, such as (a) the national captain – the head of the forces; (b) the captain of the Székely forces; and (c) third, the captain of the fortress of Várad, the head of the Partium forces. The last of these is also a political dignitary, as it was the governor of Partium. It should be noted, however, that this dignity is of a dual nature, because on the one hand it belongs legally to the Kingdom of Hungary, while on the other hand, it was practically entirely under the jurisdiction of the Transylvanian prince.⁷⁸ It was held, for example, by no less personage than István Bocskai.

The prince and the Assembly of the Estates jointly exercised the right to legislate. The Assembly of the Estates was convened by the prince. The assembly was convened by issuing

⁷² (Szádeczky work cited)

⁷³ (R. Várkonyi 2013, 26)

⁷⁴ (See more: Dr Kamody)

⁷⁵ (See more: Márkus 1900)

⁷⁶ (Eckhart – Degré 1953, 46–47)

⁷⁷ (Szádeczky work cited)

⁷⁸ (See: Benda 1972, 310)

invitations to the counties, towns, Saxon and Székely nations, indicating the time of and the reason for the assembly. The assembly composed of the following members: representatives of the seven Hungarian counties, representatives of the Partium counties, representatives of the Székely and the Saxon seats, and various towns – e.g. Enyed,⁷⁹ Torda,⁸⁰ Kolozsvár, Várad, etc.). There were also so-called regalist members of the assembly who, either because of their wealth or their dignity, were invited by the prince by special letter – also known as *regale* – and appeared in person. The assembly was unicameral and envoys and invitees were obliged to attend; and those who left before the end of the assembly were usually fined by the prince. The archbishops played a prominent role in county envoys. Bills were submitted by the prince, but the assembly itself could make requests and freedom of speech was guaranteed. The president of the assembly was appointed by the prince of his councillors. All decisions taken by the assembly had to be confirmed by the prince, preceded by a review of the decisions by the prince's council, followed by approval or, possibly, the raising of objections. After this process, all the decisions were brought together to the prince and, following his approval, signed by the president and two magistrates of the Court of Justice,⁸¹ after which the prince gave his confirmation and signature, and the decisions became law. During the final act, the prince handed the ratified rules to the Diet and granted permission to leave.⁸²

6.2. Comparison of the royal and princely powers

In this subchapter, I outline the differences in the powers of the Habsburgs, who were the most prominent of the medieval European heads of state, and the Transylvanian princes. This comparison focuses on the status of the king and the prince.⁸³

First, it must be pointed out that the ideological and public law basis of both states – the Hungarian Kingdom of the Habsburgs and the Principality of Transylvania – was the doctrine of the Holy Crown. As noted earlier in the Principality of Transylvania, the dignity of prince was obtained by election, over which the Porte exercised influence, requiring notification before the election, exercising the right of confirmation and, in several cases, appointing the prince before the election could take place. In comparison, the Habsburgs, who bore the dignity of the Hungarian kings, made their titles hereditary. The prince had to be of Transylvanian descent, whereas the Habsburgs bearing the title of King of Hungary in the period under discussion were of German – or, more precisely, Swiss – descent.⁸⁴ The latter origin, as well as the genealogy of the Habsburgs – see the development of the Spanish-Austrian branches – was significant because of the rise of imperialism. The Ottoman Sultan, as *padishah*, exercised his right to confirm the elected prince by issuing a solemn charter and the following insignia of princely dignity: (a) a mounted horse, (b) a royal staff, (c) a flag, (d) a sword, (e) a cap with a coat of arms and feathers, and (f) a caftan. In contrast, the insignia of a king⁸⁵ who did not require sultanic confirmation generally included (a) a crown, (b) a royal staff, (c) a robe, (d) a pomum (globus) and (e) a sword. The most striking difference in the

⁷⁹ The present-day Aiud.

⁸⁰ The present-day Turda.

⁸¹ Magistrates of the Court of Justice originally in Hungarian: *ítélőmesterek*.

⁸² (Eckhart – Degré 1953, 47–49.)

⁸³ It is also important to note that the term 'prince' in German also meant the title 'Fürst', which in Hungarian was used as the rank or title of 'herceg' (e.g. Fürst von Metternich).

⁸⁴ They settled east from Habichtsburg in Switzerland to the then Austria of the Babenbergs.

(See more: <https://www.habsburger.net/de/themen/herrschaftszeiten-i> accessed: 13.12.2020.)

⁸⁵ It is interesting to note that the Habsburgs, who also bore the title of German-Roman Emperor, were usually referred to by the Ottoman Sultans in their letters only as the 'King of Vienna'. This obviously implied that they regarded the Austrian monarch as inferior.

insignia is that among the heads of state discussed, the king is the crowned head of state, and in this context, there is a difference between the inauguration of a king and that of a prince.

The powers of the prince generally covered those of the Hungarian king, but his powers as a ruler also depended on his person as the prince. He was primarily responsible for the conduct of foreign policy, which was a major challenge given the geopolitical situation of Transylvania at the time. In the election of the prince, as has been amply described above, various conditions were imposed, among which the most important was that the prince should have ‘friendly’ relations with the two powers, especially the Porte, but this condition did not apply to kings. The prince could also send envoys to the Porte, but their legal status was not equivalent to that of envoys of other states and rulers, as they were considered subjects of the Porte. In judicial matters, the role of the prince was similar to that of the Hungarian king (*personalis praesentia regia*).⁸⁶ In the field of military defence, the prince was obliged to ensure the defence of Transylvania, which is why most of the princes also held the office of the Székely community’s chief leader, which was primarily a military post and extremely important. Thus, the declaration of war, the conclusion of peace and alliances with rulers of other states were the exclusive rights of the princes. The prince administered the revenues of Transylvania, taxes and regalia voted at the Assembly of the Estates.

It should also be stressed that, as mentioned above, the electoral conditions at the time were also understood as playing a constitutional role, since contemporaries regarded those conditions as a constitution, and it is worth pointing out that while these conditions were a constraint on the princes, they did not apply to kings.

One important discrepancy is worth pointing out: while the Transylvanian princes could come from any of the established religions – Roman Catholic or Protestant – the holders of the title of King of Hungary had to be Roman Catholics.⁸⁷ The essence of the previous comparison is illustrated in Table 1 below:

Table 1: Summary of comparison between Habsburg kings and Transylvanian princes.

Delimitation criteria:	Habsburg kings	The princes of Transylvania
Fundamentals of public law	Doctrine of the Holy Crown	Doctrine of the Holy Crown
Origin	German (Swiss)	Transylvanian ⁸⁸
Enthronement	filial hereditary succession ⁸⁹	election
Public inauguration	coronation	The approval, de facto appointment, of the Porte ⁹⁰
Dependency under public law	Not characterised as a vassal	Characterised by vassality ⁹¹
Insignia	crown, royal staff, robe, pomum (globus), sword	mounted horse, royal staff, flag, sword, cap with a coat of arms and feathers, caftan
Powers (supreme authority)	no limits on the powers of the head of state	Powers as head of state are limited, albeit partially, by conditions, estates, nations, sultanic confirmation
Legislation	Exercised legislative power jointly with the bicameral Diet – mainly in Pozsony ⁹²	Exercised legislative power jointly with the unicameral Diet – mainly in Gyulafehérvár ⁹³
Jurisdiction	<i>Personalis praesentia regia</i>	<i>Personalis praesentia regia</i>
Religion	Exclusively Roman Catholic	Roman Catholic or Protestant

(Source: author’s own editing.)

⁸⁶ (See Bogdándi work cited)

⁸⁷ (Von Windisch 1780, 71) ‘§. 2. Ein König von Ungarn muß nach den Gesetzen der katholischen Religion zugehan seyn; ...’

⁸⁸ An exception is the Transylvanian principality of the Romanian Vaivode Mihai Viteazul – or Mihai Bravul.

⁸⁹ It should be noted that one exception was Maria Theresa and in relation to her the Pragmatica Sanctio of 1723.

⁹⁰ This was usually granted by athname – letter of command or letter of donation – from the Porte.

⁹¹ The Ottoman Sultan – as *padishah* – appears in this public relationship as a seignior.

⁹² The present-day Bratislava.

⁹³ The present-day Alba Iulia.

7. Summary

From the point of view of constitutional law, the role of the created princely power in establishing and maintaining the Transylvanian state must be emphasised. Although this was achieved by implementing centralisation in the system of relations of that era, this centralisation can by no means be considered unlimited. The limitations, in the context of the subject under examination, were the three nations, the estates, the sultanic confirmation and, taking into account Lajos Rácz's analysis, the conditions that gave the principality a constitutional character. Thus, in the author's view, the Transylvanian state – in a sense – predated British constitutionalism by several decades.⁹⁴

The greatness of Gábor Bethlen's reign, apart from the consolidation of Transylvania and the abundant literature, is better demonstrated by the fact that the Principality of Transylvania was able to function as a counterweight to the Habsburgs in the seventeenth century, even in a limited framework, both in Hungarian and international terms. The preceding is complemented by the following quotation:

... Transylvania was at its largest during Bethlen's reign, because in the peace treaty with the Emperor-King, the seven counties of northeastern Hungary, as far as Kassa, were annexed to Transylvania during his lifetime. These had to be returned after his death. The Transylvanians wanted to compensate for this by electing as their prince the richest lord of northeastern Hungary, György Rákóczy, ...⁹⁵

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⁹⁴ See the parliamentary regency of the House of Hanover on British soil.

⁹⁵ (Szádeczky Kardoss 1927, 181)

'... Erdély Bethlen uralkodása idején volt legnagyobb kiterjedésű, mert a császár-királyal kötött békekötésben az ő élete tartamára Erdélyhez csatoltatott a magyarországi északkeleti hét vármegye, egészen Kassáig. Ezeket az ő halála után vissza kellett bocsátani. Ez Erdélyország nagymérvű meggyöngyülését okozván, az erdélyiek úgy akarták ellensúlyozni, hogy fejedelemmé választották északkeleti Magyarország leggazdagabb főurat, Rákóczy Györgyöt, ...'.

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