

THOUGHTS ON LEGAL SUSTAINABILITY- 'NIHIL SUB SOLE NOVUM.'

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Abstract - *The most frequently cited definition of sustainable development comes from the UN World Commission on Environment and Development as a 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.'* This paper seeks an answer to the question of where the role of law can be placed in the conceptual framework of 'sustainability'; what is law like if it is sustainable; what the classic and modern interpretation of this concepts are; also how do these approaches relate to the lessons of legal history, and specifically to the lessons of certain stages of the history of Hungarian state and law as sustainability turns. The conclusion is a new definition of sustainable law rooted in legal historical research, which can also be a common denominator for different aspects of sustainability.

Keywords: *sustainable development; conceptual framework; legal history; Hungary; definition*

INTRODUCTION.

The resolution No. 38/161 of December 19, 1983 of the United Nations General Assembly welcomed the establishment of a special committee that should prepare a report on the environment and global issues for the year 2000 and beyond, including proposed strategies for sustainable development. Although the name of the commission officially became the World Commission on Environment and Development, the name of the *Brundtland Commission* is also in common use after its first leader, the first female Prime Minister of Norway, the deputy director of the WHO, Gro Harlem Brundtland. Their report No A/42/427, titled *Our Common Future*, entered the public consciousness, even though, like the *Brundtland Report*.¹ In the same resolution, the UN General Assembly decided that the report of the special committee on issues within the mandate and competence of the United Nations Environment Program must be examined in the first instance by the Program's Governing Council, in order to forward it to the General Assembly together with its comments, with the aim of using it as a raw material in the preparation of the environmental protection perspective for the year 2000 and beyond, to be adopted by the General Assembly. The most frequently cited definition of sustainable development comes from the UN World Commission on Environment and Development as a '*development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*'²

The concept of sustainable development was initially fully appropriated by environmental protection, and the environmental protection law rooted in it. However, since the economic growth compulsively generated by consumer societies became unsustainable, it became clear that the problem cannot be solved by environmental protection alone. Modern conceptual frameworks are now filled with content by the social sciences, one of which is the science of legislation as an applied discipline. Since the legislators necessarily study the legislative and theoretical work of

¹ UN: 38/161. *Process of preparation of the Environmental Perspective to the Year 2000 and Beyond.* (1983)

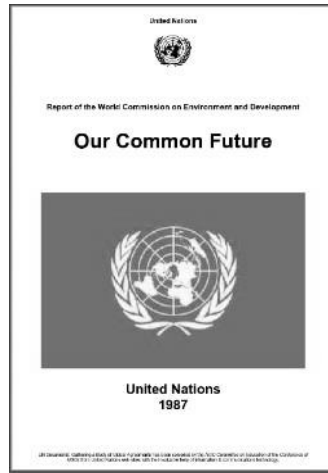
<https://documents.un.org/doc/resolution/gen/nr0/445/53/pdf/nr044553.pdf?token=21MI80rCXCI7SD9u4B&fe=true> (last visited March 14, 2024)

² G. H. Brundtland, *Our Common Future: Report of the World Commission on Environment and Development.* Geneva, UN-Dokument A/42/427. (1987) <http://www.un-documents.net/ocf-ov.htm> (last visited March 14, 2024)

their predecessors, it is not possible to give up learning the lessons of legal history. Studying the legal history, however, we come to an interesting conclusion, according to which ‘there is nothing new under the sun’ - ‘*Is there anything of which one can say, ‘Look! This is something new’? It was here already, long ago; it was here before our time.*’³

1. The Classic Interpretation of Sustainability in Law

Already at the end of the last century, the Brundtland report made it clear that the world's economic situation was fatal. Lin, Chang and Hu liken the global economy to a ‘zombie’ that is half-alive, half-dead, reeling with its own symptoms. They believe that this economic zombie may soon die out, diagnosed with a condition known as zero growth - economic stagnation. Free capitalism, which preached unlimited growth dependent on consumption, is coming to an end.⁴



Picture 1: The cover of the Brundtland Report, UN, 1987⁵

In modern economics, many terms are used to describe the unlimited growth paradigm of economic growth, such as *unlimited* growth, *perpetual* growth, and *infinite* growth economic paradigm. In the framework of the market economy, the game is to maximize the profits of the shareholders with the globalizing structure.⁶ In this structure, people are self-interested, rational, and competitive, leading to additional wealth from consumption. In this system, companies must focus exclusively on profit and growth, which prevents the development of a monopoly situation and creates ‘free’ markets in the spirit of globalization with the diminishing returns of economies of scale.⁷

However, all this actually seemed impossible more than a decade ago in the light of the highly influential paper *The Limits to Growth*,⁸ in which the Club of Rome drew attention to the

³ Bible, Ecclesiastes 1:10

⁴ C-K. Lin – A. Chang – J-S. Hu, Eco-Social Enterprise’s Innovation in the Human Society. (2015) *American Journal of Industrial and Business Management*, 5, 839-850. doi: 10.4236/ajibm.2015.512081.

⁵ UN, Brundtland Report (1987)

<https://www.are.admin.ch/are/en/home/media/publications/sustainable-development/brundtland-report.html> (last visited March 14, 2024)

⁶ J. Komlos, *Foundations of Real World Economics – What Every Economics Students Need to Know* (New York: Routledge, 2023)

⁷ Lin – Chang-Hu, above.

⁸ D. H. Meadows et al., *The Limits to Growth; a report for the Club of Rome's project on the predicament of mankind* (New York: Universe Books, 1972)



fact that in the paradigm of limitless growth, the industrialization model of economic development is not only humanity's and nature caused sharp contradictions, but people still have to face nature's revenge. If current patterns of rapid growth in population and capital continue, the world will be in danger of catastrophic collapse. Therefore, the best way to avoid collapse is to implement policies of *zero growth*, *zero population growth* and *zero economic growth*.

However, the situation did not improve despite early calls for attention. As a result of the global economic stagnation of the 21st century, it became obvious that the success of Western-style modernization requires large sums of expenditure. Oliver Markley has described five possible future outcomes of the current situation, the second of which is '*civilizational disintegration*' as the last station of the unlimited growth paradigm.⁹

Debates about sustainability and sustainable development have undergone a significant transformation over time. While at the beginning of the 1970s one focus of the international community's attention was economic development, namely the prevention of poverty in connection with integration into the global capitalist economy, by the end of the century the focus shifted to another political initiative, environmental protection. The concept of sustainability in today's public consciousness was developed, which advocates the need for international cooperation in order to prevent environmental pollution and preserve biological diversity and ecosystems. And by the 21st century, these efforts have directly evolved into current efforts to deal with climate change - sometimes leading to the destruction of priceless art treasures by extremist activists.¹⁰

The general principles and rules of international environmental law are reflected in binding legal acts of international organizations, state practice, court decisions and non-binding legal commitments. The existence and applicability of the principles of international environmental law were also confirmed by an arbitral tribunal in a unique case, the *Iron Rhine case*¹¹ in 2005. These principles are general in the sense that they potentially apply to all members of the international community for the full range of activities they undertake or authorize, and for the protection of all aspects of the environment. From the large collection of international agreements and other legal acts, general rules and principles can be established that have broad, if not necessarily universal, support and are supported in law enforcement practice. These are the following: the *Stockholm Declaration* adopted at the UN Human Environment Conference in 1972 (UN, 2994/XXVII, 2995/UVII and 2996/XXII.21.) and the *Rio Declaration* adopted at the 1992 Rio de Janeiro Conference on Environment and Development Declaration (UN, A/CONF.151/26), and particularly its principle 2 according to which states have sovereignty over their natural resources and are obliged not to cause trans-boundary environmental damage; the principle of preventive action; the principle of

⁹ O. W. Markley, Manifesting Upside Recovery Instead of Downside Fear: Five Ways Mega Crisis Anticipation Can Proactively Improve Futures Research and Social Policy. (1911) *Journal of Futures Studies*, 16, 123-134.

¹⁰ M. Pieraccini – T. A. Novitz, Sustainability Through History. in M. Pieraccini – T. A. Novitz (eds.) *Legal Perspectives on Sustainability* (Bristol: Bristol University Press, 2020) 7-8.

¹¹ Belgium v Netherlands 2005] ICGJ 373



cooperation ; the principle of sustainable development; the precautionary principle; the *polluter pays* principle and the principle of common but differentiated responsibility.¹²

2. The Three Pillars of Sustainability based on Modern Interpretation. The Hungarian Legislation

By now it has become obvious that the argument that *sustainability* or *sustainable development* serves only economic or even environmental protection purposes is problematic. The wording that recognizes that both economic and environmental development must be sustainable, i.e. durable and long-term seems more accurate. Following this change, we see that the realization that social policy is vital for achieving both economic and environmental goals is gaining more and more legitimacy. Hence the appearance of the *three pillars of sustainability* in the literature, namely the *economic, environmental* and *social* pillars.¹³

Since all pillars are ultimately regulated by legal norms in developed societies, it is obvious that sustainability as a phenomenon should also be scrutinized from the point of view of law and, in a narrower sense, of legislation as a social science. Despite the fact that for critical environmental protection lawyers, this modern, three-pillared concept of sustainability may certainly seem like an unacceptably modernist approach, ideally it would be more correct to consider this approach as more *holistic*. At the same time, it can also cause frustration for lawyers dealing with social policy, such as labor lawyers, that labor standards and other aspects of social policy are only considered protected within the framework of sustainability insofar as they are seen to be connected to the dominant trends of economic and environmental sustainability - and they are subordinated. Holism thus has its dangers when it obscures the primacy of some goals over others.

In addition to what is formulated by the UN, the concept of sustainability used by the Parliament in Hungary is of particular importance. With its resolution No 10/2013 (III.28.) the Hungarian Parliament adapted the *National Sustainable Development Framework Strategy for the period 2012-2024*. It characterizes sustainable development as follows: “*exhausts its resources, but preserves and expands them in adequate quantity and quality for future generations.*”

Such a requirement established by the consistent practice of the Hungarian Constitutional Court in relation to the right to a healthy environment, in connection with the determination of the level of institutional protection, includes the prohibition of retrogression, the principles of environmental sustainability, and the specific principles of sustainable development, including the principles of *good governance*. An example of the latter is the principle of community participation, subsidiarity, cooperation, publicity, and informed decision-making.¹⁴

3. The Codification of Sustainability in the Classic Sense in Hungarian Legal History

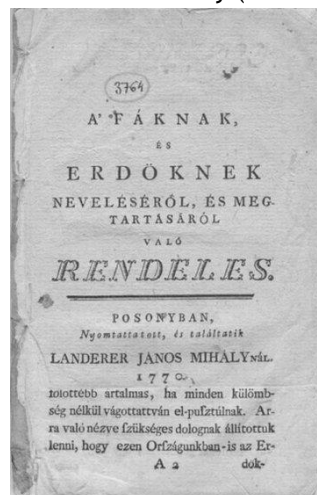
¹² P. Sands et al., *General Principles and Rules. Principles of International Environmental Law* (Cambridge: Cambridge University Press, 2018) 197-251

¹³ M. Pieraccini – T. A. Novitz, *Sustainability and Law: A Historical and Theoretical Overview*. in M. Pieraccini – T. A. Novitz (eds.) *Legal Perspectives on Sustainability* (Bristol: Bristol University Press, 2020) 9-38.

¹⁴ National Public Service University of Hungary, *Szakmai beszámoló a fenntartható fejlődés általános jogi szabályozását megalapozó kutatásról [Professional report on research establishing the general legal regulation of sustainable development]* NFPP/923-4/2018-ITM_SZERZ (Budapest: NKE, 2020) 9-11.

The image of nature has not been significantly changed by human activity in the first period of the Middle Ages. Maintaining a growing population necessitated the conquest of more and more areas for production. Extermination farming, forest grazing, mining and the human settlements themselves were right next to the forested areas, which also created favorable living conditions for the fauna. Regulation of forest utilization has often been accompanied by the issuance of hunting regulations. The first major regulation was created by king Vladislaus II (1456-1516), who in his Act XVIII of 1504 on *peasants are prohibited from hunting and birding*¹⁵ banned serfs and peasants from free hunting. The law on compensation for forest damage appeared in Werbóczy's Tripartitum.¹⁶ We also have to mention the Székely (or Szekler)¹⁷ village laws from 1581, of which forest use was regulated in detail (in case of villages as: Gyergyóújfalu, Zalán, etc.)

The transformation of agriculture began at the end of the 18th century, but its real development can be traced back to the 19th century. This was accompanied by the improvement of cultivation methods, the introduction of new plant species, but most of all the increase in the size of the cultivated area. It was then that the natural vegetation of the Great Plain, the forest steppe, began to disappear, but the mountainous forest areas also dwindled. There were several ways to increase the arable land under cultivation. They have deforested to a greater extent than necessary. In the 18th century, state power wanted to stop irrational deforestation and encourage lowland afforestation. This is also indicated by empress Maria Theresa (1740-1780) in her *Forest Order (Order on the Cultivation and Maintenance of Trees and Forests)* proclaimed in 1769, and also published in print for the public in 1770 in Pozsony (now: Bratislava, Slovakia).¹⁸



Picture 2: The cover of the *Forest Order*, 1769¹⁹

¹⁵ D. Márkus (ed.), *Magyar Törvénytár 1000-1895. 1000-1526. évi törvénycikkek [Hungarian Law Library 1000-1895. 1000-1526. year's articles of law] - Corpus Juris Hungarici* (Budapest: Franklin, 1899)

¹⁶ The Tripartitum or Opus Tripartitum (in full, Latin: Tripartitum opus iuris consuetudinarii inclyti regni Hungariae, 'Customary Law of the Renowned Kingdom of Hungary in Three Parts') is a manual of Hungarian customary law completed in 1514 by István Werbóczy and first published at Vienna in 1517. See the text of Tripartitum in Márkus, above.

¹⁷ Hungarian subgroup living mostly in the Székely Land in today's Romania

¹⁸ Maria Theresa, *A fáknak és erdőknek neveléséről, és megtartásáról való rendelés [Order on the Cultivation and Maintenance of Trees and Forests]* (Pozsony: Landerer, 1770)

¹⁹ M. Tóth, *A fáknak és erdőknek neveléséről és megtartásáról való rendelés Pozsonyban nyomtatott és találtatik L. J. Mihálynál 1770 [The order on the cultivation and maintenance of trees and forests was printed in Bratislava and can be found at L.J. Mihály 1770]* (Szombathely: Nyme Savaria Egyetemi Központ, 2008) 65.



The first real *Forest Act* was made in 1879. Many provisions of Act XXXI of 1879²⁰ were created in the name of nature conservation, for example, by ‘*declaring stony-rocky forests with erosion-prone soils as protected forests and introducing restrictions on the use of these areas*’ (Article 2). Outstanding among the laws passed in the 1880s, which regulate one sector of the domestic economy, is Act XIX of 1880 on *Fishing*,²¹ although it is also true that it provided protection only for fish species important for economic interests. Soon after the *Hunting Act* was issued by Act XX of 1883.²² It promoted the protection of birds and other vertebrates. Act XII of 1894 on about agriculture and field police - the so called: *Field Police Act*²³ - which protected songbirds for the duration of the breeding season, and established a Field Police. Nature protection in the classic sense, regulated, controlled and enforced by the state through legal means, begins here: nature protection law.

4. An Extended Legal Historical Interpretation of Sustainability. Sustainability Turns in Hungarian Legal History

If we accept the interpretation of sustainability recorded in the Brundtland Report, it is clear that only the term is modern, but the phenomenon it describes is as old as human societies. In the course of history, humanity has had to deal with difficulties many times, which in today's sense can be apostrophized as a *sustainability turn*, and for the solution of which it became necessary to generate changes in the field of legislation, which enabled further development in such a way that the survival of society for the next generations ensure. Legal history as a discipline was created precisely to investigate such phenomena.

The most obvious example is the state-founding activities of Prince Géza and his son Saint Stephen I. who reorganized the principality formed from an alliance of tribes into a unified, European, Christian state.²⁴ The *thousand-year-old Hungarian law library*²⁵ begins with the laws he created. The development of Hungarian statehood, which is also recognized in the preamble of the current *Basic Law* (Constitution), began with the St. Stephen's ‘sustainability turn’. Hungary's first king obviously assessed that the key to the survival of the nation is to change the state- and legal order. Proof of this is the *Admonitones* (Admonitions)²⁶ written to his son, Prince Imre, the purpose of which was to ensure the development of the now Christian European kingdom for the next generation as well.

²⁰ D. Márkus (ed.), *Magyar Törvénytár 1000-1895. 1879-1880. évi törvénycikkek [Hungarian Law Library 1000-1895. 1000-1526. year's articles of law] - Corpus Juris Hungarici* (Budapest: Franklin, 1896)

²¹ Márkus 1879-1880, above.

²² D. Márkus (ed.), *Magyar Törvénytár 1000-1895. 1882-1883. évi törvénycikkek [Hungarian Law Library 1000-1895. 1000-1526. year's articles of law] - Corpus Juris Hungarici* (Budapest: Franklin, 1896)

²³ D. Márkus (ed.), *Magyar Törvénytár 1000-1895. 1894-1895. évi törvénycikkek [Hungarian Law Library 1000-1895. 1000-1526. year's articles of law] - Corpus Juris Hungarici* (Budapest: Franklin, 1897)

²⁴ Gy. Györffy, *István király és műve [King Stephen and his work]* (Budapest: Gondolat, 1987)

²⁵ D. Márkus (ed.), *Magyar Törvénytár 1000-1895. 1000-1526. évi törvénycikkek [Hungarian Law Library 1000-1895. 1000-1526. year's articles of law] - Corpus Juris Hungarici* (Budapest: Franklin, 1899)

²⁶ Gy. Kristó, *Szent István király Intelmei és Törvényei [The Admonitions and Laws of King Saint Stephen]* (Budapest: Szent István Társulat, 2000)



Picture 3: The first page of king Saint Stephen's Admonitions to his son, Prince Imre /Libellus Sancti Stephani regis de institutione morum ad Emericum ducem/, 1027²⁷

Although this was the first and, in terms of its significance, the most significant sustainability turn in Hungarian legal history, we also find other legislative moments, without which the development of the Hungarian state- and legal history would presumably not have continued in the same direction, and Hungary might have lost its national sovereignty, as it happened in the case of other European peoples.

In 2022, Hungary celebrated the 800th anniversary of the *Golden Bull* issued by King Andrew II. If we interpret human rights as 'constitutional rights', which fix the rights of citizens vis-à-vis the state - in this case the king - then this can be considered the first Hungarian constitution. The statute was created at the same time as the English *Magna Carta Libertatum*²⁸ and similarly focused on the rights of nobles.

A discernible characteristic feature of individual national legislations is that they were created in order to create or significantly amend constitutions or laws with constitutional force precisely as a result of significant social changes, in order to ensure survival and development, using today's term, in the context of a sustainability turn. During the stormy centuries of Hungarian legal history, laws with such constitutional force included, for example, Act XII of 1867, which put the *Austro-Hungarian Compromise* into effect, Act IV of 1869 'on the exercise of judicial power', which separated executive and judicial power, as well as the laws regulating local self-government and state administration after 1870.

Despite the lack of a written constitution, several constitutional laws were adopted in the Kingdom of Hungary in the period between the two World Wars. These included, for example, Act I of the 1920 'on the restoration of constitutionality and the temporary regulation of the exercise of state supreme power', or Act XLVII of 1920 "on the termination of His Majesty Károly V's sovereign rights and the succession to the throne of the House of Habsburg" which declared the deprivation of the throne of the Habsburg-Lorraine dynasty in Hungary.

CONCLUSION.

As a result of legal historical research, it can be stated that legislation always strives for sustainability: the goal is to create legal norms that ensure long-term application of the law in the area to be regulated, thereby creating legal certainty, which 'meets the needs of the present without compromising the ability of future generations to meet their own needs.'²⁹

²⁷ Webplace: <https://hu.wikipedia.org/wiki/Intelmek> (last visited March 14, 2024)

²⁸ R. Huscroft, *Ruling England, 1042–1217* (Harlow: Pearson, 2005) 173-174.

²⁹ Brundtland, above.



The conclusion of the present paper can therefore be nothing other than a proposal to introduce a new legal notion, the concept of 'sustainable law in the extended legal theoretical sense'. According to it sustainable law is a system of legal norms that are always useful for society, enable the satisfaction of its reasonable needs, but do not endanger the rights of future generations, and the codification of which is the primary task of states of law.

REFERENCES

- [1] *Latin Vulgate (VUL), Ecclesiastes 1:1-10*
- [2] UN: 38/161. *Process of preparation of the Environmental Perspective to the Year 2000 and Beyond.* (1983)
- [3] <https://documents.un.org/doc/resolution/gen/nr0/445/53/pdf/nr044553.pdf?token=21Ml80rCXCl7SD9u4B&fe=true> (last visited March 14, 2024)
- [4] G. H. Brundtland, *Our Common Future: Report of the World Commission on Environment and Development.* Geneva, UN-Dokument A/42/427. (1987) <http://www.un-documents.net/ocfov.htm> (last visited March 14, 2024)
- [5] *Bible, Ecclesiastes 1:10*
- [6] C-K. Lin - A. Chang - J-S. Hu, *Eco-Social Enterprise's Innovation in the Human Society.* (2015) *American Journal of Industrial and Business Management*, 5, 839-850. doi: 10.4236/ajibm.2015.512081.
- [7] UN, *Brudtland Report* (1987)
- [8] <https://www.are.admin.ch/are/en/home/media/publications/sustainable-development/brundtland-report.html> (last visited March 14, 2024)
- [9] J. Komlos, *Foundations of Real World Economics - What Every Economics Students Need to Know* (New York: Routledge, 2023)
- [10] D. H. Measows et al., *The Limits to Growth; a report for the Club of Rome's project on the predicament of mankind* (New York: Universe Books, 1972)
- [11] O. W. Markley, *Manifesting Upside Recovery Instead of Downside Fear: Five Ways Mega Crisis Anticipation Can Proactively Improve Futures Research and Social Policy.* (1911) *Journal of Futures Studies*, 16, 123-134.
- [12] M. Pieraccini - T. A. Novitz, *Sustainability Through History.* in M. Pieraccini - T. A. Novitz (eds.) *Legal Perspectives on Sustainability* (Bristol: Bristol University Press, 2020) 7-8.
- [13] *Iron Rhine Arbitration, Belgium V Netherlands, Award, ICGJ 373 (PCA 2005), 24th May 2005, Permanent Court of Arbitration [PCA]*
- [14] P. Sands et al., *General Principles and Rules. Principles of International Environmental Law* (Cambridge: Cambridge University Press, 2018) 197-251.
- [15] M. Pieraccini - T. A. Novitz, *Sustainability and Law: A Historical and Theoretical Overview.* in M. Pieraccini - T. A. Novitz (eds.) *Legal Perspectives on Sustainability* (Bristol: Bristol University Press, 2020) 9-38.
- [16] *National Public Service University of Hungary, Szakmai beszámoló a fenntartható fejlődés általános jogi szabályozását megalapozó kutatásról [Professional report on research establishing the general legal regulation of sustainable development] NFPF/923-4/2018-ITM_SZERZ* (Budapest: NKE, 2020) 9-11.
- [17] D. Márkus (ed.), *Magyar Törvénytár 1000-1895. 1000-1526. évi törvénycikkek [Hungarian Law Library 1000-1895. 1000-1526. year's articles of law] - Corpus Juris Hungarici*
- [18] *Maria Theresa, A fáknak és erdőknek neveléséről, és megtartásáról való rendelés [Order on the Cultivation and Maintenance of Trees and Forests]* (Pozsony: Landerer, 1770)
- [19] *M. Tóth, A fáknak és erdőknek neveléséről és megtartásáról való rendelés Pozsonyban nyomtattatott és találtatik L. J. Mihálnál 1770 [The order on the cultivation and maintenance of trees and forests was printed in Bratislava and can be found at L.J. Mihály 1770]* (Szombathely: NymE Savaria Egyetemi Központ, 2008) 65.



- [20] D. Márkus (ed.), *Magyar Törvénytár 1000-1895. 1879-1880. évi törvénycikkek [Hungarian Law Library 1000-1895. 1000-1526. year's articles of law] - Corpus Juris Hungarici* (Budapest: Franklin, 1896)
- [21] D. Márkus (ed.), *Magyar Törvénytár 1000-1895. 1882-1883. évi törvénycikkek [Hungarian Law Library 1000-1895. 1000-1526. year's articles of law] - Corpus Juris Hungarici* (Budapest: Franklin, 1896)
- [22] D. Márkus (ed.), *Magyar Törvénytár 1000-1895. 1894-1895. évi törvénycikkek [Hungarian Law Library 1000-1895. 1000-1526. year's articles of law] - Corpus Juris Hungarici* (Budapest: Franklin, 1897)
- [23] Gy. Györffy, *István király és műve [King Stephen and his work]* (Budapest: Gondolat, 1987)
- [24] D. Márkus (ed.), *Magyar Törvénytár 1000-1895. 1000-1526. évi törvénycikkek [Hungarian Law Library 1000-1895. 1000-1526. year's articles of law] - Corpus Juris Hungarici* (Budapest: Franklin, 1899)
- [25] Gy. Kristó, *Szent István király Intelmei és Törvényei [The Admonitions and Laws of King Saint Stephen]* (Budapest: Szent István Társulat, 2000)
- [26] R. Huscroft, *Ruling England, 1042-1217* (Harlow: Pearson, 2005) 173-174.