

**LITERACY, PERFORMANCE AND MEMORY:
THE ÁLDOMÁS (TRANKOPFER)
IN MEDIEVAL AND EARLY MODERN
HUNGARY AND TRANSYLVANIA**

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Abstract: *The 'triumphalist' model whereby memory is superseded by writing needs qualification. Cicero posited that memory was equal to writing, since memory acted in the manner of a wax tablet on which images were stored like letters. Although governments and clerics in the Middle Ages promoted the idea of verba volant, scripta manent, many communities and even churchmen continued to act as if recollection was equivalent to writing, and indeed in some ways superior to it. The spoken word retained an authenticity which meant that voice utterances were frequently reported verbatim in inquisition records. Recollection was also institutionalized to the extent that it became, along with other forms of oral communication, performative and governed by rules of its own. The paper examines the institution of the áldomás or Trankopfer (libation) in Hungary and Transylvania, which was used in conveyances of vineyards and movables, and which substituted for written proof until the nineteenth century. The áldomás is compared with other institutions, such as boundary-beating in England, and Lytkup in Poland. Some attention will also be paid to its use in the Transylvanian Saxonland, where it appears to have also become customary in land sales.*

Keywords: 'triumphalist' model, writing, memory, communication, libation

The development of legal literacy is frequently framed within a triumphalist narrative, which sees memory and the spoken word inevitably giving way to a reliance on written instruments and proofs. Within the context of the Middle Ages, the transition from a predominantly oral legal culture to one that was increasingly defined by the written record is normally put in the twelfth and thirteenth centuries, but there were obviously latecomers as well as parvenus. In respect of medieval Hungary and Transylvania we have, of course, much less surviving physical evidence than, for instance, England or France (and we can debate the reasons for this). Nevertheless, the volume of extant material shows the same rapid rate of increase in the thirteenth century as elsewhere in Latin Christendom¹. Behind this comparability lay much the same pressures — the needs of government, the breakdown of traditional communities of memory, and the activity of countless

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¹ István Hajnal, *L'Enseignement de l'écriture aux universités médiévales*, 2nd ed., Budapest, 1959, p. 196-7.

churchmen, who hammered home the message in charter after charter that *labilis est memoria humana, sed litterae vivunt*².

There is a telling illustration of this trend, which comes from late thirteenth-century England. It is quite possibly fictional, or the parties have been muddled, but it is nevertheless suggestive of the advance of legal literacy and of lay responses. The Earl Warenne (in another account Gilbert de Clare) was asked by Edward I's commissioners to prove his right to his lands with written deeds. He responded by pulling out a rusty sword, a token of remembrance from the time of his forebears: "Look at this, my lords", said Warenne. "This is my warrant! For my ancestors came with William the Bastard and conquered their lands with this sword, and by the sword I will defend them from anyone intending to seize them"³. For Hungary, we have less dramatic evidence of the advance of lay literacy — most obviously, Béla III's requirement of 1181 that "whatever is discussed before My Highness be confirmed by written testimony", and Béla IV's injunction from around 1240 that litigants should in future petition him in writing through the chancellery, rather than pressing their suits on him in person⁴. We do, however, also have a revealing case from 1360, relating to Croatia, which bears some comparison with the case of Earl Warenne. The Lapčani nobleman, Nasman de Karin, laid claim to the village of Kokićane on the basis of ancient descent. His family had, he claimed, been in uncontested possession of it for 300 years, but it had now been wrongfully seized by the Benedictine monastery of St Chrysogon in Zadar. The case eventually came before King Louis in Zagreb. In support of the monks' rival claim to the village, the abbot of St Chrysogon's submitted several thirteenth-century charters attesting to the monks' rights to the property. These were inspected and the king upheld the monks' claims. Nasman, Louis averred, had only been able to affirm his right by speech, but the abbot had brought forward charters, and "greater faith should attach to written instruments than to oral assertions"⁵.

There is, nevertheless, some need to qualify the triumphalist account. Throughout the later Middle Ages, memory and the spoken word continued to hold power and significance in legal proceedings, often being weighed as the equivalent to the written word. This was not just a matter of local practices, adhered to by

² Piotr Górecki, *Communities of Legal Memory in Medieval Poland, c. 1200-1240*, "Journal of Medieval History", 24, 1998, p. 127-54; Martyn Rady, *Nobility, Land and Service in Medieval Hungary*, Basingstoke and New York, 2000, p. 62-3.

³ M. T. Clanchy, *From Memory to Written Record: England 1066-1307*, 2nd ed., Oxford, 1993, p. 35-6.

⁴ László Fejérpataky, *III. Béla király oklevelei*, Budapest, 1900, p. 29; *Magistri Rogerii Epistola in miserabile Carmen*, ch. 6, in *Anonymus and Master Roger*, eds. János M. Bak, Martyn Rady and László Veszprémy, Budapest and New York, 2010, p. 145 (with literature).

⁵ T. Smičiklas, *Codex Diplomaticus Regni Croatiae, Dalmatiae et Slavoniae*, vol. 13, Zagreb, 1915, p. 79-83.

illiterate peasants. It was buttressed by learned opinion that accorded memory a high place in the hierarchy of modes of cognition. Cicero, Quintilian, St Augustine and a host of learned commentators thus proposed that memory itself acted in a manner akin to the written word. As Cicero put it, “Memory is in a way the twin sister of writing, similar although in a dissimilar form”⁶. Indeed, St Augustine suggested the superiority of memory, for it conveyed mental images, whereas the written word communicated an image of an image⁷. The value laid on memory has been addressed by Mary Carruthers in an extensive work on medieval recollection, which carries the suggestive title of *The Book of Memory*⁸. Like their classical predecessors, for medieval scholars the memory was analogous to a wax tablet or, as John of Salisbury put it, a “cupboard of the mind”, which constituted an alternative source of authority to written instruments⁹.

The book of memory was very much a conceit of medieval churchmen, tied to contemporary ideas of mental training and of the cognitive architecture of the scholarly mind. Nevertheless, there were good reasons in Hungary and Transylvania, as indeed elsewhere, for not relying exclusively upon written records. First, there was the obvious problem of forgery and of the inadequacy of the methods used to detect it — seals might be counterfeited, handwriting mimicked and dignitary lists copied from genuine charters. It is often only historians who have detected individual charters to have been forgeries; at the time and for long thereafter they were thought to be genuine¹⁰. Secondly, charters were easily lost to fire, worms or carelessness. Their seals were easily broken or detached, thus vitiating their contents. Thirdly, the charter might be genuine, but its contents false. This is a controversial point, but it is the case that the Hungarian royal chancellery was usually unaware of whether what it wrote was true or not. A petitioner made a verbal recognizance or *fassio* before a chancellery scribe. His statement was copied verbatim, and issued out in the king's name. There was no attempt to establish whether the contents were true. So if the petitioner named some villages and said that he owned them, this information was duly noted. The catch was that by the fourteenth century, the scribe would normally add a clause at the end of the charter, *salvo iure alieno*¹¹. This meant that had rights been

⁶ Cicero, *Partitiones Oratoriae*, 8 (*Opera Rhetorica et Philosophia*, 2nd ed. T. Davison, London, 1820, p. 104.

⁷ St Augustine, *Confessions*, X. 8-17, ed. R. S. Pine-Coffin, Harmondsworth, 1961, p. 214-24.

⁸ Mary Carruthers, *The Book of Memory: A Study of Memory in Medieval Culture*, 2nd ed., Cambridge, 2008.

⁹ *Memoria vero, quasi mentis arca, firmaque et fidelis custodia perceptorum*: in *Ioannis Saresberiensis Metalogicon*, eds. J. B. Hall and K.S.B. Keats-Rohan, Turnhout, 1991, p. 30.

¹⁰ For medieval forgery in Hungary and a brief typology, see László Solymosi, *Írásbeliség és társadalom az Árpád-korban*, Budapest, 2006, p. 12-3.

¹¹ The earliest example of which I am aware is from 1299. See *A Blágay-család oklevéltára*, eds. Lajos Thallóczy and Samu Barabás, Budapest, 1897, p. 66.

enumerated on the petitioner's word which harmed the anterior rights of a third party then they themselves were voided and the integrity of the charter compromised. This clause made charters even more precarious, for the incorrect assertion of a right might have the consequence of calling into question other, genuine rights listed in the instrument¹².

A further concern was that the written record itself might be given on an instrument which was not legally valid. Charters that were issued by minor chapters, whose seals were not "notorious" and whose activities might be manipulated, were thus deemed inauthentic; likewise, the records of urban magistracies in respect of matters that fell outside their territorial jurisdiction¹³. Lower courts, such as those operating in villages, market towns and manors, were not in possession of seals that carried legal weight and the evidentiary value of the letters they issued was correspondingly slight. It was only much later, in the eighteenth century, that the records issued by some subordinate judicial forums acquired a legal credibility, which allowed them to be used as proof. This was because the letters published by these lower courts were now backed up by written protocols against which they might be cross-checked¹⁴. Until this time, it was perfectly possible, therefore, for courts and litigants to be legally literate, but to have no means of converting their literacy into letters that carried legal weight. As we will see, this circumstance contributed to the retained authority vested in the spoken word and in the recollection of legal events.

There were in any case good reasons to value personal recollection. First, the human voice itself retained an immediacy and authenticity that was missing from

¹² See thus the case of the Meggyesaljai–Perényi–Báthori inheritance pact of 1490, which conflicted with Stephen Móroc Meggyesaljai's previous agreements and so was injurious to pre-existing rights. Notwithstanding the royal consent, the pact was voided after Meggyesaljai's death. See *Documenta ad historiam Batori de Ecsed spectantia*, vol. 1 (*Diplomata*), eds. Richard Horváth, Tibor Neumann and Norbert Tóth, Nyiregyháza, 2011, p. 160-4; Tibor Neumann, "Verbóci István 1520. évi utazásai Szatmár megyében. A somlyói Bátoriak és a Móroc-örökség", in *Szabolcs–Szatmár–Beregi Szemle*, 41, no 3, 2006, p. 290-304 (p. 293-5).

¹³ Zsolt Hunyadi, *The Hospitallers in the Medieval Kingdom of Hungary c. 1150-1387*, Budapest, 2010, p. 197-8; Rady, *Nobility, Land and Service*, p. 68-70; András Kubinyi, *Buda város pecséthasználatainak kezdetei*, in Kubinyi, *Tanulmányok Budapest középkori történetéről*, 2 vols, Budapest, 2009, vol. 1, p. 271-300 (p. 283-6) (first published in *Tanulmányok Budapest Multjából*, 14, 1961, p. 109-43).

¹⁴ Szabolcs Somorjai, *Pest–Pilis–Solt vármegye adóssai és hitelezői a 18. század második és a 19. század első felében*, in "Aetas", 2010, no 2, p. 5-18 (p. 5-6). Debts were thus registered at manor courts and the protocol was possessed of a legal character. Records kept in cities and chapters of letters issued under their seals were in the medieval and early-modern periods recorded in extenso as duplicates, and recourse might be had to these in adjudication. Any extracts and calendars taken from these were considered private endeavours and had only a limited legal character. See Zsolt Bogdándi, *A kolozsmonostori konvent a fejedelemség korában*, Cluj, 2012, p. 166-8.

“a sheepskin marked with black ink and weighted with a little lump of lead”¹⁵. As Innocent IV (1243-54) explained, it seemed unnatural to trust the skin of a dead animal more than the voice of a living man¹⁶. Secondly, the spoken word was testable in the way that oral evidence delivered in court still is — and we should note that it was one of the ambitions of reformers in nineteenth-century Hungary to replace the paper-driven process of criminal prosecution with oral pleading and cross-examination. In the context of pre-modern adjudication, the spoken word was additionally valued because it might be assessed by the most extreme examination possible, which was oath-taking. The decisory oath, which was usually taken by the party who had the upper hand in litigation, was performed either in a church or beside a mobile altar, being preceded by the mass, and involved the oath taker swearing on the head of his adversary. The oath taker’s word was, moreover, often subject to the test of compurgation, whereby a set number of oath helpers swore to his character. This was a highly effective method of proving, since the sacramental character of the occasion meant that perjury carried consequences in the afterlife. Rather than imperil their souls, litigants and compurgators often refused the oath or did not attend the oath-taking even though, by so doing, the case would be lost¹⁷.

The importance attaching to oaths meant that witnessing retained an important place in legal transactions and other business. Events might thus be staged, with the express purpose of ensuring that they be remembered, even though there was adequate written confirmation of what was being witnessed. The act of introducing the new owner to the estate in the legal act known as institution or *statutio* might thus be accompanied by the handing over of a clod of earth or of a glove. The deployment of these symbols appears to be an early modern innovation, for they are not to my knowledge reported in medieval charters (although the mysterious Charter of Nezdinus may record a glove)¹⁸. The ceremony might, moreover, be advertised, so that neighbours and abutters be witnesses, and indeed they could be fined for not attending¹⁹. Doubtless their presence was thought important not only for witness but also as a way of preventing them from later launching a suit of recovery against the new owner.

¹⁵ *Eadmer’s History of Recent Events in England*, trans. G. Bosanquet, London, 1964, p. 146 (ch. 138). The statement was made in 1102 by three English bishops in respect of a papal bull, the contents of which they disputed.

¹⁶ James A. Brundage, *Medieval Canon Law*, London and New York, 1995, p. 133.

¹⁷ The standard work remains Imre Hajnik, *A perdöntő eskü es az előzetes tanúbizonyítás a középkori magyar perjogban*, Budapest, 1881; see also Rady, *Nobility, Land and Service in Medieval Hungary*, p. 73-4.

¹⁸ *Diplomata Hungariae Antiquissima*, ed. György Györffy, Budapest, 1992, p. 277 (and many other editions). The charter has been highly corrupted in its transmission, but the original text is probably late twelfth century.

¹⁹ Kinga Beliznai Bódiné, *A bíbor méltóság, a sárga árulás. Szimbólumok és rituálék a jogtörténetében*, Budapest, 2014, p. 168.

The *statutio* was one of the most “document laden” legal events in the pre-modern period. Upon its completion, it yielded an extensive dossier — the chancellery's instruction, ordering an institution to a property to be performed; the letter of report, delivered by the witnessing cleric or bailiff, which recorded the event and whether or not it had been contested; the chancellery's acknowledgement that the institution had been correctly done and thus that the conveyance was complete; and, possibly also, confirmation of all the above in the form of a royal privilege with pendant seal. Many transactions, particularly those involving villagers, were confirmed by less extensive documentation and in written instruments that were open to legal challenge. Under these circumstances, witnessing events assumed a particular importance and spectacles were arranged so that what had been seen was impressed in the memory of onlookers. The annual beating of the village bounds, which normally took place on St George's Day, might thus be accompanied by the firing of fusillades into boundary markers or by feasting beside them, and, less happily, by the beating of boys and youths as a means of encouraging them to remember specific places. Their names were then entered into a register — hence, from Gemer (Gömör) County in the early seventeenth century, “Lord Lajos Kendy who was then Prefect beat for eternal memory Pál Imre, after which they called the hill “Pál Imre's Tears” “²⁰. Other modes of impressing memories included ear-tweaking, face-slapping, hair-pulling and, in Transylvania, kicking²¹.

The most common way of obliging recollection was the *áldomás*. This constituted toasting the sale of any property with wine and was usually performed before witnesses. The term *áldomás* is a calque of the German *Trankopfer*. It means literally a sacrifice and was thus often rendered in Hungary as the Latin *victima*. The custom of toasting sales through *Weinkauf* or *Litkop* was commonplace across Europe and was not an autochthonous Hungarian tradition²². The vessel in which the wine was poured was sometimes known in Hungary as the “Ukkon cup”, which further points to German mediation since the name most probably derives from *urkunda/urkundi* meaning evidence or witness²³. (It has

²⁰ Lajos Takács, *Határjelek, határjárás a feudális kor végén Magyarországon*, Budapest, 1987, p. 173-89.

²¹ Takács, *Határjelek, határjárás*, p. 190-2; Livia Magina, *Instituția județului sâtesc în Principatul Transilvaniei*, Cluj, 2014, p. 218. For comparative examples, see R.J.W. Evans, *Frontiers and National Identities in Central Europe*, in “International History Review”, 14, no 3, 1992, p. 480-502 (p. 482).

²² David Ibbetson, *From Property to Contract: the transformation of sale in the Middle Ages*, in “Journal of Legal History”, 13, no 1, 1992, p. 1-22 (p. 7-8); Christopher McNall, *Litkup in the Rural Court Books of Old-Time Poland*, in “Czasopismo Prawno-Historyczne”, 49, nos 1-2, 1997, p. 11-25.

²³ Ulrike Köbler, *Werden, Wandel und Wesen des deutschen Privatrechtswortschatzes*, Frankfurt a/M, 2010, p. 117.

nothing to do, as was once thought, with the Finnish god Uku or Ukko!)²⁴. The cup might also be referred to as the cup of knowing (*tudomány-pohár*), the cup of proof (*bizonyság-pohár*), the cup of blessing (*poculum benedictionis*), or in view of his reputation for having survived a draught of poisoned wine, St John's cup²⁵. The drinking of the *áldomás* was ritualized to recall the mass, even to the extent of the wine being blessed in advance of its consumption. The solemnity of the *áldomás* doubtless reinforced agreement between the parties to a transaction. As one village council reported in 1598 in respect of a conveyance: "So that the contract of purchase be firmer and stronger, the parties confirmed it publicly and openly before us with the drink of union and the cup of blessing"²⁶.

The *áldomás* did not constitute an earnest, in the sense of being like the *Gottespfennig* an advance payment that imposed future obligations on parties²⁷. Instead, it usually accompanied the physical transfer of money from the buyer to the seller. The earliest reference to the *áldomás* is from 1310 and is contained in a charter issued by Achilles, priest of Sárospatak, which recorded a sale of land by a citizen of Újhely to some local hermits. The charter described the property involved, noted the seller's warrant, and concluded, "This purchase and sale was done in the presence and with the agreement of Stephen and Imre, son of Zidlik, of Bota, Andrew and John, son of Michael, and Ladislav, son of Waron, and of other inhabitants of the said town, to whom the prior and his brothers gave to drink the toast (*mercipotum*) and *áldomás*, according to the approved custom of this place. We at the petition of the parties give out as evidence our presents confirmed with our seal"²⁸. The charter survives along with a part of the original seal, but plainly the written evidence was considered less decisive than the list of names given in the text. In this respect, the charter served not so much as an authenticating instrument as a *notitia* recording the witnesses to the transaction, to whom recourse might be made in the event that the sale was contested.

References to the *áldomás* occur most frequently in respect of the sale of vineyards. On occasions, we will also find agricultural land being sold with an *áldomás* and, in one case, an urban *palatium* (although at 45 florins hardly an illustrious one!)²⁹. The *áldomás* might also be drunk to mark the conclusion of a long-running dispute — thus, in 1399, in respect of a protracted disagreement

²⁴ Hunfalvy Pál, *Ukkonpohár. A régi magyar jogi szokásnak egy töredéke*, Budapest, 1879, p. 3.

²⁵ Szendrey Ákos, *A magyar áldomás*, in "Ethnographia – Népelet", 53, no 2, 1942, p. 123-31; George Ferguson, *Signs and Symbols in Christian Art*, Oxford, 1954, p. 126.

²⁶ Hunfalvy, *Ukkonpohár*, p. 28.

²⁷ Ibbetson, *From Property to Contract*, p. 9.

²⁸ *Anjoukori okmánytár*, eds. Nagy Imre and Nagy Gyula, 7 vols, Budapest, 1878-1920, 1, p. 213; Hungarian National Archive, *Collectio Antemohacsiana* (hereafter MNL OL DL), DL 1751.

²⁹ Hunfalvy, *Ukkonpohar*, p. 15-6; *Zsigmondkori oklevéltár*, eds. Mályusz Elemér, Borsa Iván, Tóth Norbert C. *et al.*, 12 vols. (Budapest, 1951-2013), 1, no 488.

between the Lord Johannes and the Lady Ursula in Cincu (Cincul Mare, Nagysink, Gross Schenk), “as a further precaution and proof, the Lord Johannes drank the *áldomás* (*almasium*) with the lady in the presence of prudent men, the first of whom was Lord Michael de Schars, who blessed the *áldomás* [...]”³⁰. Charters of this type were invariably issued by minor agencies and officials, whose seals lacked legal credibility: for instance, castellans, local chieftains, private persons, councils of villages and market towns, and, later on, vintners’ courts³¹. They are not, therefore, a feature of noble society, for noblemen had access to seals and other instruments which were possessed of a complete legal authority. Indeed, the same considerations applied elsewhere in Europe. As Carl Wilhelm Proll observed in the standard eighteenth-century textbook on the German institution of *Weinkauf*, “Since even today contracts in many places lack judicial confirmation, particularly in respect of immovables, it follows that these earnestings or offerings of *Weinkauf* are no less frequent than before”³².

Despite the written evidence that survives of the ceremony being performed, we should imagine that many sales were completed with just the *áldomás* and that no physical record was kept, the names of the witnesses being entrusted solely to memory. This is clearly what Werbőczy meant in the *Tripartitum* (1517) when he described the case of a thief who says that he has bought a horse “at a free and public market or anywhere else but cannot present a warrantor (whom we call an *expeditor*) or produce the publican [*hospes*] or anyone else who would have blessed the sale and purchase as is usual [*qui mercipotum hoc est victimam emptionis et venditionis more solito benedixisset*]”³³. The implication of Werbőczy’s description is that the transaction would take place in the tavern before witnesses, with the tavern keeper solemnizing the *áldomás*. This procedure was formalized in Transylvania at the 1545 diet of Torda:

In the purchase of horses, oxen and anything else, the following should be observed. If someone buys something in the market or anywhere else at any time,

³⁰ *Hazai okmánytár*, eds. Nagy Imre et al., 8 vols, Győr and Budapest, 1865-91, 7, p. 430.

³¹ *Codex Diplomaticus Hungariae ecclesiasticus et civilis*, ed. György (Georgius) Fejér, 11 vols. in 44 parts (Buda, 1829-44), 10, part 6, p. 627-8; *A nagy-károlyi gróf Károlyi-család oklevéltára*, ed. Géresi Kálmán, 5 vols, Budapest, 1882-97, 2, p. 141; *A római szent birodalmi széki gróf Teleki-család gyömrői levéltára*, ed. Iványi Béla, Szeged, 1931, no 391; MNL OL DL 34855, 34864, 34865; Hunfalvy Pál, *Hegyaljai oklevelek*, in “Nyelvtudományi Közlemények”, 6, 1867, p. 327-49; Égető Melinda, *Hegytörvények forrásközléseinek gyűjteménye (1470-1846)*, Budapest, 2002, p. 68.

³² Carolus Guilielmus Prollius, *De iure mercipotus in contractibus vulgo vom Weinkauf*, Marburg, 1769, p. 22-3.

³³ *Tripartitum opus iuris consuetudinarii*, III, 34 [3], given in *The Customary Law of the Renowned Kingdom of Hungary: A Work in Three parts Rendered by Stephen Werbőczy*, eds. János M. Bak, Péter Banyó and Martyn Rady (*Decreta Regni Mediaevalis Hungariae*, 5), Budapest and New York, 2005, p. 422-3.

the buyer should give the cup of St John, which they are accustomed to call *Áldomás* in the vernacular, before upright and honest men of the city or vill where the purchase is made, as a sign that it is just; and should any dispute occur involving the purchaser and the things he has bought, the truth of the sale shall be determined by the evidence of the men who were there at the cup of St John. And if the purchase is done outside the city or vill, then the purchaser should present the warrantor, who in our language is called *zawathos* (*szavatos*), and if the purchaser cannot provide the warrantor, then he should be suitably punished³⁴.

In fact, as we know, this last clause was set aside in the Transylvanian Székely lands, where the *áldomás* substituted for the warranty, even though it was doubtless hard to find witnesses in the remote countryside³⁵.

During the course of the seventeenth and eighteenth centuries, the *áldomás* became an increasingly lavish occasion, particularly in respect of the sale of vineyards. Thus, from Bereg County in 1625 – “The buyer shall provide *áldomás*, which is three plates of food, a butt (*köböl*) of wine and a spit roast (*nyárs pecsenye*); the seller shall give a silver coin (*márias*)”³⁶. The dozen or so members of the vintners’ court usually acted as the witnesses on which account the cost of providing refreshment rose. In the wine country around Tokaj, it was common for the *áldomás* to include as many pints (*itcze*) of wine as there were florins in the transaction. The wine was distributed in its cup by a specially-appointed cupbearer (*pohár-felmutató*), who seems to have discharged this role on a retained basis. The *áldomás* was usually paid for by the purchaser, although we know of occasions when the costs were shared with the seller³⁷.

After the *áldomás*, the court issued out a sealed charter attesting to the transaction. In respect of the purchase of a plot of cleared land in Abauj County, the Füzér village court recorded in 1655: “In proof of which, Martin Tóth [the purchaser] brought and gave to us the judges and citizens the *áldomás* and binding cup (*kötő pohárát*) of fifteen pennies’ worth of wine, and for greater proof we give out this letter, confirmed with our village’s seal”³⁸. Nevertheless, if the sale was subsequently disputed, it was not the charter to which recourse was had but instead the recollection of the witnesses, and it was to these that the courts deferred. Thus, in one late sixteenth-century case proceeding before the Spiš treasury court at Košice, where the kinsmen of the vendor disputed the legality of a sale made at Hrušov (Körtvélyes) in Turňa (Torna) County, evidence was taken of those present

³⁴ *Erdélyi országgyűlési emlékek*, ed. Szilágyi Sándor, vol. 1, Budapest, 1875, p. 219-20. The warrantor was usually the seller, although he might pass the warrant back to the party from whom he himself had bought the goods.

³⁵ *Compilatae Constitutiones Regni Transilvaniae* (1654), III. 8. 14 (Cluj 1693 edition, p. 51).

³⁶ Égető Melinda, *Hegytörvények forrásközléseinek gyűjteménye*, p. 68.

³⁷ Hunfalvy, *Hegyaljai oklevelek*, p. 334-5. See also Szendrey, *A magyar áldomás*, p. 124.

³⁸ Hunfalvy, *Ukkonpohár*, p. 16.

at the *áldomás* to test whether any protests had been made at the time of the transaction. Their statements survive – thus, for instance, “The *áldomás* was drunk at Körtvélyes, before the judges and citizens, and both parties were there, Imre Kelemen and Miklós Balázs, and at Imre Kelemen’s request I showed the Urkon cup, and Imre Kelemen put down 84 florins, and the next day Miklós took the money. I never heard that anyone protested”³⁹.

Over the course of the seventeenth and eighteenth centuries, the *áldomás* was eclipsed. First, it was often monetized and replaced by a fixed payment delivered to the village or vintners’ court⁴⁰. Secondly, its evidentiary value was superseded by the increased reliability of written protocols and registers, to which courts might refer in any subsequent litigation⁴¹. Accordingly, the name of *áldomás* shed much of its legal meaning and became instead a more general term used for such convivialities as marked the start of house building, entry to guild membership, or annual village festivities⁴². Nevertheless, the *áldomás* as a legal event did not disappear entirely. Even in communities where there were strong traditions of legal literacy, the *áldomás* continued to be performed. This was particularly the case in the Saxon communities of Transylvania. Writing in the mid-nineteenth century, Schuler von Libloy noted the conditions necessary for the valid alienation of land, in particular the notification of relatives and neighbours that a sale was due to take place, and public proclamation on three occasions. To these he added the following condition: “As final proof the solemnity of the *Aldomasch* drink happens, which is done in accompaniment with the institution (*Statutio*) in the presence of witnesses and neighbours, and which constitutes a public act. Through the symbolic conveyance of the property, the agreed legal transfer is shown to be true and valid, and approved by the whole community”⁴³.

The history of the *áldomás* necessarily qualifies the triumphalist account of the advent and growth of legal literacy. First, acts of recollection and memorialization continued to have a role even in societies where there was a high degree of literacy. This is not surprising. Even today perfectly literate businessmen may solemnize their exchanges with a drink or handshake, in much the same fashion as the Transylvanian Saxons in the nineteenth century. Secondly, the use of the *áldomás* in the medieval and early modern period was not the consequence of legal illiteracy, for the event and the witnesses were frequently listed on sealed

³⁹ ”Történelmi Tár”, 1878, p. 659-60; see also, István Bogdán, *Régi magyar mulatságok*, Budapest, 2003, p. 161.

⁴⁰ Égető, *Hegytörvények forrásközléseinek gyűjteménye*, p. 31, 134, 172.

⁴¹ Melinda Égető, *Hegytörvények és szőlőtelepítő levelek Somogy vármegyéből (1732-1847)*, Budapest, 2011, p. 185, 209; Égető, *Az alföldi paraszti szőlőművelés és borkészítés története a középkortól a múlt század közepéig*, Budapest, 1993, p. 127-8.

⁴² Bogdán, *Régi magyar mulatságok*, p. 162-6.

⁴³ Schuler von Libloy, *Siebenbürgische Rechtsgeschichte*, 2nd ed., 2 vols, Sibiu, 1867-8, 2, p. 314.

charters. It was instead the case that the charters lacked the character of fully legal instruments. Under these circumstances, the recollection of witnesses provided an alternative to written proof. It was a common enough expression in the later Middle Ages that for the *illiteratus*, “memory often seems to serve in place of books”⁴⁴. For many communities, however, the book of memory was forced upon them not on account of any intellectual deficiency on their part but by reason of the insufficient legal credibility attaching to their written words.

⁴⁴ Sabine Krüger, *Verhöflichter Krieger und miles illiteratus*, in *Curialitas. Studien zu Grundfrage der höfisch-ritterlichen Kultur*, ed. Josef Fleckenstein, Göttingen, 1990, p. 326-49 (p. 334); Joshua C. Benson, *Matthew of Aquasparta's Sermons on Theology*, in *Franciscans and Preaching: Every Miracle from the Beginning of the World came through Words*, Leiden, 2012, p. 145-73 (p. 169).

