GOLDEN BULLS AND CHARTAS: EUROPEAN MEDIEVAL DOCUMENTS OF LIBERTIES

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GOLDEN BULLS *and* CHARTAS: EUROPEAN MEDIEVAL DOCUMENTS *of* LIBERTIES

ELEMÉR BALOGH (*ed.*)

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Elemér Balogh (ed.)
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CONTRIBUTORS

EDITOR

Elemér Balogh
Professor, Faculty of Law and Political Sciences, University of Szeged, Hungary

AUTHORS

Sir John Baker (Chapter 9)
Emeritus Professor, Faculty of Law, University of Cambridge

Elemér Balogh (Chapter 2)
Professor, Faculty of Law and Political Sciences, University of Szeged, Hungary

Christophe Chabrot (Chapter 3)
Senior Lecturer, Julie-Victoire Daubié Faculty of Law, Lumière Lyon 2 University, France

Ignacio Czeguhn (Chapter 7)
Professor, Department of Law, Freie Universität Berlin, Germany

Mária Homoki-Nagy (Chapter 6)
Professor, Faculty of Law and Political Sciences, University of Szeged, Hungary

Tomasz Jasiński (Chapter 11)
Professor, Faculty of History, Adam Mickiewicz University Poznań, Poland

Heiner Lück (Chapter 4)
Professor, Faculty of Law, Martin Luther University Halle-Wittenberg, Germany

Aniceto Masferrer (Chapter 1)
Professor, Faculty of Law, University of Valencia, Spain

Srđan Šarkić (Chapter 10)
Professor, Faculty of Law, University of Novi Sad, Serbia

Emőd Veress (Introduction)
Head of the Department of Private Law, Ferenc Mádl Institute of Comparative Law
Professor, Department of Law, Sapientia Hungarian University of Transylvania, Romania
Professor, Faculty of Law, University of Miskolc, Hungary

Helle Vogt (Chapter 5)
Professor, Faculty of Law, University of Copenhagen, Denmark

Martin Wihoda (Chapter 8)
Professor, Faculty of Arts, Masaryk University, Czech Republic

REVIEWERS

Albrecht Cordes
Professor, Faculty of Law, Goethe University Frankfurt am Main, Germany

Bernd Kannowski
Professor, Faculty of Law, Business and Economics, University of Bayreuth, Germany

Ulrike Müßig
Professor, Faculty of Law, University of Passau, Germany

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THE HUNGARIAN GOLDEN BULL – AN 800-YEAR-OLD MEDIEVAL CHARTER OF FREEDOM

The Golden Bull, issued 800 years ago, in 1222, by King Andrew II (reigned 1205–1235), undoubtedly brought about very important reforms in the medieval Kingdom of Hungary. The importance of the decree, named after its gold seal, is reflected in the material of the seal: while the seal was indeed a common formal accessory for medieval documents, the gold seal was always intended to distinguish certain documents from others. Its importance was also underlined by the fact that it was produced in seven copies, each of which was given to a custodian of the text of the Golden Bull (the Pope, the Johannites, the Templars, the King, the Esztergom Chapter, the Chapter of Kalocsa and the Nádor i.e. the Palatine). Five ecclesiastical and two secular powers were to have custody of the original text of the Golden Bull. Despite this, only copies of the text have survived.

Even without a detailed analysis of the content, we can feel the temperament, the psychology, and the power of the legal document. "We are also resolved that neither we nor our successors shall capture *servients* (a wealthy commoner serving the king) or cause his ruin for the sake of some powerful lord, unless he has been previously summoned to trial and convicted by a court of law." If the king intends to take an army outside the country, the *servients* must go with him only at his expense. The monarch undertook not to collect a war related tax from them after their return. The situation would be different if the enemy came to the country: then they would all have to go to fight jointly and

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severally. No one should ever be deprived of his possessions acquired by honest service. If a *comes comitatus* does not behave honestly according to his own lordship, or destroys his people, he shall, if he is found to do so, be dishonourably deprived of his office before the whole country, with the restitution of the property taken. If a man is condemned by a court of law, he shall not be defended by any of the mighty. Neither shall any tax be levied on the estates of *servients*, and they don't have to pay neither the denarii of freemen. Similar provisions make up this charter of liberty.

It is clear that an order of the exercise of sovereign power was laid down in the Golden Bull. One interpretation is that the weak, vulnerable king, cornered by the nobility, is forced to make concessions. The ruler had given up some of his power, forced to compromise. This interpretation was the dominant one in historiography under the Soviet-style dictatorship, since it fitted very well into the class-warrior logic of Marxist historiography. (Even in this period, the interpretation was not exclusive, since, for example, the émigré Irodalmi Újság, published in Paris on 1 May 1962, recorded in an anonymous analysis that "Andrew II, proclaimed as a weak king, was one of the main promoters of the social consciousness of Hungarian state life. His comprehensive conception of Balkan and Eastern policy, the economic reorganization of the country, the shift from crop to cash economy, the conscious prevention of feudal stratification, and finally the Golden Bull, present him as an undeservedly belittled figure of a personality of ability and action far beyond his years.")

This alternative understanding has become dominant: it is not a question of a cornered ruler, but of a strong king who reforms and modernizes the state, who expands his power base through his actions, and who rewards his followers. This is necessary, since he won his throne after power struggles with his predecessor and his brother King Emeric, and finally became king by setting aside Emeric's underage son, Ladislaus III. Emeric's former supporters, at least some of them, remained opponents of Andrew II. On several occasions, they tried to organize a claim to the throne against Andrew II, even using Andrew's minor son, Béla. They were opposed by a middle class of peers, the servients, and Andrew II wanted to secure their status. The servients were a special

class, as I have mentioned, of wealthy common freemen serving the king, who were later absorbed into the nobility. Many of the provisions of the Golden Bull referred to their status (11 of the 31 articles of the decree were about the servients) and their protection, so it is clear that the king wanted to make a 'gesture' towards them, to stabilize their position, because they were one of the bases of the ruler's power. Another reason for issuing the Golden Bull was that the king's political and economic reforms (basically, limiting the powers of the *comes comitatus* and strengthening the royal power) also needed to gain a social base.

Andrew II was a king who did not abdicate his power, but exercised it precisely in the direction he thought right. This interpretation is supported by the text of the Golden Bull itself: the aim of the decree is to ensure that the nobles who support the king "enjoy their freedom, and, for this reason, that they will always be supporters of us and our successors, and not refuse the services due to the royal crown".

But if this second approach is correct, we would normally expect a legal document of short duration, linked to the political situation of the moment. This was not the case with the Golden Bull: it was constantly applied, interpreted and reinterpreted, i.e. it became an integral part of the Hungarian constitutional tradition. The *Tripartitum* (1514), the great collection of customary law, gave the Golden Bull a special place in its compendium. Elements of the Golden Bull that have survived over the centuries include personal liberty, exemption of nobles from taxation and the resistance clause.

Even in one of the successor states of the Hungarian Kingdom – which was divided into three parts in the decades following the Battle of Mohács (1526) for centuries -, in the Principality of Transylvania, the obligation to respect the Golden Bull was a special, prominent part of the princely oaths or election conditions (conditio) (from the late 1500s to the late 1600s).

Later, during the Habsburg absolutism, the text of 1222 was also used against the rulers: "We decree that if we or any of our successors should ever wish to oppose this decree, by virtue of this charter, without any fault of disloyalty, all the bishops and other lords and nobles of our country, all and every one of them, present and future, may resist and oppose us and our successors for ever. "This is the famous resistance clause.

In the medieval context, it meant something different (much less) than in later reinterpretations, which sought to derive from this provision a realistic limit to the monarch's power. In the Middle Ages, it was more a promise of self-limitation of power than a text that actually restricted the king and created a real right of subjective resistance. Later, however, this text meant something else: a basic noble right (jus resistendi) was derived from it. In 1684, for example, Emeric Thököly called the right of resistance the "soul and summit of Hungarian freedom", which he said "perfectly washes away the stain of rebellion". It is no coincidence that the Habsburgs, as kings of Hungary deleted the resistance clause from the Golden Bull in 1687. Later, for example, in Ferenc Rákóczi's proclamation of 1703, the abolition of the resistance clause was already seen as proof of the Habsburg unlimited desire for power and arbitrariness.

The Golden Bull is one of the basic legal documents of the medieval Hungarian Kingdom, but it cannot be taken out of the general context of the period. The present volume discusses, for example, the Decree of Leon (1188) and the Magna Carta (1215), which may have influenced the Hungarian decree. There are some thematic and partial content similarities between the three documents, but this may also be the result of the "zeitgeist".

The Hungarian dynasty of the House of Árpád had a connection with the Iberian peninsula. András II's predecessor, his brother, was King Emeric. Emeric 's wife was Constance of Aragon. Constance had to leave the country after her husband's death because of her unsuccessful attempts to secure the kingship of her 4-6 year old son, Ladislaus III, precisely against Andrew II. The young child, Ladislaus III, died during this power struggle (1205), and the claim to the throne was extinguished (Constance later, in 1209 became the wife of the German-Roman Emperor Frederick II, and died in 1222, the year the Golden Bull was issued). What is significant is that, when she married Emeric in 1198, she came to Hungary with a large domestic entourage, and there must have been ecclesiastical or secular persons in her court who knew, for example, the Decree of Leon, and could have transmitted its spirit and technique of this medieval letter of liberty. Also the marriage of Violant, daughter of Andrew II, to King James I (the Conqueror) of Aragon (1235) is also indicative of the connections of the time (the influence of

the Hungarian Golden Bull on later Aragonese regulation has also been theorized).

There was also an opportunity to learn about the Magna Carta. For example, in 1215, shortly after the publication of the Magna Charta, the Fourth Lateran Council took place, where many opportunities for contact and consultation arose between the English and Hungarian prelates. Or, in 1220, the reburial of Thomas Becket, Archbishop of Canterbury, which was a significant event of the time, was attended by two Hungarian church leaders, who also had the opportunity to learn about the Magna Carta.

But the parallels between these charters of freedom are both vague, the differences are numerous, the intensity of the effect may be minimal, and there is no concrete pattern-tax relationship between these documents. It is more likely that there was an interaction between the flow of state philosophies and legal techniques, on the one hand, and the local political situation, on the other, that gave rise to medieval charters of liberty, and that differences predominate alongside similarities.

The present volume also examines the international context of the Golden Bull, its antecedents and the subsequent documents of a similar nature in some states, without claiming to be exhaustive. However, the exploration of possible parallels is not a side issue. The volume, using the method of legal historical research, pursues a twofold aim: on the one hand, it pays homage to the Hungarian Golden Bull, an 800-year-old legal document, and on the other, it seeks to provide an accurate, novel and interesting scholarly vision of the medieval letters of freedom.

It should also be pointed out that the original text of the Golden Bull and its layers of interpretation are part of the Hungarian historical constitution (in Hungary, a written constitution was adopted only under the Soviet-style dictatorship, in 1949). The preamble of the Fundamental Law in force today states that "we shall respect the constitutional traditions of our historical constitution" and Article R states that the Fundamental Law shall be interpreted in accordance with the constitutional traditions of the historical constitution. So there is still a layer of the Golden Bull that is in force, that can be considered legitimate from today's point of view, and that has been perpetuated as a value in the development of the law and state. Of course, we are not talking about

all the provisions of the Golden Bull, but only those that are valid in the context of the rule of law.

This book also marks the beginning of a new series of volumes in the English language that will explore the lessons to be learned from the history of law and that aim to preserve the heritage of our legal culture.

Emőd Veress

THE SPANISH ORIGINS OF LIMITING ROYAL POWER IN THE MEDIEVAL WESTERN WORLD: THE *CORTES* OF LEÓN AND THEIR *DECRETA* (1188)

ANICETO MASFERRER*

ABSTRACT

The Decreta of the kingdom of León was issued by King Alfonso IX in 1188, in the setting of the Cortes of León, a medieval parliamentary body. According to UNESCO, this Cortes represents the first documented example of parliamentarism in history, since the curia regis was extended to incorporate deputies of the relevant citites, thus including representatives of the cities' political forces and merchants. The Decreta is also the first medieval charter of freedoms that has survived (in copies). An analysis of the conditions under which the Decreta was created and the content of this charter of freedom reflects local political conditions, but also universal values.

Keywords: *Kingdom of Leon, cortes, decreta, Alfonso IX, parliamentarism*

* Professor of Legal History and Comparative Law, University of Valencia. aniceto.masferrer@uv.es

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1. THE HUNGARIAN GOLDEN BULL (1222) AND THE ENGLISH MAGNA CARTA (1215)

The year 2022 was the 800th Anniversary of the approval of the Golden Bull by Andrew II of Hungary (1222),[1] regarded as one the first European documents that notably limited royal power. The king would not have limited his power if he was not under pressure from powerful, feudal lords. According to current interpretations, however, the Golden Bull codified the policies of the king comprising concessions made to the nobility that supported him in the internal political struggles and pursuit of his reform agenda. Practically, the basis of royal powers was rearranged, which may seem paradoxical, as limiting royal power was also a way to strengthen it. The case was similar to that of the *Decreta*. The document, called "Aranybulla" in Hungarian, entailed 31 chapters. The first two chapters note the following:

> *Let no nobleman be arrested (unjustly), nor oppressed at the desire of any power* (Chapter I).
>
> *The nobles shall pay no more taxes, no denarii shall be collected from the coffers of the nobles. Neither shall their residences nor their villages be occupied, and they shall be visited only by those who have been invited. No taxes shall be collected for the Church* (Chapter III).

Some argue that, as per the text, if the Hungarian king could not maintain the guarantees contained therein, it was considered lawful to rise against the monarch. Notably, the text affected the nobility, not the freemen living in the emerging medieval cities. The Golden Bull was one of the first European documents to give evidence of the medieval tendency toward limiting royal power.

However, seven years earlier, a similar text, though longer than the Golden Bull—the so-called *Magna Carta*—was the basis of an agreement between King John I of England and a group of nobles (London, 15.VI.1215). The English text was traditionally considered the first

1 *De Bulla Aurea. Andraea II Regis Hungarie, 1222*, Verona: Edizioni Valdonega, 1999.

document limiting royal power, inducing the creation of the rule of law, which is among the main pillars of the Western legal tradition.

The Magna Carta of John I of England (known as John Lackland) is among the best-known documents of the English legal tradition. The agreement emerged from a dire royal need. Finding himself in a delicate situation (given social problems and serious foreign policy challenges), John Lackland was compelled to sign the document, which enshrined a set of legal and procedural guarantees, establishing limits to the exercise of feudal power. Thus, the text is also known as *Magna Carta libertatum* (Magna Carta of Liberties) because it makes a grant of liberties, as Chapter I highlights:

> *TO ALL FREE MEN OF OUR KINGDOM ('To all free men of our Kingdom') we have likewise granted, for Us and for our heirs in perpetual title, all the liberties hereinafter enunciated, to be had and possessed by Us and our heirs for themselves and theirs.*

Although the text is addressed to all free persons of the kingdom, the assembly was notably only attended by the aristocracy, and the 63 chapters of the document ensured the feudal rights of the aristocracy against the royal power. Beyond establishing that the monarch could not, with few exceptions, demand the scutage (tribute or payment made to the king for war expenses) or the auxiliary (monetary amount) without general consent (ch. 12), for which purpose the nobles must be summoned ("the archbishops, bishops, abbots, dukes, and principal barons," ch. 14), it was established that the city of London "shall enjoy all its ancient liberties and franchises by land as well as by sea. Likewise, we will and grant that the other cities, boroughs, towns, and ports shall enjoy all their liberties and franchises" (ch. 13).

However, the most noteworthy aspect of this text was the establishment of the legal and procedural guarantees contained in chapters 39 and 40, which enshrined the right to due process and the right to judicial protection, respectively:

> *No free man shall be arrested or imprisoned or deprived of his rights or property, nor put outlawed or banished or otherwise deprived of his rank,*

> *nor shall we use force against him or send others to do so, except by virtue of judicial sentence of his peers or by the law of the realm* (ch. 39).
>
> *We will not sell, deny or delay to anyone his right or justice* (ch. 40).

Although historiography, beginning with the English one, has mythologised this text, its content in the idea of granting liberties and establishing the aforementioned guarantees, was not novel at the beginning of the 13th century. However, it can be perceived in the more general context of political and economic transformations that occurred in Western Europe and some Central European states like Hungary. Thus, from similar processes emerged texts with similar content.

This chapter provides evidence of this historical truth. After this introduction (1.), Part II (2.) highlights the challenge of being immune to a biased observation and analysis of legal traditions when political and ideological ("national") interests are at stake and why the tendency of limiting royal power emerged and spread in medieval Europe. Part III (3.) argues for why the *Decreta* of the Cortes of León (1188) was a pioneering document, giving evidence of a tendency present in many European territories. Note the assumption that other documents, potentially older than the *Decreta* of León from different European territories, might be discovered in the future, for which a revision and recognition of which document is the first in Europe would be in order. Otherwise, the *Decreta* of the Cortes de León assumes the pioneering position.

2. HISTORICAL SCIENCE VS IDEOLOGY, SCHOLARSHIP VS POLITICS: THE MEDIEVAL ORIGINS OF LIMITING ROYAL POWER

In the Cortes of Cádiz (1812) context, Francisco Martínez Marina defended the thesis that there was a historical continuity between the 19th-century Cortes and the medieval ones, particularly those

celebrated in Castile and León.[2] Decades later, Joaquín Francisco Pacheco maintained the contrary thesis concerning the substantive criminal law contained in the Criminal Code of 1848, arguing that nothing from the past had been kept because everything was useless and unfit for modern times.[3]

These two examples show the temptation to mix scholarship with politics or legal science with ideology, which I learned from my colleague, J.M. Scholz, as I began work as a research fellow at the *Max-Planck-Institut für europäische Rechtsgeschichte* in summer 2000. He warned me of the incompatibility between doing research and political devotion.[4] Some of my research projects affirmed that Scholz was right. Controversies or rivalries between scholars from different schools of thought, nations, or traditions also affirm this truth. In the codification movement context, how "Codiphobia" poisoned the debate about the convenience to resort to the technique of codification to undertake legal reform in 19th-century England[5] or how passions overshadowed the discussion about whether to codify the private law of New York are notable.[6]

Accordingly, the title of this chapter may seem quite provocative from an ideological or nationalistic perspective. Are the origins of limiting royal power in the Middle Ages really "Spanish"[7]? Is it not possible that the emergence of the first documents and institutions limiting royal power could have arisen in other European territories

2 Martínez Marina, 1813; see Masferrer, 2018, pp. 276–292.

3 See Masferrer, 2018, pp. 193–242.

4 I remember he used the expression "*Mitmachen*", meaning to participate, contribute, play along with, or get involved in something in to transform the social reality.

5 Amos, 1856; see also Masferrer, 2019, pp. 11–22.

6 Reimann, 1989; see also Masferrer, 2008, pp. 173–256; Masferrer, 2008–2010, pp. 355–430.

7 The expression "Spanish" is only applicable from the reign of the Catholic monarchs (1479–1504), particularly, from Charles V (1516–1556), onward, a period where the political unity of the Spanish monarchy was compatible with the legal diversity. Thus, the different kingdoms and territories of the crown of Castile and Aragon had their political and legal institutions; Masferrer, 2009 (2nd ed., 2012).

rather than the Iberian Peninsula? Perhaps, it is; however, current evidence points to the *Decreta* of León of 1188 as the first document, whose content regarding limiting royal power is, as will be seen, similar to that of the famous Magna Carta (1215) of John, King of England. I am quite convinced that other European territories might have had similar texts or practices before 1188. In Spain, for example, from the Fueros of Sobrarbe that appeared in the middle of the 9th century emerged the "Antes leyes que reyes" ("First laws and only afterward kings") principle.[8]

In 13th-century Europe, places such as England, France, the Holy German Empire, Italy, Poland, Hungary, and Spain limited royal power. That century witnessed the origins of two relevant political and legal institutions: the rule of law or principle of legality (connected to the recognition of rights, though not in the modern sense, and concession of privileges), and parliamentarism (connected to the idea of an agreement or pact among those affected by decisions: "*Quod omnes tangit, ab omnibus debet approbari*").[9]

Unsurprisingly, the 13th century witnessed the emergence of royal power and the approval of charters and legal institutions to limit such power, which explains why most medieval institutions were particularly studied, praised, and idealised in 16th-century Europe. In England, particularly in the 17th century, royal absolutism threatened the *status quo* of social states, especially the nobility privileges and the natural rights of freemen. As kings did not enjoy much political power in many European territories in the 11th and 12th centuries, there was no reason to limit royal power. However, the emergence of royal power in the 13th century, given various historical factors (e.g., social, economic, military, cultural, political, and legal), furnished the need for limiting royal power. Similarly, the emergence of royal absolutism in the 16th and 17th centuries, also given various factors, induced some lawyers to focus on medieval institutions that had emerged precisely to limit royal power. Examples include the interest of Aragón's lawyers in the *Fuero*

8 See fn n. 11.

9 Condorelli, 2013, pp. 101-127; see also Arecco, 2005, pp. 163–175 .

of Sobrarbe in the 16th century or that of English lawyers in the *Magna Carta* in the 17th century.

Spain in the 13th century comprised various autonomous kingdoms or territories: Castile, León, Aragón, Catalonia, Navarre, Basque provinces (Álava, Guipúzcoa y Vizcaya), Valencia, and Majorca (the Catalan territory was called *Principatus* or Principality).[10] Except for the Balearic islands and Basque provinces, all Spanish territories had their parliaments (or *Cortes*, as they were called in the sources), attended by the three social states: the ecclesiastical nobility, secular nobility, and common people or representatives of the cities. Evidence suggests that the attendance of common people started in Castile and Aragón-Catalonia in 1214 and León in 1188.

Parliaments did not emerge from the royal awareness of the benefits of limiting royal power but from a royal dire need for various reasons (personal or familiar, political, economic, or military). In Spain, kings began to resort to assemblies in the Early Middle Ages when their power did not guarantee peace and security. Accordingly, particularly relevant were, for example, the assemblies of peace and truce of God.[11] Other institutions of assemblies somehow revealed the weakness of royal power: *curia regis* and councils (where kings were supported by secular and ecclesiastic nobility) and charters of the population (where nobility and freemen supported military undertakings by occupying new territories reconquered from Muslims). Such assemblies did not appear to limit royal power, given that, at that time, the king, was a *primum inter pares* or looked for support to remedy his weakness.

10 While Castile and León were definitely united by Ferdinand III in 1230, Aragon and Catalonia were also united in 1137 from the marriage of Ramon Berenguer and Petronila of Aragón; later, the kingdom of Aragón comprised united Valencia, Majorca, Menorca, and the Italian territories of Sicily, Corsica, Sardinia, and Naples. Hence, most territories of the Basque provinces were united to Castile at the beginning of the 13th century. The marriage of Ferdinand of Aragon and Isabelle of Castile politically united both kingdoms, from which the Spanish monarchy under the Catholic kings emerged (1469). In 1512, Navarre was incorporated to Castile.

11 Hoffmann, 1964.; Head and Landes, 1992; Kosto, 2003, pp. 133–149; Masferrer, 2014, pp. 28–48, particularly pp. 31–39.

3. THE *DECRETA* OF THE CORTES OF LEÓN (1188) AS THE FIRST DOCUMENT LIMITING ROYAL POWER: THE LEONESE ORIGINS OF WESTERN PARLIAMENTARISM AND THE RULE OF LAW

The Arabic invasion of the Iberian Peninsula created a peculiar situation that encouraged or "forced" the common people to sometimes defend themselves, even in regions without any political or royal initiative or support. It induced the emergence of a popular legal culture characterised by the existence of laws without a king, giving rise to the well-known saying in Aragón and Navarre, "*Antes leyes que reyes*" ("Laws first and kings afterward"), as it would be presented in the early modern age.[12] This principle might have appeared in the *Fueros de Sobrarbe*, a charter allegedly enacted in the Pyrenean valley of Sobrarbe in the middle of the 9th century, according to a falsified version of the *Fuero de Tudela* (postdated to 1117). As per legend, the *Fuero de Sobrarbe* contained some liberties, including the following: laws may not be impaired, a mediator judge shall watch, and it shall be lawful to appeal to the king should anyone be injured.

In the late Middle Ages, even though royal power was strengthened for various reasons (e.g., the emergence of cities and merchants and their incorporation in parliaments, the creation of universities, and the prestige of Roman law that supported kings as main legislators), kings were not adequately strong to address political turmoil without being compelled to make concessions. Thus, the *Privilegio de la Unión* granted to Aragón in 1287 was quite similar to the English *Magna Carta*, as the nobility took advantage of the challenging situation of Alphons III of Aragón to obtain prerogatives that were confirmed in the Cortes of Zaragoza (1347) but derogated a year later by Pedro IV because of the Battle of Épila. Like the *Magna Carta*, the *Privilegio de la Unión* affected the nobility, not the freemen. The *Privilegio General* granted in 1283 by Pedro III in the context of the military intervention in Sicily and its

12 García Pérez, 2008.

consequences (economic, political, religious, and social) affected the cities of Aragón.[13]

Notably, both Privileges of Aragón—*Privilegio General* (1283) and *Privilegio de la Unión* (1287–1348)—were linked to 9th-century *Fuero de Sobrarbe*. Moreover, the Fuero de Sobrarbe was somehow present in the cities of Aragón (through the *Fueros of Aragón*, 1283) and Navarre (through the *Fueros de Navarra*, 1238).

In Catalonia, another political turmoil led Jaume I to summon the representatives of the cities in the Cortes of Lleida in 1214. For some historians, the first Cortes of Castile were also celebrated in 1214.[14] There is no doubt that the first Cortes of León, convoked and presided over by Alphons IX, occurred in 1188, followed by the Cortes of 1202 and 1208.[15] Irrespective of whether these meetings of León should be called "Cortes" or *Curia extraordinaria*[16] or whether Cortes *stricto sensu* started in the 13th century,[17] it seems clear that they were attended by citizens.[18] Thus, they might be regarded as "Cortes."[19]

The document that justifies the title of this chapter is the first Cortes of León, particularly their *Decreta*. Unlike the *Fueros de Sobrarbe*, which belong to the 9th century but whose historical basis is not entirely certain or consistent, there is evidence that i) these Cortes were celebrated in 1188, ii) Alphons IX invited citizens from different cities to attend and participate (as he would do it again in 1202 and 1208), and iii) two bodies of laws were enacted (some constitutions against violence and thieves

13 Danvila y Collado, 1881; González Antón, 1975; Lalinde Abadía, 1980, pp. 55–68; Sarasa Sánchez, 1979; Sarasa Sánchez, 1984.

14 See Procter, 1980; O'Callaghan, 1989.

15 Colmeiro, 1861, chapter IX; Cavero Domínguez, 2009; some historians discussed whether the first Cortes of Castile and León were celebrated in Burgos (1187), in San Esteban de Gormaz (1187), or in León (1188); or whether the first Cortes of the Iberian Peninsula occurred in Portugal in 1143; see Martín Rodríguez, 2003, pp. 29–64; See also the works by Arvizu Galagarra, 1988, pp. 13–141; Arvizu Galagarra, 1994, pp. 1193–1238; Arvizu Galagarra, 2002, pp. 37–46.

16 See, for example, Estepa Diez, 2002, pp. 181–190, pp. 183–184; De Ayala Martínez, 1996, pp. 193–216; Mitre Fernández, 1989, pp. 415–426; Procter, pp. 67 ss.

17 Nieto Soria, 2011, pp. 197–241.

18 Fernández Catón, 1988.

19 For this view, see González Díez and González Hernández, 2018.

and the *Decreta*, the original of which has not been found, though there are many original and cartulary copies). The text of the *Decreta*, originally drafted and approved in Latin[20], has since been translated into Spanish[21] and English[22] and, recently, Hungarian,[23] comprises seventeen chapters.

These *Decreta* are relevant from a historical perspective because i) they reflect a strategy to strengthen royal power by obtaining institutional support rather than weakening the monarch's power, and ii) they show how adopting a wider representative assembly or a parliamentary system strengthened royal power. That is, the outcome of the Cortes of León of 1188 was two-fold: a) maintaining justice and ensuring peace in the kingdom by resorting to the rule of law or legality principle, and b) enhancing the joint participation of common people in discussing matters that affected them. What happened in León in 1188 would spread and become common in other European jurisdictions some years later: German Diet (1232), English parliament (1265), and French General States (1302).

While the *Privilegio General* (1283) and *Privilegio de la Unión* (1287) are relevant texts in introducing the principle of the rule of law and some judicial guarantees, the *Decreta* of León (1188) were approved almost a century earlier. Though Aragón's *Fuero de Sobrarbe* is much older than the *Decreta*, no documentary evidence dispels the tradition surrounding this legal source. Hence, the *Decreta* of León in the Iberian Peninsula are the earliest document comparable to the *Magna Carta*, where the king committed himself before the social estates, including the citizens, to respect the law and guarantee a set of procedural rules (which is today called the "right to due process").

What were the circumstances surrounding these Cortes of León, considered to be the first in the history of Western European parliamentarism? The economic needs of Alfonso IX of León from the rising prices after a tax increase to cope with the break of the reconquest and

20 González, 1944, doc. 11, pp. 23–26.

21 Fernández Catón, 1993, pp. 93–117.

22 Seijas Villadangos, 2016, p. 23; see this version – with some minor corrections – in the Appendix of this chapter.

23 Mezey, 2022.

the need for income to cope with the war with Portugal and Castile led the monarch to convene an extraordinary *curia regia*, where, for the first time in Europe, discounting the Icelandic case (with its legislative assembly, the "Althing"), the representatives of the city (with voice and vote) were invited. The king, realising the need for strengthening his social and political legitimacy, made the wise decision to submit a set of decrees for approval. Such *Decreta* included the recognition of a set of rights and liberties, such as the inviolability of home and mail, the obligation of the monarch to convoke Cortes and make war or declare peace, and the guarantee of various individual and collective rights.

Leaving aside the importance of the Cortes of León from a parliamentary perspective, their *Decreta* are perfectly comparable to the English Magna Carta in defending some principles connected to the rule of law and judicial guarantees. Below are brief references to some chapters containing these principles.[24]

Chapter I contains a royal commitment to observe and contribute to compliance with the customs established by Alphons IX's antecessors, establishing and confirming under oath that he would "respect the good customs (...) established by my predecessors" (Ch. I).[25]

Chapters II and III contain a royal commitment that only accurate, well-founded evidence would amount to an accusation, where the royal curia acts as the highest court of appeal. In Chapter II, Alfonso IX promised not to deny justice to anyone "if anyone should make or present a denunciation of anyone to me," threatening the informer who could not prove his accusation with "the punishment that the accused would have suffered if the accusation had been proven" (Ch. II). Moreover, given the denunciation, the king promised to treat the denounced person following the law, since "I will never cause him harm or damage to his person or properties until he is subpoenaed in writing to respond to justice in my curia in the manner that my curia determined" (Ch. III). The content

24 See the English version of the *Decreta* of León 1188 in the Appendix, reproducing the translation by Seijas Villadangos, 2016, pp. 2–25. (the English version appears in pp. 22–25), from the Spanish version of Fernández Catón, 1993, pp. 93–117.

25 Such customs included the *Fuero de León* approved in 1017; see *Fueros locales del Reino de León (910–1230). Antología*, Madrid: Boletín Oficial del Estado, 2018 (available at https://www.boe.es/biblioteca_juridica/publicacion.php?id=PUB-LH-2018-61).

of both chapters (II and III) was indeed quite similar to what would later be drafted in Chapter 39 of the *Magna Carta*.[26] Moreover, as will be seen, Chapter IX punished those *justicias* [judges] who do not administer justice according to the prescribed legal procedure.

In Chapter IV, the king promised that he would make neither peace nor war, nor would he make agreements without the advice of bishops, nobles, and good men. He pledges neither to "wage war nor make peace or make any agreement without the counsel of the bishops, nobles, and good men, by whose advice I must abide" (Ch. IV).

Chapters V and VII sought the protection of property (houses, lands, and trees). It goes beyond private vengeance by committing to protect property, as long as the offended party "presents the complaint to me or to the lord of the land or to the justices appointed by me or by the bishop or by the lord of the land," while also protecting the alleged offender (or accused) "so he will not suffer any harm," and who is allowed to "present a guarantor or give a guarantee according to the ancient law [*fuero*]" (Ch. V).

Beyond prohibiting riots (tumult disturbing the public peace) (Ch. VI), it prohibits the theft of things (movable or immovable) that are in the possession of others, whether done with (Ch. VII) or without (Ch. VIII) violence. Chapter VIII discouraged and punished private revenge, calling offices to enforce the laws of towns and villages. It also provides that no one may be seized by another person "but through the justices or mayors designated by me; and they and the landlords do faithfully enforce the law in the cities and in the boroughs [*alfores*] for those who seek it" (Ch. VIII).

Chapter IX addresses those in charge of adjudicating and enforcing the law, establishing punishments for judges who do not enforce the law, ignore the plaintiff, or administer justice when damages or offenses have been caused or committed. It lays down the obligation to do justice following a legal procedure, with a three-day term for the *justicias* to

26 *Magna Carta*, ch. 39: "No free man shall be arrested or imprisoned or deprived of his rights or property, nor put outlawed or banished or otherwise deprived of his rank, nor shall we use force against him or send others to do so, except by virtue of judicial sentence of his peers or by law of the realm."

admit the demand, foreseeing the consequences of a supposed refusal on their part:

> *I also decreed that if one of the justices denied justice to the plaintiff or delayed it maliciously or did not recognise his right by the third day, he should present witnesses before one of the aforementioned 'justicias' by whose testimony stating the truth of the matter and compel the justice to pay the plaintiff twice as much of his demand and the costs. And if all the justices of that land deny justice to the plaintiff, he should take witnesses from good men by whom it is proven and give pledge without responsibility instead of the justices and mayors, as much for the demand as for the costs, so that the justices would satisfy twice and also concerning the damage, that would ensure whom guarantees, the justices would pay double* (Ch. IX).

Chapter X prescribes that judicial decisions and judges must be followed and respected.

Chapter XIII punishes, in general terms, the offended party who, rejecting the legally established procedures to do justice and compensate for the offense, chooses to take justice into his own hands by causing some damage to the offender, in which case "he should pay double, and if also he should kill him, he should be declared a treacherous" (Ch. XIII).

The justices were sanctioned if they refused to do justice or did not arrest "immediately and without delay" anyone who "wander[ed] by chance from one city to another (...) and someone with seal should come from justices to the justices (...) they should not hesitate in detaining him and doing justice" (Ch. XIV).

Beyond the obligations and duties required of the justices, the monarch also came to their defense, stating "that no one should appeal the justices nor grab the pledges when he did not want to comply with the justice; and if he should do this, he should repay twice the damage, the demand, and the costs and also pay the justices 60 *sueldos* [wages]" (Ch. X). The end of that same chapter contains the following general clause of protection for the *justicias* in charge of administering justice:

> *And if any of the justices suffered any harm in carrying out the justice, all the men of that land will reimburse him for all the damage, in case he who did him harm should not have means to pay him; and if it happens, that one in addition may kill him, he would be taken as a traitor and a treacherous* (Ch. X).

Sanctions were also provided for those who did not appear before the justices when summoned by them in accordance with the law (Ch. XI).

Another decree established the inviolability of the home, imposing heavy financial penalties and exonerating the homeowners of a possible homicide committed in self-defense (Ch. XII).

Chapter XVI addresses the rule of law. It prescribes that nobody shall be accused or tried by either royal or city court unless established by law. Prescribing that no one should go to trial before the royal curia or the court of León "unless for those causes for which he should go according to their own ancient laws [*fueros*]" (Ch. XVI) was the logical consequence of the royal commitment to respect "the good customs" established by his predecessors (Ch. I) to proceed "according to the ancient law [fuero]" (Ch. V) and act in conformity with the privilege and ancient customs of his land (Ch. VIII). Indeed, such commitment to the rule of law was quite similar to what would later be drafted in chapters 39 and 40 of the *Magna Carta*.[27]

Further, to this royal recognition of rights and liberties, those attending the Cortes of 1188 (bishops, knights, and citizens) responded by committing themselves to be faithful to the king in his counsel "to maintain justice and keep the peace in my kingdom" (ch. XVII). Hence, Chapter XVII establishes that all participants of the Cortes shall swear faithfulness to the king to keep justice and peace and ensure public order throughout the kingdom.

The agreement of the *Decreta* in the Cortes of 1188 notably contributed to legitimising the social and political power of Alphons IX. Moreover,

27 *Magna Carta*, ch. 39: "No free man shall be arrested or imprisoned or deprived of his rights or property, nor put outlawed or banished or otherwise deprived of his rank, nor shall we use force against him or send others to do so, except by virtue of judicial sentence of his peers or by law of the realm"; ch. 40: "We will not sell, deny or delay to anyone his right or justice."

considering the content of its provisions, it is more than reasonable that such decrees have been called the "*Magna Carta Leonesa*." However, it would be a mistake, to think all the precepts were new. Some had already been enacted. Accordingly, Alfonso IX confirmed the Fueros de León (1017, by Alphons V). Provisions such as those prohibiting attacks on the property of others, ordering the resolution of disputes before the courts, or preventing the King from entering into war without general consent were well known during the reign of Alfonso VII of León (1135). New decrees were added to these precepts in 1188 concerning, for example, cases of violence on (movable and immovable) things, recourse to justice in such cases, and other guarantees of a procedural nature. A few years later, in Galicia, "constitutions" (1194) would develop some of these precepts of 1188.

The *Decreta* insists on the idea that offenses or damages must be repaired or remedied through the enforcement of the law (mainly, the Fuero of León, 1017) and in court (rather than resorting to private revenge), calling for the respect of the judicial procedure and right conduct of judicial proceedings.

Thus, the Cortes of León and their *Decreta* are considered the oldest preserved written records of the parliamentary tradition in the Western world and, by extension, of modern parliamentary democracy. Unlike the *Magna Carta*, these *Decreta* were never abolished up until the 19th century when modern codes replaced older laws approved by Alphons the Wise (the *Fuero Juzgo*—containing the *Decreta*—the *Fuero Real*, the *Siete Partidas*, and the *Espéculo*).

On the 19th of June 2013, the UNESCO recognised the Cortes of León as the "Cradle of parliamentarism," and the *Decreta* was declared "Memory of the World" for being "the oldest written document of the parliamentary system in Europe."[28] Perhaps, more importantly, the Cortes of León and their *Decreta* reflect how a king, for the first time, "put the power of law above his own power, and not vice versa."[29]

28 International Memory of the World Register. The *Decreta* of León of 1188. The oldest documentary manifestation of the European Parliamentary System. p. 1. The proposal was submitted in 2012 and registered in 2013 (available at https://en.unesco.org/memoryoftheworld/registry/251).

29 Suárez Fernández, 1976, p. 8.

Hence, for now, the first documented precedent of the rule of law and representative democracy in the Western world can be found in 1188 in León, a city that had enacted its law (Fuero de León) in a council presided by Alphons V in 1017. Thus, the people of León already appreciated what the law was about.

We cannot exclude the possibility of Spanish influences regarding the Hungarian Golden Bull because there are certain ties between the Kingdoms of Aragón and Hungary in the analysed period. The brother of King Andrew II of Hungary, King Emeric (who reigned between the 1196–1204 period) married, perhaps in 1196, Constance, the daughter of King Alfonso II of Aragón (Constance, after the death of her husband, became the wife of Frederick II, Holy Roman Emperor). The queen was accompanied to her new home by a court and clerical entourage: the latter may have been a bearer of political ideas. Iberian influences are certainly documented, for example, in the heraldic motifs. After Emeric's death (1204), Constance and their child, the child King Ladislaus III, fled to Vienna, but there, Ladislaus died at the age of approximately 5, and Andrew, later the signatory of the Hungarian Golden Bull, was crowned king. The dynastical relations between the Árpád dynasty of Hungary and the Kingdom of Aragón continued: the daughter of Andrew II of Hungary, Violant of Hungary, was the wife of King James I of Aragón (the Conqueror). Their marriage occurred in 1235, more than a decade later than the issuance of the Hungarian Golden Bull, and some years before King James I of Aragón liberated Valencia (1238). After this battle, King James I rewarded several Hungarian knights who took part in the fighting and arrived on the Iberian Peninsula alongside queen Violant.

4. CONCLUDING CONSIDERATIONS

Affirming that the *Decreta* of León (1188) constitutes a relevant historical precedent of the rule of law and representative democracy in the Western world neither means ignoring the radical differences between two social, cultural, political, and legal contexts (the 12th-century medieval and the 19th-century liberal and constitutional-legal orders) nor

denying the mythological character of some historical texts, such as the *Fueros de Sobrarbe*, *Cortes de León*, and *Carta Magna*.[30] It does rather mean that such documents show how medieval Europe started to be aware of the convenience of limiting political power through law, using the law as a safeguard against the abusive and arbitrary exercise of political power.[31]

Many notions, categories, and principles radically changed throughout time but do not preclude the possibility to reconstruct their historical development. Sovereignty, notably, changed in the Middle Ages, then in the early modern age (with the rise of royal absolutism), and, eventually, in the late modern age (with the emergence of liberal and constitutional systems after the French and American revolutions). However, such changes should not prevent legal historians from trying to describe and analyse such development.

Nobody will deny that the Second World War context from which the legal notion of "human rights" emerged was radically different from that of the rise of "fundamental rights" in the 18th and 19th centuries) and "natural rights" in the 16th century. However, it should not preclude the possibility of connecting such notions that are indeed connected.[32]

Can the expressions "rights" and "liberties" be used in the medieval context, as some scholars use them?[33] Arguably, yes; however, clarification is needed: though such expressions might appear in the sources, their meaning and scope might not extend to expectations of contemporary reading. However, it seems less appropriate to use the expressions "individual freedoms"[34] or "fundamental rights"[35] in the medieval context.

30 Lorente Sariñena, 2016.

31 Masferrer and Obarrio, 2012, pp. 15–51.

32 Masferrer, 2022; (see also the English version entitled *The Making of Dignity and Human Rights in the Western Tradition: A Retrospective Analysis*, Dordrecht-Heidelberg-London-New York: Springer, forthcoming, 2023).

33 See fn n. 12.

34 Cited in the fn n. 12.

35 Dávila Campusano, 2017, pp. 203–211.

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APPENDIX
DECRETA OF CORTES OF LEÓN (1188)

Decrees that Don Alfonso, King of León and Galicia, established in the Curia of León with the Archbishop of Compostela and all the bishops and magnates and also with the elected citizens of his kingdom.

[I]

In the name of God. I *Don Alfonso*, King of León and Galicia, having held curia in León, with the archbishop and bishops and magnates of my kingdom and elected citizens from each one of the cities, established and confirmed under oath that to all those of my kingdom, both clergy and laity, I would respect them the good customs that have been established by my predecessors.

[II]

Ditto. I decreed and swore that if someone had come to me with an accusation against another, without delay I will inform the accused of the accuser; and if he is unable to prove the accusation that he made in my curia, he will suffer the punishment that the accused would have suffered if the accusation had been proven.

[III]

Ditto. I also swore that, for the accusation that would be made about someone or for slander of him, I will never cause him harm or damage to his person or properties, until he is subpoenaed in writing to respond to justice in my curia in the manner that my curia determined; and if it is not proven, he who made the accusation will suffer the aforementioned

punishment and will also pay the expenses incurred by the accused in coming and going.

[IV]

Ditto. I also promised that I will not wage war nor make peace or make any agreement without the counsel of bishops, nobles and good men, by whose advice I must abide.

[V]

Ditto. I also established that neither myself nor anyone else other of my kingdom would destroy the house or invade or cut down the vineyards and trees of another, moreover he who has a grievance against someone should present the complaint to me or to the lord of the land or the justices appointed by me or through the bishop or the lord of the land; and if whoever is the object of the complaint wants to present a guarantor or give a guarantee according to the ancient law (*fuero*) he will not suffer any harm; and if he does not want to do that, the lord of the land and the justices would force him, as it is just; and if the lord of the land or the justices would not to do that, present me the complaint with the testimony of the bishop and of good men, and I will see justice done.

[VI]

Ditto. I also firmly forbid that anyone engages in any riots in my kingdom, instead of justice before me, as stated above. And if someone did cause such disturbance he would pay twice the damage done to me; and he would lose my favor, benefit and any land of mine if he possessed.

[VII]

Ditto. I also established that none dares to violently take either anything personal property or real property that would be in possession of another. And if this would be done, it is to be restored twice to whoever suffered the violence.

[VIII]

Ditto. I also established that none should pledge but through the justices and mayors designated by me; and they and the landlords do faithfully enforce the law in the cities and boroughs for those who seek it. And if someone else pledges in any other way, he would be punished as a violent invader. Similarly [is punishable] whoever pledges oxen or cows for ploughing, or whatever the villager had on him in the field, or the villager himself. And if someone pledges or seizes things, as stated above, he should be punished and also excommunicated. And whoever denies having acted violently to avoid such penalty, should present a guarantor according to the old law (*fuero*) and the ancient customs of the land, and immediately should be investigated if he committed violence or not, and according to the results of the investigation should be obliged to provide the given bail. The enquirers, however, be they by consent of the accuser and the accused, or if they fail to reach an agreement were those who were designated for the lands. If the justices and mayors or those that have my land were designated to do justice by consent of the aforementioned men, those should have seals, through which they should subpoena men to respond to the plaintiffs' demands and through them give me testimony about what complaints of the men are true or not.

[IX]

Ditto. I also decreed that if one of the justices denied justice to the plaintiff or delayed it maliciously or did not recognise his right by the third day, he should present witnesses before one of the aforementioned

justices whose testimony stating the truth of the matter and compel the justice to pay the plaintiff twice as much of his demand and the costs. And if all the justices of that land deny justice to the plaintiff, he should take witnesses from good men by whom it is proven and give pledge without responsibility instead of the justices and mayors, as much for the demand as for the costs, so that the justices would satisfy twice and also concerning the damage, that would ensure whom guarantees, the justices would pay double.

[X]

Ditto. I also added that no one should appeal to the justices nor grab the pledges when he did not want to comply with the justice; and if he should do this, he should repay twice the damage, the demand and the costs and also pay the justices 60 *sueldos* [or wages]. If any of the justices require any of his subordinates to do justice and they should refuse to help him, they remain bound to the aforesaid penalty and also pay the lord of the land and the justices 100 maravedis; and if the defendant or the debtor were unable to pay the plaintiff, the justices and mayors without liability should seize his person and any assets he had, and deliver him with all his assets to the plaintiff, and if it were necessary, guard him under their protection, and if anyone were to take him by force, they would be punished as a violent invader. If any of the justices suffered any harm in carrying out the justice, all the men of that land will reimburse him for all the damage, in case he who did him harm should not have means to pay him; and if it happens, that one in addition may kill him, he would be taken as a traitor and a treacherous.

[XI]

Ditto. I stated that if anyone were summoned by the seal of the justices and he should refuse to appear before the justices, all this proven by good men, he should pay the justices 60 *sueldos*. And if anyone were accused of theft or other wrongdoing and the accuser should summon

him before good men so that he would bring to justice, and he should refuse to come within nine days, if it were proven that he has been summoned, he would be considered criminal; and if he were noble he should lose the 500 *sueldos* rank and those who capture him should have justice without any liability; and in the case that the noble at any time should make amends and satisfy all defendants, he should regain his nobility and then repossess the rank of 500 *sueldos*, as he had before.

[XII]

Ditto. I also swore that neither myself nor anyone else should enter by force the home of another or do any damage to it or to their assets; and if he should do this, he should pay the owner of the house twice its value and also to the lord of the land nine times the damage caused, if he does not promise to satisfy it, as it is written. And if it happens that he killed the home owner, man or woman, he should be declared treacherous and betrayer. And if it happens that the home owner, man or woman, or any of those who should help them to defend their home should kill him, they will not be punished as a murderer and the damage they caused they will never be required to answer for.

[XIII]

Ditto. And I established that if anyone should want to do justice to anyone who had a grievance against him and the aggrieved should not want to receive justice from him, as stated above, he should do him no harm; and if it should do, he should pay double, and if also he should kill him, he should be declared treacherous.

[XIV]

Ditto. I also established that if someone should wander by chance from one city to another or from one town to another or from one land to

another and someone with seal should come from justices to justices from that land in order to detain him and to do justice to him, immediately and without delay they should not hesitate in detaining him and doing justice. If the justices should not do this, they should suffer the punishment that the wrongdoer should suffer.

[XV]

Ditto. I also forbid any man who possesses assets, for which he pays me taxes, should give them to any ecclesiastical establishment.

[XVI]

Ditto. I also ordered that nobody should go to trial in my curia or to trial in León unless for those causes for which he should go according to their own ancient laws (*fueros*).

[XVII]

Ditto. All the bishops also promised, and all the knights and citizens confirmed by oath to be loyal to my advice, to maintain justice and keep the peace in my kingdom.

THE HUNGARIAN GOLDEN BULL AND ITS PLACE AMONG EUROPEAN LEGAL SOURCES*

ELEMÉR BALOGH**

ABSTRACT

The Golden Bull, issued by King Andrew II of Hungary in 1222, was a milestone among contemporary Hungarian constitutional documents and a significant European document. It was drafted and published 800 years ago, and its significance lives on to this day, and is still a lively topic of modern constitutional law thinking.

The 13th and 14th centuries were the age of the golden bull in Europe, as legal documents with similar content and character were produced not only in Hungary but throughout the continent, such as the Magna Charta Libertatum (1215) in England, the Danish constitutional charter (1282) and, a century later, the German Golden Bull (1356). The name "golden bull" itself refers to a kind of ceremonial exceptionalism; the use of the metal seal (bulla) was adopted from Byzantium. In the Middle Ages, the use of seals was in itself a highly important authentication procedure, since it provided a visible and tangible proof of the identity

* Translated by István Harkai, Senior Lecturer, University of Szeged, Faculty of Law and Political Sciences.

** Professor, University of Szeged, Faculty of Law and Political Sciences, PhD, habil., baloghe@juris.u-szeged.hu, ORCID ID 0000-0003-1079-3975.

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of the issuer to the largely illiterate members of society, and indirectly indicated the importance of the contents of the document.
The Hungarian Golden Bull and its European counterparts carried significant public law and constitutional content. Such royal charters were essentially letters of privilege. Often they were the result of real social movements and dissatisfaction with the central power. The golden bulls can also be seen as the borderline institutions of the two (legal) historical periods of feudalism and polity, namely as constitutional documents that were conceived on the intellectual ground of feudal law, but were manifestations of an approach and a demand that was already oriented towards the political and legal concepts of the polity.
Of the provisions of the Golden Bull, I would like to highlight the element dealing with the administration of justice. Its main lesson is that, for the first time, it establishes the fact, place and time of personal, institutionalised royal justice in the promise of regular annual judgments. The Golden Bull is still with us today: an exact replica of the royal seal of the Golden Bull hangs around the necks of the members of the Hungarian Constitutional Court, which was established in 1990, and a facsimile of the Golden Bull adorns the walls of the meeting room of the regular deliberations of the judges of the Constitutional Court.
Keywords*: Golden Bull, judicature, right of resistance, ius inertiae, king, charismatic rule, presentia regia, Székesfehérvár, right of succession, coronation, burial, Constitutional Court, literacy, fealty, order, servientes regis, barones, bishops, historical constitution, Diet, Tripartitum*

The Golden Bull, issued in 1222 by King Andrew II of Hungary, was a milestone among the contemporary Hungarian constitutional sources, and a significant European document that still has a place in the relevant literature.[1] It was formulated and published 800 years ago, and it

1 The volume published jointly by the József Attila University (the predecessor of today's University of Szeged) and the University of Verona is still considered to be a unique work. In addition to the original Latin text of the Hungarian Golden Bull, this book also contains a Hungarian, Italian and English translation, accompanied by several excellent studies and decorated with many beautiful facsimile images. Besenyei et al., 1999. Here I also mention the collection of legal history

can be said that its significance is still alive, and it is also a lively topic in modern constitutional legal thinking. It is more than symbolic that a gold-plated replica of the seal of the Golden Bull hangs around the necks of the members of the Hungarian Constitutional Court, a reference to the fact that this illustrious medieval document is still present in the constitutional memory of the nation. 800 years is a long time, and a round anniversary is a good opportunity to take stock of the contemporary meaning and significance of the Hungarian Golden Bull in its time, and, just as importantly, it is time to take stock of its European parallels.

The importance of the Hungarian Golden Bull[2] in our constitutional development cannot be overestimated.[3] The frequently voiced statement that our country has been living in a state of backwardness from the West from the very beginning and almost uninterruptedly, even if it is true in many respects, was in sync with the contemporary political and legal processes of Europe at the very stage of development represented by our Golden Bull. At this point, I would like to refer to an under-researched fact concerning the genesis of the Hungarian Golden Bull, the assizes of the Holy Land as possible sources. It was Andrew II's participation in the Fifth Crusade (1217-1221) (1217/18) that gave him, and even more so his entourage – such as the bishops of Várad, Győr and Eger, the Abbot of Pannonhalma, the Archbishop of Kalocsa, as well as the Chief Treasurer (*Magister Tavernicorum*), and the Master of Cupbearers (*buticularius*) – the opportunity to learn about the elaborated system of fief law in the Kingdom of Jerusalem and to draw inspiration from it.[4]

The 13th century was the century of the golden bulls in Europe,[5] as legal documents with similar content and character were created not

texts that contains the most important European constitutional documents of the 13th-20th centuries (including translations of non-German-language texts), including the Hungarian Golden Bull. Willoweit and Seif, 2003.

2 Comp: The Golden Bull, in: Szigethy, 1987, pp. 47–54; Petrovics, 1994, pp. 55–56; Zsoldos, 2011, pp. 1–38; Rákóczi, 2020, pp. 33–34.

3 My study is based on my essay published in the above-mentioned edition of the Golden Bull; Balogh, 1999, pp. 61–77.

4 Vö. D'Eszlary, 1958, pp. 189–214.

5 Kristó, 1976.

only in Hungary, but all over the continent. The name "golden bull" itself refers to a sort of ceremonial exceptionalism: *"The Golden Bull takes its name from the Latin word bulla, which means drop, ball, sphere, hemisphere or round button. The use of the metal seal (bulla) was adopted from Byzantium and was used mainly by the papal court from the 6th century onwards. The material of this hanging metal seal was usually lead, which was also malleable, but on special occasions, the seals were also made of precious metals, mainly gold. While the lead seal was made of solid metal, gold was treated with care. The seals had only a thin gold cover, the inside remained hollow, and to prevent them from crumbling they were usually stamped with iron or filled with wax."*[6] Such a gold seal was first mentioned in a charter of King Géza II (1153) and was regularly used by our King Béla III (1172-1196), who grew up in Byzantium, to seal important charters.[7] In the Middle Ages, the use of the seal was in itself an extremely important authentication procedure, as it provided visible and tangible proof of the identity of the issuer to the largely illiterate members of the society, indirectly indicating the importance of the content of the document. The use of the seal also gave rise to a separate office in the Middle Ages: sealers are found mainly in the church centres, in the holy seats.[8] It is worth noting, of course, that everywhere in Europe, the gold stamp was only applied to the most exceptional documents.

The most important question, of course, is what public law and constitutional content the Hungarian Golden Bull and its European counterparts carried. Such royal charters were basically letters of privilege. They were often based on real social movements, on discontent with central power; there were forces in the background that felt strong enough to act in a united and organised way to defend their rights and interests effectively. Here it is necessary to point out a characteristic feature of the legal order of medieval and early Europe up to the time of the civil transformation, which can be summarized briefly in the fact that there was no abstract citizenship, but that everyone had only as many rights as he or she had fought for and, if possible, secured for

6 Érszegi, 1999, pp. 53–54.
7 Comp. Cieger, 2010, pp. 403–413.
8 Comp. May, 1956, p. 259.

himself or herself with legal guarantees. This could be done individually or in groups. While individual privileges were part of the system of feudalism, the rights acquired by the larger groups of society were more in the direction of the development of the orders. The golden bulls can also be seen as the borderline institutions of the two (legal) historical periods, the feudalism, and the fiefdom (orders), i.e., constitutional documents that were conceived on the intellectual ground of feudal law but were manifestations of an approach and a demand that was already oriented towards the political and legal concepts of the orders. There is no need to mention examples of individual privileges, but in the context of larger social communities, the medieval church, which interpreted its own status on the basis of privileges with an explicit legal content, is definitely worth mentioning. The *privilegium fori* and the *privilegium canonis* were in themselves capable of elevating the whole institutional system of the Church from the secular society, and even of having a very active impact, especially in the field of legal customs and culture, by the actual extension of the judiciary.

It was also the case in the medieval states[9] that the more powerful a member of a social group, the greater the chance that his aspirations would be realised and put down in writing. This blatant inequality of rights is very striking when seen from our time, but we must not forget that in the Middle Ages there was also a sense of equality, not on the material plane, but in the dimension of transcendence. All men were equal before God. This idea of equality should not be underestimated, because philosophically it provided a solid foundation of human dignity, and this human dignity is the very core of human rights, the solid foundation of human rights in our time. The most prominent personalities in European history have referred to it boldly and openly, and as long as it was a matter of public social conviction, it could be considered a mobilising and stabilising force. Suffice it to refer to one of the primitive means of proof in medieval procedural law, the ordeal (*ordalia*), the effectiveness of which was accepted in its time.[10] Indeed, the usability of a legal instrument depends to a large extent on whether the subjects

9 Comp. Fédou, 1971, pp. 86–119.

10 For more on the ordeal, see Bódiné Beliznai, 2014, pp. 219–230.

of the law believe in it: while there was widespread social acceptance of the notion that God's omniscience could be challenged in a legal sense and for legal purposes, a variety of such forms of proof flourished.[11] In the trial by accusation (*accusatio*) of the time, the person concerned was not usually obliged to submit him or herself to the judgement of God, but if he or she did not comply with the order of the court, he or she lost the case.

Literacy is inextricably linked to the development of the legal culture of the 13th century. It has long been known and accepted that the power of the written word is greater and, above all, more enduring than that of the spoken word (*verba volant, scripta manent*). Yet literacy has been very slow to spread. For about a thousand years of the Middle Ages, Europe was, in a broad social sense, illiterate. Literacy was largely a 'privilege' of the clergy, and it was only from the 14th century onwards that the secular 'intelligentsia' began to appear in significant numbers, not least thanks to the universities that were being established at this time. It is no coincidence that the most important documents of literacy, especially in medieval Hungary, were for centuries predominantly legal in content, so that literacy was largely represented by jurists.[12] The main reason for the literacy bottleneck was the scarcity of both scribes and the technical conditions for writing in the medieval society. In this way, only the most important aspects of human coexistence and conflict, mostly legal transactions, were recorded, where there was a growing interest of time in knowing a legal situation or legal will. The importance of this statement is underlined by the little-known fact that in Hungary, not only in the Middle Ages, but even in the early modern centuries, the authors of authentic secular documents and the general

11 In Hungary, until the middle of the 13th century, the most notable trials were those conducted at the tomb of King Saint Ladislaus (*iudicium ferri candentis*). Most of the surviving records are still available in the edition edited by János Karácsonyi and Samu Borovszky: Regestrum Varadinense. Fire-iron probe register. Arranged chronologically and together with a faithful copy of the 1550 edition, Budapest, 1903. Several studies on Hungarian and European ordeals are presented in the following conference volume; Barna, 2016; Balogh, 2016, pp. 19–27.

12 The research results of György Bónis are also milestones in this field: Bónis, 1971; Bónis, 1972.

depositories of document authentication were not the notaries (*notarii publici*) common in the western part of Europe, but ecclesiastical bodies, the chapters, and convents (*loca credibilia*) appointed by the king. After these considerations, the following are the elements that explain why the Golden Bull became the cornerstone of Hungarian constitutional history.

1. THE HUNGARIAN HISTORICAL CONSTITUTION

The role of the Golden Bull in our constitutional history cannot be understood without a closer look at the Hungarian Constitution itself.[13] First and foremost, the concept of the constitution needs to be clarified, especially in terms of its historical definitions.[14] A constitution, in the state-theoretical sense, refers to the norms that define the order in which public power is exercised in a society that has evolved into a state. One could say that the constitution lays down the structural and dynamic principles of the legal instruments of political representation. The current terminology generally narrows its meaning to the so-called charters (written) constitution,[15] which is a legal document in a single statute and has been in use throughout the world since the US Constitution (1787) and is now commonplace. From a historical perspective, however, there are two inaccuracies: contrary to the common definition above, of course, states prior to the era of civil revolutions also had constitutions, the so-called historical constitution, while modern constitutions now include citizens' rights, a content segment that is outside the institutions of state power.

There is no doubt that the historical constitutions,[16] which were rich in liberties, have dwindled in number, but the English constitution is a well-known and highly regarded exception, and the Hungarian

13 Szabó, 2020, pp. 83–122.

14 György Bónis's study on this topic clarifies basic concepts and perspectives: Bónis, 1944, pp. 333–345; and from recent literature I mention István Stipta's monograph: Stipta, 2020.

15 Mezey, 2018, pp. 971–976.

16 Homoki-Nagy, 2016, pp. 573–583.

constitution until the adoption of Act XX of 1949 can be included here, too. In any case, the Hungarian historical wording fits this approach exactly, in so far as the internal order of the Kingdom of Hungary captured the internal norms of the peoples with autonomy in the Middle Ages and Early Modern period with the word 'constitution'.[17] It is safe to say that even the current Hungarian public law thinking can be described as unmistakably historical, which is expressed more than anything else in the preamble of our current constitution, the Fundamental Law: *"We honour the accomplishments of our historical Constitution and the Holy Crown, which embodies the constitutional continuity of Hungary and national unity."* After the creation of the Constitution (2011), there was a lively professional debate in the Hungarian legal community, primarily among constitutional lawyers and legal historians, about what the 'historical constitution' consists of and how it should be interpreted in the 21st century Hungarian constitution.[18]

Even in modern times, legal systems that adhere to the system of the historical constitution – and since 2012, in a certain interpretative sense, we can (again) include Hungarian constitutional identity here – represent the realisation and experience that the legal order of society is based on two complementary pillars: on the one hand, it affirms that the constitution is capable of development, and thus considers it an assassination attempt to rigidify it as a written charter, and on the other hand, it believes in the standardization and, to a certain extent, the timelessness of legal and political conflict situations. This is a paradoxical formula, but it is precisely the dialectic of human society. I would like to highlight the second element: the legal order of the historical constitution regards the conflict situation of human society as recurring in their essential features over time, differing only in formal differences, which, however, have little effect on the legal classification. This legal approach has one very important advantage: updating tried and tested old legal solutions gives a judgement an authority that cannot be replaced with anything else. Who would dare to doubt the credibility of a judgement which is not based on an act adopted only a few years

17 Szádeczky-Kardoss, 1927.

18 Comp. Horváth, 2020, pp. 114–138.

ago, but a centuries-old jurisprudence, sanctioned and confirmed many times over? This legal model can, of course, only be fully applied to those facts that can be extracted from the fast-changing world we live in. But this is not enough, and the best example is the world of criminal law, which is at the forefront of public interest: five hundred years ago, theft, robbery and murder meant the same as today, only the stolen goods have changed and the murder weapon has become more modern.

This historical approach preserves a very important aspect of medieval legal thinking: the older a law is, the better it is. Although legal solutions do not always meet the criterion of truth (which would be the ideal goal), if new generations apply the same norm, it is the surest sign that law is the truth itself. I would also add that this kind of application of the law also requires a very thorough knowledge of legal history. It is certainly not a coincidence that in Hungary, as in England, it can be said that in comparison with continental (French, German) developments, the appearance of codes of law that logically fit the legal source order of the written constitutions was relatively late: a particularly striking example in this respect is that Hungary's first Civil Code was adopted in 1959.[19]

A constitution that has been tried for centuries in the history of a nation thus represents a kind of timelessness: a strong legal expression of social conviction in the timelessness of justice and rights. The historical constitution is a system of complementary legal pillars on which the legal norms and customs of the society are built. Our old Hungarian law called these norms the cornerstone, fundamental laws, among which the document that determined the development of our constitution, the Golden Bull, stands out, especially until 1686. In modern terms, the pioneering role played by the Hungarian Golden Bull in the development of our constitution could be described as the first embodiment of the demand for political pluralism. It is a significant document of a social and political movement that sought to transform the unipolar Hungarian political system, hitherto centred around the royal power, into a European one, and whose significance has only increased over

19 Ruszoly, 2009, pp. 667–680; Balogh, 2016, pp. 541–558; Schweitzer, 2018, pp. 815–824.

the centuries. In what follows, it seems above all necessary and instructive to sketch the contours of the political 'opponent', the Hungarian royal power.

2. THE CONSTITUTIONAL STATUS OF MEDIEVAL MONARCHS

When examining a basic constitutional document studied in a European context, the Hungarian Golden Bull, it is worth looking at the status rights of the rulers who in many respects embodied the state. In the Middle Ages, the existence of a country depended largely on the ability of the royal dynasty to exercise power. The centralised power structure in Hungary was a pioneer in Europe, but it was also the desired direction of development of monarchies in other countries. The stability of the status of European monarchs was largely determined by the system of succession on the throne. In the ancient system of Indo-German societies, leaders were elected, but in the decades of the dynamic and rapid development of feudalism, the inheritance of the throne also appeared, and gained ground as time went on. Perhaps the most important reason for this was the fact that it gave the public organisation greater political stability, which was in the interest of the whole community. By the 13th century in Europe, we find families that had been ruling for a long time, within these families, power was inherited, and new dynasties usually only emerged after a ruling dynasty had died out. One notable exception was Germany, where the king was elected for centuries. This fact was enshrined in the most famous law codes,[20] as well as in the German Golden Bull (1356).[21] As the literature is unanimous in acknowledging, the systematic reality of the election is largely responsible for the fact that even in the era of transition from feudalism to the age of the orders, the Holy Roman Empire did not succeed in becoming as markedly centralised monarchy, as the English, French or even the Hungarian kingdoms.

20 Landau, 2015, pp. 49–55.
21 Ruszoly, 2011, pp. 305–306.

2.1. THE HUNGARIAN ROYAL POWER IN THE AGE OF ÁRPÁDS

In Hungary, even a superficial knowledge of the age of Árpáds is enough to realise that our first kings possessed enviable power in their monarchy. On what legitimacy did this power rely? Three sources must be pointed out: pagan-sacral, Christian-religious and material. Of course, the first factor could only be hidden, but everyone knew about it and in practice it often appeared: the very insistence on the name of the House of Árpád is meaningful, since it is linked to a pagan ancestor. Our sources are silent about the idea of creating some kind of 'House of Stephen' after the death of our first Christian king, Saint Stephen (997-1038), or at any time: the claim to the throne of the descendants of Árpád (?-907), the prince who conquered the Carpathian Basin, was considered by all as an obvious possibility. Being descended from a relatively distant ancestor did have one practical advantage: this allowed a wider range of people to succeed to the throne, thus reducing the risk of the dynasty's demise, but there was a more important aspect, as well.

The Árpáds were charismatic rulers[22] of a patriarchal nature, and this legitimacy of power was something our kings were not willing to give up, it proved to be such a powerful political asset. It was a force we no longer encounter today, but its contemporary reality was faithfully portrayed by Bishop Otto of Freising, brother of the Austrian Margrave Henrik, a contemporary and eyewitness. In his surviving account of the archpriest who crossed our country in 1147, during the Second Crusade, he writes as follows: *"They are all so obedient to their ruler that they consider it a sin not only to excite him by open contradiction, but even to offend him by secret whispers [...] If any of the order of the lords should offend the king in the least thing, or should be known to do so, though it be not true, he alone shall be seized, shackled, and dragged off to various tortures, by any servant of low rank sent from the court, even if surrounded by his retainers. The ruler does not ask for any opinion from his peers, the accused has no opportunity to*

22 In his historical-sociological analysis, György Bónis, largely adopting Max Weber's position on the charismatic form of domination, writes in his adventurous monograph: Bónis, 1947.

defend himself, but the will of the prince alone is the ruling one in everyone's eyes."[23] We can parallel this characterisation with an article in Genghis Khan's great law code of the 13th century, which also states that a person who insults the great khan, regardless of his rank, must bear the punishment imposed on him, even if it is carried out by a lower-ranked servant.[24]

The almost despotic authority vested in the person of the monarch also obliged the members of the royal family, too. It is expressed in the scene described in the chronicle of Thomas of Split (Spalatói Tamás). In 1203, King Emeric, unarmed and carrying a stick, and claiming his royal lineage, went into the military camp of his rebellious brother, Prince Andrew (later King Andrew II, the issuer of the Golden Bull), and had his soldiers arrest him and take him to the royal military camp.[25] The pagan charismatic ideal, however, had a criterion that is historically well established: it could only be successfully invoked by a person who also fully met the physical requirements for the right to rule. The concept of idoneity (*idoneitas*) was also know among the attributes of Christian monarchs, and it was undisputed in the Árpád era from Saint Stephen onwards (the only exception was perhaps Ladislav IV, who, together with our country, was for a time subjected to excommunication and interdictum by the papal legate), but here we see the existence of a pagan aptitude that is palpable beneath the political surface. In those cases where an essential element of these conditions was lacking, the contemporary understanding found no fault with the claim to

23 Ottonis episcopi Frisingensis gesta Friderici I. imperatoris, I/32.

24 Comp. Ligeti, 1962; Szmodis, 2010, p. 208; Erdene, 2013, pp. 19–32; Wolfrum, 2006, pp. 5–17.

25 *"Nunc videbo, quis erit ausus manum extendere ad cruorem regalis prosapie?" Quem videntes omnes cedebant nichilque mutire audentes largam ei viam hinc inde faciebant. Cum autem pervenisset ad fratrem, cepit eum et ducens extra aties misit eum in custodiam ad quoddam castrum. Et tunc omnes arma cum pudore et pavore deponentes ad regis genua provoluti veniam precabantur."* In: Thomae Archidiaconi Spalatensis: Historia Salonitanorum atque Spalatinorum Pontificum. Archideacon Thomas of Split: History of the bishops of Salona and Split.Latin text by: Olga Perić. Edited, translated and annotated by Damir Karbić, Mirjana Matijević Sokol and James Ross Sweeney, Central European Medieval Texts, Volume 4. Budapest – New York, 2006. 142.

the throne of the more suitable princes. The legitimacy of the reigns of Kings Géza and Ladislav the Saint, who opposed the young Solomon, was not questioned, as they were much better qualified to rule the country than King Solomon. From a similar point of view, the repeated claims to the throne by Prince Álmos against his physically defective[26] brother, King Coloman (1095–1116), can be understood. After the death of King Coloman and his son King Stephen II, the throne was inherited by the descendents of Álmos.

The most talented rulers of the Árpád Dynasty possessed a central power whose potential was unparalleled in the contemporary Europe. In order to illustrate the significance of this statement, I would like to mention a further addition, namely the conditions of the country after the Mongol invasion (1241–1241). King Béla IV (who was also known as the King of the Shaman-Táltos, because tradition has it that he was born with six fingers on one of his hands) started to rebuild the country while repelling the attacks of the Austrian prince and the Czech king, who thought that the Kingdom of Hungary was an easy prey after the Mongol invasion.

Another sacral motif is the authority of the Christian king, which is at least as important as the pagan charisma. Our kings from the Árpád Dynasty took this authority from Saint Stephen, a towering figure in the Christian world of his day, the first king in Europe to be canonised by the Church in 1083.[27] Stephen was held in great esteem and affection during his lifetime, as he authentically embodied the ideal of rulership as articulated by Saint Augustine: *rex iustus, pius et pacificus*. In his person, moreover, the pagan idoneity was embodied, since in the struggle

26 According to the contemporary chronicler: "Erat namque habitu corporis contemptibilis, sed astutus et docilis, hispidus, pilosus, luscus, gibosus, claudus et blesus." (Cap. 143.) In: Scriptores Rerum Hungaricarum tempore ducum regumque stirpis Arpadianae gestarum. Edendo operi praefuit: Emericus Szentpétery. Volumen I. 1999, (reprint) 421.

27 The monographer of Hungarian church history also notes: *"His popularity and respect throughout the Middle Ages is unmatched. He is commemorated by some five hundred authors abroad. Only Charles the Great can compete with him in terms of popularity, but Stephen stands alone in that there is not a single offensive word in the half a thousand commemorations, only appreciation and respect."* Hermann, 1973, p. 25.

for the throne he defeated his cousin Koppány, who had a somewhat stronger claim to the throne simply because of his age (*senioritas*). The religiosity and loyalty to Rome of the Hungarian kings of the Árpád Dynasty and their family members was well known. No other family in history has given so many saints and blessed to the Church, and the case of Saint Stephen and his son, Prince Emeric, is also unprecedented: neither father nor son were canonised before or after them. The Árpáds thus enjoyed widespread support from Rome and the Church, partly because of their generally committed religiosity and partly because of their consistent loyalty to the Pope.

Apart from the ideological aspects, the fact that our kings also possessed enormous material power was decisive. According to reliable estimates, at least half of the Carpathian Basin was in the king's private possession before King Andrew II started to donate lands excessively. The incomes to which the ruler was entitled in principle, however, can hardly be estimated in the conditions of primitive natural farming. The king's income was largely enjoyed in nature, and it would have been impossible and meaningless to transport the goods to the royal seat, because it took a long time to consume them. Therefore, in accordance with the general European practice, the Hungarian kings constantly travelled around the country, partly to dispense justice and partly to consume the wealth produced in the crown lands. The king shared his political and economic power with his loyal men, his lords, who, however, could not acquire feudal fealty on the estate under their control, since they were only royal officials who could be removed at any time by the will of the king. In the 11th century, a royal code stipulated that runaway slaves and stray livestock had to be transported to the county seat, where the reeve of the manor could take his share from the goods.[28] In a similar way, the reeve piled a certain amount of crop and other goods in the county seat, and both him and the king could have access to them – the latter when he travelled in the country and arrived in the given county.

To sum up, it can be said that under the kings from the Árpád Dynasty, the central power, except for a few short periods, created

28 Ladislav the Saint III. 13.

and maintained a distinctive power structure, the like of which can be observed in only a few Western countries. However, this centralised system had its vulnerable elements, and it was only a matter of time before the new forces in society forced the king to move to a more decentralized model. From the aforementioned pillars of the royal power, the personal ruler's abilities were inherently contingent and uncertain, and the conditions of natural economy were also not conducive to the stabilisation of the central power in the longer term. All it took was one ruler with a weaker hand for the lords of the land to get a bloody nose and make demands, essentially blackmailing the king and extorting more and more land donations. This king in our history was Andrew II, who is known to have given away entire counties, catastrophically weakening the very basis of the central power. The threat and reality of the emergence of local oligarchies has also materialized in Hungary, and given the trend of European, French, German and Italian development, it is not surprising.

However, with the royal power rapidly weakening under the rule of King Andrew II at the beginning of the 13th century, a new political and social force emerged: a broad class of royal servants (*servientes regis*), the predecessors of the later law and middle-class nobility. They tried to make a name for themselves in local politics, as they had no place in the royal court, due to their lack of rank and wealth. The excellent legal historian, Andor Csizmadia, writes about them as follows: *"The royal servants, fearful of the tyranny of the lords that would emerge in the wake of the rapid disintegration of the royal county system, sought to act to prevent the encroachments, to protect the old royal system and to limit the royal donations of lands."*[29] The royal power in Hungary found a true historical ally among the royal servants, and, depending on the extent to which it was aware of this, supported their movement. It is also one of the understandings of the issue of the Hungarian Golden Bull.

The Hungarian Golden Bull can therefore be seen as the first, shy and heavily veiled contract between the political forces of the royal power and the allied parts of the society. Historically, this alliance has ensured the perpetuance of and development of the nation: survival in

29 Asztalos and Csizmadia and Kovács, 1978, p. 76.

those centuries, when in the struggle with the Mongols and the Turks, the goal was mere survival, and in this struggle the barons were more concerned with their own security and the protection of their property than with the fate of the country; development in the newer centuries, when the goal was social, economic and cultural advancement, but lacking sufficient number of free citizens, the so-called liberal nobility became the leading force of the nation.

The royal power,[30] responsible for the unity and development of the country, had thus already found a secure support in the 13th century, but the political alliance had to be placed on a solid legal basis. The most appropriate form of this alliance was a solemn charter that explicitly stated that it conferred privileges on the beneficiaries and even added sanctions. The main function of the latter, the famous resistance clause, was merely to ensure the seriousness of the royal promises, since no one in Hungary in the early 13th century could have thought in his right mind that he would dare to act openly and violently against a king, asserting his rights. It is characteristic that the resistance clause was removed from the first renewal of the Golden Bull in 1231 (although it reappears later), and the institution of the Church was placed in this position of guarantee. The Golden Bull is thus the document of the development of the Hungarian constitution, which can be called the first milestone on the road to the establishment of a multipolar political system.

2.2. THE CHARACTERISTICS OF ROYAL POWER IN EUROPE

The first and most important thing to know is that at the beginning of the history of Christian Europe, rulers were typically elected. The choice was usually made among the men of a family or dynasty in a favourable position. There was a certain tendency towards a model that seemed to guarantee the stability of the central power, the succession to the throne, i.e., an almost automatic system of succession, but this was only clearly achieved in France.

30 László, 2017, pp. 284–292.

3. JURISDICTION AND JUSTICE SYSTEM IN THE GOLDEN BULLS

The European documents that we broadly refer to as 'golden bulls' contained a great deal of historical improvisation; provisions that are sometimes barely understood by today's readers and whose significance in their time was probably limited to a narrow range of persons and subjects. However, the most important constitutional issues everywhere were the provisions relating to the judiciary, since in the Middle Ages the monarch was the first person to administer justice, and this task has received a high level of social attention.

One of the solid elements of medieval European legal history is that the rulers' judgements and legislation went hand in hand. This could not have been otherwise, since the ruler was also the ultimate and supreme source of law and justice (*iurisdictio*).[31] However, it is not unprecedented for the king not to involve political forces outside his control in the law-making process: suffice it to refer to the development of France, where the general congregation of the orders (*États generaux*) never succeeded in acquiring this public competence.[32]

3.1. THE HUNGARIAN GOLDEN BULL

The very first provision of the Golden Bull is a promise of regular royal jurisdiction: *"Every year, of the holiday of King Saint Stephen, we should celebrate in Fehérvár, unless an urgent matter arises, or illness prevents us from doing so. Even if we could not be present, the palatine will undoubtedly be there in our place to hear the litigation, and to ensure that all the servants who wish to do so are free to assemble there."* The most important constitutional lesson of the quoted article is that it first established the fact, place, and time of personal institutionalised royal jurisdiction. All three attributes are essential.

31 Comp. Antal, 2015. pp. 73–83.

32 Comp. Bónis and Sarlós, 1957, pp. 111–114.

Personality was a fundamental expectation in the order of a medieval society, but the aspect of preparation for a real-life situation is also reflected in the regulation of the substitution. In the history of the Hungarian constitution, from the Middle Ages until the 19th century, the palatine was the first court dignitary to replace the king, who could substitute for the monarch in most constitutional functions, and thus could act legally in the process of jurisdiction and law making. The judiciary and the legislation were two mutually dependent constitutional functions in the person of the monarch, although it is certain that the judiciary was dominant. It is noteworthy that the celebration of the Assumption of the Holy Virgin, which occupies a central place in Hungarian religion, was the origin of the outstanding occasion of the king's presence in court (*presential regia*), the so-called Law Day. The practical reason for linking it to the occasion was to ensure that the royal court, which roamed the country, could be found in a permanent location at least once a year by those seeking law enforcement: our legal history also derives the institution of Parliament from these legislative days.[33] In addition to the practical aspect, we must pay attention to the link with the feast, and with the ecclesiastical holiday: the credibility, importance and dignity of the administration of justice could not be better emphasized. The medieval conception saw in the king the supreme defender and guarantor of divine and human truth: truth is ultimately a divine secret, but Christians claim it as their right, and the king is therefore obliged to represent it in person. The religious holidays and the law days were not merely coincident, but complementary. Here I would like to mention that in the old Hungarian legal language the word 'law' was used not only to describe legislation (*legislatio*), but also – much more often – the various institutions of judiciary and application of law (*iurisdictio*). A few examples will suffice to illustrate this: 'law-seeing days' (*törvénylátó napok*) mean the time of judging, meanwhile 'jurisdiction' meant the actual process of the provision of justice.

It is also worth briefly mentioning a less obvious motif. One of the peculiarities of the European state-development that where the ruler has not succeeded in establishing a long-lasting central seat, a capital,

33 Comp. Mezey and Gosztonyi, 2020, p. 149.

the central power itself has failed to consolidate itself: suffice it to take the example of German or Italian history. Until the middle of the 13th century, the conditions of natural farming, which were also common in Hungary, were not conducive to the development of a stable seat of the state. As in other important centres of power in early feudal Europe, Székesfehérvár was only one of the king's seats, which he visited regularly in the second half of August every year. The other, and somewhat more ancient, centre of the country was Esztergom, but it very early became the centre of the Catholic church as the seat of the Archbishop of Esztergom, and the royal power presumably wanted to keep a certain distance from it. This was not contradicted by the fact that Saint Stephen had already built a huge and rich cathedral here, which was considered to be the king's chapel: *"The royal chapel (capella regis, capella regia) is the ecclesiastical court of medieval rulers. It contained three elements: the royal reliquary, the royal oratory (palace chapel) and the court clergy."*[34]

It goes without saying that the Hungarian king kept his most precious treasure here, the Holy Crown, which, together with the coronation insignia that came with it, was considered his own.[35] In the same way, French coronation jewellery rest in the Capetings' 'family' monastery at St Denis, English ones in Westminster Abbey, German imperial insignia since Conrad II in the churches of the Salian dynasty (Limburg monastery, then Speyer Cathedral), and Czech royal regalia in the chapel of St Wenceslas in the Church of St Vitus in Prague. Székesfehérvár was the sacral capital of the Hungarian kings, as it was made so by the tomb of our first holy king. The parallels with Europe are unmistakable: Rome was made into a seat of religious veneration by the princes of St Peter and St Paul, Paris by Clovis, Aachen by the tomb of Charles the Great. It is likely that the royal throne was also in Székesfehérvár, and although the Archbishop of Esztergom was – and still is – the Primate of the Hungarian Church, he too had to travel to Székesfehérvár for the coronation and celebrate the ceremony in the royal chapel. Thus, when the Hungarian Golden Bull designates Fehérvár as the place of

34 Kumorowitz, 1963, pp. 109–151.
35 Comp. Tóth, 2018, pp. 9–13.

royal jurisdiction, it elevated church-religious customs, traditions and aspects to constitutional importance.

As in many parts of Europe, the 'law-seeing days' led to the formation of the national assembly, the Diet: *"The Diet probably evolved from the 'law-seeing days of Székesfehérvár as other legislative assemblies also evolved into rule-making assemblies."*[36] The emergence of assemblies representing the orders was the constitutional expression of the political development of society in European history. In the middle of the 13th century, of course, there was still no talk of joint legislature of the king and the orders, but this idea was born here. This idea is nothing other than the recognition and constitutional acceptance of the fact that the king alone, even with the aristocracy, cannot exercise power fully, but must also involve the military, free and land-owner parts of the society in the exercise of power. An important factor is that in the Middle Ages, belonging to the privileged classes – not mentioning here the Church, which claimed, received, and enjoyed privileges on quite different grounds – of society was primarily associated with the soldierly lifestyle. For centuries, economic performance (craftsmanship, trade, agriculture) was not seen as a 'merit' on which to base the political emancipation of the peasantry or citizens. The latter groups had to wait until the 19th century for a full political recognition in Hungary. In the Middle Ages, the landowners (nobles) were invited to the Diet, and as a result of almost linear development, István Werbőczy's famous law book (*Tripartitum*) established the fact of a single noble liberty, or legal status (*una et eadem libertas*). The complementary and constitutional relationship between the king and the legally united nobility was formulated in an elegant legal principle: only the nobility can make you king, only the king can make you noble (*"Neque enim princeps, nisi per nobiles eligitur, neque nobilis, nisi per principem creatur."*).[37]

As for the beginning of the development of the Hungarian Diet, in the renewed edition of the Golden Bull of 1231 the king gave the assembled nobles the right of control over the palatine, while the *decree* of 1267 required the presence of 2-3 nobles per county, i.e., the representation

36 Eckhart, 1946, p. 109.

37 *Tripartitum, Pars I, Titulus 3, § 7.*

of all the nobles of the country. The issuance of this decree was preceded by an assembly of the nobles, after which they made requests to the king, who, in consultation with the barons, agreed to comply with them, and this can be considered the first Diet. It is important to point out that, just as the 'law-seeing days' mentioned in the Golden Bull were not created for the sake of the barons (who were or could have been in the king's entourage all the time), the Diet evolving from the 'law-seeing days' was not attended by the lords of the land (*veri barones*). The participation of the nobility in the legislature came from a concession received from above, as is clear from the provision of the *decree* of the Diet of 1298, by which the nobility was authorized to assemble by the consent of the king and the barons of the country (*accepta auctoritate ex consensu domini regis et baronum totius regni*), and its resolutions were approved and sealed by the barons in addition to the king. Even then, the barons and the nobles did not negotiate together: the barons sat in the royal council, and later (1608) they formed an independent curia in the Diet.

The Hungarian Parliament, which evolved from the 'law-seeing days' of Fehérvár, is a distinctive and European-standard institution of the Hungarian constitutional development. Starting from a somewhat vague and uncertain beginning, the picture of a legal institution in which the central power saw itself not so much as a rival (as French history has shown), but rather as a partner, becomes clearer. This is both an important field and guarantee for the assertion of the royal power, and a proof of the political recognition that a multi-component political system does not weaken, but on the contrary, helps to balance the opposing political forces and interests. Only a royal power that was aware of its own power could voluntarily embark on such a journey. The kings of the Hungarian Middle Ages, especially the Árpáds, rightly realised that in the long run there were far more political benefits to be gained from making the system of power multipolar than from clinging stubbornly to the model of personal kingship.[38]

38 Especiall in the orlder Hungarian historical literature, it was a popular term to describe the rule of the Árpáds, implying that they personified the ruling system of the state. Comp. Bónis, 1947, pp. 63–92. Chapter II, A személyes királyság kora (*The Age of Personal Kingship*).

3.2. THE RELATIONSHIP OF RULERS WITH THE JUDICIARY IN EUROPE

In medieval German feudal law, the supreme judicial power of the king was self-evident, as was the appearance of a substitute forum for the king, as we also read it in the Hungarian Golden Bull. The German king was replaced by the imperial deputy governor (*Reichsvikar*) or governor (*Reichsverweser*), a position long held by one of the elective princes, the Palgrave of the Rhine. It also had its own judicial forum (*Reichsvikariatsgericht*), which could even rule over the king. The right of the elector-princes to rule over the king, even by removal, was confirmed in the forum of the Rhineland palatine count by the German Golden Bull (1356). It was all part of the imperial orders."[39]

4. LIBERTIES

To use a somewhat unhistorical term, this is the name given to the very important provisions that gave privileged individuals the freedoms usually associated with litigation. Nowhere, of course, are these freedoms formulated at the level of general citizenship, let alone at the level of human rights. The great charters of privilege have always specified which group of persons could count on precisely defined rights. As I referred to it above, it was the emerging small- and middle-class landowner nobility that was the social force in the process of being formed, and whose importance would increase dynamically in the following centuries. It was this social quality that was the most important carrier of Hungarian political identity for centuries.

4.1. HUNGARY: THE PROCEDURAL PRIVILEGES OF ROYAL SERVANTS

In the Hungarian Golden Bull, the king's obligation to judge in person is continued by the very important privilege of trial (Article II), in which

39 Ruszoly, 2011, p. 314.

the king promises, that *"neither we nor our successors shall capture or cause the ruin of any servant for the sake of any powerful lord, unless he has been previously summoned to trial and convicted by a court of law."* This is the first formulation of the protection of personal freedom in our legal history. We must not ignore the fact that the beneficiaries of this right were only the servants of the king (*servientes regis*). It would be unhistorical to expect anything more in Hungary in the 13th century.

In a strict legal sense, the second provision of the Golden Bull is a contemporary formulation of a principle of criminal procedure: it is essentially about the right of access to the court. In our modern context, the beneficiaries of this provision are the totality of the citizens, whereas in the 13th century it was a relatively well-defined, much narrower social group. The content of the provision is no different today: a person can be found guilty only in a court trial. The Golden Bull also made it clear who the *servants* had to fear: not the king, but the lords, against whom they appealed to the king.

The right of access to the courts, a liberty enshrined in the Golden Bull, has remained unbroken and persisted throughout the Middle Ages in the noble society. The content of the medieval Hungarian noble status was contained in the *Tripartitum*, more specifically in the famous *primae nonus* (Pars I, Titulus 9). In the first place, it is stated here that a nobleman can only be summoned to trial, not arrested, unless he is a public malefactor (*publicus malefactor*). At first, the provision highlights that a nobleman can only be summoned to trial, not arrested, unless he is a public malefactor (*publicus malefactor*): anyone can arrest him when caught in the act (but only then!). This liberty, which can be clearly traced back to the Golden Bull, has remained a noble privilege for centuries. Only the Provisional Rules of Judicature adopted by the Conference of the Royal Judge of Hungary extended the subject to all residents in 1861. Definitive regulation, in accordance with the basic principles of civil society, was provided by Act XXXIII of 1896, the Code of Criminal Procedure. By this time, the constitutional significance of the title of nobility had become very minor, so that, for example, the commission of any crime did not entail the loss of the title of nobility, nor even the loss of the capacity to become a nobleman. (Art. 55 of Act V of 1878) Another important point to be added to the medieval interpretation of

this privilege is that the wording of the Golden Bull promised not only criminal protection in the strict sense, but also confronted all those who acted against the servants (*destruant*). It also included offences in the field of private law. This is not surprising, of course, since it is well known that in the Middle Ages in Europe, including Hungary, the procedural law of the trial was uniform. There was no difference in the structure of the trial as to its substantive content, i.e., whether the dispute concerned property or crime.[40]

Another fundamental question in the judiciary is who can be the judge? The Golden Bull narrowly defined the powers of the magistrates of the royal counties: "*The county reeves should only adjudicate on servants' estates in matters relating to money and tenth. The reeves of the county courts should adjudicate only the people of their castle.*" Throughout the Middle Ages (and even in the modern era), the right to adjudication was primarily linked to a social-power function. Trained lawyers could usually only be ancillary, although they proved indispensable in complex legal cases.[41] At the time the Golden Bull was issued, the county reeves were the king's chief provincial officials and powerful lords. The servants did not want to be subject to their jurisdiction but wanted to emphasize the need for direct royal jurisdiction. This source is also an illustrative example of the social-historical phenomenon that in our country chain feudalism did not develop according to the Western model, but rather a centralised model similar to the English one. According to this formula, the servants could only feel secure in their ambitions by being directly linked to the king. Thus, according to the Golden Bull, the county reeve could not judge the person and property of the servient. The Golden Bull did not give the reeves power over the free landowners who served the king.

The ambition to be subject to the personal jurisdiction of the king has been given a further emphasis, albeit not an insignificant one. The first provision of the Golden Bull already mentions that the King's deputy is the palatine, who can replace him in general affairs, including the

40 About the medieval litigation comp. Rüping, 1991, pp. 7, 16–23, 32, 39–41, 46–48; Rüping and Jerouschek, 2011, pp. 29-37, 44-46.

41 Regarding the medieval ecclesiastical jurisdiction, comp. Balogh, 2018, pp. 9–20.

judiciary. However, if the judgement is for the loss of head and cattle (*sententia capitalis*), the case cannot be closed without the king's knowledge if the defendant is a noble (*nobilis*). The text of the Golden Bull makes a clear distinction between the servants of the king (*servientes regis*) and the lords (*nobiles, iobagiones*). The latter were later referred to other social classes: *nobiles* will generally be the nobles, and in a narrow sense the small and medium landowners, while the term '*jobbágy – iobagiones*' was applied to the economically and especially legally vulnerable peasant class of society. The above-mentioned privilege of adjudication of the nobility by the palatine was therefore not given to the servants, but to the lords. Legal history had progressed in such a way that the *Tripartitum* describing the medieval legal system, mentions a legally unified nobility (1514). This nobility's uninterrupted right to justice throughout the entire period of the orders was the right to appeal to the royal court, where cases threatened with the loss of head and property could be decided by *res judicata*. It can be concluded, therefore, that the privilege of the noble (*nobilis*), which appeared in the Golden Bull in terms of procedural law and a number of private law matters,[42] was also transferred to a somewhat lower, legally unified social category, the nobility as a whole.

In the often turbulent litigation of the Middle Ages, rivalries between different judicial forums were common. In the absence of a law governing the jurisdiction of the courts, the more powerful judicial forum could bring the case at any time. This rivalry was mainly between the ecclesiastical courts and the secular forums, usually over matters concerning royal property rights. It should be noted that the so-called transfer order (*mandatum transmissionale*) sent out by the courts of the royal court was obeyed by the holy sees.[43]

The final judgements of the court were strengthened by the prestige of the king. *"If a man is convicted in a court of law, let no one in power defend him."* The purpose of this provision can be better understood if we know that the institutionalized form of execution of the sentence of a judge in a medieval accusation (*accusatio*) trial was not yet developed as it is in

42 Homoki-Nagy, 1999, pp. 79–87.

43 Comp. Bónis, 1963, pp. 174–235.

the modern era. It was mainly the right and interest of the case-winning party to ensure the enforcement of the judgement. To do so, title was not enough, it required power and possibility. In particular, the outcome of the enforcement could be in doubt, if the convicted was protected by someone. Apart from the cases of correspondence (*proscription*), [44] usually made in the general assembly of the palatine (*congregation generalis*), this could be done without any particular risk, especially by the barons. Against them, only the authority and command of the king could be invoked. This legal assistance was promised by the quoted provision of the Golden Bull.

4.2. RIGHTS RELATED TO LEGAL PROCEEDINGS

This insistence on the right to due process can also be found in the provisions of the English *Magna Charta Libertatum* (1215), so often associated with the Hungarian Golden Bull (39), where the social base of the beneficiaries is much wider, given that all free men were entitled to this right. It could be said that the peasant class was also outside the constitutional subject, and that the privileged military-ecclesiastical-citizen elements of society were protected by the provision. The more advanced structure of English society is reflected in the statement that the grand barons also had the privilege of being judged only by the council of the royal court (*nisi per legale iudicium parium suorum*). Not only the English law, but also the Constitution of the United States, which, centuries later, consciously and firmly based itself on the development of English law, gave *due process of law* a strong place in the Constitution (5-8th Amendments): criminal proceedings can only be brought against anyone on a legal charge.

Also noteworthy are the provisions of the charter[45] of freedom issued by King Erik V of Denmark (1282). In the first three points, the king's

44 In the course of the palatine's itinerant justice of the peace, a sentence was passed in absentia against persons who were known to be evildoers, according to which they could be caught or even killed anywhere with impunity, and their supporters were also punished. Comp. Béli, 2006, pp. 97–116.

45 Møller Jensen and Porsmose, 2012, pp. 21–43, 36–40.

promises, which include guarantees for the judiciary, can be found. As in the Hungarian Golden Bull, an annual legal day (*Hof*) must be observed, which must fall in the months of Lent. Although the document only describes an assembly, the following two points make it clear that there is also judging at these meetings, at least partially. It expressly provides that no one shall be imprisoned unless he has voluntarily confessed his guilt by law, has been lawfully convicted or has been found guilty of crimes punishable by death or mutilation. Finally, no one can be fined without a legal conviction.

5. THE RIGHT TO RESIST THE RULER

Any legal document is only as good as the extent to which it can be enforced in conflict situation: and sanctions serve this purpose. If there is no sanction, it is *lex imperfecta*, which may be morally binding, and thus its effectiveness is not to be underestimated, but the enforceability of the state, which is considered to be the law's own, is absent. Since the golden bulls originated in the medieval centuries of Europe, when the full legal arsenal of feudalism was already in place and the nascent order was at the door, it is natural that the letters of privilege issued by rulers usually contained some sort of guarantee clause. However, there were major differences in the content and detail of the sanctioning provisions. Whatever was included in these articles, however, the real weight of the charters was given by the way in which the privileges, and especially the sanction clauses, were enforced in subsequent practice. There were also big differences between golden bulls issued in different countries.

5.1. RIGHT OF RESISTANCE IN THE HUNGARIAN GOLDEN BULL

The first thing to note about the Hungarian Golden Bull's resistance clause is that it is rather laconic. The Bull does not say how the king can break his promises. Only actively or passively? Who is entitled to declare a breach? How should the king be warned? And in particular:

what means can be legally used to exercise the right of resistance? More specifically, what is the private or collective exercise of resistance? There are so many questions to be answered, and the answers are uncertain.

Above all, it is worth noting that the Golden Bull did not give the privileged – and not without danger – right of resistance to just anyone, but only to the country's nobility. They are the bishops of the country, the *iobagiones* and noblemen, the top layer of society and the political elite. The royal servants, who are the subject of many of the provisions of the Golden Bull, did not enjoy the right of resistance. They could only lay claim to it from the time when the designation noble (*nobilis*) was generally applied to them.

The recognition of the right of resistance by the kin was a severe self-imposed restriction, and it is highly probable – following the example of other similar foreign analogous examples – that it was only included in the Golden Bull of 1222 under the pressure of the moment, and was already left out of the 1231 ratification, where it was replaced by the ecclesiastical sanction of excommunication (*excommunication*). The rapidly unifying Hungarian nobility, however, saw that Andrew II had given them a weapon which it would be a great mistake to drop, and they made a point of accepting the right of resistance again and again with the monarch. It was probably the strength and solid authority of the Hungarian royal power that gave our kings the basis and confidence to accept this claim without apparent opposition throughout the Middle Ages. The brief wording of the right of resistance reserved the possibility of interpretation to the king, so the actual exercise of resistance even with the power of principle proved to be a very risky undertaking. The situation would have been quite different if a detailed and precise regulation similar to the English Magna Charta Libertatum had been drawn up, but no attempt has yet been made to do so. This did not only not happen because there was almost no detailed system of fief law in Hungary. The conclusion to be drawn from all this is that open defiance of royal power was only advisable in extreme, perfectly clear-cut situations, and only for the nobility of the country.

Another important question is: what was the scope of the exercise of the right of resistance? The person of the king was evidently sacred

and inviolable according to the ancient conception; but could one lay hands on a crowned head? Could physical coercion be used against him? A plain reading of the text of the Golden Bull might allow such an interpretation, but it seems more correct to suggest that the right of resistance could have been applied more in the mind of the perpetrators of injurious acts. Respect for a validly crowned Hungarian king was an unwritten commandment in our country, with perhaps only two major exceptions in our entire history: the attempted assassination of the royal family by Felicián Záh (17 April 1330),[46] and the case of King Sigismund who was held captive by his barons for half a year (from 28 April to 29 October 1401).

According to the Golden Bull, resistance could be exercised by all (*universi*) or individually (*singuli*). The formulaic reference to *universi et singuli* suggests a strong canon law influence. Already the provision on the Maiden Quarter clearly showed the influence of Gratian's work.[47] It should be emphasized that the imposition of the right of testamentary succession was, according to the clear evidence of the development of Hungarian legal history, in direct opposition to the system of aviticity (*aviticitas*)[48] and failed in the struggle with it. By the 13th century, however, the Church was at the height of its power, an inescapable authority, and the Council of Lateran in 1215 gave impetus to the papal effort to

46 According to the chronicles, at the time of the assassination, the elderly lord attacked the royal family preparing for dinner with a sword and managed to wound the queen (Elisabeth Lokietek) in the hand. The king, Charles Robert (King Charles I – 1308-1342), later took terrible revenge for the attack: the sentence contained in the surviving writ of sentence of the Royal Judge had Felicián's son and one of his daughters beheaded, his grandchildren given to the Knights of St. John of Rhodes, his other daughter Clare mutilated and carried through the country as a deterrent and the Záh family exterminated for three generations. Comp. Almási, 2000, pp. 191–197.

47 C. 5,59,5, in: Friedberg, 1955.

48 Aviticity is the most important institution of the Hungarian nobility. It essentially meant the blood and legal community of the noble families, the mutual right of succession and inheritance to their estates. In contrast to the individualistic legal approach of Roman-Canonical law, it was based on the idea of the common possession of lands by the family. The institution was annulled by Act 15 of 1848. Comp. Aviticity (Entry), in: Pomogyi, 2008, pp. 915–916; „*Aviticitas: ius hereditarium bonorum ab avis acceptorum*" (Entry), in: Bartal, 1901, p. 62.

infuse national sources of law throughout Europe with the principles and institutions of canon law. The phrase *universi et singuli* was inspired by the canon lawyers, including Gratian, from the Justinian Roman law (C. 5,59,5). It was used to express the difference between a legal person and a natural person, to distinguish legal consequences. An important question in this context was to decide what could be considered as *universitas*, because according to the canon lawyers' view, the body should be considered as a separate legal person, which could be replaced by a representative (X,1,29 prol.), but the rights otherwise belonged to the organisation, not to the members. The practical importance of this legal question is shown by the contemporary controversy as to whether the cardinals were entitled to *ius universitatis* or *ius singularitatis*? The eminent canon lawyer Hostiensis took the strong position that cardinals are entitled to elect the pope and to participate in papal worship *"ex iure congregationis, non singularitatis."*[49] It can be seen, therefore, that the acceptance of the prerogatives of the communities was an integral part of the Church's approach.

However, the precise definition of the scope of persons was a natural condition for the collective exercise of rights. The Hungarian Golden Bull fulfilled this condition only in a programmatic way, when it identifies those entitled to resist in the bishops, serfs (*iobagiones*) and nobles, i.e., the lords in general. A peculiarity of the Hungarian development is that the initial, relatively narrow circle of persons has expanded enormously over time, but at the same time it has also become more precise in legal terms. With the emergence of the legally unified nobility (*universitas nobilium*), the personal aspects became well-defined, but the number of members swelled to such an extent that the enforcement of interests could only be exercised by way of representation – and in constitutional terms this already leads us to the history of the Diet of the orders. The text of the Golden Bull under discussion here, therefore, under the perceptible influence of canon law, referred to both forms of exercising the right of resistance according to the legal concept of the time.

What was the risk of resistance? The Golden Bull makes it clear that *"all sins of infidelity"* are to be avoided for those who practice lawful

49 Comp. Bónis, 2016, pp. 25–30.

resistance. Infidelity (*nota infidelitas*) was the most serious category of crime in feudal society and included the most serious offences a vassal could commit against his lord.[50] The basic bond of loyalty (*fides*) of the feudal society, which was also the holding force of the state organisation, was violated. The punishment of infidelity throughout the age of the orders was, according to the rules, loss of head and cattle. According to Werbőczy, the effect was *ipso facto* established.[51] The '*destructive*' effect of the judgement thus goes back to the time when the act was committed (*ex tunc*). This was particularly important from the point of view of the law of succession. Children born before the infidelity was committed could not inherit, but those born afterwards could (by royal mercy) claim the inheritance. The relationship of succession between the infidel and the pre-born was broken, which, according to the *Tripartitum*, could not be restored by subsequent royal mercy. However, royal mercy could exempt the execution of the beheading.

The right of resistance, which was continuously present in the later transcriptions of the Golden Bull and related legal sources (apart from the Golden Bull of 1231), seems to have remained a mere possibility. The nobility of the country did not really dare to take advantage of it. However, distinction must be made between active and passive forms of resistance. Passive defiance of royal power, which was considered illegitimate, was seen as much less dangerous, and in practice it was used in many different ways.

Hungary's modern history has also seen fundamental changes in constitutional law. With the geographical and political expansion of the Ottoman Empire (1541, the capture of the capital, Buda), the so-called royal Hungary, comprising the western and northern parts of the country, ruled by the Habsburgs, represented a formal continuity with the medieval Kingdom of Hungary. In the expulsion of the Turks from Hungary (1686, the recapture of the capital, Buda), the royal court in Vienna had an unparalleled role to play. After the restoration of the country's territorial integrity, the orders of the country (both out of gratitude and out of necessity) accepted the Habsburg family's right to the throne, first

50 Comp. Barna, 2015, pp. 23–49.
51 Tripartitum, Pars I, Tit. 16.

for the male heirs and then in 1723, for the female heirs, and at the same time renounced the right of resistance.[52] From then on, the active form of *ius resistendi* could not be exercised constitutionally.

The emergence of the Habsburg dynasty opened up a new dimension of resistance to the ruler in our history: the quests for national independence. No one could have thought of this aspect at the time of the Golden Bull, of course. Already during the Turkish occupation, several national resistance movements developed which took the form of an open, armed uprising against the (foreign) ruler. In their self-understanding, these movements have always put the emphasis on legitimacy, on the legitimacy of the exercise of resistance. These struggles have generally been successful to some extent. The royal court in Vienna committed itself again and again to respect the constitutional rights of the orders of Hungary in peace treaties concluded with several Transylvanian princes: with István Bocskay in Vienna (1606), with Gábor Bethlen in Nikolsburg (1622), with György Rákóczi I in Linz (1645). The Bocskay uprising, which enjoyed strong noble and religious support, was the first organised armed confrontation between the king and the nation, and it also had certain religious characteristics, since István Bocskay, Prince of Transylvania, was Protestant and the Habsburgs were Catholics. The Hungarian orders, however, did not use the spiritual armoury of Protestantism, but stood on the platform of a political conception embedded in the medieval worldview.

Although the right of free exercise of religion for Protestant churches is one of the most cherished achievements of the Peace of Vienna, it is remarkable that the public law concept and argument of Bocskay and his followers goes back to the teachings of the medieval church, according to which subjects have the right to resist an evil ruler who does not uphold God's law. Formally, they refer to the serious and systematic curtailment of the freedoms enjoyed under the old kings. And the Golden Bull itself is the first record of freedoms. The orders referred to the Golden Bull through the *Tripartitum*, which was in use until 1848. In medieval wording, the Golden Bull was known as *decretum generale*. Werbőczy also uses this term when describing the rights of the nobility,

52 1687:4. tc.

and it is also used in the political documents of the Bocskay uprising. The armed resistance of the orders thus saw a stronger legal title in the medieval Hungarian legal sources, which also expressed historical continuity, than in militant Calvinist ideas.

However, the armed actions against the Habsburgs did not achieve the actual goal of full national independence, so the most important constitutional bastion of Hungarian national and orderly resistance was the noble county, the *municipium*, which had the accepted right of *ius inertiae*, i.e., the right of passive resistance. In practice, this meant that if the noble assembly of the county found a royal decree unlawful, it would protest against it, and if its protest was not successful, it would 'respectfully set aside' the royal decree. This procedure of the counties mostly achieved its purpose, because the government in Hungary had no other body for enforcement than the counties, so it either gave way or had to resort to extraordinary means. The events of 1848 created the constitutional legal relations appropriate to civil society, and although parliamentary government was in sharp contrast to the ancient right of county resistance, the legislature implicitly left the counties in possession of this long-exercised right (Act XVI of 1848). The constitutional development clearly pointed towards the decline of the county right of resistance. The law on the new system of counties (Act XLII of 1870) also retained the right of the legal authorities to guard the legality and expediency of government decrees, but only in the form of the 'right of inscription'. With the elimination of the cumbersome and, in the second half of the 19th century, completely obsolete institution of the county assembly from its implementation, the institutionalised possibility of local resistance to central power was essentially eliminated.

A well-known example of passive resistance was the noble-national resistance to Joseph II (1780-1790). The monarch, aware of the fact that the coronation oath and in the letter of credence[53] he had to promise to keep the old Hungarian noble privileges, did not even crown

53 The letter of credence or coronation charter (*diploma inaugurale*) is a document issued by the king who succeeds to the throne by right of succession, in a solemn form, to secure the constitution, and the contents of which are sworn to during the coronation ceremony. Comp. Márkus, 1903, pp. 808–810.

himself (thus he became the 'king with a hat' in Hungarian history), and ruled by decrees. According to the Hungarian constitution, his reign was legally an *interregnum*, so the passive form of resistance could be legally exercised. The ruler seemed to have accepted this interpretation, because he did not really initiate infidelity actions on this basis. The best-known example of passive resistance in our history, however, was the period (1849-1867) of open national antipathy towards Franz Joseph, the suppressor of the Hungarian Revolution and War of Independence (1848-1849), the so-called neo-absolutism. The constitutional basis of the opposition was against the fact that the monarch was not legitimate, essentially usurping the throne, since the Hungarian Diet did not accept the abdication of Ferdinand V, who had been validly crowned. The unified, firm and legally precise position of the country – taking into account, of course, the compelling circumstances of foreign policy events – forced Franz Joseph to retreat. On June 8 1867, he was crowned and he issued a letter of credence. The Act I of 1867 approved the resignation of Ferdinand V, thus resolving the constitutional crisis.

The role and significance of the Golden Bull in our constitutional history is highlighted by the fact that, although no autograph manuscript has survived, the exact literal transmission of the text is certain, which in itself shows the importance attached to this document over the centuries. The Hungarian orders succeeded in making it an unexceptionable practice that the monarch confirms the Golden Bull of 1222 at the coronation. There are only two exceptions to this rule. Firstly, the right of free testamentary disposition has not been mentioned since 1351 and, secondly, since 1687, the king has not been threatened with the ancient weapon of resistance. It can be concluded that, in modern circumstances, both legal institutions are based on solid foundations, not violating but rather fulfilling the aspirations of the ancestors. The law of inheritance is a well-established part of the system of private law based on Roman law, and the guarantees of the constitutional rule of law provide a safe haven against autocratic action by the State. It is perhaps worth mentioning here that the members of the Hungarian Constitutional Court, established in 1990, have an exact replica of the royal seal of the Golden Bull around their necks, and the wall of the

meeting room of the regular council of the judges of the Constitutional Court is decorated with a *facsimile* of the Golden Bull.

5.2. FORMS OF RESISTANCE IN EUROPEAN COUNTRIES

The surprisingly early and elaborate standards of European fief law were established in the Kingdom of Jerusalem. The *assizes* were formed from 1099 when the crusaders conquered Jerusalem. No other state in contemporary Europe had a constitution as elaborate as that of the Holy Land at the time.[54] The earliest appearance of the right of resistance can also be found in the Assizes of Jerusalem. The right of vassals to revolt against the royalty was already known, as the text of the assizes established it in the 12th century. If the king breaks his oath in any way, neither his vassals nor his subjects are obliged to tolerate it. At the time of the formulation, the right of resistance was completely unknown in the continental states. It gave the vassals a hitherto unknown remedy against a king who broke the law. Previously, the king alone could decide matters between himself and his vassals, but now the vassals were given the right of resistance. Earlier, there was no sanction for infringements committed by the king, because the law was represented by the king himself in the proceedings. The right of resistance was specifically directed against the offending king. The power of the law became greater than the power of the king, whose duty was to respect the law.[55] However, similar to the Hungarian Golden Bull, the solution is that the right of resistance is rather declarative, because there are no detailed rules (as in *Magna Charta Libertatum*) on the protocol of the right of resistance.

The most famous European document declaring and regulating in detail the right of resistance to the king was written in England, the *Magna Charta Libertatum* (1215), and its famous Article 61 (*enforcement clausule*). It is a little-known fact that the king, John I, did not sign it, but the agreed text was merely confirmed by the king's great seal in the

54 D'Eszlary, 1958, p. 194.
55 Ibid. pp. 206–208.

presence of several witnesses.[56] The king's position is well illustrated by the fact that in the same year he sent envoys to the Pope (his then seigneur!) to obtain the annulment of the Charter. His attempt was not without repercussions: in his bull of 24 August 1215 (*Et si carissimus…*), Innocent III forbade the king to keep his promises, under penalty of excommunication.[57] The 25 barons who exercised the right of resistance under Article 61 tried to depose the king, who resisted, and the country descended into an internal conflict. By this time, the barons had already offered the crown to the French king, but the king's unexpected death (1216) resolved the crisis.

Following the publication of the *Magna Charta*, two further revised versions were published, in 1217 and 1225 – the latter in the name of the minor king. This was more emphatically a charter of privilege, a special royal concession. The general council appeared here in the sense that everyone was somehow represented, it was practically a parliament. Accordingly, the Charter of 1225 was already included in the English *Corpus Juris* as the *"first Act of Parliament"*. The famous provisions of the Articles 39-40 of the original document were further amended in 1354.[58] A law passed under Edward III in 1368 decreed that any written law contrary to the *Magna Charta* was null and void.

The *Magna Charta* became the legal basis for *Habeas Corpus* in the years 1580-1620 and was a frequently invoked document against the autocratic exercise of royal prerogatives. Sir Edward Coke, Chief Justice of England, was keen to point out that *Magna Charta* had been renewed more than thirty times by previous monarchs. The kingdom has now transformed into a limited monarchy in the light of Article 29. In 1628 Charles I was forced to verify the *Petition of Rights* with his consent. It

56 The document was copied by priests, in several copies, of which 4 survived: two, since 1215, in the libraries of Salisbury Cathedral and Lincoln, and two in the British Library in the collection of Sir Robert Colton. The articles are not numbered except in the edition by William Blackstone (1759). Comp. Holt, J. C.: Magna Carta, 3rd ed. by Garnett, G.- Hudson, J. Cambridge, 2015, 378–398; Carpenter, D. Magna Carta, London, 2015 and 2018, pp. 36–69.

57 Bémont, 1892, pp. 41–44.

58 Here: *„anyone, regardless of their legal status"*. Baker, 2017, pp. 6–9, 531–533.

was then that *Magna Charta* truly became the law of laws, far more than anyone could have foreseen in 1215.[59]

In France, the most potent institution of political opposition to the royal power was the General Assembly (*États généraux*).[60] It was during the Hundred Years' War (1355) when extra taxes were needed to finance the war, so the king called a meeting of the *États généraux*, which voted to do so, subject to the following:

– the Assembly must be summoned annually,
– royal persons collecting the tax are supervised, furthermore
– the King may sign peace with the enemy only with the consent of the Assembly.

After John II fell into captivity, he and his son Charles, 18, signed a law on 3 March 1357 to rule under the control of a council of 12, half of whom represented the citizens. In addition, a larger council of 36 members was created to control the King and represent the *États généraux*, with 12 members per chamber. The royal power would thus have come under the control of the *États généraux*, but in reality, the King annulled this provision. The Assembly had another historic attempt in May 1413, when it tried to force another law (*cabochienne*) from Charles VI, but the effort failed due to the resistance from the divided nobility. The *États généraux* was then unable to put up any resistance to royal power.

59 Baker, 2017, pp. 500–510.

60 Comp. Picot, 1979.
https://books.google.hu/books?hl=hu&lr=&id=OZ6AW07UB5MC&oi=fnd&pg=PA1&dq=%C3%A9tats+g%C3%A9n%C3%A9raux+histoire&ots=GDJQShj8CP&sig=XknrrV-hDSaM_8hTIoGsQ-B-XZ0&redir_esc=y#v=onepage&q&f=false
The Formation and Progress of the Tiers État, or Third Estate in France, translated from the French by the Rev. Francis B. Wells, Two volumes in One, London, Henry G. Bohn, 1859.
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THE PARADOXICAL FRAMEWORK OF FRENCH ROYAL POWER

CHRISTOPHE CHABROT*

ABSTRACT

The French monarchy is not organized by a particular Bulla aurea, because it has never known a counter-power strong enough to impose rules on it like in England the Magna carta adopted by Parliament or in Hungary the Bulla aurea of 1222. On the contrary, it triumphed, sometimes by art and sometimes by luck, of all those who wanted to limit it: King of England, German Emperor, Duke of Burgundy and various local lords or the mayor of Paris, parliamentarians, States General. But becoming an absolute monarchy, the Crown then had to paradoxically protect itself from the will or weaknesses of its own kings. With the Hundred Years War against England, it first consecrated by its jurists the Salic Law, Frankish customary law put in writing by the first King Clovis around the year 500, and in particular the rule of succession by automatic inheritance and by male primogeniture, which will be applied throughout continental Europe and which prevents the king from choosing his successor. Subsequently, other endogenous rules will be put in place to strengthen the power of the Crown by imposing itself

* Senior Lecturer in Public Law, Lumière Lyon 2 University, Julie-Victoire Daubié Faculty of Law, PhD, christophe.chabrot@univ-lyon2.fr, ORCID: 0000-0002-2016-3208.

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on the king. These rules which establish French as the official language or which prohibit the dispersal of lands in the royal domain, for example, will become the Fundamental Laws of the kingdom which the monarchs must respect and which still form part of French public law today.
Keywords: *Salic law, Fundamental laws of the Kingdom, Continuity of the crown, Inalienability of the royal domain, Royal ordinances of 1357 and 1413, States General, Statutory theory of the Crown, Philippe Pot, Jean de Terre Vermeille, Etienne Marcel, Jean Bodin*

The construction of France did not follow the same paths as in England. Here, no immediate conquest by an invader, like William of Normandy who succeeded in having the superiority of his Crown recognized by the Salisbury oath in 1086. No territory rapidly unified within stable borders. No Parliament succeeding in imposing on the king texts protecting the freedoms of nobles and inhabitants, such as the *Magna carta* of 1215, the *Petition of Rights* of 1628, the *Habeas corpus act* of 1679 or the *Bill of Rights* of 1689, which will inspire undoubtedly the social contract of John Locke.

Paradoxically, it is on the contrary the initial fragility of the Crown in France that will lead to the assertion of a strong central power. After the break-up of the Roman Empire and the great European migrations, the continent was in fact divided into a very wide variety of local lordships which have long been able to compete with or oppose the monarch from the first Frankish dynasties, such as the county of Toulouse, the Duchy of Burgundy or the Kingdom of Provence. The whole challenge for the kings of France will then be, through a work spanning several centuries, to enlarge the royal territory initially concentrated around Paris, and to subdue and unite the populations by force, intelligence and law. As with Locke, Rousseau's social contract, which seeks social unification and the legitimation of a higher power, is marked, consciously or unconsciously, by the historical issues of the society he wants to seize.

But this gradual conquest of an uncertain territory by a central power still contested will be based in France on two key elements. The first lies in the recognition by the Catholic Church of the legitimacy of royal power in relation to other local lords since the conversion of Clovis

1st, the first king of the Franks who became Catholic with his soldiers after the battle of Tolbiac in 496. This religious recognition conferring a symbolic superiority will be confirmed for the Carolingian dynasty, of which Charlemagne was crowned emperor in Reims in 800, and for the following Capetian dynasty initiated by Hughes Capet in 987. The second element which allows Parisian power to transcend history is the continuity of this Capetian dynasty since 987, which makes it the oldest dynasty in Europe if not in the world[1]. Thus, the national construction project planned by the first kings will be able to be carried over from generation to generation in an extension both historical and family.

Thereby France is the result of continuous expansion, of a regular and successful process of integration of different territories, where the central power often has to impose itself by force and faces numerous centrifugal opposition forces. The populations are divided by language[2], the provinces have different legal and fiscal statuses[3], some duchies are rebels like in Burgundy. To establish the unity of the country as well as the superiority of the central authority, the French monarchy

1 This dynasty of the Capetians will include direct descendants (987-1328) with in particular the great kings Philippe Auguste, Saint Louis and Philippe the Nice, then will continue through the cousin branches of the Valois and the Orléans (1328-1589), then the Bourbons (1589-1792, and 1814-1848) including Henri IV, Louis XIV or Louis XVI and, after the Revolution, Louis XVIII or Louis-Philippe. Including the two Robertian kings who reigned before 987 and ancestors of Hughes Capet, this dynasty will reign in all 960 years through 37 kings of France. She will also produce 13 kings of Naples-Sicily, 11 kings of Spain including the current Philip VI, 4 Hungarian kings, 3 Polish kings, 2 Grand Dukes of Luxembourg including the current Henry, 32 Portuguese kings and 2 Brazilian emperors.

2 France is traditionally divided horizontally into two, with the langue d'oïl countries north of the Bordeaux-Mulhouse line and the langue d'oc countries to the south of this line ("oïl" and "oc" being the two ways to say "yes", next to "si" in countries such as Spain and Italy in Dante's typology). But we must add other specific languages: Breton, Flemish in the north, Francic in the east, etc. A 1998 study still counted nearly 90 languages spoken in France today (with however two-thirds of which in overseas territories).

3 The kingdom is thus divided into personal lands of the king, in lands of the kingdom, in duchies (Brittany, Burgundy, Auvergne...), counties (Provence, Armagnac...), States or Generalities (Languedoc,...) which have more or less autonomy and knowing very different tax regimes. On the analysis of this diversity of the Ancien Régime monarchy, read de Tocquevillle, 1856.

will then have to fight with determination all these factors of internal division and impose a single strong reign, dominating any competing counter-power. Which she will eventually do, sometimes luckily and sometimes artfully. Thus in England the Crown was never contested, except under the Commonwealth of Cromwell from 1649 to 1660, but the holder of the throne was regularly worried by the Parliament which imposed its texts on him with each of the various change of dynasties[4]. On the contrary in France the Crown itself is often attacked, but it asserts itself against any counter-power through a single Capetian dynasty which is imposed on all. It is thus the national division and the initial fragility of the monarchy that will lead to asserting its real historical superiority[5].

But this monarchy, which is gradually becoming absolute, is not necessarily completely free. Texts frame its development. These limitations have different destinies, however. If the monarchy has succeeded in resisting attempts at exogenous supervision by competing powers (**I**), it will nevertheless submit to texts that it will produce itself, strangely to its advantage (**II**).

1. AN EXOGENOUS FRAMEWORK INCAPABLE OF LIMITING THE MONARCHY

The affirmation in France of an absolute monarchy, in which the king rules alone, is the fruit of a long work carried out successfully by generations of Capetian kings, while the first Frankish tribes put under control

4 The *Magna Carta* is thus imposed by the lords in 1215 on John Lackland who replaces the king Richard the Lionheart gone in crusade, the *Petition of Rights* of 1628 adopted by the parliament intervenes in the first years of the reign of the new Charles 1st Stuart who wants to establish an authoritarian monarchy, just like *Habeas Corpus* in 1679 against King Stuart Charles II, and the *Bill of rights* was imposed in 1689 on the new monarchs Marie of England and William of Orange chosen by Parliament to lead the Glorious Revolution.

5 We can note that the final unification could not be completed under royalty, so it will be the Revolution of 1789 which will have to consecrate the omnipotence of the central State in the name of unity and equality.

their chief elected by the warriors[6]. The Capetian monarchy to impose itself will thus seek to overcome local resistance through a skilful and continuous policy aimed at territories[7] as well as men[8], to strengthen the place of the monarch in institutions, like Philippe Auguste who now imposes his son as legitimate successor directly to his death in 1223 without going through the election of the heir by the peers of the kingdom, even if it had become just symbolic.

Like many Indo-European societies, France in the early Middle Ages was organized according to a tripartite social division, justified by Saint Augustine and in France by Aldebaron of Laon around 1030. Thus, and to be supported in his opposition to the Pope, Philippe the Nice (le Bel) convened in 1302 the first States-General which brought together representatives of the three States of society: the nobility (those who protect and lead), the clergy (those who pray), and the so-called "Third Estate » which reflects all the diversity of workers (at the start were only represented the bourgeoisie "of the good towns ", then the peasants, artisans, workers, lawyers, shopkeepers, doctors, etc.).

6 A symbolic episode tells how Clovis, 1st king of the Franks, could not save in 486 a valuable vessel that he wanted to give to the bishop, during the looting of the churches of Soisson and the collective and equal distribution of the booty according to Frankish custom.

7 The Duchy of Normandy was thus reconquered by the King of France in 1204, the County of Toulouse was invaded by Philippe Auguste at the beginning of the 13th century under the pretext of the crusade against the Cathars, the Duchy of Brittany was attached to the Kingdom of France after three marriages between the duchesses Anne and her daughter Claude to the kings Charles VIII (1491), Louis XII (1499) and to François Ist (1514) which will give the edict of union in 1532, the dangerous Duchy of Burgundy is integrated under Louis XI in 1477, like the territories of Maine, Anjou and Provence in 1481. After an eventful history, Louis XIV militarily annexed southern Flanders, then Alsace at the end of the 17th century.

8 Many popular revolts, which generally develop against taxes and duties, will thus be put down by the king: first great revolt of 1358 led by Jacques Bonhomme (who will give his name to the "jacqueries"), revolts in Languedoc in 1381, in Paris in 1382 (revolt of the Maillots), in Normandy in 1436 or in Brittany in 1489, jacquerie of Pitauds against the new tax on salt in Saintonge in 1548, jacqueries in the south of France in Languedoc and in Bordeaux in 1589-91, in Burgundy in 1592, etc. The aristocrats were also able to rebel against the king, as during the *Fronde* in 1648, when Louis XIV was still a child and under regency, or with the opposition of the Catholics to King Henry IV who was too conciliatory with the Protestants.

Subsequently, and because the king's vassals owed him "help and advice" in the government of the kingdom, the States-General will be convened regularly to settle religious questions[9], to levy new taxes[10] and to settle territorial[11] and military[12] questions, or to settle the succession or regency of the Crown[13]. There have been more than forty summons from these States in 487 years, from their creation to the last one in 1789, which caused the fall of the monarchy.

The convocation of these States-General can be strategic, to weld the constituent bodies of the Kingdom behind the king or to validate complicated decisions by a majority. But it can also translate the impotence of the king to regulate the important questions of the Kingdom, and reinforce the importance of the peoples of France who must for example, through their elected representatives, agree to the tax which the king wants to create or which transmit him their "doléances" (grievances). There is therefore a great danger that the king will see his power compete with these States-General. Moreover, on several occasions they tried to pose as a legitimate and effective counter-power by adopting texts framing royal power, especially in the 14th century (**A**). But the monarchy will resist effectively while accepting a diminished role of the States-General (**B**), to gradually impose an absolute government.

1.1. REBEL STATES-GENERAL ATTACKING ROYAL POWER

The monarchy has repeatedly found itself in a position of weakness, which the States-General have tried to take advantage of to impose their will and pass texts limiting the king's powers. Two important moments

9 Judgment of the Pope in 1303, religious questions in 1560 finally postponed, and in 1576 on relations with French Protestants.

10 In 1313, 1322, 1355, in 1356 and 1357 (tax to free King John II prisoner of the English) or in 1380, 1355, 1561 and 1576. The fiscal question is also at the basis of the meetings of 1484, 1614 and 1789.

11 Like the question of the division of Normandy in 1468.

12 The war against England leads to the reunion of the States General of 1326, 1369, or 1439 for exemple.

13 In 1317, 1420, 1484, 1588 and 1593.

mark this standoff, which culminated in the adoption of ordinances which could have played the role of the English *Magna Carta* in French institutions. In vain.

The first conflict will take place in the period 1355-1358, and will be the strongest attempt to establish a parliamentary monarchy in France. In the early days of the Hundred Years War which began in 1337, France suffered many defeats, such as the Battle of Crécy in 1346 when the new King Philippe VI of Valois pitifully fled losing all credibility. To continue the war, his son Jean II said as le Bon (the Good) had to convene the States-General from December 1355 (in Paris, in the Oïl provinces) to March 1356 (in Toulouse, in the Oc provinces[14]) to obtain the creation of a tax on salt (the "gabelle") and on any trade in order to finance its armies. The States-General accept these new taxes with difficulty and manage to impose certain constraints on the king in return, such as their annual meeting, control over the king's agents responsible for collecting these taxes or the prohibition to grant a truce to the enemy without the agreement of the States, with a right of resistance against any royal officer who does not respect these principles. This agreement will be registered in the long ordinance of December 28, 1355 ratified by King John II[15].

This King John II was taken prisoner during the battle of Poitiers in September 1356, so it was his son Charles, aged 18 and future Charles V said as Le Sage (the Wise), who would exercise the regency of the Crown and bring together the States-General in November 1356 to negotiate the payment of the royal ransom. During this meeting, while the branch of the Valois is very disputed, the provost of the merchants of Paris[16]

14 Until 1484, the States General met differently in the two linguistic regions of France

15 Ordinance of December 28, 1355, available at: https://gallica.bnf.fr/ark:/12148/bpt6k118975q/f160.item

16 In the Middle Ages, certain corporations of merchants in Paris and in particular the navigators on the Seine who supplied the city by the river (the "nautes", whose coat of arms became that of the city of Paris) organized themselves in brotherhoods, directed by a "provost". This provost will establish himself as the *de facto* ruler of the city of Paris, alongside the provost of Paris appointed by the king. Saint Louis (Louis IX) will more officially organize this provost of the merchants in 1263. Too threatening for the king, as the revolt of Etienne Marcel will prove, it will be dissolved after the revolt of the Maillotins against Charles VI in 1382 and reunited with the provost royal.

Etienne Marcel, and Robert le Coq, magistrate and bishop of Laon, directly oppose the claims of the regent Charles, and want to establish a monarchy controlled by the States-General on the basis of the ordinance of December 28, 1355. Pressed and contested, the Dauphin[17] ends up adopting the great ordinance of March 3, 1357[18] imposed on him by the States-General, by which he agrees to dismiss many personal advisers very criticized, and takes up the main provisions of the decree of December 1355. From now on, he can reign only under the control of a council of the Dauphin of a dozen members and comprising half of the bourgeois representing towns and mainly Paris, and another larger council of States, composed of thirty-six members (twelve representatives from each of the three States). The royal administration and in particular the financial administration is purified and controlled by the States-General, taxes can only be created by these States-General and collected by agents appointed by them, the nobles are no longer exempt from taxes, etc. The monarchy came under the control of the States-General, called to meet annually and whenever necessary[19].

But in practice this ordinance will not establish a parliamentary monarchy. It was firstly canceled on April 6, 1337 by King John II the Good, still captive of the English in Bordeaux. For his part the regent Charles, more and more supported by his administration, came into direct conflict with Etienne Marcel and Robert le Coq, to whom he prohibited in August 1357 from meddling in royal affairs. The two camps opposed each other during the new States-General of January 1358, but in the context of riots started by Etienne Marcel upon the discovery of the treaty negotiated by John the Good for his liberation, which left a third of the kingdom to the English. The royal palace is invaded and Etienne Marcel forces the regent Charles to confirm and execute the ordinance of 1357. He does not dare, however, to take the step of

17 Title given to the son heir to the King of France since the purchase of Dauphiné, around Grenoble, in 1349.

18 See (with the error on the year): https://gallica.bnf.fr/ark:/12148/bpt6k5622562f/f2.item

19 See the thesis of S. Stavisky *The Ordinance of March 3, 1357. Les Valois dans la tourmente*, ed. Canopy 2001.

dismissal, and maintains him as regent of the crown in particular so that he can oppose to his father's treaty.

But Etienne will end up losing his support. The States-General gathered outside Paris to ratify these new royal ordinances will ultimately support, and in particular the nobility, the Dauphin Charles. Likewise the great Jacquerie of May-June 1358, a popular uprising in several provinces of France indirectly supported by Etienne Marcel, brought the castes of merchants closer to the regent who promised a return to order. It will even be Charles of Navarre, a former ally of Etienne Marcel, who will lead the armies that have come to defeat the Jacques. At the end, during a final siege of Paris the population of Paris will turn against Etienne Marcel accused of treason, and he will end up massacred by the mob on July 31, 1358.

The Dauphin Charles will return triumphant to Paris with the support of the various layers of the population and no longer having any direct opponent, neither Etienne Marcel, nor Charles of Navarre nor the States-General. While it was about to disappear, the Capetians-Valois monarchy grew stronger and Charles would even be fully supported by the new States-General meeting in March 1359 to counter the claims of the English. The opposition of the States-General has lived. The one-man opposition was not structured enough in this troubled time, and revolt did not turn into revolution.

But this opposition will manifest itself again when King Charles VI, son of Charles V the Wise, summons the States-General of January 30, 1413 to resolve a new budgetary crisis. His opponent, the Duke of Burgundy Jean sans Peur (John Fearless), will then influence part of the deputies and the population to demand reforms of the state and the monarchy. He thus obtains the meeting of a commission made up of magistrates, bishops, aldermen and academics from the Sorbonne university to prepare the text of this reform which will be based on the main lines of the ordinance of 1355. While this commission is working from March, Paris is agitated by demonstrations of the Brotherhood of Butchers led by Simon Caboche, supported by the Duke of Burgundy. This growing revolt eventually invaded the Bastille and the royal palace, and on May 21 forced Charles VI to ratify the long text of 259 articles drawn up by the commission and which would become the so-called

"Cabochian" ordinance of May 26-27, 1413[20]. This ordinance is extraordinarily long and complex, undoubtedly too much, dealing with many subjects: election of royal offices, control of the royal administration and in particular of tax and finance agents by the States-General, supervision of judges to avoid their corruption, functioning of the local Parliaments, or scientific level of the deputies, etc.

But here too, the text has difficulty in being quickly implemented, and the Cabochian revolt ends up being defeated by the Armagnacs, nobility of southwestern France who supports King Charles VI against the Duke of Burgundy. The king will be able to return again triumphant to Paris, and will annul in great ceremony in the Parliament of Paris[21] his ordinance of May, which will be torn in public place. The king again succeeds in preventing the monarchy from becoming parliamentarian, and the States-General will no longer be able to impose themselves on the king.

But was that really the objective of the Duke of Burgundy? He wanted to reduce the power of Charles VI to take his place. But no doubt he was not ready to rule under the control of the States-General afterwards either. Here too, the fragility of the popular revolts against the king, the solitary strategies of conquest of power, the divisions of the nobility whether or not supporting the rebellion, the complexity of the reforms envisaged and the lack of substantive reflection shared by the greatest number, prevented the consecration of an effective counter-power to the monarch within the States-General. After the storm, the king even ends up strengthening his power. And the following States-General won't really worry the monarchy anymore.

20 To see on https://gallica.bnf.fr/ark:/12148/bpt6k55621t.image

21 Alongside the States-General, which meet from time to time, the Parliaments sit on a regular basis, in Paris and in the major provinces of the territory (Parliament of Brittany, Dauphiné, Languedoc, Burgundy, etc.). These assemblies, composed essentially of an aristocratic "sword" nobility but which will soon be joined by a "dress" nobility (rich merchants who can buy this function), are called to do justice by applying the royal ordinances that they register. In the event of a rebellion, the king can himself come in person to register his ordinances and impose his will in a "lit de justice" ("bed of justice") by which he takes back his delegated powers to Parliament to rule himself.

1.2. DOMESTICATED STATES-GENERAL SUPERVISED BY ROYAL POWER

While the monarchy is strengthening, the States-General have on a few occasions manifested a different conception of power and sought to assert their legitimacy. The clearest affirmation of this desire for a parliamentary monarchy will be made during the States-General of Tours in 1484. These States-General are convened to discuss the regency of young King Charles VIII, exercised since 1483 by his sister Anne de Beaujeu, known as also Anne of France, and her husband Pierre, but contested by Louis II of Orleans[22]. For the first time these States-General merge the assemblies of langue d'oïl and langue d'oc, and the deputies are now appointed by election of the entire population, with a Third State comprising, for example, peasants and no longer just bourgeois from "good cities". Two theses collide here. The first, supported by the deputies of Paris and the North, entrusts only the nobles and peers of the kingdom the government and the choice of the advisers of the regency when the king is minor. The other, carried in particular by Burgundy and Normandy, maintains that the power actually belongs to the People represented in their States, and that it is up to them to choose the king's regency council.

Several deputies will support this "party of States" against the "party of Princes", but history will retain above all the name of Philippe Pot, Grand Seneschal of Burgundy. In his speech of February 7, Philippe Pot indeed expresses in a remarkable way these democratic theses also supported by the University of Paris. He then lays down very modern principles: "*Originally, it was the people who chose a king to entrust them with their interests, and the king is only placed at the head of the country with the consent of this people. If he is not old enough to rule, the kingdom returns to the people, that is, to all of the inhabitants of the land. The States-General, which represent them, are responsible for administering*

22 Louis II of Orleans himself became king of France from 1498 to 1515, on the death of Charles VIII, under the title of Louis XII. He is the great-grandson of Charles V, and claims the throne or the regency as the grandson of Louis I of Orleans who was the brother of King Charles VI.

the kingdom ", and therefore for appointing the regents. It is a real plea for popular sovereignty, legitimate to impose its will on the monarch and princes[23].

Finally, at the end of these States-General on March 14, 1484 and as supported by Philippe Pot, the regency of Anne de Beaujeu will be confirmed and will last moreover until 1491. But it should be noted that this same Philippe Pot will oppose on February 12 to a formal vote of the States which wanted to formalize "*that the Lord and the Lady of Beaujeu are with the person of the king as they have been there until now*". Because that would have officially registered that it was indeed the States-General who had taken the decision to confirm the regency and who therefore had the initial sovereign power, which then risked being imposed on the regents and future kings. However, Philippe Pot, very close to the Beaujeu, probably did not really want to go that far. While he was opposed to the Princes' party, as a good Burgundian, he was also an aristocrat who did not want to give up entire power to the States, because he could participate in monarchical power later and therefore did not want to restrain it completely in advance. The States-General then contented themselves with an implicit confirmation of the regency, without an official vote.

The doctrinal construction of sovereign States-general stopped there. The "monarchomachs" who postulate for a limitation of the royal power like the theologian Théodore de Bèze, will be few in France, not very influential, and especially used during the religious conflicts, when the Catholics will want to oppose the coming of a Protestant king, Henri IV (1589) and when Protestants want to limit the power of a catholic king. Otherwise, it is rather the jurists of sovereignty and royal power such as Jean de Terre Vermeille (1370-1430)

23 This speech is reproduced in Latin by Jehan Masselin, deputy of the clergy of Rouen, in Normandy, in his *Journal of the States General of France held in Tours in 1484* (reprinted by ed. Bernier, Paris 1834). But it is likely that it was in fact rewritten by Masselin from different theses supported by several pro-state power speakers. See the analysis of this speech in Bouchard, 1950, pp. 33-40. https://bm.dijon.fr/documents/ANNALES%20BOURGOGNE/1950/1950-022-02-033-040-1362982.pdf

and then Jean Bodin (1530-1596) who will lay the foundations for the superiority of the Crown.

The influence of the counter-powers then began to wane. On the one hand, certain taxes established definitively from John II the Good around a strong currency, the *franc*, made it possible to no longer systematically bring together the States-General on these fiscal and financial matters. On the other hand, the monarchy developed a whole strategy to remove from the agenda demands on administrative and political reforms, as in 1560. Likewise, the monarchs have always rejected an annual meeting of the States-Generalobtained under Etienne Marcel, or the biannual meeting promised by Charles VIII in 1484, and any other identical request formulated by the States on various occasions. The convocations remain at the sole goodwill of the king, who brings together his States according to his needs and without obeying them. These meetings then begin to become rarer[24]. Instead, "assemblies of notables" will be called together, bringing together selected aristocrats and bourgeois, to provide advice to the King as in 1527 and 1558. But these assemblies remain docile, not very ambitious, not very dangerous for the monarchy. No limiting text is derived from it. And if the States-General asked in 1576 to be able to appoint permanent commissioners to receive complaints between two summons, the king would reject the proposal recalling that he can always himself receive permanently the requests of his people.

Anyway, the grievances arising from extensive consultations in each order, and transmitted by the States-General to the King at the end of their meeting, will never obtain binding force. The king disposes of it as he pleases. While he sometimes takes this into account and then adopts ordinances to deal with the problems raised as in 1561 or 1576, it is

24 76 years separate the States-General of 1484 and the following of 1560, and after a few meetings at the end of the 16th century (1561, 1576, 1588, 1593, in a troubled period of wars of religion and uncertain succession), the States will no longer be united under Louis XIV and Louis XV, from 1614 to 1789. Finally, only the bankruptcy of the State after financial aid to the American Insurgents will oblige Louis XVI to convene the States-General for the last time in 1789, in view of the resistance of the nobility to any tax reform.

neither systematic nor immediate[25]. The States-General still owe "help and advice" to the king, but now he no longer needs it and in return does little to meet the expectations of the deputies of the three States. The monarchy has won its fight against States, and can become absolute. But then it will submit to other constraints, which it will produce itself.

2. AN ENDOGENOUS FRAMEWORK AFFIRMED FOR THE BENEFIT OF THE CROWN

The Capetians thus succeeded in gradually asserting the superior power of the monarch. Jean Bodin, in his work *La République*, which appeared in six volumes in 1576, even provided all the theoretical and legal bases for establishing the "sovereign" power of the king. From then on, an absolute monarchy was established, of which Louis XIV (1643-1715) will be the symbol in his court of Versailles. But the monarch is not God. He still has to obey higher rules that Bodin himself identifies. If indeed the Sovereign has a "*perpetual and absolute power*", that is to say he has "*the power of legislation over all in general and over each in particular ... without begging the approval of a superior, equal or inferior* ", he remains subject " *to the laws of nature and of God* "as well as to the treaties he has signed and to the commitments made to his subjects, and finally also to the fundamental laws of the Kingdom[26]. There is therefore a framework at the will of the king, but which often comes from the monarchical rules themselves.

Among these rules, appears first the Salic law which was used to preserve the French royal dynasty (A), and which will be the first of the

25 The grievances expressed during the States-General of 1614 gave rise to several meetings of notables in 1617 and 1626 before an ordinance was finally adopted on the points raised in 1629, fifteen years later. See "The role of the States General in the government of the kingdom (XVI-XVIIth centuries)" by Y.-M. Bercé, in Minutes of the sessions of the Académie des Inscriptions et des Belles Lettres, n ° 4-2000, pp. 1221-1240 (https://www.persee.fr/doc/crai_0065-0536_2000_num_144_4_16207)

26 Bodin, 1756 (facsimile of the Elibron Classics eds), p. 266, 276, 314 or 318, and p.436. See also Spitz, 1998, p. 12 and s. or 79 and s.

fundamental laws of the kingdom intended paradoxically to reinforce the power of the monarchy by limiting the risks of its weakening (2.2.).

2.1. A SALIC LAW PRESERVING THE FRENCH MONARCHY

The Capetians from Hughes Capet[27] form the third Frankish dynasty, which succeeds the Carolingian dynasty from Charles Martel and Charlemagne[28], which itself replaced the Merovingian dynasty from Clovis[29]. These dynasties are those of the Franks known as "Saliens" (Salians), that is to say bringing together the Frankish tribes located in the north of present-day France and in the south of present-day Belgium[30].

The Franks of the time are still governed by their customs. But their establishment in the lands of the fallen Roman Empire prompted them to gradually adopt legal rules whose form and substance are influenced by Roman law. Thus, the great Frankish customs such as the Salic law (of the Salian Francs) and the Ripuaire law will be written down[31], which will then be amended or supplemented by "capitulars" adopted by the Frankish assemblies and subsequent kings. The lex salica written in Latin under Clovis in 511 contained about 65 articles but it contains almost a hundred after the additions of Charlemagne after 800 (*lex Salica Karolina*

27 The name "Capetians" is given to the kings who succeed Hughes Capet, who became king in 987. But the dynasty dates back to the "Robertians", ancestors often bearing the first name of Robert and of whom two members were elected king during the Carolingian period, and who were close servants of the last Merovingian kings.

28 The son of Charles Martel, Pépin le Bref (the Brief) will be the first Carolingian king in 751. His son is Charlemagne, crowned king of France in 768 and crowned emperor in Rome in 800.

29 Descendant of Mérovée, son of Clodion the Hairy, Clovis becomes king of the francs in 481. His name will be gradually transformed to become Louis, used by many kings of France.

30 The Salian Franks are thus distinguished from the Riparian Franks who bring together the Frankish tribes settled on the banks of the Rhine and whose capital will be Cologne. Some historians have, however, demonstrated links between Carolingians and Riparian Franks.

31 See also the laws of the Burgundians and the Laws of the Visigoths, or the Gallo-Roman breviary of Alaric in 506.

emendata[32]). This Salic law includes very diverse provisions, particularly in criminal law, such as the price of penalties, or the rules relating to incest, the transfer of property, royal protection, etc. It is especially called upon to govern personal relations within the Frankish kingdom.

It will however be used to frame the transmission of royal power. Article 62 of this law provides that in matters of inheritance, women cannot inherit or transmit family property (the "alleux"), which allows them to be kept in the family patrimony instead of being lost through the marriage of girls[33]. This rule of private law will be exploited in a very timely manner to organize the succession of the Crown.

Succession problems will indeed arise at the end of the "Capetian miracle" which, from 987 until 1316 had always allowed the king to have an heir son. King Louis X, son of Philippe IV said as the Nice ("le Bel"), died in June 1316 having a daughter from a first marriage, Jeanne of Navarre, and his new wife being pregnant[34]. His brother Philippe V will succeed in removing Jeanne from the crown and will be proclaimed regent then king by the States-General meeting at the beginning of the year 1317. When he also dies without son, he is replaced by his brother Charles IV in 1322, who also died in 1328 without son[35]. The crown of France is then claimed by Edward II, King of England, for his son whom he had with Isabelle of France, last daughter of Philip IV the Nice and sister of Charles IV, whom he married in 1308. For to prevent the crown of France from being then recovered by the King of England, French jurists will seek legal justifications. As in 1317

32 View a copy: https://commons.wikimedia.org/wiki/Category:Lex_Salica_(manuscript_107)

33 Article 62 *in fine* : « *De terra salica nulla portio hereditatis mulieri veniat, sed ad virilem sexum tota terrae hereditas perveniat* » ("as for the salic land, that no part of the inheritance goes to a woman, but that all the inheritance of the land passes to the male sex"). To see on https://upload.wikimedia.org/wikipedia/commons/1/1e/Lex_Salica_Emendata_66.jpg.

34 She will give birth to a son, John the Posthumous, five months after the death of Louis X. But this child himself will die five days after his birth.

35 The line of the direct Capetians then disappears with these "cursed kings" who died without male heirs (Philippe the Nice, father of Louis X, Philippe V and Charles IV, would have been cursed in 1314 by the grand master of the Temple Jacques de Molay, whom he had arrested and burned in Paris at the end of the Île de la Cité to seize the Templar treasure).

custom or the weakness of women will be invoked, and the States-General will award the crown to the "French" successor they have finally chosen. In 1328 it will thus be Philippe VI son of Charles of Valois, the brother of Philippe the Nice, who will therefore become the first king of the Valois branch, the only one of the four other contenders to descend by the males. The King of England will eventually oppose this succession and will then begin the long Hundred Years War, from 1337 to 1453[36].

This War was a succession of military but also legal battles. In search of arguments to strengthen the defense of the "French" dynasty, we will then rediscover the Salic law in 1358. Its article 62 was gradually interpreted and used from 1388 by jurists such as Pierre Lescot, then Jean de Montreuil in 1413 and Jouvenel des Ursins to counter the claims of the King of England and the Duke of Burgundy. For example, the "terra salica" will be assimilated to the "kingdom of France" and the rule which excludes the inheritance of girls, initially reserved for private use, will be extended to the public domain of the Crown: if women can inherit property monetary, they cannot inherit land or titles. The throne of France cannot therefore be transmitted by women.

This is the position that will defend French jurists of the Dauphin Charles, son of Charles VI and future Charles VII, in particular to oppose the Treaty of Troyes of 1420 which made the King of England the successor to the Crown of France[37]. This time, it is no longer the custom or

36 To assert the claim to the throne of France, the monarchs of England have officially called themselves since 1328: "... by the Grace of God, King of England, Scotland, and *France*, Defender of the Faith, etc. ". It is George III who will benefit from the new act of union in 1800 creating the United Kingdom of Great Britain and Ireland who will renounce adding "France" to his title.

37 French king Charles VI being stricken with mental illness, he was placed under the regency of Philippe III, Duke of Burgundy. However, the latter made an alliance with Henry V of England. The Treaty of Troyes signed by Charles VI and Henry V then provides that the latter will marry Catherine of Valois, daughter of Charles VI, and will inherit the Crown on the death of Charles VI, in place of Charles VII (son of Charles VI, who had had Philippe de Bourgogne's father killed to reduce the threat from the Dukes of Burgundy). Charles VII will then take refuge in Bourges (he will become the "king of Bourges") and will then participate in the reconquest of the kingdom with the support of Joan of Arc. The Treaty of Troyes of 1420 will then be annulled by the Treaty of Arras of 1435 between Charles VII and Philippe III of Burgundy.

the weakness of women that is invoked but the Salic law reinterpreted to prohibit the transmission of the Crown by women. "*The lily cannot spin into a distaff*" says the saying from the Gospel (Matthew, VI, 28), the lily symbolizing the crown of France and the distaff the women, which allows them to spin wool. This interpretation of the Salic law, which imposes royal succession by male primogeniture and the non-transmission of the title by women, will be applied several times in France thereafter: in 1498 for the succession of Charles VIII, in 1515 on the death of Louis XII and in 1589 on the death of Henri III, the last of the Valois, all died without direct male descent. It will also be used by most of the European courts descending from the Franks, except in French Celtic Brittany which will allow Anne to become duchess in 1488, nor of course in England which disputes its use to claim the throne of France. Moreover, the English queen Victoria will then be able to inherit from her uncle William IV the throne of England in 1830 but not from the kingdom of Hanover which he also possessed and which will go to a male heir, Ernest-Augustus I, son of George III.

Strange destiny, therefore, of this Salic law: private customary law external to the Capetian dynasty, it ends up being reappropriated by these Frankish kings to become a public endogenous constraint intended to ultimately protect the French monarchy by imposing an objective rule of succession which limits powers of the king, who cannot dispose of his title. It then lays the foundations for other laws binding on the king: the fundamental laws of the kingdom.

2.2. FUNDAMENTAL LAWS OF THE KINGDOM STRENGTHENING THE CROWN

Paradoxically, the monarchy in France will strengthen its power and perpetuate its status by putting in place laws that it will adopt itself to regulate its exercise and the powers of the king, and therefore ultimately to protect it against any personal monopolization and squandering. These constraints, including on the will of the king, will be called the fundamental laws of the kingdom.

On the basis of the Salic law, principles will first develop relating to the unavailability of the Crown itself. Thus, Jean de Terre Vermeille[38] will develop a whole so-called "statutory" theory of the Crown opposing the Treaty of Troyes of 1420 which wanted to modify the order of succession to the throne of France. In its conception, the Crown is not a private good which one inherits according to the rules of private law, but a public title which one succeeds, and which does not belong to the king but to French monarchy. The Crown is then transmitted according to the objective rules of public law laid down by the Salic law: the king cannot dispose of it himself, nor transmit it according to his own choices. Nor can he give up wearing it, even by treaty. There follows a whole conception of royalty as "function" and not as "property", which reinforces royal power while limiting the power of the king himself, who also becomes servant and subject of the Crown. These rules of succession will sometimes be called into question[39] but ultimately regularly enshrined and applied[40]. The king therefore no longer owns the Crown but simply holds it during his reign.

It will also follow that the transmission takes place directly, beyond any will of the king or symbolic act. For French jurists, the death of the king automatically transfers the Crown to his successor. It is no longer the coronation that makes the king, it is the rule of succession: "the

38 Jurist of the Dauphin Charles, he published in September 1419 his work *Contra rebelles suorum regum* ("Against the rebels of the king") which notably contains the *Tractatus de jure futuri successoris legitimi in regiis hereditatibus* ("A treatise on the right of a future legitimate successor in royal estates") which details his statutory theory of the Crown.

39 Thus, the Treaty of Utrecht of 1713 which put an end to the war of succession of Spain waged by England and Austria against France imposes on Philippe V, king of Spain and grandson of Louis XIV, to renounce the Crown of France, to prevent a possible alliance of the two countries which would have disrupted European balances.

40 Louis XIV had wanted by an edict of July 1714 to legitimize his two children born out of wedlock, to allow them to inherit the Crown in place of other descendants he did not love, despite the customary exclusion of bastard heirs since the Carolingians and the theory of the unavailability of the Crown. But dead in 1715, his edict will be revoked in 1717 by the regent of the young king Louis XV, great-grandson of Louis XIV, with a new edict which recalls "the king's fortunate inability to dispose of the Crown".

dead seizes the living" ("le mort saisit le vivant"), "the king is dead, long live the king!" ("Le roi est mort, vive le roi !")[41]. And if the Dauphin, his heir, is still under 14, he can still exercise his power but under a regency that the States-General can organize and often entrusted to a member of his close family (mother, sister...). The principle of dynastic continuity is thus consecrated, which completes the Salic law of succession by male primogeniture. From then on, the coronation becomes a single complementary ceremony, which can be organized in due course. It is no longer *constitutive* of royal power but only *confirmatory*: the king already invested does nothing but be blessed there, receives sacred oil (Holy Chrism) and the symbolic insignia of his power. However, the coronation indirectly poses another fundamental law of the kingdom: the king must be Catholic to receive the anointing of the Pope or his representative[42].

But if the Crown is thus detached from the king and protected by these rules of succession, the assets of the Crown will also be framed by fundamental laws of the kingdom adopted by the king himself in order to prevent the impoverishment of the monarchy. A fundamental rule was thus gradually established: the domains of the Crown do not belong to the king, as the royal jurist Pierre de Cugnières asserted in 1329. He cannot therefore dispose of them freely by selling them according to his will[43]. Better, he must now defend this public property, and the king must swear during his coronation, from Charles V, to "protect the rights of the Crown". A strange oath by which the king limits his own freedom. But the stake is important: the power of the king depending

41 On the death of Charles VI in 1422, we hear during the funeral "Dead is King Charles, Long live King Henry!" But it was in 1498 that we switched to an impersonal formula during the funeral of King Charles VIII ("Dead is the King, Long live the King!"). It is then said that "the monarch never dies in France", or that "The Crown is never without a monarch".

42 The Protestant Henri IV, who inherited the throne in 1589, could thus accede to the throne after a hard religious war only after his conversion to Catholicism ("*Paris is well worth a mass*"), confirmed by his coronation in Notre Dame cathedral of Chartres in 1594.

43 The Dauphin Charles, future Charles V, will cancel on this basis in 1358 all the alienations made by Philippe the Nice for 50 years. Several other cancellations will be pronounced thereafter.

on his wealth, and his wealth coming from the lands of his kingdom, any land of the king personally owned must be integrated into the royal domain[44] and any reduction of the royal domain weakening the Crown must be prohibited. This customary fundamental law will then be consecrated and detailed by the Edict of Moulins adopted by Charles IX in February 1566 on the inalienability of the domain of the crown[45], adopted following the complaints of the States-General who were concerned about the sales of royal lands, and which was confirmed by the Edict of Blois in 1579.

However, the prohibition on the sale of the royal domain concerns only the lands "acquired" from the Great domain of the Crown which exist at the entry into the king's reign, and not the negligible lands (near, marshes) of the Small domain, or lands "conquered" by him during his reign and which he can sell, manage himself or entrust to others in the form of *appanage* or *engagement*[46]. An appanage was a king's land which could be very important like a county or a province, allotted to a member of the royal family from whom he derived enjoyment and which he could pass on to his children, but which reverted to the Crown in the event of death without male descendants[47] or if his beneficiary acceded to the throne. The principle of the inalienability of the royal domain thus admitted this exception because this transmission of a royal land is only temporary and because it is protected by the other principle of imprescriptibility of the domain[48]. The appanage lands will in practice be increasingly reduced, most eventually returning to the royal domain, although the practice continued until the Revolution of 1789.

44 King Henry IV was thus obliged in 1607 to integrate his personal lands in Navarre into the domain of the Crown of France after his accession to the throne in 1589 and following numerous pressures from the Parliament of Paris.

45 See it at: https://gallica.bnf.fr/ark:/12148/bpt6k517005.pleinepage.f189

46 An engagement, or a pledge, is royal land given for enjoyment (but not ownership) to a person who has loaned money to the king, as security.

47 This is how Louis XI was able to recover the appanage of Burgundy in 1477 upon the death of Duke Charles the Bold who left only one daughter, Marie, who would then have to marry Maximilian of Austria, from the House of Habsburg and heir to the Empire, to keep her rank.

48 Imprescriptibility prevents the acquisition of ownership of royal land over time, through prolonged detention.

Other fundamental laws will organize the kingdom thereafter, but bearing on the powers instituted more than on the royal institution itself, such as the edict of Villers-Cotterêts of August 1539 relating to justice, which notably imposes the use of French in judgments, or the Edict of Blois of May 1579 which establishes a general regulation of the kingdom, imposing the keeping of registers of baptisms, marriage and burials, laying down the rules of public marriage, universities, hospitals, etc[49].

Thus, the framework of royal power in France knows several paradoxes. It is because of its initial weakness that the Crown will eventually assert itself, by necessity and by the happy combination of circumstances. And if it was able to free itself, sometimes with difficulty, from external constraints such as attacks from the States-General, then it had to adopt its own rules to preserve and strengthen itself, to the detriment of the power of the king. But as we can see, this framework of the king's powers only concerns the protection of the Crown, and does not allow the assertion of the rights of individuals against the will of the absolute monarch. The king's letters of seal, forced imprisonment or hospitalization, land confiscation, decisions taken beyond the oppositions of the aristocrats when the king comes to sit in person in the Parliaments, recall the king's omnipotence, which echoes today's "Jupiterian" presidents. Finally, we had to wait for the Declaration of the Rights of Man and of the Citizen of August 26, 1789 to see consecrated, 574 years after the English *Magna Carta*, an external right that could oppose the royal will. But this text will then reach a global aura that even exceeds the French monarchy.

49 In a Declaration of May 3, 1788 on the fundamental laws of the kingdom, the Parliament of Paris will consecrate these fundamental laws, citing in particular but not exhaustively the need to be a monarchy, Catholic, of heredity by primogeniture to the exclusion of women, but also the customs of the provinces, the irremovability of magistrates, the right for local courts and parliaments to verify royal ordinances and to refuse them if they prove to be contrary to the fundamental laws of the State, or the right of citizens to be brought before their natural or legal judge when arrested.

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THE GOLDEN BULL OF 1356. A LEGISLATIVE MASTERSTROKE BY EMPEROR CHARLES IV

HEINER LÜCK*

ABSTRACT

The Golden Bull of Emperor Charles IV (reigned 1346/1355-1378) of 1356 is one of the most prominent laws of the late medieval and early modern Holy Roman Empire. It is one of the fundamental laws (leges fundamentales) and, from the point of view of constitutional history, presenting a clear programme for the organisation of imperial rule involving the privileged electoral group. The Code pursues the creation of a firmly structured order, which can be based in part on custom.

Ranking (casting of votes; seating order; different privileges) and equality of rank (ceremonial) among the electors are laid down as essential elements of an order of unity and peace in the empire. The consensus with the electors sought by the Emperor and apparently largely implemented offered the chance to also implement the agreed and imperially proclaimed rules in reality. In this respect, those important rulers besides the emperor who had to enforce the law in general in their territories were involved in the content and formal design of the Code as a prerequisite and unifying feature.

* Full professor retired of Civil Law and Legal History, Martin Luther University Halle-Wittenberg, Faculty of Law, Halle an der Saale, Dr. iur. habil., heiner.lueck@jura.uni-halle.de, ORCID: 0000-0002-3871-7838.

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At the heart of the Golden Bull were the rules for the election of kings, which basically stood the test of time until the end of the Old Empire. Clarity and the endeavour to reach agreement on the applicable rules were the goals of the Golden Bull. This meant that there was no longer any room for the election of opposing kings and double elections. In many cases, the legislator was able to refer to tradition and custom, which contributed to an evident legitimisation of the respective norms. Compliance with and enforcement of the legal norms enacted by the legislature were important to the legislature. A system of sanctions – from loss of rights to fines to the death penalty and the diminution of rights/honour of the descendants of executed conspirators/mayhem criminals – reinforced the relevant norms. In this respect, the legislator left no doubt about his determination. The electors, whom he had included in the legislation by consensus, were held in high esteem by him as emperor (of necessity due to the power-political relations in the empire) with regard to the welfare of the Holy Roman Empire.
Keywords: *Emperor Charles IV, Holy Roman Empire, fundamental laws, constitutional history, election of kings, legislation, electors, ceremonial rank, privileged electoral group, Empire and territories*

1. ORIGIN AND TRADITION

The Golden Bull[1] of Emperor Charles IV (reigned 1346/1355-1378)[2] of 1356 is one of the most prominent laws[3] of the late medieval and early

1 Authoritative scholarly-critical edition of Fritz, Goldene Bulle MGH 1978-1992. The conference volumes Hohensee et al. I, II 2009 are of outstanding importance for the historical appreciation and research of the Golden Bull in its diverse, also comparative-international contexts. Presenting the state of research at that time, they go back to a conference organised by the working group of the Academy Project of the Berlin-Brandenburg Academy of Sciences and Humanities „MGH. Constitutiones et acta publica imperatorum et regum. Dokumente zur Geschichte des Deutschen Reiches und seiner Verfassung" in 2006.

2 The dates in brackets for kings and emperors are the year of election as Roman-German king and the year of coronation as Roman-German emperor. On the biography of Charles IV, cf. on behalf of many: Monnet, 2021; Seibt, 1978; Seibt, 1983/1994; Spěváček, 1979; Moraw, 1979; Müller-Mertens, 1982; Bobková, 2012. On the autobiography of Karl IV, Schlotheuber, 2005.

3 On the concept of law, cf. the overview by Mertens, 2012.

modern Holy Roman Empire. It is one of the fundamental laws (*leges fundamentales*)[4] and, from the point of view of constitutional history, stands chronologically between the imperial laws of Emperor Frederick II (r. 1212/1220–1250) (*Confoederatio cum principibus ecclesiasticis* 1220; *Statutum in favorem principum* 1231/32)[5] and the reform laws of the Diet of Worms under King Maximilian I (r. 1486/1508–1519) (Reichskammergerichtsordnung 1495, Ewiger Landfriede 1495[6], etc.).

Historically[7], the Golden Bull is a collection of individual laws (*leges, constitutiones*,[8] *edicta*) of Emperor Charles IV, which were discussed and promulgated[9] at the court days[10] of Nuremberg (November 25th 1355 to January 10th 1356) and Metz[11] (November 17th 1356 to January 7th 1357).[12] The total of 31 chapters are written in Latin („in an elevated language).[13] The Code consists of two parts, which came into being at the two aforementioned court days. Only a few months earlier (April 5th 1355), Charles IV had been crowned Emperor in Rome. In addition to the crown of Roman-German emperor and king[14], Charles wore the Bohemian royal crown, the Lombard („Milanese") royal crown (coronation in Milan in 1355) and the Burgundian royal crown (coronation in Arles in 1365),[15] which also play a role in the Golden Bull.

The Proemium and Chapters 1 to 23 (the later first part of the Golden Bull) were promulgated on January 10th 1356 at the Court Day of Nuremberg. Chapters 24 to 31, which form the second part, followed at the Court

4 Mohnhaupt, 2016, col. 695.
5 Cf. also Laufs, 2012, col. 452; Buschmann, 2008a.
6 Cf. also Buschmann, 2008.
7 The work of Hergemöller, Fürsten 1983 is fundamental to the history of origin, structure, effects and other aspects; Wolf, 2013b should also be mentioned here.
8 Cf. Lück, 2014.
9 On promulgation as a component of legislation, cf. Mertens, 2020, col. 936 f.
10 On the preference of this term over „Reichstag", cf. Hergemöller, 2006, p. 26; cf. also the detailed study by Annas, 2004.
11 Cf. the very informative chronology of events and procedures at the two court days in Hergemöller, 2006, pp. 35–37.
12 Hergemöller, 2015, p. 17. On the promulgation of laws in the Middle Ages in general, cf. Wolf, 1973, pp. 558–562.
13 Fritz, 1978, p. 37.
14 Cf. Fillitz, 2012.
15 Laufs, 2012, col. 448.

Day of Metz on December 25th 1356.[16] It wasonly between 1366 and 1378 that the Nuremberg and Metz parts were united into one book (the so-called Bohemian copy).[17] The Proemium provides brief information on the reasons for the legislation and how it came about. The legislator („we"), who as King of Bohemia refers to his own electoral position,[18] wants to establish unity among the electors. He gives two reasons for this: because of the emperorship and because of the right to vote. Unity was to be brought about on the rules for the election of kings. Discord and other dangers should no longer have access to the electors. In exercise of the imperial power, the following laws have been enacted and confirmed. As to the manner of execution of the legislative act, it is stated that the laws were passed at the solemn Court Day in Nuremberg in the presence of all the ecclesiastical and secular electors as well as other princes, nobles and city representatives[19] after thorough deliberation. The proclamation was made while seated on the imperial throne, with the emperor adorned with the imperial insignia[20] (crown, sceptre, orb).[21]

It has been handed down from the Metz Court Day that the Emperor read from the Gospel of Luke (2:1), the beginning of the Christmas story, during the Christmas Mass. In doing so, he identified himself with the Roman Emperor Augustus and, through this symbolic act, let all contemporary witnesses know that he was an indirect successor to him. Furthermore, this was connected with the statement that the Roman Empire was older than the Christian Church.[22]

This was preceded by the preparation of drafts and draft resolutions on individual provisions in the imperial chancellery during the second half of 1355,[23] i. e. in preparation for the Nuremberg Court Day.[24] The

16 Cf. Hergemöller, 1989.
17 Hergemöller, 2015, p. 24.
18 His own position as elector obviously meant a lot to the Emperor/King. Cf. Heinig, 2009, p. 73. On his decrees in favour of Bohemia, cf. Bobková, 2009.
19 On them cf. Lindner, 2009a.
20 Cf. also Lück, 2012c; Lück, 2012b.
21 Hergemöller, 2006, p. 26.
22 Schneidmüller, 2009, p. 272.
23 Bojcov, 2013, pp. 586, 593, 596, 606 f.; Hergemöller, 1983, pp. 6, 161–168; Greule, 2020, p. 104.
24 Cf. Hergemöller, 2006, pp. 26–28.

emperor probably brought several drafts in edict[25] form with him to Nuremberg, which served as a basis for negotiations and were incorporated more or less modified into the text of the Golden Bull.[26] The emperor himself called his and his court chancellery's work of law[27] 1361: „unser keiserliches rechtbuch" (our imperial law book).[28] The final editing was apparently in the hands of the court chancellor Johannes von Neumarkt (Bishop of Leitomischl 1353-1364). The teachings of Lupold von Bebenburg (Bishop of Bamberg 1353-1363) also appear in the text.[29] With all due respect for the legislative achievements of the emperor, his court chancellor, his councillors[30] and notaries, the electors[31] as actors in the Golden Bull legislation must also be taken into account[32] – as is rightly expressed solemnly and verbally in the Proemium.[33] With the electors (Archbishops of Mainz, Cologne and Trier as well as King of Bohemia, Count Palatine of the Rhine, Duke of Saxony, Margrave of Brandenburg), strong personalities with knowledgeable advisors were present at the two court days alongside the Emperor. With a sense of compromise[34], they were not infrequently able to assert their positions in the negotiations on the text of the law and even to include new provisions not planned by the emperor in their interests.[35] The Proemium emphasises that the emperor enacted the law with the consensus[36] of the electors, which refers to both the form and the content. On the one

25 On the edict as a legal act of ancient Roman imperial legislation, cf. Waldstein and Rainer, 2014, p. 212 f.
26 Bojcov, 2013, p. 607.
27 Cf. also Hergemöller, 1981.
28 Neumann, 1996, no. 196. Cf. also Wolf, 1969/2013; Lindner, 2009, p. 99.
29 Laufs, 2012 col. 451.
30 Cf. generally also Schirmer, 2012.
31 Cf. the overview by Wolf, 2016.
32 See also Lindner, 2009, p. 132; Willoweit, 2013, p. 85. See also Heinig, 2009; Lieberich, 1959, p. 186.
33 Similarly Lindner, 2009a, p. 172 f.
34 Cf. also Hergemöller, 2015, p. 28; Heckmann, 2009, p. 933; Greule, 2020, p. 108 f.
35 So presumably chapters 13, 16 and 24 at the insistence of the Archbishop of Cologne, the Bishop of Strasbourg, the Archbishop of Mainz (Heinig, 2009, p. 88; Hergemöller, 2015, p. 24).
36 On consensus in medieval legislation, cf. Dilcher, 2016, col. 113-115, cf. also Lanzinner, 2012.

hand, due to the constellation of political forces, imperial legislation of the kind still practised by the Staufer Frederick II, for example, was no longer possible. Only in this way could a fundamental imperial law come into being,[37] which „owes itself to a unique constellation of exceptionally interdependent protagonists …".[38] On the other hand, under Emperor Louis IV, called the Bavarian, (r. 1314/1328-1347) and Charles IV, the concept of the emperor's legislative power had finally established itself in the course of the reception of Roman and canon law.[39] Louis' reign was marked by massive constitutional disputes,[40] to which Charles IV referred with the Golden Bull. From the point of view of negotiation with consensus as the result, the Golden Bull has often been described, not entirely inaccurately, as a treaty or agreement.[41] However, the increasing role of the electors and their growing co-responsibility for the empire did not preclude imperial *plenitudo potestatis*.[42] With the solemn promulgation by the emperor, making the splendour of the empire visible, and the conscious use of his legislative competence, it became imperial law. The function of highlighting precisely this function could also be assigned to its opening poem, which emphasises the emperor „as the guarantor of the secular (legal) order … and thus the special and novel role of law in the conception of rule".[43]

Seven original copies have been preserved,[44] which were made shortly after the promulgation.[45] Five of them (executed in 1356) were

37 Similarly Lindner, 2009, p. 132.
38 Heinig, 2009, p. 91.
39 Wolf, 1973, pp. 523, 528-530; Willoweit, 2009, pp. 248-251 et al.
40 Willoweit, 2013, p. 83.
41 Helmrath, 2009, p. 1140; Schlinker, 2021, p. 120.
42 Willoweit, 2013, p. 85.
43 Greule, 2020, p. 141.
44 1) Frankfurt copy (Institut für Stadtgeschichte Frankfurt am Main; 2) Cologne copy (ULB Darmstadt); 3) Mainz copy (Österr. Staatsarchiv, Haus-, Hof- u. Staatsarchiv Wien – AT-OeStA/HHStA UR AUR 9229 Golden Bull – Mainz copy, 1356 I 10); 4) Bohemian copy (ibid., AT-OeStA/HHStA UR AUR 9228; URL: http://www.archivinformationssystem.at/detail.aspx?ID=489245); 5) Nuremberg copy (Staatsarchiv Nürnberg); 6) Palatine copy (Bayerisches Hauptstaatsarchiv); 7) Trier copy (Landesarchiv Baden-Württemberg/Hauptstaatsarchiv Stuttgart. Detailed description in Fritz, Goldene Bulle 1978-1992, pp. 540-547.
45 Hergemöller, 2015, p. 17.

given to electors (Bohemia, Mainz, Cologne, Trier, Palatine of the Rhine). Two further copies went to the cities: Frankfurt am Main as the place of the election of the king (1366)[46] and Nuremberg as the place of the first court day (1366/1378).[47] Adequate copies for the Electors of Saxony and Brandenburg have not survived.

The extremely popular name of the law (first „Bulla Aurea" in 1400)[48] goes back to the seal capsule made of sheet gold, filled with wax.[49] It measures approx. 6 cm in diameter and has a thickness of approx. 0.6 cm.[50] The seal shows the emperor enthroned on the front with a bow crown, a long sceptre crowned with lilies and an imperial orb. The throne, furnished with cushions, is flanked at seat level by the imperial coat of arms (shield with crowned eagle – heraldically on the right) and the coat of arms of the Kingdom of Bohemia (shield with crowned double-tailed lion – heraldically on the left). The inscription reads: KAROLVS QVARTVS DIVINA FAVENTE CLEMENCIA ROMANO(RVM) IMPERATOR SEMP(ER) AVGVSTVS, in the inner field continuation of the inscription: ET BOEMIE REX. The reverse shows a stylised view of the city of Rome and the inscription AVREA ROMA on a portal. The circumscription reads: ROMA CAPVT MVNDI REGIT ORBIS FRENA ROTVNDI.[51]

During the reign of Charles IV, the Golden Bull apparently did not develop any significant „normative force".[52] Only gradually did it develop from a privilege[53] into an „unrestricted basic law of the empire",[54] which is expressed, among other things, in the transcriptual tradition. There are 173 copies from the late Middle Ages (not including the seven copies for five electors and the cities of Nuremberg and Frankfurt) and at least 20 more

46 For details see Lindner, 2009, p. 107-112; Brockhoff, 2006; Matthäus, 2015.
47 The Nuremberg copy, unlike the others, has a wax seal (Hergemöller, 2015, p. 26).
48 So also Fritz, 1978, p. 35.
49 Fritz, 1978, p. 35; cf. also Matthäus, 2015, p. 76.
50 Fritz, 1978, p. 35.
51 Seal description according to Fritz, 1978, p. 7. This hexameter was often used on bulls (Vogtherr, 2008, col. 713). On this type of seal, cf. also Matthäus, 2006.
52 Lindner, 2009, p. 137.
53 On the privilege in the Middle Ages, see Hecker, 2020.
54 Lindner, 2009, p. 136; similarly p. 139. On the distinction between privilege and law, cf. Wolf, 1973, p. 518.

from the early modern period.[55] Most of the manuscripts have survived in Latin, followed by the German ones. French versions and a late translation into Spanish have also survived; a Czech version, however, is missing.[56] The greatest concentration of manuscripts is found between the years around 1435 and 1475.[57] It is possible that the unfolding juridification of society brought with it an increased need for Golden Bull texts.[58]

Of outstanding cultural-historical importance is the magnificent manuscript with 48 miniatures from 1400, commissioned by King Wenceslas (reigned as Roman-German King 1376-1400; as Wenceslas IV King of Bohemia 1363-1419).[59]

The first printing in book form appeared around 1474 in Nuremberg by Friedrich Creussner. It is the first ever printing of an imperial law.[60] A total of nine cradle prints can be identified (three of them in Latin and six in German).[61] Among them is the print illustrated with impressive and artistically high-quality woodcuts, which was published in 1485 by Johann Prüss in Strasbourg.[62] The book was produced in preparation for the election of King Maximilian.[63]

2. ASPECTS OF CONTENT[64]

At the centre of the regulations made at the Nuremberg Court Day was the election of the king with the exclusivity of the right to vote for the

55 Heckmann, 2009, p. 934; locations and description of the manuscripts ibid, pp. 981-1042.
56 Heckmann, 2009, p. 941.
57 Heckmann, 2009, p. 938.
58 So also Heckmann, 2009, p. 937.
59 Today in ÖNB, Cod. Vind. Pal. 338. Cf. Wolf, 2013c; Garnier, 2009, pp. 225-237, as well as the facsimile edition Wolf, König Wenzels Handschrift 2002.
60 GDW M16093.
61 Fritz, 1978, p. 36.
62 Die güldin bulle. vnd künigclich reformacion, Strasbourg 1485 (Gesamtverzeichnis Wiegendrucke Nr. M 16095); cf. also Die güldin bulle 1485/1968.
63 Wolf, 1989, col. 1543.
64 The following remarks are based on Fritz, 1978, as well as on his bilingual MGH edition (Latin and Early New High German) – Fritz, Goldene Bulle MGH 1978-1992. All literal German-language quotations are also taken from the translation, unless otherwise indicated.

seven electors[65] and the stipulation of the voting order as well as the majority principle in voting.[66] The head of the election was the Archbishop of Mainz. He had to ask for the votes in the order now prescribed by law: Archbishop of Trier, Archbishop of Cologne, King of Bohemia, Count Palatine of the Rhine, Duke of Saxony and Margrave of Brandenburg. Lastly, the Archbishop of Mainz was to be asked for his vote by the six other electors. Furthermore, the legal status and ranking of the electors, clarifications of the right of feud, as well as the prohibition and punishment of conspirators for the preservation or restoration of the land peace were regulated.

The conspicuously meticulous rituals listed in connection with court sessions and other representative imperial assemblies, some of which were based on traditional imperial customs, are a characteristic feature of the Golden Bull's content. Without the imperial custom and without the symbolic language of the rituals, the imperial constitution was „not viable".[67] The laws of Metz therefore largely contain concretisations on ceremonial and the presentation of the Empire.[68] The constitution of the empire[69] existed in the 14th century and later not only in the form of customary and written legal norms, but also in the form of rituals in the sense of legally relevant symbolic acts.[70] Also of central importance is the stipulation of the indivisibility of the Kurlande, which corresponds with the imperial prohibition of dividing imperial fiefs that had existed since the 12th century.[71] Finally, the strict imperial legal requirement of primogeniture[72] was intended to bring about a uniform succession regulation for all electorates.

The main actors of the imperial constitution in the Golden Bull are, besides the king/emperor, the seven electors. The latter elect the Roman

65 Fundamental works on the right of kingship are those by Armin Wolf: Wolf, 2002a; Wolf, 2013; Wolf, 2017; Wolf, 2020 et al.
66 Cf. also de Wall, 2008, col. 40 f.
67 Cf. Stolleis, 2015, p. 65 f. Fundamental to this is Stollberg-Rilinger, 2008.
68 Hergemöller, 2015, p. 17 f., 26.
69 Cf. fundamentally Moraw, 1985.
70 Stolleis, 2015, p. 65.
71 Willoweit, 2009, p. 252.
72 Cf. Brauneder, 2020.

King and future Emperor: *rex Romanorum in cesarem* (or: *imperatorem*) *promovendus*.[73] The Roman King is elected in Frankfurt am Main[74] and crowned in Aachen.[75] According to the doctrine of *translatio imperii,* he is entitled to the imperial crown.[76] With the imperial coronation[77] in Rome by the Pope, he attains the imperial dignity. The regular mention of the formula reproduced above proves that the Golden Bull consciously and thus constitutionally correctly distinguishes between kingship and emperorship. It should be borne in mind that the electors no longer considered papal approval of the election of the king,[78] as was customary and necessary in the High Middle Ages,[79] necessary at the latest after the imperial law *Licet iuris*[80] as well as the Mandate *Fidem catholicam* and the *Rhenser Weistum* (all from 1338), prepared by the *Sachsenhausen Appeal* (1324), which had been created and promulgated under Charles' predecessor and rival Louis the Bavarian.[81] In general, the Pope as the head of the universal spiritual power plays no role in the Golden Bull in relation to the universal temporal power of the Emperor.[82] The reference to Rome in the seal is clearly aimed at the metropolis of origin of the Western (Roman) Empire. Although Charles IV had himself crowned emperor in Rome in 1355, a cardinal legate acted as coronator here, admittedly after consultation with the Pope.[83]

According to the Golden Bull, seven electors are entitled to vote (first practised in this way in 1298 at the second election of King Albrecht I (r.

73 See also Hergemöller, 2015, p. 21. On the origin and reception of this formula, see in detail Menzel, 2009, pp. 40–45, 52–55, as well as Willoweit, 2013, p. 85.
74 On Frankfurt am Main, cf. the overview by Maaser, 2008.
75 Cf. Heidenreich and Kroll, 2006.
76 Cf. also Schmidt, 2012, col. 883. On the scholarly debate about the translatio imperii in the context of the election of Charles IV, cf. Moeglin, 2009, p. 32 f.; Willoweit, 2009, p. 248.
77 Cf. Becker, 2012; Büttner, 2017.
78 Cf. in detail Menzel, 2009 as well as; Lindner, 2009, p. 114 f.; Stollberg-Rilinger, 2012, col. 1506–1508.
79 Cf. Lückerath, 2008; Willoweit, 2013, p. 81, 84; Castorph, 2022.
80 See also Laufs, 2012, col. 451; Schneidmüller, 2012, col. 1502 f.; Becker, 2016.
81 See also Moeglin, 2009, pp. 20–38; Menzel, 2009, pp. 47, 58; Lieberich, 1959.
82 Laufs, 2012, col. 454.
83 Hergemöller, 2015, p. 21; Schneidmüller, 2012, col. 1503; in detail Schlotheuber, 2017.

1298-1308). The Electoral College[84] is composed of three ecclesiastical (Archbishops of Mainz, Cologne and Trier)[85] and four secular electors (King of Bohemia, Count Palatine of the Rhine, Duke of Saxony, Margrave of Brandenburg).[86] As King of Bohemia, Emperor Charles IV was himself the highest-ranking secular elector.[87] The explicit stipulation that the King of Bohemia was an elector of the empire with the right to vote clarifies with the highest authority of imperial law that the exception communicated in the Saxon Mirror (Landrecht III 57), that the King of Bohemia had no right to vote, was rejected and replaced by an unequivocal stipulation.[88] The electoral dignity was linked to the territory that the electors held as a fief of the empire (Fahnlehen). Attached to this was the noble right to elect the Roman king. Anyone who legally held an electorate was entitled to elect a king and enjoyed other associated privileges which were radicated to the electorate. In addition, there was an arch office, which was also accessory to the electorate or the electorship. This was to be exercised by the secular electors, especially on ceremonial court days at the royal/emperor's banqueting table, in the sense of a service of honour to the king/emperor.[89] The King of Bohemia was the *Archipincerna*, the Count Palatine of the Rhine the *Archidapifer*, the Duke of Saxony the *Archimarschallus* and the Margrave of Brandenburg the *Archicamerarius* of the Empire. The arch offices[90] of the three ecclesiastical electors consisted in the exercise of the chancellorship, divided among certain areas of the empire. Thus the highest-ranking archbishop of Mainz[91] acted as chancellor for Germania (*Archicancellarius per Germaniam*), the archbishop of Cologne as chancellor for Italy (*Archicancellarius per Italiam*) and the archbishop of Trier as chancellor

84 Cf. Hlawitschka, 2015; Wolf, 2013; Wolf, 2017; Wolf, 2020.
85 See also Kloft, 2006; Pelizaeus, 2006.
86 The article was inserted later (around 1273) into the law book, which was written between 1220 and 1235 (cf. Wolf, 2020). However, it denies the King of Bohemia – historically incorrectly – the right to vote. On Bohemian electoral law, cf. also Begert, 2003; Wolf, 2012; Wolf, 2013a; Hlaváček, 2002.
87 Cf. Frey, 1978.
88 Cf. also Schneidmüller, 2009, p. 275.
89 Cf. Töbelmann, 2010.
90 Cf. also Erkens, 2008.
91 Cf. also Jürgensmeier, 2006.

for Burgundy (*Archicancellarius per Galliam*).[92] These offices were of a purely symbolic nature and served primarily to stage the visualisation of the empire in the context of court days and similar representative gatherings.

As a group, the electors were endowed with extensive privileges, some of whose contents they had been exercising for a long time. These included various regalia (coinage regal, mining regal, rule for the protection of Jews) as well as freedom of the courts. The latter included above all the assurance of the king/emperor that he would no longer drag anyone from an electorate before an external court, and thus also before a royal court (*privilegium de non evocando).* Furthermore, the subjects of the electors were forbidden to appeal to a foreign court (*privilegium de non appellando*). These privileges[93] weakened the imperial jurisdiction and strengthened the development of the judicial system in the electorates with the elector or his court as the apex of jurisdiction towards the outside world and the empire. The Count Palatine of the Rhine and the Duke of Saxony had a special position among the electors. As vicars of the empire, they had the power to represent the emperor/king in the event of a vacancy[94] on the throne.[95] The Count Palatine of the Rhine was responsible for the areas of the empire where Frankish law[96] applied, the Duke of Saxony for the areas of the empire in the Saxon legal[97] sphere.

The electors are characterised in Chapter 12 as „pillars of the Empire", expressing their exclusive position and weight in the constitution of the Empire.[98]

Viewed as a whole, the Golden Bull „as a work of peace"[99] was aimed at establishing and maintaining peace between the emperor/king and the electors on the one hand and between the electors themselves on

92 On this tripartitedivision of the empire, cf. Holzhauer, 2012, col. 1194; Lindner, 2009, p. 128.
93 Cf. Eisenhardt, 1969; Battenberg, 2020a; Battenberg, 2020.
94 Cf. also Erkens, 2012; Moraw, 1983, pp. 51 f., 55.
95 Cf. also Heckmann, 2002.
96 Cf. also Schumann, 2008.
97 Cf. also Lück, 2010; Lück, 2012a.
98 Cf. the fundamental research by Gotthard, 1999; Gotthard, 2001.
99 Schneidmüller, 2015, p. 45.

the other.[100] Chapter 24, which endows the electors with the right of majesty, is of particular importance. Whoever attacks an elector in the future will be judged with the sword, because the electors are „members of our [the imperial – H. L.] body".[101] Last but not least, the imperial law aimed at strengthening the royal house power, which for Charles IV and his successors included the kingdom of Bohemia, which was privileged by the law in several ways, including in particular the right to the first secular electoral vote in the election of the king and the final vote of the royal/imperial chancellor in the person of the archbishop of Mainz. However, the associated expectations of the Luxembourg dynasty were not fulfilled.

Nevertheless, the Golden Bull remained in force until the end of the Old Empire in 1806 and had a stabilising and promoting effect on imperial constitutional law and on the state-building processes in the imperial territories, especially in the electorates. It formed the legal basis for all royal elections after 1356, the last time for the election of Francis II (r. 1792-1806).

Right at the beginning, the text of the Golden Bull presents in its metaphorical proemium[102] an imperial claim to rule as well as supremacy and divine grace (theocratic vocation).[103] The necessary unity of emperor/king and electors as well as of the latter among themselves, the uniformity of the election of kings and the overcoming of the division detrimental to the empire are formulated as goals of the law.[104]

This is followed by the table of contents with numbers and headings of the individual chapters 1 to 21:[105]

100 Similarly Schneidmüller, 2015, p. 33 f.; Lindner, 2009, p. 122. On the avoidance of armed conflict as a basic feature of Charles IV's policy, see Schlotheuber, 2009, p. 144; Angermeier, 1978.

101 The passage is taken verbatim from Codex Iustinianus 9, 8, 5 (so-called *lex Quisquis*). Cf. also Lieberwirth, 2016, col. 1198; Schneidmüller, 2009, p. 269.

102 Bojcov, 2013, p. 592, fn. 26.

103 Laufs, 2012, col. 451 f. Cf. also Bauch, Divina favente clemencia 2015.

104 Schneidmüller, 2009, p. 269.

105 This overview does not represent a „systematic arrangement" of the contents of the Code (Bojcov, 2013, p. 588). A factually oriented subdivision has been proposed by Armin Wolf (Wolf, 1969/2013, p. 973). The list of chapters has been prefixed to the Code in connection with the adopted transcript of the Code.

Chapter 1: How the escort of the electors shall be and by whom it must be provided

Chapter 2: On the election of the Roman King

Chapter 3: On the seating arrangements of the Archbishops of Trier, Cologne and Mainz

Chapter 4: On the electors in general

Chapter 5: On the right of the Count Palatine and also of the Duke of Saxony

Chapter 6: On the prerogatives of the electors over the other princes

Chapter 7: On the succession of the secular electors

Chapter 8: On the freedom of the courts of the King of Bohemia and his countrymen

Chapter 9: About gold, silver and other mines

Chapter 10: About coins

Chapter 11: On the jurisdiction of the electors

Chapter 12: On the meeting of the electors

Chapter 13: On the revocation of privileges

Chapter 14: On the withdrawal of feudal estates in case of unworthiness

Chapter 15: On conspiracies

Chapter 16: About the stake citizens

Chapter 17: On announcing feuds

Chapter 18: Notification form for the invitation to the King's Election

Chapter 19: Form of power of attorney of an elector for his representatives at the election

Chapter 20: On the unity of the electorates and the rights attached to them

Chapter 21: On the order of precedence of archbishops in solemn processions.[106]

106 The overview in the copies is incomplete. The text still has a Chapter 22 (On the hierarchy of the secular electors and the wearing of the insignia in ceremonial processions) and a Chapter 23 (On the giving of blessings by the archbishops in the presence of the emperor). Chapter 23 is only mentioned in the Mainz original in the overview (Fritz, 1978, p. 40).

The provisions proclaimed at the Court Day of Metz on December 25th 1356 are not preceded by a list of chapters. Therefore, the chapters do not have headings. In Fritz's edition and translation[107], their numbering follows that of the Nuremberg laws (chapters 24-31). In terms of content, they concern the following subjects:

Chapter 24: Punishment of crimes of majesty against electors

Chapter 25: Prohibition of the division of electorates

Chapter 26: Ceremonial at court days

Chapter 27: Arch offices of the electors at solemn court days

Chapter 28: Table and seating arrangements at ceremonial court days

Chapter 29: Determination of places for king's election, coronation and first court day / Position of representatives of the electors

Chapter 30: Rights of the court officials in the granting of fiefs by the emperor/king to the electors

Chapter 31: Multilingualism in the Empire and the learning of languages by the firstborn sons of the electors.

3. THE GOLDEN BULL AFTER 1356 – HIGHLIGHTS OF CHANGE AND PERMANENCE

Nobody else but Charles IV himself violated the rules of kingship he promulgated under the Golden Bull a little later.[108] When electing his son Wenceslas as Roman King and future Emperor in 1376, he put his dynastic interest above the legal precept he had issued 20 years earlier. He must certainly have been aware that, according to Roman law, the ruler was above the law (princeps legibus solutus) and could not regard it as binding on him.[109] It is curious that Wenceslas, of all people, was deprived of his power by the Rhenish electors in 1400 because of his unfitness.[110] Charles granted princes benefices

107 Fritz, Goldene Bulle MGH 1978-1992; Fritz, 1978.
108 On the Golden Bull and the royal elections after 1356, see Johannes, 2012.
109 Cf. Schlinker, 2020.
110 Cf. Lindner, 2009, p. 105 f.

in the form of the conferral of arch offices that were not connected with an electorate.[111] Furthermore, he repeatedly disregarded the rules for the ceremonial wearing and display of the insignia (sword, sceptre, orb).[112]

A more intensive reception of the Golden Bull in constitutional and legal practice seems to have taken place only in the course of the 15th century.[113] The central regulations of the election of the king were first used in the election of King Sigismund (1411/1433-1437) in 1410/11.

In the long run, the Golden Bull was to have strong effects, also intended by the legislator. Already at the time of the Golden Bull's enactment, papal approval of the election of the king was no longer relevant.[114] Consequently, there is no longer any mention of it in the Code.

The imperial coronation of the elected Roman-German king in Rome was also no longer mandatory in the further development. The last regular king/emperor to receive such a coronation was Frederick III (reigned 1440/1452-1493) in 1452. In 1508, with the election of Maximilian I as „Elected Roman Emperor"[115], the final renunciation of the papal imperial coronation was completed. The imperial coronation by the Pope was henceforth dispensed with. Only Emperor Charles V had himself crowned by the Pope in Bologna in 1530, which was to remain an exception.[116] Since the election of Charles V, the privileges of the electors and the other imperial estates were promised, confirmed and secured by the emperor through negotiated electoral capitulations between the emperor and the estates[117] (also *leges fundamentales*)[118], which is reminiscent of the procedure of negotiation in the legislation of 1355/56.

111 Lindner, 2009a, pp. 176, 178-181.
112 Schneidmüller, 2009, p. 279.
113 Hergemöller, 2015, p. 21.
114 Hergemöller, 2015, p. 21.
115 Cf. Eisenhardt, 2008.
116 See also Stolleis, 2015, p. 56.
117 Cf. also Stollberg-Rilinger, 2012, col. 1508.
118 Mohnhaupt, 2016, col. 695.

From the early 15th century onwards, a general pressure for reform intensified in the empire. One of the best-known reform writings is the *Reformatio Sigismundi of* 1439, named after Emperor *Sigismund* but by an unknown author. However, significant results of the reform process were only achieved under King Maximilian I at the Reform Reichstag of Worms in 1495. Feuding was prohibited by the Eternal Peace of 1495. Legal disputes were referred to the Imperial Chamber Court created in 1495.

Attempts to involve the imperial estates in the exercise of imperial power in 1500 and 1521 (imperial regiment) failed.

In the first half of the 16th century, the Reformation led to the division of the imperial trerritories and towns into Catholic and Protestant, which significantly influenced the imperial constitution and its „symbolic language".[119] While Charles IV, with his legislative work and other measures, contributed significantly to placing the constitution of the empire on stable foundations, the next emperor with the name Charles (in the census Charles V) had to experience how „the world broke"[120] for him with and as a result of the Reformation.[121]

The relevance of the Golden Bull to imperial law was reflected in the science of imperial journalism and public law that was established around 1600, initially at Protestant universities.[122] The appreciative signature as „fundamental imperial law"[123], which is widespread in modern legal, constitutional and historical literature, is first found in 1699 in the work of Johann Jacob Moser.[124] The Latin designation „lex

119 Cf. in detail Stollberg-Rilinger, 2008, pp. 93-136 (Reichstag von Augsburg 1530).

120 Schilling, 2020.

121 Cf. also Lück, 2012d, col. 1627 f.

122 Stolleis, 2015, p. 67.

123 Lindner, 2009a, p. 190; Laufs, 2012, col. 455; Stollberg-Rilinger, 2018, p. 25; similarly: „the fundamental constitutional law of the Holy Roman Empire ..." (Eisenhardt, 2013, p. 12); „this basic law" (Kunisch, 2001, p. 264); „one of the elementary basic laws of the empire" (Stollberg-Rilinger, 2008, p. 60); „European basic law" (Borgolte, 2009, p. 599).

124 „... reichsgrund-gesetze, benahmentlich die aurea bulla ..." (Moser, Staats-Recht 33 1747, p. 122). Cf. also Deutsches Rechtswörterbuch: https://drw-www.adw.uni-heidelberg.de/drw-cgi/zeige?index=lemmata&term=reichsgrundgesetz (6.2.22).

Imperii fundamentalis" appears somewhat earlier, namely in 1615 in the work of Arumaeus.[125] It was already regarded as such in the 16th century.[126]

Admittedly, as a result of multiple shifts in power and changes in political conditions, a number of changes had taken place. The Golden Bull nevertheless represented „a kind of immovable centre as the basic law of the slowly changing imperial constitution".[127] In the 16th and 17th centuries, Frankfurt was no longer the exclusive place for the election of kings.[128] A successor to the king/emperor was often elected while the emperor was still alive (*vivente imperatore*).[129] The Perpetual Diet had been meeting in Regensburg since 1663.[130]

The number of electors was expanded in the 17th century. In 1623, the Duke of Bavaria took the place of the Count Palatine of the Rhine. The arch office created for him was that of Imperial Treasurer (*Archithesaurarius*). In 1692, the Duke of Brunswick-Lüneburg attained the electoral dignity. At the same time, he was given the newly created arch office of Reichserzbannerträger (*Archivexillarius*). With the annexation of Bavaria to the Count Palatine of the Rhine, the Palatine electorate ceased to exist, while the Bavarian electorate remained. With the Imperial Deputation of 1803, the Electors of Cologne and Trier disappeared. The Elector of Mainz received the newly created principality of Regensburg to replace Mainz, which had been lost to France. In addition, there were the new electorates of the Dukes of Salzburg (from 1805 Würzburg) and Württemberg as well as the Margrave of Baden and the Landgrave of Hesse-Kassel.[131] They all ceased to exist with the fall of the Old Empire in 1806. The territory of Hesse-Kassel was called the „Electorate of Hesse" or „Kurhessen" until 1866. The sovereign used the title „Elector of Hesse".

125 Wolf, 1969/2013, p. 971.
126 Stollberg-Rilinger, 2018, p. 25.
127 Stolleis, 2015, p. 55.
128 Stolleis, 2015, p. 56; in detail Stollberg-Rilinger, 2008, pp. 172-193.
129 Stolleis, 2015, p. 56.
130 Cf. Duchhardt, 2012.
131 Stolleis, 2015, p. 58.

4. CHARACTERISTICS OF THE GOLDEN BULL LEGISLATION

If we take a look at the Golden Bull as a product of imperial legislation, the following aspects deserve emphasis:

Charles was an educated ruler, legislator and judge.[132] This is symbolised not only by the foundation of the University of Prague in 1348, the first university in the territory of the Holy Roman Empire, which he initiated, as a model that set standards and is still a flourishing reality today. He and his closer courtly surroundings knew the teachings and works of important poets as well as thinkers on state and law. It is assumed that the Golden Bull was influenced to a greater or lesser extent by Dante Alighieri, Petrarch, Lupold von Bebenburg, Konrad von Megenberg, Bartolus de Saxoferrato and others.[133] In addition, there was considerable knowledge of the law as well as analytical abilities, which were attested to Charles by contemporaries.[134] Charles understood and spoke several languages (Latin, German, Tuscan, French, Czech). Above all, he was proficient in Latin, which gave him good access to the sources of learned law (Roman and canon law).[135]

It should be remembered that Charles IV was able to build on the legal acts of his former rival and predecessor Louis the Bavarian, even though he was extremely critical of them.[136] In terms of content, however, they corresponded to Charles' interests. This applies above all to the provisions enacted or confirmed by Louis to detach the election of kings and the coronation of emperors from papal involvement.[137] Charles took up the legislative achievements of Louis, whom he had fought as a counter-king, and made them appear as his own *constitutiones* or *leges* in the splendour of the comprehensive and solemnly proclaimed body of laws,

132 Cf. Schlotheuber, 2016; Schlotheuber, 2016a; Schlotheuber, 2005. Greule, 2020, p. 117 f.; Žurek, 2017.
133 Lindner, 2009, pp. 114-127; Schlotheuber, 2009, pp. 141 f.
134 Schlotheuber, 2009, p. 151.
135 Schlotheuber, 2009, p. 167.
136 Cf. Lieberich, 1959, p. 187.
137 Cf. in detail Menzel, 2009.

which was to have lasting repercussions and popularity. In retrospect, it had to appear to posterity as an imperial law of exclusive Carolinian provenance – confirming Charles IV's „legislative practice aimed at publicity"[138]. The Golden Bull was his work, flowing from his sole legislative competence.[139] In this respect, the „inheritance of the legislative emperor" Louis was „taken away" from Charles IV.[140]

The Emperor had his Court Chancellery prepare written drafts of various provisions, which he brought to the Court Day in Nuremberg. These formed the basis for negotiating the respective norms. Proposals for norms were also submitted by the electors and represented with an indispensable willingness to compromise. In Metz, Charles IV, as elector, carried the sealed copy of the Nuremberg part of the Golden Bull that had been given to him.[141] Both in matters of content and in the language of documents, Charles and his chancellery were guided by the laws and charters of the Staufer Frederick II.[142] Incidentally, the original order of the individual chapters, their rearrangement and supplementation in the process of drafting the Golden Bull is highly disputed.[143]

The Golden Bull reveals a clear programme for the organisation of imperial rule involving the privileged electoral group. The Code pursues the creation of a firmly structured order, which can be based in part on custom.

Ranking (casting of votes; seating order; different privileges) and equality of rank (ceremonial) among the electors are laid down as essential elements of an order of unity and peace in the empire. Thus, „on the one hand, the clear hierarchy … And on the other … the absolute equality of rank"[144] were meticulously balanced with each other. The consensus with the electors sought by the Emperor and apparently largely implemented offered the chance to also implement the agreed

138 Lindner, 2009, p. 95.
139 Lindner, 2009, p. 132.
140 Moeglin, 2009, p. 18 f.
141 Lindner, 2009, p. 102.
142 Schlotheuber, 2009, pp. 165, 168. On the languages of documents in the 13th and 14th centuries cf. Lawo, 2009.
143 Zeumer, 1908; Hergemöller, 2006; Bojcov, 2013; Greule, 2020, pp. 102-109.
144 Kunisch, 2001, p. 269 f.

and imperially proclaimed rules in reality. In this respect, those important rulers besides the emperor who had to enforce the law in general in their territories (e.g. land peace; freedom of jurisdiction) were involved in the content and formal design of the Code as a prerequisite and unifying feature. The balancing of different ideas between the king/emperor and the electors, as well as among the electors and other representatives of the empire, and the implementation of unity (consensus) with regard to the rejection of papal claims, the maintenance of the god-independent empire and the special rights of the electors in the text of the law constitute „the special achievement of the Luxembourger" as a legislator.[145]

At the heart of the Golden Bull were the rules for the election of kings, which basically stood the test of time until the end of the Old Empire. Clarity and the endeavour to reach agreement on the applicable rules were the goals of the Golden Bull. This meant that there was no longer any room for the election of opposing kings and double elections. In many cases, the legislator was able to refer to tradition and custom, which contributed to an evident legitimisation of the respective norms. Compliance with and enforcement of the legal norms enacted by the legislature were important to the legislature. A system of sanctions – from loss of rights to fines to the death penalty and the diminution of rights/honour of the descendants of executed conspirators/mayhem criminals – reinforced the relevant norms. In this respect, the legislator left no doubt about his determination. The electors, whom he had included in the legislation by consensus, were held in high esteem by him as emperor (of necessity due to the power-political relations in the empire) with regard to the welfare of the Holy Roman Empire. The fact that the emperor himself was the most distinguished secular elector among them favoured and strengthened this constellation, also from the point of view of authenticity. With their exclusive imperial fiefdoms (electorates), the royal electors were something like the basis of the constitutional and peaceful order sought by the Golden Bull. This position was underpinned by the stipulation of an annual meeting of the electors

145 Lindner, 2009, p. 133. For appreciation as a „completely independent work" created „with admirable creativity", see also Willoweit, 2009, p. 256.

to deliberate for the good of the empire, which, however, was to remain largely a vision.

Through the Archbishop of Mainz as Imperial Chancellor, imperial rule was also present in the day-to-day practical actions of rulers in the empire. Two royal/imperial imperial vicars represented the emperor/king in the event of a vacancy on the throne – admittedly on the important condition that the high-ranking legal acts they performed had to be confirmed by the new king/emperor as soon as one was elected.

5. CONCLUSION

The epochal and European history of the Golden Bull's impact, which is supported by a „rhetoric aiming at eternity"[146], cannot and should not be described here.[147] As a representative example of the complex reception in the centuries after its creation and its after-effects in the modern age, only three facts should be pointed out. Basic knowledge of the Golden Bull has always been included in school textbooks.[148] The seven copies and Wenceslas' magnificent manuscript were inscribed on the UNESCO World Documentary Heritage List in 2014.[149] The legislative masterpiece of Emperor Charles IV is still a reminder today: a divided society is no advantage for the good development of the community. Let us learn from it!

146 Heinig, 2009, p. 67.

147 Cf. the instructive contributions by Schubert, 2009; Heckmann, 2009; Holtz, 2009; Buschmann, 2009; Niedermeier, 2009; Kümper, 2006; Matthäus, 2006a; Neuhaus, 2011.

148 So also Bojcov, 2013, p. 581 f.

149 Brockhoff and Matthäus, 2015; Greule, 2020, p. 99; Stieldorf, 2015.

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THE DANISH CONSTITUTIONAL CHARTER OF 29 JULY 1282*

HELLE VOGT**

ABSTRACT

In 1282, the kingdom of Denmark received its first constitutional charter. The charter laid down the boundaries of the king's power, and established the governmental role for the 'best men' in the kingdom: i.e., the most prominent members of the elite, secular as well as ecclesiastical. The charter was the culmination of a long period of political conflicts between the king's and the magnates, about the king's right to legislate, judge and levy taxes and dues. In the charter, the king promised to rule together with the parliament, and that their consent was needed to new legislation, taxes and dues. The freedom of the church was secured, and a number of legal guaranties were given, for instance against arbitrary imprisonment and sentences.

Keywords: *Denmark, Parliament, Erik V, Lèse-majesté, Thirteenth century, Constitution charter, Taxes, Legal guaranties*

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** Professor of Legal History, Faculty of Law, University of Copenhagen, PhD, helle.vogt@jur.ku.dk.

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In 1282, the kingdom of Denmark received its first constitutional charter. The charter laid down the boundaries of the king's power and established the governmental role for the 'best men' in the kingdom: i.e., the most prominent members of the elite, secular as well as ecclesiastical.

The Danish realm, understood as a union consisting of the three provinces of Scania, Zealand and Jutland, can be traced back to the early ninth century.[1] From time to time during the following centuries, and as late as the civil wars of the 1150s, power was vested in more than one king at the same time. In times of peace, these kings did not claim sovereignty over all the Danes, but merely over one of the three provinces; conversely, warfare tended to flare up when two or more royal princes claimed kingship over the whole realm. In 1157, the dynastic strife ended, and Valdemar I (r. 1154/7–1182) became sole king. During his reign and that of his sons Knud VI (r. 1182–1202) and Valdemar II (r. 1202–1241), the kingdom experienced a time of internal peace, and the political landscape was characterised by cooperation between royal authority, the leading magnates and the Church.[2] It was probably during the reign of Valdemar I that the parliamentary system was first established. The parliament, in Old Danish *hof*,[3] was an annual gathering of the most prominent men of the realm, lay and ecclesiastical, with the latter including all the bishops and abbots of the most important abbeys. Nobility of birth was only established in Denmark in 1522; thus, the lay members of the parliament were invited because of their local importance and power and/or their relationship with the king.[4]

Denmark was Christianised in the second part of the tenth century.[5] The organisational structure of the Church developed in the eleventh century, and around 1060, during the reign of King Svend Estridsen (r. 1047–1076), Denmark was divided into nine dioceses. In the beginning

1 Scholz and Rogers, 1972, s.a. 809, 811, 90 and 93. For a historical overview of early Danish history in English, see, for instance, Sawyer, 1984.
2 On the Danish history of the twelfth and thirteenth century, see, for example, the articles of Skovgaard-Petersen, 2008, pp. 168-183 and 353-368.
3 'perlamentum, quod hof dicitur', § 1, p. 75
4 On the parliamentary system, see Hude, 1893.
5 On the Christianising process, see Berend, 2007.

of the thirteenth century, canon law was fully recognised in Denmark,[6] and the Church held a position of considerable power.

There are probably many reasons for the dynastic struggles in twelfth-century Denmark, but one of the main reasons was undoubtedly due to the fact that Denmark was an elective kingdom until the introduction of Absolutism in 1660. All sons of kings and their sons had a claim to the throne, and all that was required to gain the title of king was to be elected at one of the three provincial assemblies situated in three major legal provinces: Scania, Zealand or Jutland. If two kings were elected at the same time at different assemblies, it often lead to internal warfare. King Svend Estridsen had 14 sons, each of whom had his own sons as well: with so many potential claimants to the royal crown, the foundations had been set for civil war.

The three major legal provinces of Denmark each had its own provincial law – Zealand even had two – dating from the early to the mid-thirteenth century. The provincial laws were written down with the consent of – and probably on the initiative of – the Crown, the secular elite, and the Church.[7] The laws are quite long and detailed, covering areas such as inheritance, property transfers, village organisation and agricultural matters, and what we would today call penal law. There are differences between the laws, but these are mostly insignificant and primarily concern procedural law.[8]

The stable domestic conditions and the close cooperation between the Church and the Crown came to an end after the death of Valdemar II in March of 1241. Subsequently, the sons and grandsons of Valdemar II starting fighting in their bids to succeed to the crown.

During the civil wars of the twelfth century, magnates would often change sides, nor would they come to the rescue if the royal candidate whom they had supported failed to live up to their expectations. The same observation probably holds true for when the civil wars flared up again in the 1240s. In the 1250s, the first round of these new wars had

6 Bagge, 1981, pp. 144-145.

7 For the writing down and dating of the laws, see: Vogt, 2010, pp. 44-49, 64-72, and Andersen, 2006, pp. 77-86, 94-100, 140-142 and 164-166. For an English version of the laws, see Tamm and Vogt, 2016.

8 For the change in the procedural law, see Andersen, 2011.

been fought to a fatal end with the killing of Erik IV (r. 1241–1250), but political unrest continued to linger. Within such an environment, it was no wonder that the king wanted to strengthen his sanctions against magnates who might consider transferring their loyalty to one of the royal brothers or cousins, such as, for instance, the duke of Schleswig or any other of the royal cousins. King Abel (r. 1250–1252) and King Kristoffer I (r. 1252–1259), both sons of Valdemar II, tried to pass a special law on the crime of lèse-majesté which they included within a broader law that sought to regulate the relationship between the king and those of his men who had sworn an oath of allegiance to him. When Abel became king in 1250, the civil war between him and his younger brother Kristoffer on one side, and their older brother Erik IV on the other, ended with Erik's murder. But Abel only held the crown for two years before dying in battle himself. After his death, Kristoffer took the crown from under the nose of Abel's minor sons, thus paving the way for the next round of civil wars to kick off.

To treat offences against the king as a particular crime that justified particularly harsh punishment dates back to the Roman Empire; as Roman law came to be studied in the twelfth century, its principles increasingly formed part of royal legal ideology. Lèse-majesté was not originally a term found in the provincial laws, which instead referred to the crime of the *avighskjold*, which means literally 'an inverted shield': namely, someone turned his shield against his own side and led a foreign army into the kingdom.[9] The special laws, in contrast, explicitly contained the crime of lèse-majesté, and an individual accused of such a crime could be convicted on suspicion alone. It gave the king, who appointed the nominated men who would investigate the case and present an oath on the question of guilt, a powerful tool to excise unwanted elements from among his magnates.[10] The crime was sanctioned by the death penalty. In addition to this, the convicted person not only lost his personal property – consisting of moveable and acquired land – but his inherited land was also confiscated by the king, a punishment

9 *Danmarks gamle Landskabslove med Kirkelovene*, vol. V (Erik's Law of Zealand), ch. 2;27.

10 Fenger, 1991, p. 50.

almost unheard of compared to the sanctions for other crimes. In this way, the king acquired a powerful tool to discipline not just a single magnate, but his entire family, by removing from the next generation the family's economic foundations. The legislation was probably never enforced, due no doubt to the strong resistance against it on the part of the magnates. However, it offers a very good example of why the elite wanted to limit the king's legislative power. The dynastic and civil wars continued on and off until the beginning of the 1270s, when King Erik V (r. 1259–1286), Kristoffer I's son, won a decisive legal victory over the rebellious eastern bishops.[11] As a result of the strengthening of royal power, Erik V in 1276 tried to have his two-year-old son Erik crowned as co-ruler by the parliament, a practice introduced in 1170 and used as a method to try and pacify rival royal lines in case the king died before his son had established a powerbase that could secure his election.[12] The sources offer scant information about the parliament of 1276,[13] but we are informed that many of the lords were present and that they did homage to the infant prince, with the exception of the lord high constable (*marsk*) Stig Andersen. Here, we get a glimpse of the political disagreement between the king and some of his magnates. At this same parliament, a royal ordinance on lèse-majesté was presented to those attending. This ordinance was subsequently abolished in 1282.

The Ordinance consisted of five paragraphs.[14] The first addressed the procedure to be followed and the punishment for cases of plotting against the king's life, while the second paragraph set out what would happen if one neglected to inform the king about planned marriages between foreign royals. The third paragraph was about illegal and secret connections to foreign lords; the fourth concerned acts that could harm the king; and the fifth paragraph outlined the punishments incurred for certain aggravated killings.[15] At the end of § 4, the Ordinance stated:

11 On the civil wars, see Hørby, 1977.

12 The Danish kings were elected, but from 1170 and up to Erik V's failed attempt in 1276, the kings usually crowned their eldest son as king during their lifetime.

13 For a discussion about whether it took place at the same parliament or not, see Holberg's convincing arguments. Holberg, 1895, pp. 19-20.

14 DDR 1971, pp. 60-61.

15 For further information, see Fenger, 1971, pp. 444-447.

'what is said above, that the king as plaintiff should nominate the jurors, was not accepted by anyone in the realm (*regno*), except those few that attended the council (*concilio*), but they [the realm] insisted that the accused should nominate them [the jurors]'.[16] That the accused nominated the compurgators was normal procedural practice at the public assemblies that also functioned as courts. Exactly how the term 'realm' should be understood is open to interpretation, but it seems likely that it meant the best men of the realm, that is, the parliament.[17] Only one manuscript of the ordinance has been preserved, and the notice gives a clear indication that the procedural system was not accepted by the elite. The sources preclude any deeper insight that might let us see what took place at that parliament, nor do we know if the ordinance ever *de facto* came into force.[18] One may wonder why the king found it necessary to issue an ordinance on lèse-majesté, when there was, at the same time, opposition among the magnates to letting the king strengthen his power over his men and the appointment of Erik VI as co-ruler. As stated above, the sources are very scarce, but they could indicate that there was a power struggle between the king and some of the magnates. Although the sources are silent about events in the following years, they clearly show that the conflict of interests between the king and the leading members of the elite increased. The events leading up to the parliament of July 1282 are not known, but the yearbook from the Abbey of Ryd tells of some further strife that arose between the king and the princes.[19] Which princes this might refer to is not mentioned, but it seems likely that they included the sons of the dukes of Schleswig and Northern Halland who had demanded the dukedoms that their fathers

16 'Quod autem supradictum est, scilicet quod rex quasi actor n[omina]ret purgatories supradictos, nullis placuit de regno[exceptis] paucis, qui tunc dicto concilio inferfuerunt; set affirma [uerunt], quod reus debeat eos nominare', DDR 1971, pp. 60–61.

17 That those present at the parliament were seen as the *regno* is strengthened by the prologue of Erik V's Ordinance of Vordingborg, known from a later Danish translation: 'wfftær alle danæ rat hoc danæ togæ withær', DDR 1971, p. 62.

18 For a discussion of the notice and the ordinance, see Vogt, 2013, pp. 85–99.

19 Ryd Abbey's yearbook, *Annales danici medii ævi*, 1920, p. 62, 'Lit oritur inter regem Ericus et principes'.

had previously held.[20] Taking subsequent events into consideration, it is evident that the strife was not only between the king and his royal cousins: many displeased magnates either joined the struggle or used the unstable conditions as an opportunity to express their discontent with the king. One later source from the sixteenth century can be interpreted as proof that the magnates stirred up the peasants against the king, but this remains doubtful.[21] The uprising was successful and the princes finally obtained their dukedoms in 1283.[22] This was the culmination of a longer political process starting in March 1282, when the king issued a provisional decree wherein his power to judge, legislate and collect taxes without parliament's consent was significantly reduced.[23] The decree was promulgated by the king on 'the advice of all Danes and all Danes agreed',[24] and in addition to bishops and princes, the decree mentions that it was witnessed by 'the best men of the kingdom, both learned and lay'.[25]

Later this year, in July, the parliament assembled again in Nyborg and there Erik V issued the charter that had been promised in March. The charter, now known by the misnomer 'Eric V's coronation charter'[26] –

20 King Abel's descendents were made dukes of Schleswig, and the descendents of Valdemar II's illegitimate sons were made dukes of Northern and Southern Halland.

21 The Danish history writer Arild Hvidtfeld wrote in his Chronicle of the Danes, under the year 1282, that the nobility stirred up the peasants against the king: Matzen, 1889, pp. IX-XI; this has convincingly been rejected by Holberg, 1895, pp. 53-55.

22 This was just a short respite before the duke of Schleswig again saw his dukedom confiscated in 1285. However, after the murder of Erik V in 1286, he was given back all of his privileges and even formed part of the regency.

23 The Danish legal historian Poul Johannes Jørgensen did not think that it was the rebellion of the princes that made the king issue the decree, but instead that he was forced to do so by the magnates after a political defeat, the nature of which he does not define: Jørgensen, 1940, pp. 74-76. Nevertheless, most historians see a link between the two events.

24 'efttær alle Danæ rath oc Danæ togæ withær', DDR 1971, p. 62.

25 'bæstæ mæn aff rigæt bothæ lærtæ og legtæ', ibid., p. 65.

26 'Erik Klippings Håndfæstning', at the time when Erik V issued the charter, 'håndfæstning' merely meant a document that tied the king's hands. However, later in the fourteenth century it began to be used exclusively for coronation charters. Printed in DDR, 1971.

constitutional charter is much more fitting, and will be used here – is found in many medieval and renaissance manuscripts, both in the Latin original and in Old Danish as well as in Low German translations. In these manuscripts, the charter appears together with other legal texts. It is not surprising that the charter can be found in legal collections, since it kept its legal importance until the introduction of Absolutism in 1660. It is also quoted in many judgments passed by the courts in the sixteenth and seventeenth centuries.

Erik V's constitution charter is comprised of four parts. The first part gives general protection against the king's arbitrary use of power[27]. It falls into two parts §§ 1-5, and 10-13 and 16. The first provision states that a parliament should be held once a year. Most of the paragraphs then concern the use of royal letters in the prosecution process, and also revoke all laws that were in conflict with the laws of King Valdemar. At the time of the charter, the laws of King Valdemar probably referred to non-royal legislation, i.e. the provincial laws, and to the royal legislation given before the death of Valdemar II in 1241, which later became a symbol of the 'good old laws'.[28] Concerning the administration of justice, it is stated that no one could be imprisoned unless he confessed or was caught red-handed, nor could anyone receive a punishment other than what was stated in the laws. The king's officials could only summon individuals to the ordinary assemblies, which presumably meant that they were not allowed to hold private courts. No man could have his land confiscated for a crime, with the exception of lèse-majesté. If someone wanted to raise a claim against the king for unlawful possession of land, the matter should be decided by the parliament. Finally, the king was not allowed to build on private land unless the owner agreed to it, and all confirmed privileges should stand.

The second part of the charter, §§ 6-9, was about the protection of the peasantry.[29] These provisions regulated the paying of tax; stated a general prohibition against forced labour except in times of need,

27 Ludvig Holberg offered a very thorough analysis of the different parts, Holberg,1895, pp. 99-101, 111-115.

28 On the laws of King Valdemar, see Hørby, 1989, pp. 45-47, who sees it as a sign of the emergence of thinking like a state, and Fenger, 1971, pp. 448-449.

29 Holberg, 1895, pp. 101-111.

which should probably be understood as referring to the construction of fortifications during times of war; and stipulated that no one should be forced to give poultry or other gifts to the king's table.[30] § 9 granted free farmers the right to take possession as estate managers (*bryti*) as long as tax was paid of the land they owned.

The third part of the charter, §§ 14-15, was concerned with the protection of merchants.[31] It was detailed that the law given earlier that year about shipwreck should be observed, and that no new duties should be imposed on the merchants. The fourth and final part, §§ 17-18, regulated the protection of the Church and clerics.[32] Prohibitions were given against violent guests; these paragraphs detailed that a guest should be content with what the host offered, and neither demand more nor take it violently. This paragraph applied to both lay and cleric. However, the problem with travellers who violently took what they wanted if they were not content with what they had been offered seems to have been a problem primarily faced by ecclesiastical institutions. And finally, the Church in Denmark should have all the freedoms it had held in the time of King Valdemar II. The charter not only bound Erik V, but also whoever would succeed him as king; the charter thus had the character of providing a constitutional document for the whole of the realm.

Erik V's constitutional charter was by far the most important constitutional legislation in medieval Denmark, both in the long and in the short term. The constitutional charter, as shown above, weakened royal power and put a stop to royal attempts by the kings in the second half of the thirteenth century to strengthen their power through unilateral legislation applicable to the whole realm. The constitutional charter strengthened the power of the elite, both lay and ecclesiastical, by protecting them against the king's despotic actions and by giving them the final say in matters of new legislation and new taxes and duties. Parliament, and later from the early fourteenth century, the council of the

30 That it could sometimes be difficult to distinguish between voluntary gifts and duties can be seen in Erik's Law of Zealand, where in book III, ch. 63, it is stated that if the householders did not voluntarily give a gift to the king's official they could not count on his help if they came into trouble. DGL vol. V, pp. 357-358.

31 Holberg, 1895, pp. 116-120.

32 Ibid., pp. 120-122.

realm, maintained this position – with a few brief exceptions[33] – right up until the rise of Absolutism in 1660.[34]

The weakening of royal power and concurrent strengthening of the power of the magnates does not make it sound like this legislation designed for the whole realm united the kingdom; nevertheless, it is my claim that this was precisely what Erik V's constitutional charter did. Theories about state-building view constitutional legislation as an important step in the direction of turning a kingdom into a state. The power struggles in the second half of the thirteenth century were not so much about the content of the laws, but more about who should have the right to the administration of justice – the king or the courts – and whether or not the king should be bound by the law. The legal and economic systems that formed gradually during the century became so well established that the administration of justice, taxes, trade and so on continued uninterrupted well into the seventeenth century. And this is despite the fact that in the fourteenth century, the kingdom was pawned to foreign princes and also experienced an interregnum.[35]

33 For instance, one such exception occurred during the reign of Valdemar IV. After he had gained control over the whole kingdom, he started a campaign to increase the crown's possessions by summoning political opponents to his court, *kongens retterting* (the king's court), where they were judged to lose their land on very thin legal bases.

34 Bishops lost their place in the council of the realm during the Reformation.

35 During the reign of Erik VI (1286–1319), expensive wars were partly paid for by pawning parts of the kingdom to German princes. At his death, Erik VI's brother Christopher II took over a realm with its finances in ruin, and when he died in 1332, a new king was not elected. The western provinces were under the rule of the mortgagees, and Scania submitted to the Swedish crown. In 1340, Christopher's son Valdemar IV became king of Northern Jutland and gradually, by redeeming the mortgages and winning military victories, he managed to re-unite the kingdom and considerably strengthen royal power.

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PRIVATE LAW INSTITUTIONS IN THE GOLDEN BULL

MÁRIA HOMOKI-NAGY*

ABSTRACT

Among the provisions of the Golden Bull that concern public law, there is one that concerns private law, namely the law of succession. This so-called Article 4 mentions three questions. Firstly, it confirms the ancient custom that if the testator has descendants, they inherit the estate. If there are no descendants, the Golden Bull has given the testator the opportunity to dispose freely of his property. This is the measure to which the literature links the emergence of the right of testamentary disposition in the Hungarian legal system. The freedom of testamentary disposition is, however, limited by the institution of the daughter's quarter, which must be given to the daughter's heirs from the paternal ancestral property. Finally, the Golden Bull also establishes the ancient rules of legal inheritance by stating that if the testator had no descendants and no will, his ascendants or collateral relatives, ultimately the king, inherited the estate.

The paper seeks to answer the question whether the possibility of making a will really only appeared in 1222. The documentary evidence of the 12th and 13th centuries provides evidence that wills were made with royal approval even before the Golden Bull. After 1222, the practice of

* Professor, University of Szeged, Faculty of Law and Political Sciences, PhD, habil., homoki@juris.u-szeged.hu, ORCID: 0000-0002-6423-5568.

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requiring the king's approval for a will to be valid continued, as attested by the royal seals on the documents.
The other question is the scope of the legal inheritance in the century of the Golden Bull, which meant the lateral relatives of the clan. Initially, this did not extend beyond the grandparents' parental lineage, but later, in order to preserve the ancestral property of the clan, the circle of collateral relatives who claimed the inheritance became wider and wider. This ambition was strengthened when the nobility asked the King's approval to leave their property exclusively to their descendants. This eventually led to the issue of the decree of 1351, when Louis the Great renewed the Golden Bull, but deleted Article 4 of it, stating that the law of descent was to be the law of descent.
Keywords: *will, succession of sons, succession of daughters, patrimony, right of disposition subject to royal authorisation*

The 800th anniversary of the creation of the Golden Bull provides an opportunity to analyse some of its provisions in the field of private law. Although the Golden Bull primarily deals with public law issues, the few measures it contains in the field of private law will be decisive for the development of Hungarian private law in later centuries.

A long-accepted opinion on the origins of the Golden Bull is that certain measures of Andrew II, such as the increased donations of property or the frequent deterioration of the value of money and the servants and serfs forced its issue because of their own social and financial security.[1] Today, historians are painting a more nuanced picture of this issue. This concerns, on the one hand, the formation and role of the royal servants as a social group in the decade preceding the publication of the Golden Bull.[2] On the other hand, the circumstances in which the Golden Fleece was produced were influenced by the power aspirations of the nobility, both those who supported and those who opposed the policies of Andrew II.[3] This affects the private law rules laid down in the Golden Bull in so far as they influenced or were influenced by the

1 Eckhart, 1946, p. 27.
2 Almási, 2000, pp. 40-45.
3 Erdélyi, 1917.; Érszegi, 1990. pp. 17-19; Zsoldos. 1990, pp. 1-36.

property and land ownership of the 13th century. "The structure of property in Hungary in the 11th and 12th centuries was marked above all by the overwhelming quantitative predominance of royal estates."[4] The second half of the 12th century saw an increase in the donation of royal estates, which reached its peak during the reign of Andrew II.[5] The royal castle lands, which had hitherto been held only until the Ispanic title was granted, were donated in such a way that they could be inherited by the successors of the donors. In this way he laid the foundations for the emergence of a secular landed aristocracy.[6] As György Bónis put it, the royal servants were 'wealthy, free landowners' who wanted to 'extend their estates and liberties and reduce their services'.[7] This aim was served by the Golden Bull's formulation of the principle of legislative privilege, the principle of personal freedom and the reduction of financial and military obligations.[8] The provision on national property in Article 4 also fits into this line.

"If a servant should die without a son, his daughter shall keep a quarter of his estate, and he shall dispose of the rest as he pleases. And if he cannot make a will because of his unexpected death, his nearest relatives shall keep it. If, however, he has no relatives at all, the King shall have them."[9]

By the 13th century, there was a clear separation between the royal estates and those of the emerging nobility. This was one of the reasons for the publication of the Golden Bull, in which, in addition to the power struggle between the nobility who agreed with or opposed the policies of the monarchy, Andrew II donated some of the estates that were the basis of royal power, while at the same time seeking to secure the financial revenues needed for the royal treasury with the newly introduced regal revenues. This did not mean that the king did not retain a considerable amount of real property, which included the estates that had passed to him in the event of the succession of a noble. After the Tatar invasion,

4 Zsoldos, 1990, p. 5.
5 Kristó, 1976, pp. 31–35.
6 Engel, 1990, p. 216.
7 Bónis, 2003, p. 115.
8 Eckhart, 1946, p. 30.
9 Érszegi, 1990, p. 28.

our rulers mainly donated empty, uninhabited estates.[10] It should also be remembered that the legal consequence of crimes of infidelity was also the forfeiture of head and cattle, where the forfeiture of cattle also increased the royal property. The fundamental difference between the property reverting to the monarch by reason of treason and the property reverting to the monarch by reason of treason was that the property which had reverted to the king by reason of treason had to be re-donated by the king, whereas the noble property reverting to the monarch by reason of treason did not. Gradually, the fact of secession and infidelity became the title to the royal grant of the manor. If it came to one's knowledge that either a breach of title or the crime of infidelity had been committed, one could claim a royal grant of land under one of the two titles. When the right of the king to determine what was actually covered by the ius regium in private law is examined, it must be understood in the era of the Golden Bull to include not only the royal estates which still existed but also those which had reverted to the king either because of a breach of the Crown or because of infidelity.[11] This would be the basis for the legal institution known in later centuries as latens ius regium, when property was only legally transferred to the treasury, but not yet de facto. This gave rise to the institution of the donation in suit.[12] The king gave the claimant a right of action to prove the king's right.[13]

The property of the clan must be distinguished from the property of the sovereign. This was already referred to by St Stephen when, in section 35 of his second decree, he stated that the property donated by the king, like other goods which are the property of the donor, is inherited by the sons of the nobles, and cannot be taken from them. An exception

10 Attila Zsoldos proves that in the second half of the 13th century, the term "land abandoned by its inhabitants" appears in the documents as a new title of the royal donation. The donation of such an estate was preceded by an investigation carried out by a royal official and by officials sent by the authenticator. The grant was only made if the land was truly uninhabited. Zsoldos, 1990, p. 8.

11 József Gerics and Erzsébet Ladányi proved with several Anjou-period documents that "the estate was a royal right due to the secession and thus donable." Gerics and Ladányi, 1991, p. 4.

12 Frank, 1845, pp. 279–280.; Czövek, 1822, pp. 134–138.

13 Czövek, 1822, p. 135.

to this was made if the donor had committed any of the acts of disloyalty defined later – attempt on the life of the king, treason or flight abroad. Then, by virtue of the ius regium, the estate reverted to the king.

Since Section 35 of the decree of St. Stephen II provided that the estate received from the king shared the fate of the clan estate, because "each man should be master of his own property, almost as well as of the king's donations", therefore within the real estate in the clan estate there was no separation between the hereditary lodging estate belonging to the clan and the donation estate received from the king in return for good service. The concept of *possessio*, which in the common law system denoted the property actually held by a person, irrespective of where it came from, appears in the practice of the period.

This system is nuanced by Kálmán Könyves, who in his first decree already distinguished between land owned by the clan and land donated by the king. It is no coincidence that György Bónis, describing the property relations of the 12th century, distinguished between the land of lodging and the land of donation.[14] While the property acquired by the members of the clan, be it hereditary property, a royal donation from Stephen the Great or property bought with money, belonged to the clan as a whole and was held by the individual heads of the clan, the property donated by King Kálmán remained in the clan's possession for as long as the clan had a son. In the words of the decree, "the donation of other kings shall pass from father to son, and if there be no son, the brother shall follow, and his sons shall not be excluded from the inheritance." (Kálmán: I.20.) If the donor had no legitimate heir, the estate reverted to the king, and thus became alienable again. It was after the provision in the decree of King Kálmán that it became clear that the right of the king was the right of the king as the main owner of the property, and that he could assert his right to the ius regium by virtue of his royal power. This provision resulted in the inheritance of the grantor's son, or in his brother's and his sons' absence, and in the possession of the grant. If there was no heir, the property reverted to the king. According to Gábor Béli's view, from that time onwards, the ruler was entitled to the property in the sense of the law of things – if one can use this dogmatic

14 Bónis, 2003, p. 118.

term in Hungarian private law, which was dominated by customary law. The king, as the owner, had the right to retain the lying property or to donate it again.[15] The real property in the possession of each clan was also separated from the point of view of inheritance law, into 'purely' clan property and donation land from the king. These two types of property, and the distinction between clan and royal law that necessarily went with them, "played a decisive role in the development of the law."[16] In Bónis's words, "the limited inheritance of the dower estates was the royal right, the unlimited transfer of the lodging estates the ideal type of estate of the extended family-national right."[17] József Illés saw the importance of Kálmán Kálmán's law precisely in the fact that "it is the first legislative attempt to limit the inheritance of kinship."[18]

In fact, the inheritance norms established by customary law were not influenced by the decrees of either St Stephen or St Kálmán. According to the order of nature, the sons of the deceased always inherited first, but we have no precise data on the order in which the members of the deceased's clan succeeded each other in the absence of descendants. Did the father, who may still be alive, or the father's brothers and sisters, or distant relatives from a common ancestor, inherit? To which circle of relatives did the principle of descent in the law of succession apply?[19] When we want to define the law of succession of a clan, we can start from the concept of clan, generation, as the agnate relatives descended from a common ancestor. However, this can refer to a much more distant circle of relatives than the testator's brothers and sisters or perhaps the brothers and sisters of his father and their male descendants.[20] St Stephen's decree leaves this question obscure, and St Kálmán limited it to the brother of the legatee and his descendants by blood. The Golden Bull stipulates that if the servient 'should be unable to make a will because of his unexpected death, his nearest relatives shall retain

15 Béli, 2017, p. 98.
16 Bónis, 2003, p. 118.
17 Bónis, 2003, pp. 118-119.
18 Illés, 1904, p. 69.
19 József Illés wrote about this question in detail in his work entitled The Order of Legal Succession in the Árpád Age.
20 Fügedi, 1999, pp. 20-21.

the estate'[21], but does not specify where the circle of blood relatives who may still inherit, either legally, as defined by customary law, or by will, ends.[22] This provision of the Golden Bull is repeated in Article 11 of 1231. According to Jenő[23] Szűcs, Article 6 of the decree of 1267 sought to limit the king's right to grant the estate by requiring the entire family of the deceased nobleman to be summoned to appear before the king in order to establish whether or not there was still a heir entitled to inherit.[24] However, the concept of 'whole kinship' is still too general and vague, because it could mean the whole lineage descended from a common ancestor, but it could also be limited to a certain degree of kinship for the purposes of succession law. The measure confirmed by Béla IV may be evidence that the emerging common nobility gradually extended the circle of blood relations where the property of a blood relative could be claimed by lateral relatives from a common ancestor, thus preventing the ius regium from being enforced.

Kálmán provided that only in the case of land donated by the king could it be inherited by the donor's brothers and sisters and their descendants if there was no legitimate son. The surviving charters prove that estates which had reverted to the king as a result of a secession could be donated by the king in return for good offices, whether military or other services rendered to the king. The peculiarity of our charters on the donation of estates is that they record the merits for which our rulers gave someone an estate. It was the cases of the reversion of lying estates that shaped the concept of the ius regium, which in later centuries would define our entire system of property law. According to József Gerics, "the concept of royal right (ius regium) in Hungary, which had already become established in the second half of the 13th century, encompassed two types of property: those 'directly belonging to the king and the royal power' and those over which the king exercised the right of donation for the benefit of the nobles."[25]

21 Gerics and Ladányi, 1991, p. 7; Szűcs, 1984. p. 344.
22 Szűcs, 1984. p. 346.
23 Illés, 1904, p. 53.
24 Szűcs, 1984, p. 346.
25 Gerics and Ladányi, 1991, pp. 3-5.

At the beginning of the 13th century, thanks to the new land policy of Andrew II, the so-called honorary estates became hereditary estates by royal grace.[26] This policy was opposed by the servants who forced the issuing of the Golden Bull and made Andrew promise that "we will not grant the whole county or any other dignity as a perpetual possession or estate."[27] Unlike clan property, our rulers had to determine the succession of the donated property in such a way that it would not become "hereditary property"[28], but would revert to the ruler in the event of the death of the donor or his sons, i.e. on the death of the donor. Gábor Béli quotes the donation letter of Andrew II of 1205, which states precisely that the donated manor may be inherited by his descendants, "his heirs and descendants of his heirs".[29] Moreover, the succession clauses in the subsequent deeds of donation already clearly specify this order of succession.[30] According to Béli's interpretation, this succession clause formula follows the form laid down in the Law of St Stephen. The question is, however, to what extent can the provision of Kálmán Könyves, according to which, if the donee has no sons, his brothers-in-law or their descendants shall inherit, be understood as an extension of the order of succession to the donated property and to what extent as a restriction? In any case, it must be regarded as a restrictive measure for the inheritance of the family estate. But in the subsequent development of the law, the succession of the hereditary estate was allowed[31] by our rulers only to the donor and his descendants, and the expansive interpretation which Kálmán allowed was expressly forbidden. This could be derogated from if the monarch granted the donor a free right of disposition in the absence of a son.

The predominance of male members of the clans over royalty in the law of property and succession became predominant by the end of the 13th century. The right to dispose of property was guaranteed by the Golden Bull itself, as described above, in the case of landed property,

26 The most recent literature on the honor estate is Tringli, 2021, pp. 6, 1209-1231.
27 Érszegi, 1990. p. 30.
28 R. Kiss, 1927. p. 5; Rákos, 1974, pp. 5-6.
29 Béli, 2017, p. 99.
30 Béli, 2017, p. 99; László, 2020. p. 50.
31 Bónis, 2003, p. 119.

and by decrees dating from the second half of the 13th century in the case of donation property.

1. THE RIGHT OF FREE DISPOSAL

Although the clan property and the donation property received from the king were legally separate, since the clan property was inherited by the clan within the scope defined by customary law, and the donation property could be inherited by the donor's son according to the order established by the beginning of the 13th century. If there was no heir, the estate reverted to the king. Our surviving documents prove that, in the absence of a son, nobles were already claiming the right to freely dispose of their inherited property in the 12th century, i.e., the right to make a will subject to royal approval and to make a gift on death.[32] However, the nobles wanted to assert this option not only in the case of the clan estate but also in the case of the donation estate.

Among the rights of the monarch was the possibility, in the absence of a male heir in the succession of the donation, either to give the donor free disposal of his estates, or to grant the daughter line the right of succession or. According to 13th-century documentary records, the nobility was often granted the right of free disposal as a royal favour. In Erik Fügedi's opinion, the charters "show that the king's permission made the consent of relatives superfluous, even in the case of ancient estates."[33] This right, in Eszter Waldapfel's view, "is not opposed to the right of kinship, but on the contrary, it is opposed to the right of the king to rule by the throne. In practice, the right of free disposition merely provides the possibility of carrying through the clan succession."[34] In the following centuries, the granting of the right of free disposition required the consent of the clan of the rightholder, in addition to the royal approval. This right of free disposition allowed, in the early 13th century, a servient and nobleman without a son heir to name his daughter and her son

32 Holub, 1926, pp. 233-234.
33 Fügedi, 1999, p. 80.
34 Waldapfel, 1931, pp. 134-167.

heirs as heirs to his lying estate. In the second half of the 13th century, several documents show that, by granting the right of free disposition, the nobleman had made his daughter's husband, his son-in-law, his heir, and had in fact adopted his son-in-law as his son.[35]

The exercise of the right of free disposition, as enshrined in Article 4 of the Golden Rule, was in fact a reference to an already existing practice. According to the documents issued by Béla IV, this was still only possible with royal permission. This is well evidenced by the charter of Béla IV "if it should happen that he should leave without the comfort of children, his estates, which he may indeed possess in right and peace ... shall be given to his son-in-law."[36] Béli also sees it as proof that the father without a son heir is asking the king for a free disposition in order to make his son-in-law and also his daughter his heir. In effect, this free disposition right meant the adoption of a son, and in so doing, it also gave the father's daughter and his grandsons by her the right of succession.

The 13th-century documentary practice thus proves that the right of free disposition granted to the donor did not constitute a right of disposition in favour of a stranger, but that the woman of the noblewoman who had been deprived of her seed had obtained the right of inheritance by granting the inheritance either directly to her sons – the grandchildren of the donor – or indirectly, through the right of inheritance granted to the daughter's husband, the son-in-law of the deceased, but in any case to the grandchildren of the son of the deceased. The granting of the right of free disposal also established the legal institution of adoption, or adoption of sons, in Hungary. In the 14th century, this developed in such a way that, with royal approval, a nobleman who was about to be deprived of his seed could adopt[37] anyone – even a non-nobleman – as his son and thus become the heir to his estates.

The royal right was affected by the provision of the Golden Bull, which stated that the "son of a servant killed in battle shall be rewarded by the king with a land grant."[38] This provision was further extended by

35 Béli, 2017, p. 106; Fügedi, 1999, pp. 78-80.
36 Béli, 2017, pp. 106-107.
37 Werbőczy, I.8., 1990; Frank, 1845, pp. 464-465.
38 Szűcs, 1984, p. 346.

the decree of 1267, which stipulated that if a noble son died in a campaign without his successor, his "possessions acquired in any way" should not revert to the king, but that "the hereditary estate should pass to the kinsmen, and the purchased and acquired estates to the testamentary heirs."[39] If the provisions of the decree are carefully analysed, a clear distinction is made between hereditary property, which could not be disposed of, and purchased and acquired property, which the decree also gave the right to dispose of. In this respect, the decree limits the king's right of succession by allowing the right of free disposal also in the case of acquired property, i.e., donated property. Thus, while in the second half of the 13th century the clan's right of succession to the hereditary estate was increasingly strengthened, i.e., the institution of heredity was formalised, which also constituted the property basis for the survival of the clan, the right of reversion of the donation estate was reduced by the right of free disposal granted by royal favour.

Erik Fügedi pointed out that Róbert Károly and later Lajos the Great changed the succession clause of the donation deed so that the donated man's brothers and their descendants could only claim the donated land if the donation deed expressly allowed it.[40] This further narrowed the circle of those who could inherit the donation property, compared to the provision in Kálmán Könyves's decree.

The provisions in royal decrees and the practice of charters continue to obscure the extent of the kinship of those who could inherit in the event of the death of one of their members.

By a later name, blood relatives who are descended from a common ancestor and who share the real estate owned by the clan are called class brothers. From the 16th century onwards, the term 'class brother' became common.[41]

The right of free disposal, as formulated in the Golden Bull, is therefore closely linked to the question of what and for whose benefit the holder of immovable property could exercise this right. In documentary

39 Szűcs, 1984, p. 347.

40 Fügedi, 1999, p. 82.

41 According to József Gerics, in the Árpád period the name of class patriarch was used even if the common ancestor was not named. Gerics and Ladányi, 1991, p. 8; Illés, 1904, p. 62.

practice, even before the publication of the Golden Bull, the right of disposal was granted as a royal favour, but this was naturally only possible with royal permission. The Golden Bull expressly mentions a provision in the event of death if the servient had no male heirs. Article 4 of the Golden Bull also provided for the right of free disposition only if a precisely defined condition was met – the testator had no male offspring – and limited it further by the fact that even then the daughter quarter could not be disposed of.[42] It is known from documentary sources that wills were made even before 1222. The validity of a will, whether hereditary or donated, required the consent of the king, but often also the consent of other nobles.[43] In the case of hereditary estates, the consent of living male relatives living further away was also required.[44] Dispositions could be made not only for the benefit of the church but also for the benefit of the laity, and several documents testify that the holder of a manor, in the absence of a son heir, disposed of it for the benefit of his daughter[45]. However, with royal permission, the grantee could not only make a will, but also a private donation to both church and laity during his lifetime. The emphasis was on the fact that in all cases royal permission and approval was required,[46] confirmed by the king's seal.[47] 'The nobles of the king's entourage could exercise their right to dispose of their real property with the active cooperation of the royal lords of the royal assembly.'[48]

Property bought with money could be freely disposed of, because the contemporary understanding was that money was a movable thing. Money, the purchase price, was replaced by the goods purchased.[49] However, if the property purchased was not disposed of on the death of the owner and was passed on by intestate succession under customary

42 Czövek, 1822, pp. 313-316.
43 Béli, 2017, p. 102.
44 Béli, 2017, p. 103.
45 Béli, 2017, p. 103.
46 Béli, 2017, p. 101.
47 Holub, 1926, 234. p.
48 Béli, 2017, p. 104.
49 Béli, 2017, p. 103.

law, the property became hereditary and could not be disposed of freely thereafter.

In terms of inheritance law, the Anjou reign saw a sharp distinction between clan property, which was inherited by male blood relatives descended from a single ancestor, and donated property, which could only be inherited by the male descendants of the donor.

2. THE CLASS

The essence of the clan property law, its rules of succession, can be seen in the so-called class covenants, in other words in the surviving class letters. The property of the clan was either held undivided or divided among the members of the clan. Until the 16th century, this was of crucial importance, because if the brothers lived in an undivided state, the property they acquired during their lifetime did not become their own property but increased the common property of the clan.[50] If, however, a division occurred, the property acquired after the division became the property only of the member of the clan who actually acquired it. This is why it is significant that, according to our surviving documents, from the second half of the 13th century onwards, class settlements proliferate, providing good evidence of the evolution of property and property relations.[51] The class letters testify to which parts of the estate were shared between the class brothers and which, such as the minor royal regalia, the right of purchase, the use of woods and pastures, were held jointly as commoners after the class. This enables the noble clans to divide their property from time to time, while at the same time there is always a part of the clans' property which is held undivided over several generations. The commonality of the wealth of the clan, which also resulted from the undivided nature of the wealth, and the claim of the class relatives to the wealth acquired by the class relatives who had not yet been divided, meant that the male relatives also claimed property which they had not contributed to acquiring. This situation,

50 Werbőczy, I.43. § 4; Frank, 1845, pp. 489-491; Engel, 1997, p. 141.
51 Béli, 2010, p. 131.

and the need to remedy the resulting inequalities, is well illustrated by the charter granted to Comes Mikcs by Charles I. According to this document, he donated the property to Comes Mikcs so that he could 'peacefully and without any harassment use the property which he had already obtained from the king and which he was to obtain in the future ... without this extending in any way to his brothers and blood relatives'. Then the monarch even declared that he would grant it to the grantee "irrespective of any law or custom".[52] This was not the only charter of Charles the Great that changed the customs of the time. For in this very charter, King Michael excluded his brothers and their descendants, who lived with him in an undivided estate, from inheriting the estates. This possibility, however, could only be exercised as a royal favour until the 16th century, when the rule became general that those living in an undivided community of property could acquire lying property in their own rights without their side relatives being able to claim ownership.

Erik Fügedi sees the solidarity of the clan in the fact that possible distant relatives do not object to such provisions. Fügedi also sees it as proof that in the second half of the 13th century, the right of free disposal granted by royal grace did not require the consent of the clan, even in the case of hereditary property.[53] In fact, at the beginning of the reign of Charles of Anjou, some people could even assert their right of free disposal against the clan if they had obtained the consent of the monarch. "If a nobleman had succeeded in obtaining the royal permission, there was nothing to prevent him, in breach of his solidarity with the clan, from leaving the estates in his hands to his daughter or son-in-law, by disregarding his relatives." [54]

The ius regium was limited not only by the right of free disposal but also by the institution of adoption. The development of the two legal institutions was closely intertwined. When the royal favour allowed the husband, i.e., the son-in-law, of the daughter of a testator who was about to be deceased to become her heir, this effectively meant in everyday life the adoption of the son-in-law as the son-in-law. From this practice,

52 Engel, 1997, p. 144.
53 Fügedi, 1999, p. 80.
54 Fügedi, 1999, p. 81.

the general rule developed by Werbőczy's time that a nobleman facing a secession could, with the prior royal consent, adopt anyone as his son and thus name himself heir. The adoption of a son, however, only retained its effect in property law if the testator had no son.[55]

3. THE BOYIFICATION (PRAEFECTIO)

Another instance of the restriction of the ius regium appeared during the reign of Charles the Great, known as the sonship. The purpose of this legal institution was also to enable a nobleman without a son to sire a daughter or a female member of his family with the king's consent, in order to inherit his property.[56] The first time Charles Robert made use of this royal power was in 1332, when he sired the orphaned Margaret of Gersei.[57] According to the charter, in order that "the hereditas of those who died in the king's faithful service should not fall into the hands of hostile elements, he, out of special grace, the fullness of royal power and princely generosity, made Lazarus and Denis his true heirs, in their threefold estates, and gave them to him as hereditary possessions, as those to whom they belonged by natural and hereditary right." According to Werbőczy, by sonship, daughters "do not acquire their possessions by right of inheritance and blood, but by the power of sonship."[58] If a son was born to a legitimate daughter, the children inherited the grandfather's property; if no son was born, the other branch of her clan could not inherit the property, which reverted to the crown. "Sonship, therefore, is not a means of ensuring the survival of the clan, but only of ensuring the inheritance and transmission of the clan's estate to a daughter child."[59] Although Charles Robert did not subsequently make use of this royal grant, his successor, Louis the Great, made much more frequent use of it. But for this very reason, the condition of sonship was tightened, when it had to be proved that no male relative could be

55 Frank, 1845, pp. 464-465.
56 Werbőczy, I. 50. cikk; Frank, 1845, p. 113.
57 Fügedi, 1999, pp. 83-85.
58 Werbőczy, I. 50.; Fügedi, 1999, p. 39.
59 Fügedi, 1999, p. 39; Béli, 2016, p. 62.

in the clan within a quarter of a generation, and by the reign of Sigismund within a fifth of a generation. It shows how, in the absence of male descendants, the claim to inheritance of a clan estate can be made by distant relatives.) Nevertheless, sonship is firmly rooted in our private law system and there are several examples of royal favour having been granted to not one but two women in the same clan.

The right to royal power was limited by the right of free disposition granted by our rulers as a royal favour. This free disposition could mean the adoption of sons, the possibility of sonship and, ultimately, the right to make a will.

The King's fundamental right to reversion of the estate of a nobleman who died without a son, i.e., ius regium, is proven by our documentary practice. "We who, by divine grace, have retained power in our country, to whom, by the customary law of our country, tried and tested from time immemorial, the memory of which has been forgotten, the estates and goods of those who have died without sons shall descend, unhindered by heirs at law or other relatives or blood."[60]

While our kings, through their decrees, increasingly restricted the circle of those entitled to inherit the hereditary estate, the circle of blood relatives who could acquire the inherited property became more and more precise. This became what was called the ancestral estate, which the holder of the estate could not dispose of. Customary law rules determined that the ancestral property could be inherited first by the male descendants, then, if there were no descendants, by the testator's brothers and sisters or their descendants, and then, in a certain order, by the more distant blood relatives.[61] Thus the rule laid down by Werbőczy was established that the ancestral property was owned by the circle of blood relatives from a common ancestor, i.e., the clan. Ancestral property embodied the blood and legal community of those belonging to the same clan. The owner of the property could not therefore dispose of it, since he had to ensure that it would be preserved for future generations. In his decree of 1351, in which Louis the Great abolished the right of free disposal contained in Article 4 of the Golden Bull, this form

60 Béli, 2017, p. 107.
61 Illés, 1904, p. 62.

of tied ownership was established in everyday practice and remained unchanged in the history of our property law until the entry into force of Act XV of 1848.

4. THE NEIGHBOURHOOD

Among the provisions of the Golden Bull concerning private law relations, we should also mention the institution of the subsidiary quarter mentioned in Article 4.[62] Our early decrees made no mention of the existence of a daughter's quarter, and in fact only mentioned the maintenance and care of the father, brothers and male relatives of the daughter. They specifically refer to the right of male inheritance.[63] When it is possible to exercise the right of free disposal, two conditions are laid down by Andrew II in the Golden Bull. The first, already mentioned, is the absence of a son heir, and the second is the provision of a daughter's quarter to the testator's daughters, which is confirmed by Article 11 of the Decree of 1231. The designation of a daughter's quarter in the Golden Bull raises the question of the right of women to inherit. Ancient customary law did not provide women with inheritance rights; they were entitled to maintenance, care, and marriage in marriage out of the clan's property. Marriage in the early centuries certainly meant the granting of movable property, which in later centuries could be supplemented by real estate, especially among the nobility. It was part of this customary system that the father had to provide a quarter of the family property for his daughters. This, however, reduced the amount of family property that could be inherited by the sons. Although our documentary sources provide little evidence of the enforcement of the daughter's quarter in pre-Golden Bull times, it must have been enforced if the Golden Bull considered it necessary to record it.[64] In the centuries following the Golden Bull, the rules of this legal institution were shaped, which resulted in the rule, already laid down in Article 30 of

62 Holub, About the Maiden Quarter. pp. 106-115.
63 Illés, 1904, p. 32.
64 Béli, 2016, p. 65.

Decree 1290, that the daughter's quarter had to be paid to the daughters in money, if possible, at a public value. This practice is also confirmed by the practice of the charters of the time.[65] This rule was reinforced by Sigismund in his decree of 1435, when he decreed that 'in accordance with the old custom of the country, the father's house, together with the quarter-parcel of the father's estates, shall be separated for the daughters in exchange for a daughter's quarter, and they shall be left in possession of the father's house until the time of their marriage. And after their marriage, they shall be paid in money for their quarter. In possession only if the daughter married a nobleman or a nobleman not in possession, with the consent of her father or her brothers. In his decree of 1435, Sigismund also stipulated that if the daughter's quarter was received by the daughter in an estate, but no son was born of her marriage, then after the daughter's death the property granted in the estate had to revert to the daughter's male relatives, or, where applicable, her brothers. That is, a stranger, i.e., the daughter's husband, could not inherit it.[66]

To date, the literature has not decided whether the daughter quarter was to be issued exclusively from the clan estate or possibly from the donation estates. In the opinion of József Illés, this obligation was imposed exclusively on the clan estate.[67] The daughters were to inherit equally with the sons from the property bought with money, for the same reason that the father was free to do so.

After Sigismund's provision on the girl's quarter, only Werbőczy laid down the rules of the girl's quarter, which had developed by the beginning of the 16th century, and which formed part of Hungarian private law until 1848.

The rules of succession set out in Article 4 of the Golden Bull effectively fixed the "struggle" between the customary law norms among the clans and the provisions of the decrees which were the enforcement of royal power. How could the clan assert their right of succession to all

65 Frank, 1845, pp. 493–494; Béli, 2016, p. 67; Illés, 1904, p. 36.

66 Béli, 2016, p. 68.

67 Béli, 2016, p. 63. proves that "the sources after the Golden Bull prove that it was encumbered by the paternal hereditary estate."

the immovable property in their possession and how could they enforce their right of reversion of the hereditary estates. How the inheritance of agnate kinsmen was strengthened and formalised and how the provision of maintenance, care, out-marriage, and the grant of a daughter's quarter to women fitted into this. This article shows the coexistence and complementarity of customary law and statute law, which ultimately determined the entire Hungarian law of succession, not only until 1848, but in some elements even afterwards.

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THE GENERAL PRIVILEGE OF ARAGON OF 1283 AS A FUNDAMENTAL DOCUMENT OF MEDIEVAL STATE ORGANISATION*

IGNACIO CZEGUHN**

ABSTRACT

The article deals with the privilege of Peter III in Aragón. It examines the content of the privilege and its consequences for the further development of the Aragonese kingdom in the Middle Ages. In particular, the relationship between the king and the nobility is examined. It also explores the extent to which the privilege can be regarded as a document that stands in the tradition of European fundamental laws.

Keywords: *Privilege of Aragón 1283, pactism in the middle ages in Aragón, Peter III of Aragón, privilege of the Union, the "Justicia of Aragón" as judge*

The General Privilege of Aragon of 1283, also known as the Privilege of the Union, is a significant historical document regarding the

* On the whole see Sarasa Sánchez, 1984; also Sarasa Sánchez, 1979; Sanchez Aranda, 2011, pp. 361-376.

** Professor, Freie Universität Berlin, Fachbereich Rechtswissenschaft, PhD, jushist@zedat.fu-berlin.de, ORCID: 0000-0002-8722-4327.

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development of the law of the kingdom and the Crown of Aragon. It is considered by some scholars as the aragonese Magna Carta, comparable to the English Magna Carta of the early 13th century.[1] In this article I will summarise the reasons for its importance, the historical context in which it was developed and its importance for the kingdom of Aragon.

The General Privilege of 1283 is a legislative text that lists a series of agreements and laws between King Pedro III of Aragon and the aragonese nobility. The text was written in the aragonese language and was made public in Saragossa on 3 October 1283. This document addressed the subjects of the kingdom of Aragon and the kingdom of Valencia, to which this series of laws and agreements applied.

The General Privilege of Aragon is linked to the legislative development of the kingdom of Aragon during the Late Middle Ages and to pactism as a form of government. A pactism that was characteristic of the Crown of Aragon between the 13th and 15th centuries and which reflected it socio-economic changes within the kingdom.[2] This period saw a shift in the economic axis towards Catalonia and the Mediterranean, with the rise of the bourgeoisie in the Catalan cities, and where the aragonese nobility saw their economic and political future in some danger.[3] This development would lead to a struggle by the nobility to maintain their privileges.

1. HISTORICAL CONTEXT

However, in order to understand the Privilege of the Union, it is, first off all, necessary to understand its historical context. A series of particular circumstances brought King Peter III into conflict with the aragonese nobles. They would exert pressure for the approval of this agreement of 1283.

1 Lima Torrado, 2015, pp. 7-34.
2 Colás Latorre, 1997, pp. 269-294.
3 Zulaica Palacios, 1994, pp. 39-57.

1.1. THE KINGDOM OF ARAGON AT THE END OF THE 13TH CENTURY

At the end of the 13th century, the kingdom of Aragon was basically an agricultural economy. The creation of the kingdom of Valencia by James I after the reconquest of those lands had disappointed many aragonese nobles who saw the Valencian campaign as a way of expanding their lands.[4]

On the other hand, treaties with France and Castile had also limited aragonese territorial expansion in other directions. In this context, economic power shifted towards the Mediterranean, with the support of a rising Catalan bourgeoisie, which saw the Mediterranean as an economic improvement.[5]

The kingdom of Aragon remained a peripheral economy that did not benefit from the maritime trade boom and would not benefit from future aragonese conquests in the Mediterranean Sea.

Instead, it would suffer from the general economic crises that would later affect all the states of the Crown of Aragon.[6]

1.2. THE STATUS OF THE ARAGONESE NOBILITY[7]

The aragonese nobility found themselves in an unwanted situation because they were disadvantaged, despite having actively participated in the military conquest of Valencia.

The nobility wanted to participate more in politics in order to counterbalance the weight of the principality of Catalonia in the monarch's decisions and to maintain their economy and privileges, which they perceived to be threatened.

4 Guinot Rodríguez, 2017, p. 167.
5 Riera i Melis, 2008, num. 1, pp. 9-16; also, Guinot Rodriguez, 2009, pp. 33-47.
6 See Guinot Rodríguez, 2017, p. 38.
7 Utrilla Utrilla, 2009, pp.199-218.

1.3. THE REBELLION OF THE NOBILITY IN 1283

Against this background, the starting point for the confrontation of the aragonese nobility against the king was the conquest of Sicily in 1282.[8] This enterprise led the Pope in Rome to excommunicate Peter III of Aragon and to grant the crown of the aragonese kingdom to Charles of Valois, son of the King of France. The excommunication and the granting of the aragonese crown endangered the aragonese territory and the monarch's own crown.[9]

In this situation, the aragonese seized the opportunity to strengthen themselves." Facing his excommunication, King Peter III had to cooperate with them militarily in order to overcome the threat of a French invasion from the north.

Thus, in Tarazona during the summer of 1283, when the troops were called up to defend the borders of the kingdom against the foreseeable French invasion, the nobles rebelled and presented their grievances and complaints to the king.

The king's response to this rebellion went unheeded and Peter III was forced to move the council from Tarazona to Saragossa.

1.4. THE AGREEMENT BETWEEN KING PETER III AND THE ARAGONESE NOBILITY

On 3 October 1283, an agreement was reached in Saragossa. This agreement became known as the General Privilege of Aragon or simply the Privilege of the Union.[10] This Union refers to the Union of aragonese nobles formed in 1283, whose aim was to show a common front to defend their rights and privileges against the king.

The content of the approved text included all the claims of the nobility, which shows that the nobility's pressure was successful. The 31 articles constituted a set of confirmations of aragonese law that had been

8 On the whole see Runciman, 1958.
9 Guinot Rodríguez, 2017, p. 203.
10 González Antón, 1975, p. 87 f.

legislated throughout the Middle Ages and which sought to unify the laws for the kingdom, as well as to update them and put them into effect as soon as possible.[11]

2. STRUCTURE OF THE GENERAL PRIVILEGE OF ARAGON OF 1283

The General Privilege of Aragon, granted by King Peter III the Great at the Cortes of Saragossa in 1283, begins with an introduction in the first person by the King of the Crown of Aragon, Peter III, in which he comments on the year and the place where he is meeting, Saragossa on 3 October 1283. It also states with whom he is meeting, highlighting wealthy nobles, knights, infanzones and citizens of towns and villages.

The subsequent 31 chapters can be divided into 3 basic general groups: relations between the king and his subjects, privileges of the rich men and administrative aspects.[12]

The final part of the text acknowledges that the abovementioned provisions are granted by the king and permanently confirmed

3. THE IMPORTANT CONTENTS OF THE PRIVILEGE OF THE UNION

Once the historical and social context that led to the approval of a text in which the king was subject to compliance with the laws and the need to rely on the estates of the kingdom for his government is known, the chapters of the General Privilege are easier to understand. They also provide information on the administrative functioning of the kingdom and on certain economic and fiscal aspects.

11 Lalinde Abadía, 1980, p. 55 f.

12 Texto de las peticiones de la Unión al rey en el Privilegio General. Extraído de González Antón, 1975, p. 6 f.

All the approved chapters benefited the nobility and resolved 6 main issues:

(1) The problems of the nobility and feudal relations with estates
(2) Central and local administration
(3) The general economic system
(4) The fiscal system
(5) The administration of justice
(6) The political constitution

To give an example, one aspect of the regulation of the administration of justice is chapter 3, which refers to the actions of the Justice of Aragon. The Justice of Aragon became a key priority for the administration of justice in Aragon from 1283 onwards.[13] And with the Privilege of the Union, his role was regulated in a less arbitrary way. This system of justice would last until the end of the Middle Ages, but would see its power decrease from the Modern Age onwards.

Indeed, when the rebels wrested the famous Privilegio General from the monarch, its third article stipulated that the Justice of Aragon should adjudicate all court cases with the consultation not only of the nobles but also of the citizens and good men of the towns. Such a condition, obviously, could only be met when the king convened the Cortes, once a year, as was now promised. Another article emphasises that the sovereign could not seize noble lordships without a sentence of the justice given under the same conditions. It can be said, therefore, that in 1283 the justice became, in theory, the highest judge for lawsuits brought by all free aragonese and not only by nobles, but with the limitation of needing the advice of a wide range of people, without their number and quality being specified. What appears to be the enshrinement of justice does not hide the clear political intentions of the unionists, and it is clear that not all free aragonese could take their lawsuits to the royal courts.[14] The powers of the justice were extended, but in an unspecific manner, especially if we bear in mind that the convening of the Cortes

13 González Antón, 2000, p. 47 f.

14 See on the whole Comentarios de las cosas de Aragon by Gerónimo de Blancas, 1590, Publication date 1878, Publisher Zaragoza, Impr. del Hospicio.

would always be highly irregular. The realities of the situation make it necessary to point out other nuances: no one disputes the king's power as supreme judge, an unquestionable attribute of his sovereignty, even if the justice could decide against him in certain feudal lawsuits; on the other hand, the justice would continue to be a royal official and adviser ("our servant") acting on the orders of the monarch, who could appoint and dismiss him without any objection being raised.[15] At the height of the unionist euphoria, Peter III appointed Juan Gil Tarín "for as long as it pleases us"; Alfonso III appointed M. Pérez de Huesca "as long as you act well and faithfully in the said Justiciado", and Juan Zapata for life for his proven loyalty. None of the appointments specify the powers of the office or, of course, even refer to the terms of the General Privilege. Martínez de Artasona and Gil Tarín were dismissed; the former was accused by Peter III of having disobeyed and insulted him. Tarín dared to summon the king, by order of the Unionists, to come and meet them where they were; he was not acting, then, as a judge who summons the parties, but as a gentleman devoted to the revolting side. However, he was not relieved of his functions and was even confirmed by Alfonso III. These years, troubled by a rebellion increasingly confined to the aristocracy and the minority that dominated Saragossa, did not allow for the normal development of nascent institutions such as the Justicia or the Cortes themselves. The fact that the king has the prerogative of dismissal does not automatically turn the magistrate into his docile instrument of his. But the Union itself does not seem to have had confidence in the magistrate that it itself has promoted. He hesitates about the advisability of promoting his figure, so that in the Union's own internal ordinances it is stated that all Aragonese who are in litigation or are at odds in a private war can go to the Justice of Aragon indistinctly or only to the justices of each place. It seems that, deep down, they did not trust him, probably because the tenor of the traditional privileges gave more reason to the monarchy than to their beneficiaries and did not guarantee them the advantages they wanted in order to be respected. This was the real weakness of the armed rebellion in relation to the sacred feudal privileges: this right was not on their side.

15 González Antón, 2000, p. 36 f.

4. CONSEQUENCES OF THE GENERAL PRIVILEGE OF ARAGON AND THE PACTISM

This text, the General Privilege of Aragon, granted by King Peter III the Great[16] at the Cortes of Saragossa in 1283, was a common achievement for the aragonese nobility in particular and, in general, for the kingdoms of Aragon, Ribagorza, Teruel and Valencia.

The Privilege of the Union laid the foundations for the constitutional development of Aragon. In medieval society, periods of war were often moments of political change, to a greater or lesser extent, due to the need for the monarchy to obtain greater economic resources. The Cortes of 1283 are a paradigmatic example of this mechanism: in order to obtain this extra income, Peter III had to offer legislation and privileges to the participating social groups. This situation, considered by many authors to be the starting point of pactism in the Crown of Aragon, has been researched extensively, especially in its more formal and specific aspects.[17]

It also opened the door to the participation of the estates in the king's assemblies. This resulted in a "pactista" type of government. In this type of government, the king needed to reach an agreement with the different estates before applying any important political or economic measure.

The aragonese pactism was characteristic for the late Middle Ages, before the monarchy evolved towards an ever-greater authoritarianism, which later gave rise to an absolute government, already within the modern European states.

16 Peter III of Aragon, known as the Great (1239 – 1285) King of Aragon. He was the son of James I the Conqueror, whom he succeeded in 1276 as ruler of Aragon, Catalonia and Valencia, but not of Mallorca, as the Balearic Islands (along with Roussillon, Cerdagne and the Lordship of Montpellier) passed to his brother James II of Mallorca. With the completion of the Aragonese Reconquest during the reign of James I the Conqueror (with the help of Peter, who participated as an infant in the conquest of Valencia and Murcia), Aragon had no frontier left with the Muslims; Peter III then directed the kingdom's energies towards Mediterranean expansion which gave rise to problems with France and the papacy.

17 Guinot, 2007, p. 169.

Finally, I do not want to overlook a relevant aspect: this governmental pactism in Aragon was not a democracy as we know it today. It was an agreement between the estates of the kingdom for its government. Unlike in other peninsular kingdoms, where there were only three estates, in the Cortes of Aragon, the representative assemblies of each of the estates were called "arms" and there were four of them: the high nobility (rich men), the low nobility (knights and infanzones), the clergy, and the representatives of the towns and places (universities).[18] They were always convened by the king and were generally held in La Seo de Zaragoza, although there were many other towns that hosted them. Despite this, it laid the foundations of a government based on compliance with the laws, on agreement and on the limitation of royal power. And it gave rise to institutions and rules that were much more participatory than those of any other European state at the time.

Another consequence is the preferential treatment of the aragonese nobility. This favourable character perfectly visible in the document. I would highlight the following articles:

Article 1: On confirmation by oath of the privileges, usages and liberties by the king in the Kingdom of Aragon, Ribagorza, Valencia and Teruel.

Article 28: On the obligation of the monarch to convene the Cortes of the Kingdom of Aragon once a year in the city of Saragossa.[19]

18 Luis Gonzalez, 2000, pp. 119-130, especially p. 129.

19 Quare supplicarunt quod dignaremur confirmare dictos foros, usus, libertates, consuetudines Aragonie prelibaratas et privileia universa que habent et instrumenta donacionum et permutacionum per nos et per nostros perpetuo observare. Preterea universi predicti nobis humiliter intimarunt quod etiam pluribus, juribus, libertatibus et usibus fuerant et sunt per predecessores nostros et per nos spoliati et in pluribus erant et fuerant contra foros, usus, consuetudines, libertates et privileia agravati et in suo iure diminuti; quare petierunt cum humilitate instante quod ad illas de quibus fuerant spoliati eos restituere dignaremur et quod daremus seu concederemus eis omnia et universa res et jura que consueverunt habere.
Et universi predicti ut nos redderent cerciores de premissis que petebant ad illa nobis filio nostro dompno Alfonso articulatim holare (sic) alter et aparte et per capitula legi fecerunt in scriptis in forma qui sequitur: Estas son las cosas de que son spuilados los rrichos omnes, mesnaderos, cavalleros, infançones, ciudadanos, e los omnes de Aragon e de Ribagorça e del rregno de Valencia e de Teruel:

These articles contain two interesting points. Firstly, the king had to submit to the legislation of the kingdom, highlighting the previously approved Fueros, which in many cases favoured the landed nobility.

Secondly, the king had to govern the kingdom together with the council of the nobility and the citizens of the towns, reflected in the obligation to convene annual Cortes.

This was intended to limit the king's royal authority and arbitrariness. Henceforth the king had to comply with the laws passed in the Cortes with the advice of the estates.

5. CONSEQUENCES AND EFFECTS OF THE GENERAL PRIVILEGE OF ARAGON

This assembly of Saragossa and its decrees can be considered as a starting point for the future aragonese parliament, since it demonstrates the king's will to govern with the Cortes, as well as its annual convocation.

The implementation of the chapters of the General Privilege was neither easy nor was it always achieved. Immediately afterwards, Peter III wanted to rely on the Catalan bourgeoisie to confront the aragonese nobility, who rebelled against him and forced him to approve a agreement hat he did not support. But in the end, Peter III had to give up his attempt and enforce what had been agreed. It also meant that he had to develop a similar text in Catalonia, in order to avoid committing offences within the kingdom and provoke possible future rebellions within the Catalan principality. The monarchs after Peter III would have to continue to apply the chapters of the General Privilege. At the Cortes of Monzón in 1289[20], the General Privilege was confirmed. Subsequently,

Que el senynor rey observe e confirme fueros, costumpnes, usos, privilegios e cartas de donaciones e de camios del regno de Aragón e de Valencia e de Ribagorça e de Teruel. (...)
Item, quel seynor rey faga cort general de aragoneses en cada un ayno una vegada en la ciutat de Çaragoça. see the text in: El privilegio general de Aragón, la defensa de las libertades aragonesas en la Edad Media, Estudio y edición de Sarasa Sanchez, E. Cortes de Aragón, Zaragoza 1984, pp. 79-90.

20 González Antón, 1978. Cfr. 2. 3. 2. «Las Cortes Generales de Monzón», pp. 68-69.

it was also confirmed by King James II in 1325. Finally it was repealed by Peter IV in 1348.[21] In these Cortes of 1348, as in many others held by Peter IV, some of the key parts of the kingdom's political-administrative framework were regulated. As for the Justice, his powers were increased: The regent of the Office of the Governor and the judges of the kingdom were obliged to consult him in all court cases regarding doubts about the prescriptions of the privileges, liberties, uses and customs of Aragon. They had to suspend the court proceeding until they received a reply. It is comparable to the current system of concrete judicial review. The confrontation between monarchy and aristocracy that took place in Aragon from the mid-13th century to the mid-14th century, the period during which the Union was in power, ended in 1348 with the defeat and prohibition of this insurgent movement.[22]

It is clear that, although a large part of the kingdom initially joined the Union, it was the nobility that started and maintained the movement. This is how Peter IV himself understood it. Consequentially, if he wanted to divide its members, he attracted to his side a few wealthy men who until then had taken an active part in the rebellion. At this point, the Aragonese nobility, displaced by the recent social and political transformations, saw how it was losing part of its power, so it reacted by confronting the other institution that disputed it, the monarchy, not so much to take it away as to share it and adapt it to its new needs.[23] The defeat of the Union and the subsequent repression of the rebels resulted

21 Peter IV. Of Aragón (1336-1387), son of Alfonso, Count of Urgel, and Teresa of Entenza, when his grandfather James II died and his father Alfonso IV acceded to the throne, he was the first-born son, so that on his death he became the new Aragonese sovereign (1336). He married four times: to María of Navarre, Leonor of Portugal, Leonor of Sicily and Sibila of Forciá. The Catalans wanted the King to go to Barcelona before taking the oath of allegiance and his coronation in the capital of the Crown, but the sovereign decided to begin the acts in Zaragoza, as he did, placing the crown himself; he then went to Lleida and later to Valencia. He soon wished to incorporate the kingdom of Mallorca, with Roussillon, into his territories, which he achieved in 1344. He also faced the noble rebellion in Aragon and Valencia; he defeated the Aragonese unionists in Epila in 1348, limiting their privileges.

22 González Antón, 1975.

23 Sarasa Sánchez, 1989, pp. 35-45.

in a new political landscape. The monarchy reasserted its authority and ensured that a similar rebellion would not be repeated in the future by sanctioning the prohibition of the Union in the courts. Certain institutions and offices of the kingdom were strengthened, such as the courts themselves and the governor general's office. Above all, however, there was a reorganization of the structures of the nobility, as some branches of certain lineages disappeared, and others were consolidated thanks to royal favour. In short, a nobility that was less critical and more inclined towards the monarchy was created.[24]

6. CONCLUSION

The Privilegio General is a very interesting text for learning more about the history of the Crown of Aragon during the Late Middle Ages. It also helps us to understand the particularities of the government of the Crown. Pactism became a particular characteristic of the kingdom of Aragon with respect to other peninsular and European states. As a result, some have considered it, perhaps with enthusiasm as the beginning of European parliamentarism, although this is more and more discussed nowadays.

The character of the pactism remained, not only in the Kingdom of Aragon, but also in Catalonia and Valencia. A pactism that contrasted with the greater authoritarianism that existed in Castile. A character that should not be overlooked in order to understand later historical events that took place in Spain during the Modern Age and even to understand contemporary Spain.

24 Sesma Muñoz, 1987, pp. 245–273, especially p. 253; Simón Ballesteros 2012.

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GOLDEN BULL OF SICILY

MARTIN WIHODA*

ABSTRACT

The study ponders the contradiction between the period significance of a set of documents from 1212 known today as the Golden Bull of Sicily and its position in the present discourse of Czech sites of memory. It points out that the Golden Bull of Sicily is, in essence, an agreement between a feudal lord and a vassal, namely future King of the Romans Frederick II of Sicily and King of Bohemia Ottokar I. Today, however, it is presented to the Czech public as a document of extraordinary national and constitutional-law significance. The study shows on the transformations of Czech historical thought that the Golden Bull of Sicily only became a site of memory in the twentieth century, in connection with the defence of Czech state and national independence against Nazi Germany on the eve of the Second World War.

Keywords: *Golden Bull of Sicily, places of memory, Czech historical thought, Czech statehood, Czechs and Germans*

* Professor, Masaryk University, Faculty of Arts, Institute of History, PhD, wihoda@phil.muni.cz, ORCID: 0000-0001-8001-0994.

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1. INTRODUCTION

The Golden Bull of Sicily is the name used today for a set of three privileges that came into existence in Basel on 26 September 1212. They were issued by Frederick II, the King of Sicily and future (imperator electus) King of the Romans, in reward to King of the Bohemians Ottokar I and his brother, Margrave of Moravia Vladislaus Henry. The time and place of their origin, their appearance and historical context enable us to view these documents as a single legal unit.[1]

Historical research concurs that the legally most important articles were part of the bull in which Frederick II assures the King of the Bohemians Ottokar I (1197/1198–1230) that he would maintain the validity of the privileges that had been bestowed on him by Frederick's uncle, King of the Romans Philip of Swabia (sicutdilectuspatruusnoster pie memorie rex Philippus omnium principumhabitoconsilio per suumprivilegiuminstituit). Referring to the merits of the Bohemians and especially of King Ottokar, Frederick promised to accept him as his vassal and to bestow the royal insignia on whoever was elected at home (volentes, utquicunque ab ipsis in regemelectusfuerit, ad nosvelsuccessores nostros accedat, regalia debito modo recepturus). At the same time, he emphasized that Ottokar and his successors would rule the Czech lands hereditarily and free of any payment. Moreover, formerly alienated dominions were to be restored to the kings of Bohemia, and they were also granted the right of investiture of bishops of Prague and Olomouc under the condition that the old freedoms of the church would not be affected. Their obligations to the kings of the Romans were limited to the attendance of court diets as long as these were summoned to Bamberg or Nuremberg. The king of Bohemia was to attend diets in Merseburg only if the duke of Poland was invited there and if he himself received an invitation at least six weeks in advance.Ottokar and his successors were also obliged to either send

1 Wihoda, 2012 (Forschungen zur Kaiser- und Papstgeschichte des Mittelalters. Beihefte zu J. F. Böhmer Regesta Imperii 33).

300 riders to the coronation journey to Rome, or to pay 300 marks instead.[2]

In the second bull, Frederick II ceded properties and fiefs in the Upper Palatinate, Pleissenland and Vogtland to the King of the Bohemians. The Bohemian claim of Dohna Castle, which was then held by Ottokar's rival, Margrave of Meissen Dietrich, was treated in a special way. Frederick pledged to acquire the castle for Ottokar; if he did not succeed, he would submit to an arbitral award.[3]

The bull for the Margrave of Moravia Vladislaus Henry (1197–1222) defies unambiguous interpretation. He was admitted rights to *Mocran et Mocran* with appurtenances while maintaining his existing services and obligations to the court of the kings of the Romans (*concedimus et confirmamusMocran et Mocran cum omni iure et pertinentiissuis, salvo servitio, quod inde curie nostredebetur*).[4] The words *Mocran et Mocran* are usually regarded as a scrivener's error – a distortion of the name of Moravia, which was divided into two parts at that time (*Moraviam et Moraviam*), meaning that the privilege would confirm Vladislaus Henry's rule in the whole land. An alternative interpretation puts *Mocran et Mocran* into context with feoffment, most recently in the area of Leipzig.[5] However, indirect evidence, especially the transformation of Moravia into a margraviate, corroborates the former option.[6]

2. ORIGIN

All the bulls from Basel were verified with the gold majesty seal of the royal chancery of Sicily; they also share the scribe, notary Henry *de Parisius*, who most probably worked with a template, a list of requirements that had probably originated at the Prague court. This is the only

2 *Friderici II. Diplomatainde ab anno MCCXII usque ad annum MCCXVII*, edited by Walter Koch,Monumenta Germaniae Historica,Diplomata XIV/2, Hannover 2007, 1–5, No 171.

3 *Friderici II. Diplomata*, 8–10, No 173.

4 *Friderici II. Diplomata*, 5–7, No 172.

5 Žemlička, 2007, pp. 251–289.

6 Wihoda, 2015, pp. 100–112.

possible explanation of how Frederick II, who was educated in Sicily and was only superficially acquainted with the situation in the Empire, could know that Ottokar I had been the first of the imperial princes to vote for him (*rex eorumOttacharus a primo inter alios principesspecialiter pre ceteris in imperatoremnos elegit et nostreelectionisperseverantiediligenter et utiliterastiterit*), how he could know the content of the privilege by Philip of Swabia, the complex property and power situation in the east of the Empire or the custom of the Bohemians to choose their ruler by election.[7]

The final form was imprinted on the Golden Bull of Sicily by three persons: Henry *de Parisius*, who held the title of notary (*notarius et fidelis noster*), vice-protonotary (*viceprothonotarius*) Ulrich and royal court protonotary (*regalis curie prothonotarius*) Berthold of Neuffen. Bertold had dictated one of Frederick's deeds already in Verona on 25 August 1212. In the following years, he supervised the operation of the chancery, which means that he might have been the superior of protonotary Ulrich. Ulrich apparently put together the dating forms and probably also took care of the attachment of the gold bulls, as it was part of the obligations of lower staff members of the chancery. Most importantly, however, he remained canon of the Basel chapter, and his relationship with Frederick II begun and ended with the Golden Bull of Sicily. The position of Henry *de Parisius* can be defined similarly: he was apparently a public notary and left Frederick's services after completing the commission, the Golden Bull of Sicily.[8]

The attractive name of the Basel bulls of 26 September 1212 is due to their gold seal. As it was only valid in the Kingdom of Sicily, however, its legal value on the imperial soil was rather disputable. The southern-Italian chancery tradition influenced also the appearance of the privileges, most considerably their protocols. All the privileges of 26 September share a precise rendition of Frederick's name, and especially the initial F, which was extended across several lines and decorated with a plant pattern (*lettresfleurées*) with tassels on the outer edge. The remaining letters (REDERICUS) are attached to the central crosspiece of the initial

7 Koch, 2002, pp. 721–741.
8 Friedl, 2008, pp. 112–121.

F. Its upper arm introduced an invocation rendered in majuscule which is, however, lacking in the bull with which Frederick II defined the rights and obligations of the kings of Bohemia. Non-filled lines reveal that the scribe forgot about it. He also overlooked a missing lower tassel of the initial F in the second privilege for the king of Bohemia.

The appearance of the lines of witnesses was determined by two different chancery traditions. While the privilege with which Ottokar I secured estates and fiefs in the Upper Palatinate, Pleissenland and Vogtland respects the rules established in the Empire, Frederick's second privilege for the king of Bohemia and the *Mocran et Mocran* bull divide the persons present into four parallel columns emphasized by a system of dividing lines. The first one includes bishops, the second abbots and protonotary Berthold of Neuffen, and the last two secular persons. The arrangement of the witnesses according to their social position markedly resembles the customs used by the papal chancery.[9]

Generally speaking, the Golden Bull of Sicily is a legal document in which the customs of the Sicilian, papal and imperial chanceries mingle in a unique way. The historical context is no less interesting. We can hardly imagine Frederick II having the privileges for his Bohemian allies sealed merely out of his good will. In fact, we can reasonably doubt that before 1212, he had an idea that there were any domains of the king of the Bohemians and of the margrave of Moravia in the Holy Roman Empire. Hence the question: How could he assess their rights and obligations in Basel on 26 September 1212? Did he meet envoys from Bohemia in Basel? And if so, how could they have known in Prague where to send the envoys?

Well-informed sources concur it was in Nuremberg in the autumn of 1211 that the imperial princes called on Frederick II of Sicily to seek the imperial crown; Frederick was informed about their decision in January 1212. At that time, he started to use the title *imperator electus*, literally the chosen one, the future ruler of the Holy Roman Empire, thus informing his rival, Holy Roman Emperor Otto IV, that he accepted the princes' offer. Pope Innocent III endorsed Frederick's candidacy in April 1212, but bad news was waiting for Frederick in Genoa, where he

9 Wihoda, 2016, pp. 69–97, here 72–78.

arrived on 1 May at the latest: Lombard cities led by Milan remained faithful to Emperor Otto IV; ten weeks had to elapse before Frederick dared to move to Pavia.

Frederick found support also in Cremona, where he stayed for twenty days and found out that the Alpine passes were in control of his enemies. The options that lay before him were either to go back and admit defeat, or to turn to the east; he chose the latter and set off on 20 August 1212, accompanied by a small retinue of riders. Without rest, he passed through Mantua and Verona, where Berthold of Neuffen joined Frederick, and was welcomed in Trento late in August. From there, Frederick headed for Chur. In front of Constance, however, he was informed that Emperor Otto IV was encamped on the opposite shore of Lake Constance.

A direct confrontation was out of the question and a retreat into the Alpine passes could have led to a catastrophe in the advanced summer. After an intervention from the papal legate, who anathematized Emperor Otto IV and threatened all his allies with the same punishment, however, the bishop of Constance let Frederick II enter the city after all. From there, he travelled to Basel by boat along the Rhine; at the beginning of October, Friedrich took the important palatine castle (*Pfalz*) of Hagenau.[10]

A testimony of the hardships of the long and dangerous journey is borne by the Golden Bull of Sicily, whose witness lines can be described as the list of Frederick's allies as of 26 September 1212. The list of the people present makes it evident that Frederick II crossed the Alps in secrecy, which practically rules out the possibility that envoys of the king of Bohemia and the margrave of Moravia could have appeared in Basel. Why, then, did he address the first deeds on the German soil precisely to them?

The answer might be hidden in the chronicle by Burchard of Ursberg, according to which the imperial princes authorized Anselm of Justingen and Henry of z Neuffen to inform the Pope about the outcome of the negotiations in Nuremberg.[11] At that time, Ottokar could have seized

10 Wihoda, 2012, pp. 84–94.

11 Holder-Egger and von Simson, 1916, pp. 108–109.

the opportunity and equip the envoys with the list of requirements with which he conditioned his further support. Frederick II might have found out about the Bohemian requirements in Rome and, following the Pope's advice, hire public notary Henry *de Parisius* and entrust him during the first stop on the German soil to develop the template, the draft originating in Prague, into the form of a legal document, the Golden Bull of Sicily.

3. SECOND LIFE

Let us admit right away that it is impossible to prove that the king of Bohemia and the margrave of Moravia had a draft made, which then travelled with the imperial envoys to Rome and possibly as far as Sicily. We only know that if 1212 and the Golden Bull of Sicily were ever remembered in Bohemia, it was, surprisingly, not under the reign of Ottokar I and his successors. Another striking fact is the king of Bohemia and his brother, the margrave of Moravia must have been informed that the privileges were not free of defects. Despite that, neither of them ever asked to have them rectified. Yet a suitable opportunity offered itself in February 1213, when they attended a court diet summoned by Frederick to Regensburg.[12]

There are also other ways of proving the marginal place the Golden Bull of Sicily held in the legal architecture of the Kingdom of Bohemia. The canons of St Vitus chapter at Prague Castle kept annals close to the royal court; as of 1212, they mention the translation of the relics of saints, the fall of Chamberlain Czernin and King Frederick's arrival in the Empire.[13] There is not a single word about the Golden Bull of Sicily, even though it is clear from the annals that the canons had access to the documents in the crown archives, among which the Golden Bull of Sicily must have been. Therefore, they undoubtedly knew Frederick's privileges of 26 September 1212, but they apparently did not consider them important.

12 *Friderici II. Diplomata*, 39–41, No 188; 44–47, No 190.
13 Emler, 1874, p. 283.

The Golden Bull of Sicily remained a forgotten document throughout the thirteenth century. It was not quoted by any king of Bohemia; it was not read publicly until the extinction of the Premyslids in 1306, when the land diet in Prague was deciding about the further fate of the kingdom.[14] Charles IV (1346–1378) was the first to acquaint himself more thoroughly with the content of the Golden Bull of Sicily. He had the first crown archive registers made and, on 7 April 1348, he presented eleven deeds including the Golden Bull of Sicily to the land diet for approval. Moreover, he came to the conclusion that Frederick's privilege was imprecise and, therefore, had the election article augmented with a provision that if no lawful male or female descendant came out of the royal family or if the throne was vacated for any other reason, the election of the king of Bohemia should belong to the estates of Bohemia for all times.[15] The adding of precision to the procedure contains a fair dose of irony. It was due to this condition that Ottokar I overlooked the Golden Bull of Sicily, as an election vote of the Bohemian nobility was the last thing he wanted to heed in his kingdom.[16]

Yet, it was the Golden Bull of Sicily rather than Charles's confirmation from 1348 that became a firm part of the modern Czech state and national self-confidence. This brings us to relatively recent events – the break-up of Austria-Hungary in 1918 and the successor states, which started to create their own legitimation myths. The Czech, or more precisely Czechoslovak one was based upon emphasizing a thousand-year-old state distinctiveness and the independence on the western neighbour, Germany. The legal dimension of these notions was summarized on eve of the Munich crisis 1938 by Karel Doskočil, who made translations of important legal documents available in a readingbook intended for a wide audience in 1938.[17] The Golden Bull of Sicily could not have missed in the chronologically ordered selection, and its appearance immediately attracted the attention of the general public. History textbooks and multiple graphic reproductions followed after the war.

14 Wihoda, 2012, pp. 239–245.
15 Hrubý, 1928, pp. 43–47, No 51, here 45–46.
16 Wihoda, 2012, pp. 246–252.
17 Doskočil, 1938.

4. SUMMARY

Looking back, it is evident that the legally-historical interpretation of the individual articles of the Golden Bull of Sicily was subordinated to period-conditioned interests. The privileges from Basel were torn out of the historical framework, divided and quoted with the assertion that some parts were in effect and others were not. Special attention was paid to the electability of the kings of Bohemia; in it, the proof was sought that the Bohemian society had won already in the Middle Ages freedom of acting or even outright independence from the (German) Empire. From the early twentieth century, therefore, the discussion no longer concerned the bulls from 1212 but various matrices of their interpretation. What slipped through the cracks during this process was the fact that from the legal perspective, the Golden Bull of Sicily is a common contract between a senior, Frederick II of Sicily, and a vassal, Ottokar II. Likewise, no ear was lent to the fact that the Golden Bull of Sicily was embedded in the legal order of Bohemia by Charles IV, whose rigorous comment on the election of the kings of Bohemia was to become a subject of disputes between the estates of Bohemia and the Habsburg dynasty in the sixteenth century.

Surprisingly, the Golden Bull of Sicily was not duly appreciated by the historicizing nineteenth century, in which the modernizing Czech nation started to demand more autonomy from Vienna. If the proposition established in the Czech law-historical thought – that the privileges from Basel had defined the Kingdom of Bohemia's rights and obligations towards the Holy Roman Empire – was valid, how come that none of the educated Czech patriots pointed that out? This is, after all, a surprising fact at the time of strengthening national awareness and struggles concerning Czech constitutional law.

In other words, the Golden Bull of Sicily has not been a jewel of the national past since time immemorial but was inserted into the collective memory of the modern Czech nation only shortly before the end of the First Czechoslovak Republic in 1938. And, even though the Golden Bull of Sicily's influence on the domestic order was negligible before 1348, its historical significance is undoubted – due to the circumstances of its origin, its contents and remarkable fate, and due to the manner in which it was incorporated into the pragmatic image of the national past in the

twentieth century. Rather than a tug-of-war concerning the meaning of a beautiful document, therefore, the lengthy disputes concerning its interpretation reflect the difficult search for the role of the Czech nation and state in the history of Central Europe.[18]

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18 Hruza, 2007, pp. 215–251.

MAGNA CARTA

SIR JOHN BAKER*

ABSTRACT

The Magna Carta of 1215 was a peace treaty between King John and his warring barons. It set down in writing the customary rights and liberties which kings were expected to respect. Though broadly inspired by Henry I's coronation charter of 1100, it took the precaution of spelling out the rights and liberties in minute detail. As a peace treaty it failed, and John (with papal approval) immediately repudiated it. But John died in 1216, and during the infancy of his son Henry III a more permanent document was crafted. The final version of 1225 was considered the first English statute, emerging from a great assembly which later in the century would be called parliament. It was confirmed at least thirty times, by king after king, establishing that England was a limited monarchy in which kings ruled under the law. The most influential provision down the centuries was that 'No free person shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor shall we go against him or put upon him, except by the lawful judgment of his peers or by the law of the land; to no one shall we sell, to no one deny or delay, right or justice.' These words in later times inspired the principal legal remedies against governments and public officials, the writ of habeas

* Emeritus Downing Professor of the Laws of England, KC, LLD, FBA, University of Cambridge, jhb16@cam.ac.uk.

Baker, J. (2023) 'Magna Carta' in Balogh, E. (ed.) *Golden Bulls and Chartas: European Medieval Documents of Liberties,* pp. 195–207. Budapest – Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing. https://doi.org/10.47079/2023.eb.gbac.1_10

corpus and the Petition of Right (1628). By 1604 it could be claimed that Magna Carta guaranteed 'everything that anyone has in this world, or that concerns the freedom and liberty of his body or his freehold, or the benefit of the law to which he is inheritable or his native country in which he was born, or the preservation of his reputation or goods, or his life, blood and posterity.'
Keywords: *Magna Carta. King John (of England). English law. Constitutional law. Personal liberty. Feudal rights. Rule of law. Limited monarchy.*

King John reigned as king of England from 1199 to 1216. His grandfather, King Henry II, had ruled not only England but a vast French empire including Anjou (inherited from his father), Normandy (inherited from his mother) and Aquitaine (by marriage with his wife Eleanor). Henry had spent more than half his reign in France, while Richard hardly spent any time in England at all. During their reigns (1154-99) the king's permanent court at Westminster and the itinerant justices travelling round the country had begun to establish a regular system of common law, through which property rights could be vindicated and those dispossessed during the reign of King Stephen (1135-54) could achieve restoration by process of law. However, both the possession of the Plantagenet empire and the rule of law in England were threatened under King John.[1]

Historians from 1216 to the present have had difficulty finding much good to say about John, though Shakespeare attempted a fictional rehabilitation in the 1590s (carefully omitting all mention of Magna Carta). John's very claim to the throne was disputable. He managed to obtain it on the death of his eldest brother Richard I, even though his second older brother Geoffrey had a son still living (Arthur, duke of Brittany). When Arthur mysteriously disappeared after being captured by John's forces in 1203 it was widely believed that John had arranged his murder. The French King Philip II, who had previously accepted John's kingship, set about to remove him from his French possessions, ostensibly for

1 For the background, and the events of 1215, see Holt, 2015, pp. 378-98; Carpenter, 2015, pp. 36-69; Vincent, 2015; Loengard, 2010. For recent reappraisals of John and his supposed failings see Church, 2015; Vincent, 2020.

refusing to stand trial for homicide. By the end of 1204 John had been driven from Normandy and Aquitaine. Thereafter he lived in England, taking over the day-to-day government, and allegedly taking the law into his own hands when it suited him. Although the king's justices continued to provide regular justice for most people, the stationary court at Westminster (the Bench) ceased to exist as the judges were now expected to follow the king.

John ruled in an autocratic manner. His excesses, though not without parallel in the previous century, were causing deep unrest and they were largely beyond the reach of the legal system. Desperate to raise sufficient funds to finance the recapture of his French empire, he resorted to blatant abuses of his prerogative rights. The heirs of deceased tenants-in-chief were made to pay enormous sums to take up their inheritances, their lands were wasted (stripped of assets) while in the king's custody, and they and their widowed mothers were forced into unsuitable marriages to enrich the king. Extortionate taxes were imposed at the king's will. More and more land was declared to be royal forest, which removed it from the ambit of the ordinary common law and enabled the forest justices to raise large sums of money in fines and amercements. Church lands were exploited during vacancies in bishoprics, and large sums were demanded for elected bishops to enter their sees.

Such rapacious depredations, coupled with a reputedly depraved personal life and unreliable character, made King John deeply unpopular among the baronage and the episcopacy alike. Things became worse when John antagonised Pope Innocent III by refusing to accept his nominee, the theological scholar Stephen Langton, as archbishop of Canterbury in 1206. Langton was resident in enemy territory, having spent some years studying in Paris, and was deemed to be dangerous. In any case, the kings of England claimed that popes should not consecrate English archbishops until the king had first approved the election. The result of John's defiance was that his whole kingdom was placed under a papal interdict. No English subject now had access to the sacraments; no English subject could be buried with Christian rites. The pope's decision to punish innocent people in such a way – effectively a declaration of war – gave John a convenient excuse to confiscate Church lands and exact more money from the clergy, especially from those who had

emigrated to escape the interdict. After six years, however, John capitulated. In order to obtain a withdrawal of the interdict, he surrendered England to the pope in 1213 as a papal fief, agreeing to pay 1,000 marks a year in tribute, and allowed Langton to be installed as archbishop. The last straw was added in 1214 with a failed expedition to France. Success in war might just have outweighed the nation's grievances, but the barons were exasperated by this second military failure. Having lost France, and debased England, John was now in danger of losing his English kingdom as well. In early 2015 the barons took up arms to enforce their demands for the liberty of the Church and the realm.

The barons did not seek to depose John, but rather a return to the rule of law, with assurances as to the future. John may have hoped in 1214 to appease them by making ad hoc concessions and reforms, but this was too precarious a solution to the problem, and after 1214 it was overtaken by the threat of civil war. What was needed was a written guarantee that the king would never again act outside the law or established custom, and some definition of what the relevant law and custom was. According to some chroniclers, Archbishop Langton had insisted at the time of John's absolution in 1213 that he should swear to observe the laws of King Edward the Confessor (d. 1066). These laws had achieved a somewhat mythical significance as the legacy of supposedly better times, though the text entitled *Leges Edwardi Confessoris* had in fact been concocted after the Norman Conquest of 1066, perhaps as late as the 1130s. The text said nothing of liberty or of the issues which concerned the barons. About half was concerned with the position of the Church, and most of the remainder with crime. The appeal to the *Leges Edwardi* was therefore symbolic rather than practical, representing a desire to turn the clock back to an imaginary golden past.

A more fruitful inspiration was the coronation charter of Henry I (1100).[2] This, too, contained references to the 'lagam Regis Edouardi', here meaning simply the law as it stood before the Conquest.[3] But the

2 Liebermann, 1894, p. 40; *Statutes of the Realm*, I (London, 1810), Charters of Liberties, p. 1; Bémont, 1892, p. 3 (from a manuscript with the incorrect date 1101).

3 William I had likewise promised to everyone 'legem Eadwardi regis': Liebermann, 1903, p. 488 (*c.* 1070).

king also promised, more specifically, to abolish all bad customs and to restore all property wrongfully confiscated during the reign of William II (1087-1100), and to set a firm peace throughout the realm. Even more specifically, he promised not to take the profits of a bishopric or abbey during a vacancy, and that the heir of a tenant-in-chief should be allowed to take up the inheritance without having to pay an unreasonable sum (as 'relief') to redeem it. The charter moved into the realms of legislation when it ordered that this last provision should also be observed by the barons in respect of their own tenants. It was, nevertheless, seen as a personal declaration which did not extend beyond Henry's lifetime. Henry's successors Stephen (1135) and Henry II (1154) both confirmed it, adopting the language of charters of grant and confirmation, but there is no evidence that Richard I (1189) or John did so. It seemed high time for it to be revived.

The chronicler Roger of Wendover (d. 1236) claimed that Archbishop Langton was responsible for rediscovering the charter of 1100 and bringing it to the attention of the barons at a meeting in St Paul's, London, in 1213, whereupon they all swore oaths in Langton's presence to fight to the death for the liberties which it contained.[4] Some historians concluded that it was Langton who promoted the production of the greatly extended formulation of English liberties which became Magna Carta. But this is disputed by other historians, who see Langton rather as a go-between attempting to achieve a peaceful settlement between the barons and the king which might also gain the pope's acquiescence. It will probably never be known for certain whether there was a single promoter. There is little doubt, however, that the charter of Henry I was the starting point. Its confirmation was one of the first demands made by the barons in late 1214.[5] There followed over five months of negotiation with the king in 1215 and the production of various drafts of the many new clauses to be added.

Negotiations came to a head during the summer of 1215, and on 15 June the text of Magna Carta was finally settled and sealed at a place

4 *Matthaei Parisiensis Chronica Majora*, ed. H. R. Luard (Rolls Series, 1872-83), vol. II, pp. 552-4. For a sceptical assessment of the story see Holt, 2015, pp. 200-202.

5 Carpenter, 2015, pp. 290-295.

called Runnymede. This was an ancient meeting point on the River Thames, not far from the king's castle at Windsor and within a day's reach of the barons' stronghold in the Tower of London. Kings did not, and still do not, sign charters. But the agreed version was authorised by affixing the king's great seal in the presence of numerous named witnesses. Clerks were at once employed to make copies, all dated 15 June, which could be distributed through the kingdom. Four of these contemporary charters survive, two in the cathedral libraries of Salisbury and Lincoln, where they have been since 1215, and two in the British Library which were acquired by the seventeenth-century collector Sir Robert Cotton. They are all of different shapes and sizes,[6] and only one retains a fragment of the great seal, but the text is exactly the same. The clauses were not numbered, but it is usual to follow the numbering used by William Blackstone in the first scholarly edition (1759).[7]

Magna Carta was in no sense a written constitution. In political terms it was a peace treaty, with relatively short-term aims, although it was – significantly – expressed to bind the king and his heirs in perpetuity. What was most remarkable about it was the level of detail represented by its sixty-three clauses, framed with an elegant economy of words which would admit of creative reinterpretations over the centuries. The only contemporary parallel for such a detailed document was Simon de Montfort's so-called 'Statutes' or Customs (*Consuetudines*) of Pamiers (1212), the forty-six clauses of which dealt (inter alia) with a few of the same issues but in different phraseology and from a different perspective.[8]

Like the charters of the twelfth century, Magna Carta began by assuring the liberties of the Church. It proceeded according to the scheme of Henry I's charter by dealing next with inheritance, relief and wardship, but in greater detail. The amount of a reasonable relief was now fixed as £100 for an earl's barony and £5 for a knight's fee, and in other cases

6 For plates illustrating all four see Vincent, 2014, pp. 76-79.

7 There are modern editions, with parallel English translations, in Holt, 2015, pp. 378-398; and Carpenter, 2015, pp. 36-69. Since it was a charter, not a statute, its provisions are called 'clauses'.

8 Translation in Sibley, 1998, pp. 321-329. The emphasis here was on regulating the barons rather than limiting the sovereign, though De Montfort took an oath to be bound by the customs as well.

ancient usage was to be followed (cl. 2); guardians were not to waste the property of their wards (cl. 4-5) or to 'disparage' them with unsuitable marriages (cl. 6), and no relief was to be payable when a ward came of age (cl. 30). The charter then dealt with widows. A widow was to receive her marriage-portion and her own inheritance after her husband's death without delay and without paying to redeem them, and was to be allowed to remain in her husband's house for forty days while her dower land was assigned (cl. 7). No widow was to be compelled to remarry if she did not wish to do so (cl. 8). Debtors' lands were to be protected from distraint for rent so long as there were sufficient movables to cover the debt (cl. 9), and if a debtor died owing money to the Jews – or (it was added) other creditors – the debt was not to carry interest while the heir was under age, and the debtor's widow was to have her dower free of the debt (cl. 10-11). The next set of provisions concerned the taxation of feudal tenants, making more specific provisions than the vague promises in earlier charters to abrogate 'bad customs'. No ad hoc tax was to be imposed on tenants except by the common council of the realm, unless it was an aid for ransom of the king's body, for knighting of his eldest son, or for the first marriage of his eldest daughter, and such aids were to be reasonable (cl. 12); other lords were not to impose aids on their tenants at all, except in the like three cases (cl. 15), or to demand more service from their tenants than was due (cl. 16). The city of London – and (it was added) all other cities and boroughs – were to have their old liberties and free customs, which doubtless referred primarily to exemptions from taxation (cl. 13). Procedures were then set out for assembling the council of the realm referred to in Clause 12. All archbishops, bishops, earls and greater barons were to be summoned, and also all tenants-in-chief, on forty days' notice, and if any did not attend on the day the business was to be done by those who did (cl. 14). Next came judicature. Common pleas – those which did not concern the king – were no longer to follow the king's court but were to be held in some certain place (cl. 17).[9] Assizes – procedures devised under Henry II for making factual enquiries in order to settle

9 This was confirmed in 1225, c. 11, and was a revival of the old 'Bench', later known as the Court of Common Pleas; the 'certain place' was normally Westminster Hall. The court before the king was then called the King's Bench.

possessions and inheritances – were to be held in the counties, which were each to be visited four times a year by a pair of royal justices for that purpose (cl. 18-19).[10] Amercements (financial penalties) were to be proportionate to offences (cl. 20-22). Sheriffs, constables, coroners and other royal officials were forbidden to hear pleas of the crown (cl. 24), that is, serious criminal cases. Other provisions regulated the conduct of sheriffs, constables and bailiffs (cl. 25-31), especially in relation to purveyance – the pre-emption of property for the king's use. All forests created in John's time were to be disafforested at once, and bad forest customs abolished (cl. 44, 46-48). In between these provisions about forest law (cl. 45), the king made a general promise not to appoint justices, constables, sheriffs or bailiffs other than men who knew the law of the realm and meant to observe it well.

Tucked away among the miscellaneous provisions in the second half of the charter was the stirring guarantee of liberty which was to resound down the centuries (cl. 39-40):[11]

> *No free person (homo) shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor shall we go against him or put upon him, except by the lawful judgment of his peers or by the law of the land. To no one shall we sell, to no one deny or delay, right or justice.*

No one has suggested a satisfactory reason why this was given such an inconspicuous position in the charter as settled in June 1215, especially since in one of the drafts it had been placed first.[12] Nor has it proved entirely clear what the words meant. Judgment by peers certainly did not mean – as was later thought – trial by jury. Trial juries were not used in criminal cases until ordeals came to an end (following

10 In 1225 (c. 12) the circuits were only required to be annual. The system, which soon became biannual and was given wider functions, continued until the abolition of the assizes in 1972.

11 These two clauses became Chapter 29 in the statutory version of Magna Carta (1225), as numbered in the printed editions. The only change was the addition after 'disseised' of the words 'of any free tenement of his, or of his liberties or free customs'.

12 Holt, 2015, p. 352, cl. 1.

the Lateran Council of 1215), while in civil cases they were still known as assizes. In any case, jurors never gave judgments; they delivered verdicts or 'recognitions' – findings of fact on oath – whereupon a court could give judgment. As the draft shows, [13] the emphasis was on the need for a judgment by someone other than the king; and perhaps that is all that 'peers' meant.[14] More puzzling was how judgment by peers could be an alternative to the law of the land, unless the word 'or' could be read subdisjunctively.[15] But the general sense was clear enough. Life, liberty and property were not to be subject to the king's pleasure but could only be taken away by a court administering the law of the land. Moreover, following the precedent of 1100, this and the other provisions of the charter were to be observed not only by the king but by everyone else with respect to their own men (cl. 60).

The most remarkable provision in the Magna Carta of 1215 was the enforcement clause (cl. 61). After a number of promises to restore property taken contrary to Clause 39, a new mechanism was put in place to ensure the king's compliance. The barons were to elect twenty-five of their number to maintain the liberties granted by the king, with the power to coerce the king by seizing his castles, lands and possessions, or using any other possible means (except against the king's person or that of his queen and children).

No one can doubt the importance of this document, and yet it never became law. King John, seeing it as an abject defeat, had no intention whatever of observing it and lost no time in sending envoys to Pope Innocent III – now his feudal superior – to obtain an annulment. This was a breach of the king's promise at the end of Clause 61 that he would

13 Ibid.: 'King John grants that he will not take anyone without judgment, nor accept anything in return for justice, nor do injustice'.

14 It was later taken to mean that 'peers of the realm' (nobility) could not be tried by a common jury but only by the House of Lords. The last 'trial by peers' in that sense was in 1935.

15 There is a parallel, but with *et* in place of *vel*, in the *Constitutio de Feodis* of the Holy Roman Emperor Conrad II (1037): Monumenta Germaniae Historica, *Legum Sectio IV: Constitutiones*, vol. 1 (Hanover, 1893), p. 90, lines 17-18: 'nisi secundum constitucionem antecessorum nostrorum et iudicium parium suorum'. The similarity of wording may be evidence that the *Libri Feudorum* were known in England in 1215.

never do anything of the kind, and that if he did so it would be void. The pope was nevertheless pleased to oblige, declaring it shameful and demeaning for a king to make such concessions to his subjects. By the bull Etsi karissimus of 24 August 1215 he forbade the king on pain of anathema from keeping his promises.[16] The bull carried little weight in England, when set against the king's solemn oath. The twenty-five barons tried to depose the king, the king resisted, and the country descended into civil war. The barons were now desperate enough to consider offering the throne to the king of France. The crisis was averted, however, by the sudden death of King John from dysentery – some suspected poisoning – in October 2016, aged 49. Thus ended the first phase of Magna Carta: a period of little over one year. It was hardly, as yet, a success story. Repudiated by king and pope, it had been largely ineffective.

A long peace followed. John's heir was his son Henry III, aged nine, and the government of England was now de facto in the hands of the leading barons. One of their first acts was to issue a new Magna Carta on 12 November 1216. It was sealed by William Marshal, the chief minister, and by the papal legate Guala: a charter no longer tainted by coercion or doomed to papal condemnation. The content was considerably scaled down and carefully redrafted. Notable omissions were the provisions about the great council of the realm and the twenty-five enforcers. The former was the nearest England ever came to a written parliamentary constitution. But the makers of the 1216 charter were not concerned with future legislation or taxation. They were setting down the old law as they conceived it to be, and it was assumed that most of the provisions would be implemented promptly, since the implementation lay in their own hands. There was no need to establish a constitutional structure or an enforcement mechanism. Whether private subjects could enforce the charter against the king would remain an uncertain question until the sixteenth century.

Further revisions were made in 1217, accompanied this time by a separate Charter of the Forest, and then in 1225 the definitive version

16 Bémont, 1892, pp. 41-44. The original bull is in the British Library.

was issued in the infant king's name.[17] The 1225 document was still expressed as a charter of grant, but it was clearly more than just a concession by an individual king. It purported to have been issued in return for a tax – a fifteenth part of all their goods – granted to the king by the bishops, abbots, priors, knights, freeholders and 'everyone of our realm', comprehensive words which seemed to imply a great council in which everyone in the realm was somehow represented. This was, in effect, a parliament; and the 1225 charter came to be received as the first Act of Parliament on the notional English statute-book.[18] Chapter 29 (the new version of Clauses 39-40) was clarified in 1354 as applying to 'all persons, whatever their estate or condition', and as requiring 'due process of law'.[19] In 1368 it was even enacted that any statute made contrary to Magna Carta should be treated as void,[20] though this could not and did not bind future parliaments.

Thereafter Magna Carta lost much of its impetus for two centuries. Many of its provisions became obsolete, or were impliedly repealed, in the late medieval and Tudor periods. Those who lectured on it in the fifteenth and early sixteenth centuries did not treat it as a constitutional document of special importance but as a miscellany of points of law, some of which were obsolete or impliedly repealed. Magna Carta would probably not be remembered today, except by medievalists,[21] were it not for the revival and reinterpretation of Chapter 29 between the 1580s

17 Latin text in Bémont, 1892, pp. 45-60; *Statutes of the Realm*, I, Charters, pp. 14-25; Holt, 2015, pp. 420-428. A version in the Bodleian Library is printed with translation in Vincent, 2015, pp. 274-280.

18 It was the first item in manuscript and early printed volumes of the *Statuta Vetera*. In later statute-books the text is often taken from the parliamentary reissue of 1297, but it was still placed first. Some considered that the confirmation in the Statute of Marlborough (1267), c. 5, was the moment when it achieved statutory status, but the matter was settled in favour of 1225 by a judicial decision of 1607: Baker, 2017, pp. 6-9, 531-533. Since it is a statute, the 1225 Magna Carta is reckoned to consist of 'chapters' rather than clauses, though the division and numbering are not contemporary.

19 28 Edw. III, c. 3. Cf. the *ordo judiciarius* of the Golden Bull of 1222, cl. 2.

20 42 Edw. III, c. 1.

21 All but three chapters have been repealed. Those left in force are c. 1 (liberties of the Church), c. 9 (liberties of London and other cities and towns) and c. 29 (liberty of the subject).

and the 1620s.[22] It then became the legal foundation for *habeas corpus*, a procedure whereby anybody in custody could have the reason for his imprisonment examined by a superior court. And this became a potent means of protecting the rule of law against creeping abuses of the royal prerogative, since all powers of government and taxation depended ultimately on imprisonment. Magna Carta soon became a symbol of English liberty. Sir Edward Coke (d. 1634), chief justice of England (1613-16) and a bold champion of the rule of law, was fond of pointing out that the great charter had been confirmed over thirty times by the king's predecessors. This meant that the kingdom descended from king to king as a limited monarchy, constrained by the provisions of Chapter 29. Kings themselves professed to accept Coke's premise, if not all the deductions he made from it, and in 1628 King Charles I was forced to reaffirm it by giving his assent to the Petition of Right. By then Magna Carta had become 'the law of laws',[23] worthy (as Coke said) to be written in letters of gold.[24] 'Everything that anyone has in this world,' wrote Coke, 'or that concerns the freedom and liberty of his body or his freehold, or the benefit of the law to which he is inheritable, or his native country in which he was born, or the preservation of his reputation or goods, or his life, blood and posterity: to all these things this act extends.'[25] It was far more than anyone could have foreseen in 1215. But its mystical power was now indelible.

22 Thompson, 1948; Baker, 2017.

23 Francis Ashley's lecture on Magna Carta (1616), quoted in *The Reinvention of Magna Carta*, p. 428.

24 Ibid, p. 1 (remark of *c.* 1605 related by Ashley). It came to pass that Blackstone's edition of Magna Carta was the first English book printed in gold (in 1816).

25 Treatise on Magna Carta, c. 29 (1604), first published in J. Baker ed., *Selected Readings on Magna Carta* (Selden Society vol. 132, 2015), pp. 394-402 (law French and parallel translation); *The Reinvention of Magna Carta*, pp. 500-10 (translation only).

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CONSTITUTIONAL NORMS IN SERBIAN MEDIEVAL LAW

SRĐAN ŠARKIĆ*

ABSTRACT

Serbian medieval law had no documents such as Magna Carta of 1215 in England and Bulla Aurea of 1222 in Hungary, but some provisions from the codification of Stefan Dušan contain the ideas which even today would have belonged to a constitution. Those ideas penetrated in medieval Serbia under the strong influence of Byzantine law.

The fragments of Dušan's Codex Tripartitus (Syntagma of Matheas Blastares, so-called „Justinian's Law" and Dušan's Law Code) which, from the modern constitutional-legal view, are of the utmost validity are: 1) Chapter B – 5 of the Syntagma of Matheas Blastares, translated and accepted in Serbia from Byzantium precisely in Dušan's time, entitled On Emperor, which expresses solemn ideas about the Emperor's rule.

2) Articles of Dušan's Law Code, which restrict the prerogatives of the Tsar as a supreme organ of power, and put the law above Emperor, are 171, 172, and 105, which is connected with them. Although the provisions of these articles are relevant for the judiciary, they are, from constitutional-legal aspect, of great importance.

* Full professor, Faculty of Law, University of Novi Sad, Serbia, PhD, srdjansarkic@gmail.com, ORCID: 0000-0002-4899-4126.

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Serbian medieval law had no documents such as *Magna Carta* of 1215 in England, and *Bulla Aurea* of 1222 in Hungary, but some provisions from the codification of Stefan Dušan contain the ideas which even today would have belonged to a constitution. Those ideas penetrated in medieval Serbia under the strong influence of Byzantine law.

The reception of Byzantine law in any Slavonic country culminated with a great work of Serbian legal tradition, codification of the Emperor (Tsar) Stefan Dušan (1331–1355). This was realized in 1346, when King Dušan proclaimed himself *the true-believing Tsar and Autocrat of the Serbs and the Greeks* (**Стєфань вь Христа Бога благовѣрни царь и самодрьжьць Срьблкмь и Грькомь**). Educated as a young man in Constantinople, Dušan knew very well that if his State pretended to become an Empire, it should have, *inter alia,* its own independent legislation. Accordingly he began preparations for his own Law Code immediatly after the establishment of the Empire. In a charter of 1346, in which he announced his legislative programme, he said that the Emperor's task was to *make the laws that one should have* (**закони поставити јакоже подобаєть имети**).[1] These laws are, without a doubt, of the type which Byzantine Emperors had, namely general legislation for the whole of the State's territory. In the social and political circumstances, the Serbian Tsar had to accept existing Byzantine law, though modified in accordance with Serbian custom. A completely independent codification of Serbian law, without any Byzantine law, could not be produced and therefore the Serbian lawyers created a special *Codex Tripartius,* codifying both Serbian and Byzantine law. In the old manuscripts Dušan's Code is always accompanied by two compilation of Byzantine law, translated into Old Serbian language: the abbreviated (*Epitome,* Ἐπιτομή) *Syntagma kata Stoicheion* (Σύνταγμα κατὰ στοιχείον) or *Alphabetical Syntagma* (nomocanonic miscellany put together in 24 titles, each title has a sign of one of Greek alphabet letter) of Matheas Blastares, a monk from Thessalonica and so-called

1 Charter was preserved only in a late Rakovac (small village and monastery on the right bank of Danube, near Novi Sad) copy from 1700. Novaković, 1898, p. 5.

„Justinian's Law", a short compilation of 33 articles regulating agrarian relations. Dušan's Law Code, in the narrow sence (**ЗАКОНЬ БЛАГОВѢРНАГО ЦАРА СТЕФАНА**), is the third and the most important part of the larger Serbo-Byzantine codification, and it was issued at State Councils (**сьборь**) held in Skoplje (Скопје) on 21 may 1349 (first 135 articles) and in Serres (Σὲρρες) five years later (articles 136-201).

1.

The fragments of Dušan's *Codex Tripartitus* which, from the modern constitutional-legal view, are of the utmost validity are:

1) Chapter B – 5 of the *Syntagma* of Matheas Blastares, translated and accepted in Serbia from Byzantium precisely in Dušan's time, entitled *On Emperor,* which expresses solemn ideas about the Emperor's rule..

Greek text: Περὶ Βασιλέως. Βασιλεύς ἐστιν ἔννομος ἐπιστασία, κοινὸν ἀγαθὸν πᾶσι τοῖς ὑπηκόοις· μήτε κατὰ προσπάθειαν ἀγαθοποιῶν, μήτε κατ' ἀντιπάθειαν τιμωρῶν, ἀλλ' ἀναλόγως ταῖς τῶν ἀρχομένων ἀρεταῖς, ὥσπερ τις ἀγωνοθέτης, τὰ βραβεῖα ἐξ ἴσου παρεχόμενος, μηδὲ κενὰς εὐεργεσίας εἰς βλάβην ἄλλων τισὶ χαριζόμενος.

Σκοπὸς τῷ βασιλεῖ τῶν τε μενόντων καὶ ὑπαρχόντων δι' ἀγαθότητος ἡ φυλακὴ καὶ ἀσφάλεια, καὶ τῶν ἀπολωλότων δι' ἀγρύπνου ἐπιμελείας ἡ ἀνάληψις, καὶ τῶν ἀπόντων διὰ σοφίας καὶ δικαίων τρόπων καὶ ἐπιτηδεύσεων ἡ ἐπίκτησις.

Τέλος τῷ βασιλεῖ, τὸ εὐεργετεῖν· διὸ καὶ εὐεργέτης λέγεται· καὶ ἡνίκα τῆς εὐεργεσίας ἐξατονήσῃ, δοκεῖ κιβδηλεύειν κατὰ τοὺς παλαιοὺς τὸν χαρακτῆρα.

Ἐπισημότατος ἐν ὀρθοδοξίᾳ καὶ εὐσεβείᾳ ὀφείλει εἶναι ὁ βασιλεὺς, καὶ ἐν θέῳ ζήλῳ περιβόητος.[2]

Old Serbian translation: **Царь ѥсть законѝнок прѣдстателѝство, обѝште благо въсѣмь послоүшникомь; ни же по пристрастїю благотворє, ни же за соүпротивострастїє моүче, нь противь когождє добродѣтели**

2 Text was edited by Ράλλης and Πότλης (Ralles and Potles), 1859, p. 123. The fragment was taken from *Epanagoge* (Greek Ἐπαναγογὴ, „Return to the Point"), more correctly *Eisagoge* (Greek Ἐἰσαγωγὴ τοῦ νόμου, „Introduction to the Law"), Byzantine law book of Emperors Basil I, Leo VI, and Alexander, promulgated in 886 (II, 1, 2 and 3). Zepos, 1931, pp. 240-241.

обладаємыихъ, такоже нѣкы подвигоположникъ, почьсти равно подає а не тыштаа благодѣанїа на врѣдь дроугыимь нѣкыимь дароук.

Мысль єсть цароу прѣбываюштихъ же и соуштихъ силь благостїю хранєнїє и оутврьжденїє и погыбшїихъ бьдростнымь прилежанїємь въсприкткик, и не имѣкмыихъ прѣмоудростїю и праведными нравы и хитрост҃ми притежанїє.

Кон҃ць цароу єже благодѣати; тѣмь же и благодѣатель глаголєть се; и єгда оть благодѣанїа изнеможеть, мнить се погоубывша по древныихъ царскоє начрьтанїє.

Нарочить въ православыи и благочьстїи дльж҃нь єсть быти царь, и въ рьвенїи божїи прослоуть.[3]

English translation: *The Emperor (Tsar) is the lawful ruler, the common good of all subjects; he does not do good out of partiality, nor does he punish out of antipathy, but according to the virtues of the subjects, and like a judge at the trial, gives the awards equally, and does not give the benefit to any one to the detriment of others.*

The Emperor's goal is to preserve and foster existing values, and to re-establish with care those lost, and to acquire by wisdom and righteous means and enterprises those which are missing.

The task of Emperor is to do good, for which he is called a benefactor; when he stops doing good, then, according to the opinion of the ancients, it is considered that he has perverted the Tsar's mission.

The Tsar must distinguish himself in orthodoxy and in piousness and be renowned in his favour before God.

2) Articles of Dušan's Law Code, which restrict the prerogatives of the Tsar as a supreme organ of power, and put the law above Emperor, are 171, 172, and 105, which is connected with them. Although the provisions of these articles are relevant for the judiciary, they are, from constitutional-legal aspect, of great importance.

Article 105, promulgated 1349, in the first part of the Code:

рѣ҃ ѳ҃ потвороу книжномь. Книге цареве коє приносе прѣд соудїє за що любо, тере их потвори законикъ царства ми, що сьмь записаль коу любо

3 Edited by Novaković, 1907, pp. 127-128.

книгоу, wнезїи книзе кок потвори соудь, тезїи книзе да оузмоу соудїе и и да их принес8 прѣд царство ми.[4]

Article 105, *On the Contradiction of Charters: Imperial charters which are produced before the judges in any matter, which my Code contradicts, and which the court find invalid shall be brought and submitted to me.*[5]

In article 105, where Tsar's writs clash with the law, the judges have instructions to refer the matter back to him. But experience showed that this procedure was unsatisfactory and in 1354 Tsar amended it, in article 171, where he isuues direct orders to the judges that the Code itself is final and authoritative and overrides any separate deeds or enactments issued separately by the Tsar.

рог҃ ѠЗ законѣ. Єщє повелѣва царство ми. ащє пише книг8 царство ми, или по срьчѵ́бѣ, или по любѵ́би, или по милости за нѣкога, а wнази книга разара законикь, не по правдѣ и по закон8 како пише закони́кь, соудїе тоузи книг8 да не вѣроую, тъкмо да соуде и врьше како к по правдѣ.

Article 171, *On the Law: A further edict of my Majesty. If I the Tsar write a writ, either from anger or from love or by grace for someone and that writ transgress the Code, and be not according to right and the law as written in the Code, the judges shall not obey that writ but shall adjudge according to justice.*

Article 172, as a type of guarantee of judiciary independence was based on the Byzantine tradition *princeps legibus alligatus*.[6]

род҃ ѠЗ соудїахь. Въсаке соудїе да соуде по закони́ник8 право како пише оу закони́ник8, а да не соуде по страх8 царства ми.

4 Critical editions of Dušan's Law Code were done by Novaković, 1898; Radojčić, 1960, and Bubalo, 2010. Serbian Academy for Science and Art has edited all manuscripts of Dušan's Law Code: vol. I, Codd. Mss. Strugensis et Athoniensis, Beograd 1975; vol. II, Codd. Mss. Studeniciensis, Chilandarensis, Hodosensis et Bistriciensis, Beograd 1981; vol. III, Codd. Mss. Baraniensis, Prizrensis, Šišatovacensis, Rakovacensis, Ravanicensis et Sofiensis, Beograd 1997; vol. IV, Codd. Mss. Patriarchati, Bordiosiensium, Popinciensis, Tekelianus, Sandicianus, Koviliensis, Belgradensis, Rezeviciensis, Caroloviciensis, Verseciensis, Gerbliensis, Bogisicianus et Jagicianus, Beograd 2015. Numeration of the articles is according to the edition of Stojan Novaković.

5 The English text of all the articles quoted in the paper is according to the translation of Burr, 1949-50, pp. 198-217 and 516-539.

6 Cf. Bury, 1910, pp. 7, 9, 29-30

Article 172, *Of Judges: Every judge shall judge according to the Code, justly, as written in the Code, and shall not judge by fear of me, the Tsar.*

How those articles came into the Law Code of Stefan Dušan? Were they the result of the independent development of Serbian medieval law, or were they taken from somewere else? The majority of the researchers of the Code of Stefan Dušan from 19th century were firmly convinced that the articles 171 and 172 were independent.[7] However, according to the researches of Nikola Radojčić,[8] most probably they were taken directly from the *Basilika,* (Greek τὰ Βασιλικὰ, „the Imperial [Laws]"), an extensive collection of Byzantine laws, begun under Emperor Basil I and completed in the first years of the reign of Leo VI (probably 888).

The text of the *Basilika* which corresponds to the article 171 is VII, 1, 16 and reads: Πᾶς δὲ δικαστής... τηρείτω τοὺς νόμους καὶ κατὰ τούτους φερέτω τὰς ψήφους, καὶ, κἂν εἰ συμβαίη κέλευσιν ἡμετέραν ἐν μέσῳ κἂν εἰ θεῖον τύπον, κἂν εἰ πραγματικός εἴη φοιτήσας λέγων τοιῶσδε χρῆναι τὴν δίκην τεμεῖν, ἀκολουθείτω τῷ νόμῳ. Ἡμεῖς γὰρ ἐκεῖνο βουλόμεθα κρατεῖν, ὅπερ οἱ ἡμέτεροι βούλονται νόμοι...

The text which corresponds to the article 172 is VII, 1, 17, and reads: Θεσπιζομεν... κατὰ τοὺς γενικοὺς ἡμῶν νόμους τὰς δίκας ἐξετάζεσθαί τε καὶ τέμνεσθαι· τὸ γὰρ ἐπὶ τῇ τῶν νόμων κρινόμενον ἐξουσίᾳ οὐκ ἄν δεηθείη τινὸς ἔξωθεν διατυπώσεως.[9]

7 See Šarkić, 1988, pp. 43-55, especially 46-48.

8 Radojčić, 1923, pp. 100-139.

9 *Basilicorum Libri LX, series A, volumen I, textus librorum I-VIII,* edd. H. J. Scheltema et N. Van der Wal, Groningen 1955, p. 303. Although the content of the above mentioned provisions from the *Basilika* was identical with a content of articles 171 and 172 of the Code of Stefan Dušan, the Serbian translator did not translate the Greek text literally. This fact led Marko Kostrenčić to develop a hypothesis in a paper on Radojčić's treatise, *The Strenght of the Law According to Dušan's Code,* that such provisins might have originated independently in Serbia as a result of Serbian legal development (*Narodna starina,* 7, pp. 100-102). To support this thesis Kostrenčić wrote that the position of a ruler in Byzantium, and especially his attitude towards laws, was different from the position of a ruler in Serbia, which, according to him, was more similar to the position of a ruler in Hungary. He especially draws attention to some provisions of the *Bulla Aurea* of Andrea II from 1222, in which the similarities with articles 171 and 172 could be found. That text from the *Bulla Aurea* says (XXX): *...ita, quod ipsam scripturam pre oculis semper habens nec ipse deviet in aliquo in predictis nec regem vel nobiles seu alios consentiat*

2.

Besides articles 171 and 172 the Code insists in many of its provisions that duties are executed in accordance to the law and that nothing is done against the law. First, articles regulating the relations between social classes.

1) Article 42 determines the duties of the noble landowners:

м҃ Ѡⷭⷭ баштине свободне. И баштине въсе да сѫ свободне, wт въсѣ работь и поданькь царства ми развѣ да даю сокѹ, и воискоу да воюю по законоу.

Article 42, *Of Free Hereditary Estates: And all hereditary estates*[10] *are free of all works*[11] *and tributes to my majesty, save that they shall pay the corn-due*[12] *and provide soldiers to fight, according to the law.*

2) Article 68 equalized the duties of all villeins in the Empire, and article 139 protects the dependent inhabitants from the noblemen's despotism and determines the villein's duties towards their masters if the lords violate their authority as prescribed by law:

з҃ Ѡⷭⷭ мероиⷯѫ. Мероиⷯомь законь по въсои земли оу неделѫ да работаю два дьни проиⷯарѫ; и да мѫ дава оу године перьоерѫ царевѫ;

deviare, ut et ipsi sua gaudeant libertate ac propter hoc nobis et successoribus semper existant fideles et corone regie obsequa debita non negentur.
Statuimus etiam quod si nos vel aliquis successorum nostrorum aliquo unquam tempore huic dispositioni contraire voluerint, liberam habeant harum auctoritate sine nota alicuius infidelitatis tam episcopi quam alii iobagiones ac nobiles regni nostri universi et singuli presentes ac posteri resistendi et contradicendi nobis et nostris successoribus in perpetuum facultatem. Text was quoted according to the edition Besenyei et al., 1999, p. 29.

10 Serbian word is *baština* (**баштина**), which comes from the old Slavonic word *bašta* (**баща**) = father, and indicates the hereditary estate (*očevina*), with reference to the real estate which passes from father to the heirs of his body (analogous to the Latin term *patrimonium,* derived from the word *pater* = father, as well).

11 The term used in Serbian text is *rabota* (**работа**), the general Slavonic word for compulsory, usually unpaid, day labour for the State or for one's lord (corvée), Greek ἀγγαρεία.

12 Serbian word is *soće* (**сокѹ**), the basic and general tax in the medieval Serbian State. The meaning of the word is unclear. Maybe it comes from Latin *soca, soccus* = plough, or *saccus* = purse, or Byzantine tax called τῆς σακέλλης. In Byzantine sources *soće* was always translated as σιτοδοσία.

и заманицомь да мѕ сена коси дьнь єдинь, и виноградь дьнь єдинь; а кто нє има виноград, а wны да мѕ работаю инє работѣ дьнь; и що оур-абота меропьхь тозїи въсе да стежїи; а ино прѣзаконь нищо да мѕ сє нє оузмє.

Article 68, *Of Villagers:*[13]*The law for the villager on all land. He shall work for two days in the week for the fief-holder*[14]*and let him pay one imperial perper*[15] *in the year and let him cut his* [lord's] *hay with all his household one day and his vineyard one day; and if there be no vineyard, let him do other work for one day. And what a villager do, let him store it all and according to the law nothing else shall be taken from him.*

(In the manuscript the article has no number) **Мѣропи́хомь въ земли царства ми да нѣсть воли́нь господарь оучинити прѣзаконь нища; развѣ що кєть царство ми записало ѕ законице, този да мѕ работа и дава; ако ли моу оучини що безакона, повелѣва царство ми, въакы мероп́хь да кєть вольнь прѣти сє своимь господаромь, или съ царствоми, или съ госпождомь царицомь, или съ црьквомь, или съ властѣли царства ми; и с кымь любо да га нѣсть воли́нь никто дрьжати wт соуда царства ми; развѣ да мѕ соудїе соудѣ по правдѣ; и ако ѕпри мѣропи́хь господара, да оуемчи соудїа царства ми, како да плати господарь мѣропи́хѕ въсе на рокь; и потомь да нѣсть воли́нь ни́зи господарь оучинити зло мѣропи́хѕ.**

Article 139: *No master may do to a serf within the territories of my Empire aught that is contrary to the law, save only what I have written in the Code. That shall they do and give. And if he do aught to him against the law I enact, every serf is free to lay plaint against his master, be it I the Tsar, or the Lady Tsaritsa, or the Church, or my lords or any man. No man is free to withhold a serf from my Imperial Court, only the judges shall judge him according to*

13 Serbian word is *meropsi* (**меропси**, singular = *meropah,* **мѣропьхь**). The term *meropsi* became common in the 14th century for all dependent villagers, but the meaning of the word could not be precisely defined. It comes probably from the name of Thracian tribe *Meropes* (Μέροπες) who lived in Rodope mountains (today in Greece).

14 *Pronijar* (**пронїарь**), after the Greek word *pronoia* (πρόνοια), meaning *care, foresight, forethought, administration*, and in Church terminology *Providence.*

15 The *perper* (**перьперь**) was the Serbian money of account, Byzantine *hyperpiros* (Greek ὑπερπυρος, meaning gold „tried in the fire").

right. And if the serf win against his master, let my judge give warranty that his master pay all to the villein at the appointed time, and that his master do no evil to the villein after the sentence.

3.

Provisions about judiciary:

1) Article 30 (second part) prescribes that no one shoud be persecuted without a trial:

ки҃ Ю ако ли кто комѫ кривь, да га ище соудомь и правдомь по законѫ; ако ли оубѣ́ вѣ без соуда, или комѫ забави, да плати самоседе́мо.

Article 30, second part: *...And if anyone be guilty towards another let him sue him through the court and by suit according to law. And whoso shall molest or damage anyone without judgment, let him pay sevenfold.*[16]

2) Article 182 regulates the competence of the judges, who, each in his region, decides according to law.

рпд҃ Ѳ позовѫ невол҃немь. Кто кѣсть оу wбласти коихъ соудїи, вѣсакь човѣкь да нѣсть воль҃нь позвати оу дворь царства ми, или камо инамо; тѣке́мо да греде вѣсакь прѣд свога соудїю; оу чиеи боудѣ wбласти да се расоудїи по законоу.

Article 182, *Of Unlawful Suits: No man who is in the district of judges may bring an action in my Imperial Court, or anywhere else. He may appear only before his own judge in whose district he is, that the matter may be tried according to the law.*

3) The absence of a plantiff before the court frees the defendant of any responsibility if he spent the time determined by law at the court (article 89).

пѳ҃ Ѳ позванїи крив҃ца. Кто позовѣ крив҃ца прѣд҃ соудїе позвавь и не поиде на соудь, нъ сѣди дома; ов҃зїи кои кѣсть позвань ако прїиде на рокь прѣд соудїе и wтстои се по законѫ, тъзи да кѣсть прость wт тогазїи дльга за кои є быть позвань, ере wнь позвавь дома сѣдїи.

16 Formula „let him pay sevenfold“, used in six articles of Dušan's Law Code, means to increase to seven times the amount of fine.

Article 89, *Od Summoning Offenders: If a man summon an offender before the judges and then do not come to court himself, but sit at home, the party summoned, if he come at the appointed time before the judges and remain according to the law, is discharged from that debt for which he was summoned, inasmuch as he that summoned him sitteth at home.*

4) For the village boundaries the witnesses are determined by law (article 80).

ѻ҃ѳ Ѿ мегю селскои. Ꙁа мегю селске, да дадꙋ ѡбои кои ищꙋ свѣдоке, онь половинꙋ, а онь половинꙋ по законꙋ; да коудѣ рекꙋ сведоцїи, тогвази да ест.

Article 80, *Of Village Boundaries: Touching village boundaries, let both claimants bring witnesses, one a half and the other a half, according to the law. And whom the witnesses shall name, his shall it be.*

5) Article 132, 152 and 154 regulate the jury by law (*porota,* porota).[17]

рлг҃ Ѿ пленоу. Що кто коупи ѡт плена изь тоугю землю, що боудѣ плѣнюно по царевѣ земли, да юсть волнь коупити ѡт тогазїи плена, колико ꙋ тꙋгѡи земли; ако ли га кто потвори говорѣ ѡнозї е мое, да га ѡправи порота по законоу, ере ю коупиль оу тꙋждои земли, а не моу ни тать, ни проводьчїа, ни вѣстникь, такози да си га има како свое.

Article 132, *Of Booty: If anyone in the Imperial dominions buy aught from booty taken on foreign soil, it is free to him to buy that booty provided he do so not within the territories of my Empire, but on foreign soil. And if someone accuse him, saying :"That is mine," the dispute shall be settled before a jury according to the law, whether he bought it on foreign soil and is not a thief nor a receiver nor an abettor: and such let him hold as his own.*

рмд҃ Ѿ законѣ. Како юсть биль законь оу дѣда царства ми оу Светаго кралга; да сꙋ велимь властѣлом, вели властѣле, а срѣдним людемь противꙋ дроужина ихь, а себрьдїамь их дроужина да сꙋ поротници, и да нѣст оу пороте родима, ни пизмѣника.

17 Serbian word *porota,* usually translated as jury, was not jury in English sense of the word – a certain number of men and women selected according to law, and sworn (*iurati*) to inquire of certain matters of fact, and declare the truth upon evidence to be laid before them. In Serbian medieval law *porota* was collective name for members of jury, who were conjuratores or compurgators – one who swears or is sworn with others (from *rota,* **рота** = oath).

Article 152, *Of the Law: As was the law under the Sainted King my grandfather,*[18] *so let great lords be jurors for great lords, for middle persons*[19] *their peers, and for commoners their peers. And on the jury there may be neither kinsman nor enemy.*

рнѕ҃ Ѡⷪⷪ поротницѣх. Кои сѥ поротници кльнѫ и wправѣ, wногази по законѫ, и ако сѥ о тѡзи wправѣ поличїѥ wбрѣте истинѡ оу wногази wправ҃чїѥ когано ѥ wправила порота; да оузмѥ царство ми на тѥх҃зїи поротницех по тысѫщѫ перьперь; а векѣ потомь да несѫ тызїи поротници вѣрованїи; ни да сѥ кто wт них ни моужи ни женїи.

Article 154, *Of Jurymen: When jurors acquit on oath according to the law, and after acquittal guilt be proved against him whom they have acquitted, I shall fine those jurors one thousand perpers each and in future those jurors shall not be believed and they may not take either husband or wife.*[20]

4.

In the administrative area should be metioned articles 63, 187 and 176.

1) Article 63 regulates the income of the *kephalia* (kefalió, kepalîa, from Greek κεφαλή, literally „headman", the governor of a city).

ѯв҃ Ѡⷪⷪ доходѡкоу. Кепалїѥ що соу по градовѣх, да оузымаю свои доходькь закономь; и да имѡ сѥ продаваю жита и вина и меса за динарь що иномѫ за два; нъ грагѫанинь този да мѫ продава, а инь никто.

Article 63, *Of Incomes: Governors who are in the cities shall take their income according to law, and let corn and wine and meat be sold to them at*

18 King Stefan Uroš II Milutin (1282-1321), Dušan's grandfather.

19 The expression "middle persons" seems to indicate for the first time a definite recognition of an intermediate class, which presumably included the lesser barons, the merchants, the townsfolk and tradesmen, superior craftsmen, who were not of aristocratic rank, but superior to the rank and file of the commoners and countryfolk in general.

20 The Serbian verb for a man to marry is *oženiti se,* a reflexive verb from the word *žena* = woman. The word for a woman, in the modern language is *udati se,* literally, to give oneself up, but the old verb we have here is, *mužiti se,* from the word *muž* = a husband.

one dinar[21] *which is sold to others for two; and citizens alone may sell to him and none other.*

2) Article 187 regulates some police measures taken when the Emperor and Empress travel.

(The article has neither titel, nor number; it is found only in the Athos and Bistritsa texts) **Коудѣ гредє царь и царица или становѣ или кони цареви, оу комь селѣ прѣлеже, потомь ни єдинь стан҃никь да нє прѣлежи оу том҃зи селоу; ако ли се кто wбрѣте и прѣлежи оу том-зи сел8, прѣзь законь и повелѣниѥ царево, wн҃зи кои к старѣи прѣд станови, да се да свѣзань wном8и сел8; ш҃о боудє стр8вено все да плати семоседмо.**

Article 187: *Wheresoever the Tsar and Tsaritsa travel, or the herds and horses of the Tsar, in whatsoever village they rest, in that village no herdsmen may rest. And if there be one who rest in that village contrary to the law and Tsar's command, the elder of the shepherds shall be delivered bound to that village and shall pay sevenfold the damage done.*

3) Article 176 determines the regulations of the towns.

рои҃ ⷭ градовѣхь. Градове въси по земли царства ми, да с8 на законѣ w въсѣм како с8 били оу прьвыхъ царь; а за соудове ш҃о имаю мегю собомь, да се соудє прѣд владал҃ци град҃скыми, и прѣд црьковнымь клиросомь, а кто жоуплданинь при гражданина, да га при прѣд владал҃цемь град҃скымь, и прѣд црькwм, и прѣд клиросомь по законоу.

Article 176, *Of Towns: All towns which are in my dominions shall be in relation to the law in all things as they were in the days of the first Tsars.*[22] *For suits which citizens have between themselves, let them be judged before the prefects of the towns. Or before the Church courts. And if a man from the country have a case with a citizen let him sue before the prefect of the town and before the Church and the clergy. According to the law.*[23]

In a more detailed analysis probably some additional provisions could be found which belong to constitutional law, but we consider that even the above will suffice as a proof of the existence of some elements of

21 One golden perper was settled accounts as 24 dinars. In the first half of 14th century the rate was 1:30, and in the first half of 15th century even 1:40.

22 I. e. Byzantine Emperors.

23 The first sentence amplifies the confirmation of the urban rights which was granted to the Greek (Byzantine) towns in article 124, and is now extended to all towns in the Empire.

constitutionality in Serbian medieval law, especially in the Code of Stefan Dušan.

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THE GOLDEN BULL ALLEGEDLY ISSUED IN 1226 BY FREDERICK II FOR THE TEUTONIC ORDER

TOMASZ JASIŃSKI*

ABSTRACT

In my 1994, 1998 and 2008 publications on the Golden Bull, I established that:

1. *A palaeographic analysis of both originals of the Golden Bull shows that their writing, ornamentation and manner of writing the name of Frederick II are characteristic for the 1230s.*
2. *Publications similar to that of the Golden Bull occur in other imperial documents from 1231; an identical publication appeared twice in 1237. The identical closing protocol of the Golden Bull is found in two documents issued by Frederick II for Teutonic Order in November 1235.*
3. *Since in the imperial chancery the closing protocol remained unchanged for at best several months, then the Golden Bull must have been written during a joint stay of Frederick II, Herman von Salza and Peter de Vinea (author and editor of the Golden Bulle) in Germany from May to August 1235.*

* Professor, Faculty of History – Adam Mickiewicz University Poznań, Kórnik Library Polish Academy of Sciences Kórnik, Dr., habil, tomjas.tomasz.jasinski@amu.edu.pl, ORCID: 0000-0002-0876-2048.

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In 2017, the Golden Bull was published in Monumenta Germaniae Historica; its publishers its publishers opposed my findings, saying that:

1. *The Golden Bull may have been issued in 1226, and its present copies are new publications (Neuausfertigungen) issued in 1245 (!) based on the Nachurkunde of the Golden Bull (BF 3479), issued in Verona.*
2. *The Königsberg copy was produced first, and then the Warsaw copy was based on it.*

In my 2020 article I proved that:

1. *The careful comparison of this document (BF 3479) with the Golden Bull leaves no doubt that publishers MGH are wrong.*
2. *The comparison of minor variations between the Warsaw, Königsberg and BF 3479 copies proves beyond the shadow of doubt that the Warsaw copy was the original document, and the Königsberg and BF 3479 copies were based on it, independently.*

Ultimately, it can be assumed that the Golden Bull of Frederick II for the Teutonic Order was not created in 1226, but in 1235, in connection with a dispute of Duke Conrad over the Dobrin land. The content of the document, as well as its legal provisions were aligned to the then arbitration proceedings before the papal legate.

Keywords: *Order, Emperor Frederick II, imperial documents, Old Prussia*

For over a century and a half, the Golden Bull has enjoyed constant scholarly attention not only because of its historical value, but also due to unusual circumstances of its creation and the legal provisions it contains. What is more, it remains a great mystery from the diplomatic perspective.

Before discussing this document in detail, let us take a brief look at the relations between Poland and Prussia, as they were ultimately the reason behind the Teutonic Knights' arrival in the land of Culm in the late 1220s. Until early 1970s, bringing the Teutonic Order to Poland, to the land of Culm, stirred heated debates among German and Polish historians. German scholars emphasised the disastrous situation and helplessness of Polish Mazovia in the face of Prussian invasions at the beginning of the 13th century (known as *Hilferuf*), whereas Polish scholars considered almost every single privilege issued at that time for the

Teutonic Order to be either a forgery committed by the Teutonic Knights or a document created as a result of some conspiracy of Germans who hated Poles. Now, once national emotions have subsided, cooperating Polish and German scholars focused on the essence, trying to reconstruct the actual state of affairs.

Prussians had inhabited the Baltic area, east of the lower Vistula since antiquity. They were Indo-Europeans, a Baltic people, like the Lithuanians or Latvians; they should not be confused with other Prussians, namely German inhabitants of the Kingdom of Prussia established in 1701 and covering, among others, the former Polish fiefdom of Ducal Prussia (Herzogtum Preußen) and the Electorate of Brandenburg. From the earliest times, the rulers of Poland, beginning with Boleslav the Brave (cf. mission of St. Adalbert in Prussia in 997) strove to subjugate the Prussian tribes. However, the bravery of Prussians and favourable physiographic conditions (impassable forests and swamps) helped them remain independent. At the beginning of the 13th century, the attacking party was the Poles, who, under the leadership of palatine Christian (polish – Krystian), subjugated some of the Prussian tribes. In 1217, however, due to internal reasons, Duke Conrad of Mazovia ordered to capture and strangle palatine Christian. This contributed to a political destabilisation of Mazovia, and the Prussians immediately took advantage of it, repeatedly invading Mazovia.

These events happened to coincide with Honorius III's efforts to get as many European rulers and knights as possible to participate in the crusades in Palestine. Conrad of Mazovia, along with his older brother Leszek the White, the High Duke of Poland, obtained permission from the Pope to organise crusades against the pagan Prussians instead of going to the Holy Land. They enlisted the first Prussian bishop Christian and the following dukes in this venture: Henry the Bearded from Silesia, Swietopelek and his brother Wartislaw from Pomerelia (=Gdansk Pomerania). In this effort, in 1222 Duke Henry the Bearded, together with Silesian knights and bishops of Wroclaw and Lebus, rebuilt the gord of Culm earlier destroyed by the Prussians, and granted it to Bishop Christian along with the immediate area. Duke Conrad granted part of the then land of Culm to the following dukes: Leszek the White, Henry the Bearded and Swietopelek. These estates were supposed to provide

material support for the knightly guard against the Prussians, alternately exercised by knights from different Polish duchies. This guarding system collapsed in 1225, when the guardianship on the Polish-Prussian border was exercised by the feuding knights of Leszek the White from Malopolska. One of the knightly families, namely the Gryfici (also Świebodzice), decided to take advantage of the situation and deal with their enemies – the Odrowąż. Gryfici made and agreement with the Prussians, opened their strongholds and fled to Malopolska, delivering their enemies, the Odrowąż, to the spoils of the Prussian invasion. Having arrived in Malopolska, the Gryfici told Duke Leszek that the defeat was a result of a strong and unexpected invasion of the Prussians; however, once the remnants of the Odrowąż arrived in Malopolska, the Gryfici's plot was discovered and they had to save their lives by fleeing to Silesia to Duke Henry the Bearded. They convinced him that all the inhabitants of Malopolska dreamed of nothing else but to hand over power to him. Together with considerable forces and the Gryfici, Henry set out for Malopolska. Near Cracow there was an encounter between the armies of Henry the Bearded and Leszek the White, the latter supported by his younger brother, Conrad of Mazovia. The dukes decided to make peace, and it was probably then that Henry the Bearded proposed to replace the system of knightly guard in the land of Culm with a neutral force of the Teutonic Order. Conrad of Mazovia established contacts with the Teutonic Order; yet, the first Teutonic brothers came to the land of Culm only in 1228, and they received their final privileges only in 1230. All of these events, together with the aforementioned lands granted, are the background for an imperial privilege, the Golden Bull of Frederick II for the Teutonic Order, which is the subject of this analytical study.

The Bull opens with a rather extensive narrative (*narratio*), from which we learn that Hermann von Salza, Grand Master of the Teutonic Order, has declared in the presence of the Emperor that Conrad, the Duke of Mazovia and Cujavia, promised and undertook to grant the Order the land of Culm, and to make donations in another land located between his dutchy (literally called *marchia* in the document) and Prussia; according to the Grand Master's relation, the promise of this donation was made on the condition that Teutonic Knights would enter Prussia and conquer it "*to the glory of the true God*". Later the document's

narration reads that Hermann von Salza postponed (!) the acceptance of Conrad's proposal and asked the emperor to "*grant him and his house both the land that the said duke should have donated and all the land that could be conquered through their toil within the borders of Prussia*"[1]. In response to these requests, the Emperor allowed the Order to enter Prussia by force of arms, thereby granting and confirming the perpetual tenure of both the land *"they will receive according to the promise of the said Duke and whatever other land they may be given, as well as all the land they will acquire with the help of God within the borders of Prussia, as an old and due right of the Empire in the mountains, plains, rivers, forests and in the sea, so that they can own it free from any encumbrances and taxes and that they will not have to be subject to anyone".*

The scope of the quoted donation is at odds with the events of the 1220s in many aspects. These contradictions will be clarified once we learn more about the time and circumstances of the creation of this document thanks to diplomatic analysis. To begin with, it should be recalled that two copies of the Golden Bull have survived, namely the Warsaw (W) and Königsberg (K) copies, which were stored in two different archives at the time when critical studies began, i.e. Preußische Staatsarchiv Königsberg and Central Archives of Historical Records in Warsaw. In 1940, during the German occupation of Poland, Erich Weise, a German scholar who was back then the occupation supervisor of the Warsaw archive, transported the Warsaw copy to Königsberg. From then on, both documents shared the fate of the Königsberg archive, and after the war they were initially stored in Göttingen, and later until the present day in Berlin, in the Geheimes Staatsarchiv Preußischer Kulturbesitz.

The two documents differ in dozens of minor variations, mostly spelling or word rearrangements, but there are also two more significant differences: (1) the penalty for violation of the imperial privilege was 100 pounds of gold in the Warsaw copy, while in the Königsberg

1 Preußisches Urkundenbuch. Politische Abtheilung, vol. 1, part. 1, ed. [R.] Philippi, Königsberg i. Pr. 1882 (below quoted PUB I/1), no 56: *nostra sibi et domui sue concederet et confirmaret serenitas tam terram, quam predictus dux donare debebat, quam totam terram, que in partibus Pruscie per eorum instanciam fuerit acquisita*.

copy it was as much as 1,000, and (2) several people in the witness list. These differences, as well as some contradictions in the dating of the document, namely the under-dating in both copies according to the years of Frederick's reign in the Kingdom of Sicily, have led scholars to put forward different views and hypotheses as to the time when this document was created. In this article, I confine myself to citing only the most important hypotheses and findings; for secondary matters, I suggest you read my detailed studies. In 1886, Max Perlbach, an excellent German scholar, on the basis of an analysis of the witnesses of the Golden Bull in both copies and on the basis of errors in dating according to the years of Frederick's reign in the Kingdom of Jerusalem, concluded that traces of the original version of this privilege, possibly a concept of the same document, dating from 1224, are visible in the Golden Bull[2]. Although this thesis was disproved two years later by K. Lohmeyer, scholars continued to try to revise the time of creation of the Golden Bull on the basis of the list of witnesses[3]. For example, in 1908 H. Grumblat put forward a hypothesis that both copies are new publications (Neuausfertigungen) of the original document issued in March 1226 in Rimini[4]. According to this scholar, the Warsaw copy was supposed to have been created between July and September 1234 (i.e. around the same time that Gregory IX granted the Order the privilege in Rieti on 3 August 1234), while the Königsberg copy to have been written in the years 1236-1239. In 1924, these findings, as well as the earlier hypotheses of M. Perlbach, were criticized by Erich Caspar, who considered these explorations unfounded and completely arbitrary. Since then, for many years to come scholars have adopted Caspar's view that the Golden Bull was issued in 1226 as the most convincing one[5]. Fifty years later, P. Zinsmaier, in an interesting study on the chancellery of Frederick II, which is a summary of his several decades of research on this issue, put forward a thesis that the Golden Bull "zu einem wesentlich späteren

2 Perlbach, 1886, p. 52.

3 K. Lohmeyer, Kaiser Friedrichs II. goldene Bulle über Preussen und Kulmerland vom März 1226, Mitteilungen des Istituts für die Österreichische Geschichte, (below quoted PUB I/1), Erg.-Bd. 2 (1888), pp. 380-420.

4 Grumblat, 1908, pp. 385-422.

5 Caspar, 1924, p. 104 n.

Zeitpunkt als 1226 entstanden ist"[6]. This scholar, who had access only to the Königsberg copy, noted that the document was not produced until 1230s, as indicated by the handwriting of the Königsberg copy and the way Frederick's name was written, because the latter did not appear in the imperial chancellery until 1232[7]. This scholar regarded the Königsberg copy as a new publication (Neuausfertigung) of the Golden Bull, made in 1230s. However, he was not able to determine whether this was just a faithful repetition of the original document from 1226 or whether it was formulated anew as late as in the 1230s. According to this author, this privilege lacks stylistic elements that would allow precise dating of the text itself. Ultimately, however, P. Zinsmaier considered it likely that the text of the Golden Bull itself was also not written until the 1230s.[8]

Several German scholars responded critically to P. Zinsmaier's findings, accusing him mainly of neglecting the Warsaw copy in his research[9]. This accusation was unfair, though, as in the early 1970s it was widely known that the Warsaw copy had been lost during the war. At the time, German archivists concealed the fact that it was actually there in the Berlin-Dahlem Archive, and only revealed it during an exciting polemic with Zinsmaier.

The attack on P. Zinsmaier's findings was so vehement that other historians, both German and Polish, have maintained the traditional view that the Golden Bull was produced in 1226[10]. This is undoubtedly also due to the fact that all Golden Bull scholars had overlooked P. Zinsmaier's statement made in 1983, published in "Nachträge und Ergänzungen" to Regesta Imperii[11]. In this work, P. Zinsmaier not only upheld his previous findings, but also extended them to the Warsaw copy. On the basis

6 Zinsmaier, 1974, p. 147.
7 Ebenda, p. 148.
8 Ebenda, p. 148.
9 Arnold, 1976, p. 44 n.; Hubatsch, 1978, p. 1 n.
10 Kluger, 1987, p. 54, 57 n.; Labuda, 1988, p. 503 n.; Dygo, 1992, p. 9 n., especially the footnote 18.
11 Regesta Imperii V. Die Regesten des Kaiserreichs unter Philipp, Otto IV., Friedrich II., Heinrich (VII.), Conrad IV., Heinrich Raspe, Wilhelm und Richard 1198-1272, ed. Böhmer, J. F., Ficker, J., Winkelmann, E., Bd. 4, Abt. 6, Nachträge und Ergänzungen, ed. P. Zinsmaier, Köln-Wien 1983, p. 195, BF 1598.

of their external features, he considered both originals of the Golden Bull to be documents created in the 1230s.

My research of the originals and facsimiles of Frederick II's documents carried out in Germany (1990-1991), as well as in other countries, confirmed my conviction that P. Zinsmaier's findings were correct. In total, I had the opportunity to study nearly three hundred facsimiles out of approximately five hundred originals of Frederick II's documents preserved throughout the world[12]. My palaeographical studies were supplemented by reading *in extenso* almost all of Frederick II's printed documents, over 2,500 in all, published in more than ten volumes and dozens of dispersed publications[13].

The said studies of the Frederick II's documents helped me to formulate certain general conclusions about the work of the imperial chancellery[14]. Here I shall confine myself to stating that the 1220s and 1230s were a period of stability in the work of the imperial chancellery. The systematic improvement of the form and appearance of the document consisted in practice in the constant introduction of minor improvements. Scribes preparing fair copies were constantly working to improve the appearance of the document, constantly introducing

12 It was possible thanks to the collection of about two hundred photocopies collected by P. Zinsmaier in the State Archive in Karlsruhe. In this archive, I also had the opportunity to see the largest collection of original documents of Frederick II in Germany. Thanks to P. Zinsmaier's Additions to the Regesta Imperii (Nachträge und Ergänzungen), which inform about the publication of the likenesses, I found many other documents. Finally, with the support of the Alexander von Humboldt Foundation, I collected a series of photocopies of other original documents of Frederick II from the German, Italian, French, Swiss and Swedish archives.

13 While reading, I took into account not only the most famous editions (J.L.A. Huillard-Bréholles, Historia diplomatica Friderici secundi, vol. 1-6, Paris 1852-1861; E. Winkelmann, Acta imperii inedita. Urkunden und Briefe zur Geschichte des Kaiserreichs und Königsreichs Sizilien, vol. 1-2, Innsbruck 1880-1885), but thanks to P. Zinsmaier's Additions (Nachträge und Ergänzungen) to the Regest Imperii I found most of the single and occasional publications. Only rare old prints, especially Italian ones, and, of course, non-printed documents remained out of reach.

14 There is quite a lot of literature on the periodization of the history of the chancellery of Frederick II: F. Philippi, Zur Geschichte, p. 9 n.; Schaller, 1957, pp. 207-286, part. 2, ebenda, 4 (1958), pp. 264-327; Zinsmaier, 1963, p. 87 n.; idem, Die Reichskanzlei, p. 135 n.; Csendes, 1980, p. 115 n.

small innovations in ornamentation, which were immediately picked up by their colleagues. The notaries drafting the contents of documents constantly expanded the form by adding individual words or replacing them with new, more accurate ones. Every time such an "invention" gained recognition, other imperial notaries would immediately follow. These practices of the imperial chancellery proved extremely helpful in the study on the dating of questionable documents[15]. What it means is that if you go through all the Frederick II's documents, you can determine precisely when a particular innovation in document decoration or its form was introduced in the imperial chancellery. This method of research seems particularly precise in the case of the chancellery of Frederick II, because the chronology of innovations is based on several hundred originals and several hundred copies of documents. However, when applying this method of document dating you need to remember that it only permits, in principle, to determine the *a quo* date of the creation of a given document. This limitation is due to the fact that both earlier ornamentation systems and old forms were often repeated at a later date.

For this reason, it is difficult to disregard P. Zinsmaier's arguments. The way of writing the emperor's name in the intitulation found in both copies of the Golden Bull was not a one-off invention and was being developed in the chancellery for over eleven years to take its final shape only in 1232. Another dating element omitted by P. Zinsmaier is the characteristic ornamentation of the initials in both copies of the Golden Bull. Until 1231/1232, the ornamentation of the initials was basically limited to bold letters and small ornaments either inside the initial or in its immediate vicinity. Around 1231, the ornaments were significantly enriched, often extending beyond the immediate vicinity of the letter. In 1232, the initials take on the form we know from the Golden Bull, although they are somewhat more elaborate and correspond more closely to the initials used in 1234-1235.

15 Zinsmaier, 1974, p. 136: „vollzieht sich doch im Formular der Kaiserurkunden im Laufe der Jahre eine gewisse Weiterentwicklung, die zu klaren Aussagen hinsichtlich der Entstehungszeit des in Frage kommenden Textes berechtigt. Bei zweifelhaften, bei nicht richtig oder undatierten Schriftstücken ist die Diktatanalyse noch immer unentbehrlich".

The analysis of the internal features of the Golden Bull offers even more interesting insights. For example, all four elements of the publication (*publicatio*) of the Golden Bull: 1) *hinc est igitur,* 2) *presentis scripti serie,* 3) *notum fieri volumus,* 4) *modernis imperii et posteris universis,* had never appeared together until the years 1231-1244[16]. It must be added here that initially these were publications with relative adverbs *(tam, quam),* which are absent in the Golden Bull. Identical publications as in the Golden Bull, i.e. without relative adverbs, did not appear in the chancellery of Frederick II until 1237[17]. The analysis of the final form leads to even more interesting conclusions[18]. In-depth research shows that in the period after the imperial coronation, the eschatocol would usually be added at the moment of sealing the document in the Frederick's chancellery. Both the contents and the stylistics of the eschatocol were constantly changed over time. For this reason, it is often a perfect document dating instrument.

The eschatocol of the Golden Bull contains three quite rare peculiarities: (1) the word *serenissimus,* instead of *invictissimus,* which was more popular at that time, (2) *fecimus* instead of the most popular *iussimus* and (3) the absence of the word *nostro* before the emperor's name *Friderico Dei gracia*[19]. Of all the documents of Frederick II from 1198-1250, that is, of more than two and a half thousand documents, there are only three diplomas, where the closing protocol contains these three rare elements together. These are: the Golden Bull of Rimini and two documents of Frederick II for the Teutonic Order (!) dated November 1235. What should be emphasised is that the closing protocol of one of these two documents dated November 1235 (BF 2125) is almost completely identical to the eschatocol of the Golden Bull. For both this document

16 BF 1918,1921,1937, 2244, 2272, 3408; see also publications related to the publication of the Golden Bull: BF 1946, 1960, 2140, 2268, 3109, 3294, 3346, 3518.

17 BF 2244, 2272 – it is probably not a coincidence that the recipient of one of these documents from 1237 is Herman von Salza.

18 Frederick II's documents issued to recipients in the Roman Empire and the Kingdom of Sicily had a different eschatocol – see Ladner, G., *Formularbehelfe*, p. 94, and Heupel, W. E., *Der sizilische Grosshof*, p. 29.

19 BF 1918,1921,1937, 2244, 2272, 3408; see also publications related to the publication of the Golden Bull: BF 1946, 1960, 2140, 2268, 3109, 3294, 3346, 3518.

and the Golden Bull lack the word *secundi* in signum, and in the dating of both documents the term *Romani* was added before the word *imperii*. Unfortunately, the original copy of this document has not been preserved[20], and for this reason we cannot compare its external features with the Golden Bull. However, the second of these documents (BF 14724) has survived to our times, and has the same arrangement of letters in Frederick's name in the intitulation as the Warsaw copy. The initials of this document (BF 14724) are the most similar to those of the Warsaw and Königsberg copies out of all the documents of Frederick II I know (compare picture 17).

The fact that the very rare closing protocol of the Golden Bull is so similar to the eschatocol of BF 14724, and nearly identical with BF 2125, supports the idea that the Golden Bull was produced not long after these two documents. This is due, among other things, to the fact that the closing protocol of solemn imperial documents consisted of many elaborate elements which no notary would leave unchanged for more than a few months.

The addition of the eschatocol at the time of the corroboration, as well as the need to make updates to certain parts of it, especially the dating and attestation, meant that the closing protocol would undergo fundamental changes even when the Nachurkunde was created. Although all parts of the form would then be transcribed from the Vorurkunde, the closing protocol would be subject to major modifications. For example, in Nachurkunde of the Golden Bull (BF 3479) a great many changes were made to the closing protocol, including the removal of all (!) peculiarities of the Golden Bull, i.e. *serenissimo* and *fecimus* were replaced with other words and the missing *nostro* was added.

Documents BF 14724 and BF 2125, dated November 1235, were written during the joint stay of Frederick II and Grand Master Hermann von Salza in Germany. This period begins in May 1235, when the Emperor boarded a ship in Rimini with his son Conrad, Grand Master Hermann von Salza and a group of his closest associates[21], and closes with the Grand Master's departure for Italy in late November 1235, where he went

20 It's an insert of BF 4482.

21 It was the first time the emperor stayed in this city since 1226.

at the Emperor's request in order to discuss contentious issues concerning the Lombard League with Pope Gregory IX[22].

It seems very unlikely that the Golden Bull could be produced outside this period, namely May-November 1235, given its closing form. This supposition can be confirmed, and the timing even further specified, once we take a look at the language, form and style of the Golden Bull. Assuming that the Golden Bull was drafted by Petrus de Vinea, we can pinpoint the time of its creation to the period between May and August 1235, when the head of the imperial chancellery was staying in Germany.

Knowing the date of issuance of the Golden Bull, we can easily guess what was the purpose of preparing it at that particular time. There was a violent dispute between the Teutonic Order and Duke Conrad over the Dobrin land at that time, and it ended with an amicable ruling on 19 October 1235, according to which the Teutonic Order had to give back the Dobrin land to the Polish ruler since they had seized it illegally.

A trace of this dispute can be found in the Golden Bull, where we read that Duke Conrad allegedly promised the Teutonic Order, apart from the land of Culm, properties located *in alia terra inter marchiam suam videlicet et confinia Prutenorum*. This phrase is completely pointless in 1226, because back then there was no territory that would be located between the dutchy of Conrad and Prussia. In 1226, any territory had to belong either to the Dutchy of Mazovia or Prussia. In 1235, however, between the "marchia" of Conrad of Mazovia and Prussia there was the Dobrin land, bordering with Prussia north of Plock, the capital of Mazovia[23].

At Easter (8 April) 1235, shortly before his departure for Germany[24], Grand Master Hermann von Salza went to the Pope and managed to obtain a confirmation of a document by Bishop Petrus of Plock, under which the Brothers of Dobrin were incorporated into the Teutonic

22 BF 14724 i 2125 and the letter from Peter de Vinea on the arrival of the Grand Master to Italy – Huillard-Bréholles, 1966, p. 304; Koch, 1885, p. 95 n.; Kantorowicz, 1928, p. 382, vol. 2, Berlin 1931, p. 172; K1uger, 1987, p. 173.

23 PUB I/1, no 67: *castrum Dobrin cum spacio terrarum, que continentur inter hos duos rivulos Chamenizam* [et] *Cholmenizam usque in Pruciam.*

24 BF 2081.

Order[25]. When things seemed to be on the right track, Conrad of Mazovia unexpectedly opposed the transfer of the Dobrin land to the Teutonic Knights. The dispute between Conrad of Mazovia and the Teutonic Order over this land was initially brought before the court (which has not been specified in any historical sources); later on, however, in October 1235, both parties decided to have the matter heard by an arbitration court presided over by the papal legate, William of Modena[26]. The Teutonic Order did not actually have any document to support their claim to the Dobrin land; the document of incorporation of the Brothers of Dobrin did not in any way prejudge the matter. However, had the Teutonic Order submitted the Golden Bull before the court, and later on before the judge of the arbitration court, William of Modena, the papal legate, the matter would have looked totally different. The Golden Bull stated that Conrad of Mazovia, already before the arrival of the Teutonic Order in Prussia, promised Hermann von Salza that he would offer the Teutonic Knights not only the land of Culm, but also another land, "by chance" located between the Conrad's marchia and Prussia, just like the Dobrin land. Contrary to this open pledge – which was confirmed by the Emperor with his solemnity in the presence of many venerable laymen and clergy (including the Metropolitan Bishop of William of Modena!) – Duke Conrad had not only never donated such land, but even went so far as to snatch this land from the Teutonic Order as soon as they seized it following a merger with the Brothers of Dobrin.

Even though the dispute between the Order and Conrad over the Dobrin land is reflected in the Golden Bull, it seems there must have been far more important reasons why this document was drawn up. They can be found in the text of the settlement concluded between the Order and Conrad on 19 October 1235 thanks to the arbitration proceeding held by the papal legate. In that document, Duke Conrad once again handed the land of Culm and Nieszawa District to the Teutonic Knights. This astonishing fact was pointed out only by G. Labuda. According to this scholar, repeating the donation shows that in the course of the dispute over the Dobrin land Conrad decided not only to take away the

25 PUB I/1, no 118.
26 Ebenda, no 119.

Dobrin land from the Teutonic Knights, but also to revoke all his earlier donations. It was only (according to G. Labuda) as a result of the pressure from the arbitration committee, especially its chairman, William of Modena, that a compromise was reached. In return for returning the Dobrin land, the Order retained the right to lands they have received earlier[27].

Submitting the Golden Bull to the papal legate William of Modena and Duke Conrad at the moment when the latter withdrew his donations would have strengthened the position of the Teutonic Order considerably. This document would have given strong arguments to the papal legate and would have been a warning to Duke Conrad. The papal legate could read in the Golden Bull that bringing the Teutonic Order to the Polish-Prussian borderland was not just a matter between Duke Conrad and Hermann von Salza, as the latter had withheld his acceptance of the Polish duke's proposal until it was approved by Emperor Frederick II. For Conrad of Mazovia, the Golden Bull in 1235 would have been a signal that banishing the Order would bring him into conflict with Frederick II.

Apart from this, there is a number of anachronisms in the Golden Bull that are completely inconsistent with the year 1226, yet perfectly consistent with the year 1235. If you wish to learn the details, consult my earlier publications.

What I must add at this point is that what appears to be at odds with Golden Bull's dating of 1226 is the fact that Prussia was granted to the Landgrave of Thuringia on 22 June 1226. It is obvious that the Emperor could not have granted Prussia to the Order in March 1226, and then again to the Landgrave of Thuringia three months later. This fact proves that, as it is stated in the narrative of the Golden Bull in 1226, the offer of Conrad of Mazovia was discussed at the imperial court in 1226. The Golden Bull also describes Hermann von Salza's response to the Conrad's offer: *quam promissionem recepisse distulerat*, and on the basis of the donation to the landgrave we may say that he not only "postponed" but rather "rejected" it and decided to "push it on" to the former feudal lord (Hermann was Ludwig's ministerialis), because he dreamt of conquering

27 Labuda, 1980, p. 308 n. – where detailed justification of the view on the revocation by Konrad of grants to the Teutonic Order.

land in Palestine and establishing a Teutonic state there. It was not until Ludwig died, the Emperor got ill in 1227 and the 1227 crusade seemingly failed that Hermann recalled the Conrad's proposal, which resulted in donations for the Order in 1228.

Legal aspects need to be addressed separately due to their importance; I have discussed them in three articles. Here I shall confine myself to stating that the finding that the Golden Bull was written in 1235 in connection with the dispute of the Teutonic Order and Conrad of Mazovia means that hitherto state of research into the legal and historical aspects of this document is no longer relevant to a great extent. None of the scholars researching the legal aspects of the Golden Bull has taken into account that this document was drafted with a specific political agenda in mind. Adapting the content of the document to the difficult situation of the Order in 1235 obscured the whole picture. A reading of all the documents of Frederick II leaves no doubt that, according to the disposition of imperial documents, the Imperium Romanum was a concrete, real state with strictly defined borders and rights. In the light of imperial documents, the Imperium Romanum was a triad of three states: the German Reich and Kingdoms of Italy and Burgundy. The Imperium Romanum did not include the Kingdoms of Sicily and Jerusalem. When issuing any document, Frederick II would always make a distinction whether this document was for Imperium Romanum or, for example, for the Kingdom of Sicily. Documents for Imperium Romanum and for the Kingdom of Sicily would always differ from one another in their structure and appearance.

Subordinating Prussia to a specific state, Imperium Romanum, encompassing Germany, Italy and Burgundy, we still have to explain how to reconcile this fact with the unprecedented limitation of imperial power over Prussia: *et nulli respondere proinde teneantur* [i.e. the Teutonic Knights]. This limitation cannot be explained, as has been attempted, by Lehnsexemption, because this could not place the Order outside the state, even though it did take it out of the feudal ladder. The fact that we are dealing with an exceptional situation in the Golden Bull is best evidenced by the Nachurkunde of the Golden Bull, where the emperor's powers are restored: *et nulli teneantur inde nisi tantum nobis et successoribus nostris Romanis principibus respondere.* What was the reason for

the restriction of imperial power in the Golden Bull? Assuming that the Golden Bull was produced in 1235 in connection with the arbitration proceeding held by William of Modena, the papal legate, it is easy to explain the reasons for the limitation of imperial power. Well, in the proceedings conducted by the papal legate, the Teutonic Knights could not violate the most important provision of the protective bull of Gregory IX dated 3 August 1234: *ita ut per vos aut alios dicta terra* [i.e. Prussia] *nullius umquam subiciatur dominio potestatis.* It is possible that this prohibition prevented the nomination of Hermann von Salza as the Duke of the Reich, as a result of which he had to content himself with ducal rights only. And here one cannot help thinking that the very idea of granting ducal rights to Hermann von Salza was inspired by the preparations for the great celebrations of the elevation of Otto the Child as the Duke of Brunswick-Lüneburg in August 1235.

Historians analysing the public-law relationship between Conrad of Mazovia and the Empire in the light of the Golden Bull agreed that the title of *devotus noster* bestowed upon the Polish duke proved his affiliation with the Empire. Only H. Grumblat and M. Dygo doubted that this was the meaning of this title[28]. The former researcher even noted that this title was used not only in respect of people affiliated with the Empire, but also other persons, such as English prelates, comes, barons and other noblemen[29]. Unfortunately, H. Grumblat has failed to provide the historical source to support his arguments. When reading all the documents of Frederick II, I have not found a single document in which this title (*devotus noster*) was used for a person who was not a subject of the Imperium Romanum or the Kingdom of Sicily or Jerusalem. In imperial documents, *devotus noster* is synonymous with another term, namely *fidelis noster. Devoti nostri* were townsmen, clergy, counts and dukes who were subjects of Frederick II in his three states[30]. *Devotus noster* was frequently applied to Hermann von Salza and his confreres,

28 Dygo, 1992, p. 10.

29 Grumblat, 1908, p. 398 n.

30 See e.g. BF 2057, 2168, 2399: *Imperialis excellentia tunc precipue sui nominis implet titulos, cum fideles et devotos suos benigne respicit et iustas eorum favorabiliter petitiones exaudit.* See. Huillard-Bréholles, J. L. A., *Historia*, vol. 1, p. 63, 127, vol. 2, p. 20 and passim. Teutonic Knights as *devoti nostri*, see Winkelmann, E., *Acta*, vol. 1, no 268.

as well. In the course of reading all the documents of Frederick II, I came across a document that must have been the basis of H. Grumblat's view. It is a letter of Frederick II to the English magnates found in Letters of Petrus de Vinea (BF 3495), in which the emperor wrote, among others, *prelatis ecclesiarum, comitibus et baronibus, nobilibus et universis per regnum Anglie constitutis – - devotis et amicis suis.* As you can see, Frederick II addresses his letter not to *devotis nostris,* but to *devotis suis.*

In the Golden Bull, Conrad of Mazovia is a subject of Imperium Romanum, just like Hermann von Salza. Besides, this was the only basis for the emperor to step in between these two persons. The status of Duke Conrad in the Golden Bull was not something new in the light of Staufs' imperial ideology. German historians pointed to the feudal dependence of Poland on Frederick I and Henry VI. When analysing the Golden Bull, there is no need to go that far back. It should suffice to refer to a document of Frederick II himself, dated 1212, in which the belonging of Poland to Imperium Romanum leaves absolutely no doubt: *quod si dux Polonie vocatus accesserit.* Whether this public-law relationship of the Polish Duke to Imperium Romanum in the light of the Golden Bull was actually true, and whether the Frederick II's views were shared by Conrad of Mazovia, is a separate question.

Summarising the legal issues, it can be stated that the Golden Bull contained extremely original solutions. Its dictator was able to incorporate Prussia into the Imperium Romanum without violating the protective bull of Gregory IX dated 3 August 1234. He transferred the rights of the Duke of Reich to Hermann von Salza without conferring the title itself, which would have been impossible due to the papacy. He "dragged" Conrad of Mazovia into the Imperium Romanum without infringing upon his rights or his sense of independence. All this required not only an immense diplomatic talent, but also some great legal experience. For this reason, I believe that the only Frederick II's dictator who could have handled such difficult legal issues was Petrus de Vinea. He was valued not only as an excellent dictator and poet, but above all as a talented lawyer, diplomat, administrator and even a military commander[31]. Petrus de Vinea was the author of one of the most magnificent monuments

31 Kantorowicz, 1928, vol. 1, p. 275 n., vol. 2, p. 126; Niese, 1912, pp. 523-535.

of the medieval law, namely Constitutiones of Melfi, along with other legal texts.

Nearly simultaneously with my first dissertation on the Golden Bull, Marc Löwener published his article "Bemerkungen zum Text der Rimini-Bulle Kaiser Friedrichs II. für den Deutschen Orden vom März 1226"[32]. Despite the fact that the author must have missed Paul Zinsmaier's statement about the Warsaw copy of the Golden Bull, and therefore sticked to the traditional dating of this document, many of this scholar's findings coincided with mine, including the conclusion that formulaic differences between the narrative and the disposition of the document introduced legal ambiguities, as if deliberately, since thanks to these ambiguities – in the event of a possible confrontation with the duke – "würde die Rimini-Bulle zu einem praktischen Instrument der aktuellen Politik gegen herzogliche Ansprüche!"[33]. It can be said that despite a different dating of the Golden Bull, M. Löwener came to a similar view as I did. The difference between our views boils down to the fact that M. Löwener only assumed the possibility ("würde") of using the Golden Bull "gegen herzogliche Ansprüche", whereas I linked its creation with putting forward such "Ansprüche". As a side remark, I may also add that M. Löwener, when analysing the phrase *per totam terram conquisitionis eorum, sicut acquisita per eos et acquirenda fuerit*, concluded that "hier nun muß auffallen, daß sowohl von vergangenen als auch von künftigen Erwerbungen die Rede ist"[34]. I interpreted this phrase identically in my dissertation[35]. However, the very mention of the conquest of part of Prussia in the Golden Bull is something I have explained as an anachronism, whose origin appears clear if you have it in mind that the author of the Golden Bull wrote from the perspective of the year 1235, and not 1226.

In 2005, Sylvain Gouguenheim, a French historian, published an extensive article entirely devoted to the Golden Bull of Rimini[36]. This dissertation is actually a long discussion with the theses of my article

32 See Arnold, 1993, pp. 51-67.
33 Löwener, M., Bemerkungen, p. 61.
34 Ebenda, p. 62, footnote 47.
35 Jasiński, 1994, p. 144; Jasiński, 2008, p. 118.
36 Gouguenheim, 2004, 2, p. 381–420.

on the Golden Bull. The author, while fully endorsing the view that both the Königsberg (K) and the Warsaw (W) copies were produced around 1235, disagrees with my view that the Golden Bull is a state forgery. S. Gouguenheim also claims that the Golden Bull is not a *Neuausfertigung*, which he believes P. Zinsmaier was supposed to have advocated[37]. According to S. Gouguenheim, the two existing copies of the Golden Bull are interpolations of the original written in March 1226. According to the French scholar, several fragments of the Golden Bull, in their present form, include five interpolations[38]. What is the major difference between the views of the French scholar and mine? Answering this question, it should be noted that, even though we differ in many details, the essential difference is only one. The author believes that in 1226 Hermann von Salza accepted Conrad's proposal and applied for an imperial document, which was then interpolated nine years later. In my opinion, Hermann von Salza did not accept Conrad's proposal in 1226 and therefore did not apply for the imperial document, and the Golden Bull was issued as late as in 1235 in connection with the dispute of the Order with Duke Conrad, which was ended by an arbitration ruling given by William of Modena, the papal legate. In a nutshell, S. Gouguenheim believes that there was the original Golden Bull, issued in March 1226, whereas I do not believe that any such document has ever existed. The main evidence against the creation of such a document in 1226 are two facts: (1) firstly, the land of Culm in 1226 belonged to the Prussian bishop Christian, and not Conrad; it was not until March 1228 that the land of Culm was restituted, and (2) in June 1226, Prussia was granted to Landgrave Ludwig. This last fact was not believed by Gougenheim; he presented a long argument on the subject, and I responded with a polemic. The French scholar was of the opinion that the original version of the Reinhardsbrunn Chronicle referred to *terram Plissie* and not *terram Pruscie*. However, preference should be given to *terram Pruscie* lesson, not just because better copies have it, and the erroneous lesson was not written

37 In fact, P. Zinsmaier only considered this possibility; in the end, however, P. Zinsmaier considered it probable that the text of the Golden Bull was not written until the 1230s.

38 Gouguenheim, 2004, pp. 408-413.

until the end of the 16th century, but above all because the quoted passage from the Reinhardsbrunn Chronicle was taken from the Latin Life of St. Ludwig, written by an anonymous monk shortly after 1308, among others on the basis of *Gesta Ludowici IV lantgravii* by Bertold, chaplain to the said ruler. Although the Latin Life has not survived to our times, its German version, edited by Frederick Kodiz, rector of the monastery school in Reinhardsbrunn, has survived. The German version was written at the end of the first half of the 14th century and has the lesson: *in Pruzen lande*. O. Holder-Egger, who published the fragment of the Reinhardsbrunn Chronicle we are interested in, added the following comment after quoting all four lessons (2, T, 1 and the German version of *Vita Ludowici*): "De vera lectione nihil dubii restat, cum tria testimonia contra 1 conveniant"[39].

What must be said is that even if these three correct lessons had not been preserved, the lesson *Plissie* should still be amended to *Pruscie* because of the context. As we remember, the Chronicle states that Ludwig was to receive this land: *quantum expugnare valeret et sue subicere potestati*. Of course, this phrase, as many scholars have already emphasised, can only be applied to Prussia, and in no case to Pleissenland.

In 2017, historiography revisited the time of writing down the Golden Bull. As part of the fundamental editorial series *Diplomata Regum et Imperatorum Germaniae,* being part of the Monumenta Germaniae Historica, since 2002 a team of German historians led by Walter Koch, an eminent medievalist, has published successive volumes of the documents of Frederick II. More recently, in 2017, these scholars published the famous Golden Bull for the Teutonic Order, dated March 1226[40]. The publishers eventually concluded that the Golden Bull may have been issued in 1226, and its present copies are new publications (Neuausfertigungen) issued in 1245 (!) based on the Nachurkunde of the Golden Bull (BF 3479), issued in Verona. In addition, they concluded that the Königsberg copy was produced first, and then the Warsaw copy was based on it. German scholars must have made these conclusions following an inattentive reading of P. Zinsmaier, who allegedly claimed that the

39 Cronica Reinhardsbrunnensis, p. 605.
40 Koch et al., 2017, no 1158, pp. 539–547.

Golden Bull was written by the same hand as 14 documents listed by this scholar, including BF 3479 of June 1245. In fact, Zinsmaier claimed quite the opposite; he wrote that the Golden Bull, namely its both copies were not written by this hand (!). A careful comparison of this document (BF 3479) with the Golden Bull leaves no doubt that P. Zinsmaier was right. Furthermore, a comparison of minor variations between the Warsaw, Königsberg and BF 3479 copies proves beyond the shadow of doubt that the Warsaw copy was the original document, and the Königsberg and BF 3479 copies were based on it, independently. So it was exactly the opposite of what the publishers of Monumenta Germaniae Historica have assumed[41].

Ultimately, it can be assumed that the Golden Bull of Frederick II for the Teutonic Order was not created in 1226, but in 1235, in connection with a dispute of Duke Conrad over the Dobrin land. The content of the document, as well as its legal provisions were aligned to the then arbitration proceedings before the papal legate.

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41 See Jasiński, 2020, pp. 121-136.

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