PRIVATE LAW INSTITUTIONS IN THE GOLDEN BULL

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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

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Homoki-Nagy, M. (2023) 'Private law institutions in the Golden Bull' in Balogh, E. (ed.) *Golden Bulls and Chartas: European Medieval Documents of Liberties*, pp. 151–170. Budapest – Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing. https://doi.org/10.47079/2023.eb.gbac.1_7

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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