



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 Bull² 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 states⁹ 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 rulers²² 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 known 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 defective²⁶ 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 généraux*) 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' (*törvénytátó 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 land-owner 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 charter⁴⁵ 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 credence⁵³ 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 clause*). 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=GDJQSh-j8CP&sig=XknrrV-hDSaM_8hTlIoGsQ-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.

<https://oll.libertyfund.org/title/wells-the-formation-and-progress-of-the-tiers-etat-or-third-estate-in-france-vol-1>

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