

# *The influence of Latin Canon law on the Golden Bulls issued by Andrew II of Hungary*

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*Humanum genus duobus regitur,  
naturali videlicet iure et moribus.  
Gratian, Tractatus de legibus\**

The clerics who prepared and edited the texts of the Laws of King St. Stephen in the early 1030s, or of the resolutions of church synods held during the reign of Ladislas I (1077–1095), and of the Laws at Tarcal and of the synods of Esztergom in the reign of Coloman the Learned (1095–1116), were all trained in the Latin west, so they were familiar with the law of the Church, were acquainted with the Canon law collections by Burchard of Worms, Ivo of Chartres, and, later, of Gratian's work in Bologna. Their activities even influenced political developments in Hungary, because they were also the teachers who educated generations of young Hungarians. On such grounds, it becomes clear that the Laws favoring the Church, issued in 1221, or the Golden Bull of 1222, but mainly its revised version in 1231, by King Andrew II, show strong western influence, as if to prove that the *regnum* of the House of Árpád formed, indeed, a part of western Latin culture.

During his reign, King Emery of Hungary (1196–1204) relied on the use of armed force to curtail Prince Andrew's, his younger brother's, greedy reach for the crown, and when the prince succeeded him on the throne as Andrew II (1205–1235), King Andrew constantly needed a large army for the conduct of his almost

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\* Cf. *Decretum Magistri Gratiani (Concordantia discordantium canonum)*, Vol. 1, of *Corpus Iuris Canonici*, ed. A. L. Richter, 2nd rev. ed., ed. A. Friedberg, Leipzig 1879; repr. Graz 1959, (henceforth: Friedberg, *Corpus*), I, part I, *distinctiones* 1–20; dist. 1, is based on Isidor of Seville's *Etymologies*, v:2. See also Gratian, *The Treatise on Laws with the Ordinary Gloss, Decretorum dd. 1–20*, ed. A. Thompson and J. Gordley, Washington 1993, xiiff, and 3ff.

continuous warring efforts, and, *ex necessitate*, always needed money for the maintenance of his army. The monarch rather irresponsibly began to give away, on a large scale, land from the territorial fort districts of the royal domain with the understanding that, in return, the grantees were to provide military service for the king. Many of the grantees were members of the entourage of Gertrud of Meran, Andrew II's first wife, and they were allowed to hold high administrative offices in the realm. Their arrogant behavior, professional incompetence, and short-sighted governing directives caused chaos in the realm.<sup>1</sup> Because of his weak personality, Andrew II was not able to exploit the benefits generated by the great estates, nor could he gain the upper hand in the realm's administration. Under a strong ruler, the large estates and the king's land grant policy would have greatly contributed to the realm's military readiness and defense; under a weak king, they posed a threat to the well being of the land. In order to improve on his difficult financial problems, Andrew II ordered that the annual exchange of money (coins) be carried out for money (coins) of lesser value (*lucrum camerae*), and entrusted non-Christian: Jewish, and Moslem, officials with carrying out his directive; most probably on the grounds that the non-Christians were experts in financial matters. Misguided by wicked advisors, Andrew II gave away, for no valid reason, whole counties, and distributed unjustified monetary grants to unworthy individuals. Worse still, trusting his memory, he frequently, and simultaneously, made the same donation (of money, or of land) to different individuals that led to further misunderstanding.<sup>2</sup> The new owners of the estates pursued their own political (dynastic), and economic interests, while the king continued to suffer from chronic shortness of money.<sup>3</sup>

In 1220, Pope Honorius III himself had to intervene to extricate the Hungarian monarch from the financial difficulties of his own making. The pontiff reminded the monarch of his obligation to rescind any donation he made that might have

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<sup>1</sup> On the reign of King Emery, see the brief entry, Chapter 172, in the *Chronicon pictum*, cited henceforth as *Chronicle*, in *Scriptores rerum Hungaricarum*, ed. E. Szentpétery, 2 vols. Budapest 1937–1938; expanded reprint by C. Szovák–L. Veszprémy, Budapest 1999, (henceforth: SRH), 1: 463; on Andrew II, see Chapter 174 and 175, SRH, 1: 464ff.; B. Hóman, *Geschichte des ungarischen Mittelalters*. 2 vols. Berlin 1940–1943, 2: 85ff.; Gy. Székely, ed., *Magyarország története 1242-ig*. [History of Hungary until 1242] Budapest 1984, 1320ff.; Gy. Szabados, "Imre király házassága, aranybullája." [King Emery's marriage, and his golden bull] *Századok* 136 (2002), 341ff.; Z. J. Kosztolnyik, *Hungary in the Thirteenth Century*, New York 1996, 1ff., and 15ff.; on the reign of Andrew II, cf. *ibid.*, 77ff., and 88ff.; P. Engel, *The Realm of St. Stephen*. London–New York 2002, 83ff., and 407f.

<sup>2</sup> See Gy. Györffy, *Wirtschaft und Gesellschaft in Ungarn um die Jahrtausendwende*. Vienna–Graz 1983, 102ff.; Kosztolnyik, *Hungary in the Thirteenth Century*, 79; Gy. Kristó, *Die Arpaden-Dynastie*. Budapest 1993, 174ff.

<sup>3</sup> His son and successor, Béla IV, cited "*immensae donationes*". Cf. G. Fejér, ed., *Codex diplomaticus Hungariae ecclesiasticus ac civilis*, 42 vols. Buda 1829–1844, (henceforth: CD), IV/1: 105; and, compare with the remarks by Rogerius, "*Carmen miserabile*," Chapter 3 and 9, SRH 2: 554, and 557f.

harmed his country's interest.<sup>4</sup> The coronation-oath he took obligated him to recall any gift, or donation, unjustly and irresponsibly given away.<sup>5</sup> Indeed, in his writ issued in 1221, following the pope's advice, Andrew II rescinded some outrageous donations that he had recently made.<sup>6</sup> The recall of land grants the king had earlier made from the royal domain, and of other royal gifts, understandably caused strong dissent among the higher nobility; simultaneously, though, the service nobility and garrison personnel at the royal district forts were greatly pleased because now they could rely upon the king's protection from the greedy demands of members of the powerful higher nobility. And yet, disorderly conditions continued to prevail in the land; public consensus even demanded the recall of the monarch, calling for his replacement by Béla, the son born to Andrew II and his first wife, Gertrude of Meran.<sup>7</sup> Once again, Rome had to hurry to the aid of the king by admonishing members of the hierarchy that Andrew II did not crown his son king, so that the son could take the realm over from him already during his lifetime.<sup>8</sup>

The papal admonition was of no lasting avail, however. Open rebellion threatened the country, when, in 1222, members of the hierarchy led by Bishop Stephen of Zagreb, persuaded the king to summon a country convention, the Diet. Andrew II did that, and had the resolutions reached at the convention summarized in a "Charter of Liberties," known as the Golden Bull of 1222.<sup>9</sup>

<sup>4</sup> As, e. g., grants he made to the Queen and to her brothers in 1209 – cf. *Regesta regum stirpis Arpadianae critico-diplomatica*, ed. E. Szentpétery–I. Borsa, 2 vols. Budapest, 1923–1987, (henceforth: RA), no. 243; St. Katona, *Historia critica regum Hungariae stirpis Arpadianae*, 7 vols. Pest-Buda 1779–1781, V: 91f.

<sup>5</sup> Cf. Letter of Pope Honorius III, A. Potthast, ed., *Regesta pontificum Romanorum*, 2 vols. Berlin 1874–1875, no. 6318; CD, III/1: 294f.; Katona, *Historia critica*, V: 338ff., as if to respond to the king's plea and complaints – see Katona, *Historia critica*, V: 304f.

<sup>6</sup> Cf. RA, n. 373, though Fejér dated it 1231 – CD, III/2: 224ff. In 1219, in his letter to Pope Honorius III, Andrew II bitterly complained about wretched conditions in his realm, see RA, n. 355; text in A. Theiner, ed., *Vetera monumenta historica Hungariam sacram illustrantia*, 2 vols. Rome 1859–1860, (henceforth: VMH), I: 20; Katona, *Historia critica*, V: 303f. Honorius III answered the king on 5 March 1219, see Potthast, no. 6000 and 6001; and, VMH, I: 19 and 21; also, Katona, *Historia critica*, V: 319f., and CD, III/4: 278ff.

<sup>7</sup> St. Katona, *Historia pragmatica Hungariae*, 2 vols. Budae, 1782–1784, I: 748ff.; on the king's son, Béla, see CD, III/1: 413f., and 430ff. See also papal writ dated 15 December 1222, Potthast, no. 6900; and, VMH I: 36, n. 73. Later, on 27 January 1224, the Curia requested the Czech king's support for Béla, see Potthast, no. 7152; text, CD VII/5: 234f., and a papal warning to Béla – Potthast, no. 7179.

<sup>8</sup> For the papal writ, dated July 4, 1222, see Potthast, no. 6870; VMH I: 35, n. 70; V. Fraknoi, *Magyarország és a Szentzsék*. [Hungary and the Holy See] 3 vols. Budapest 1901–1903, 1: 47f.; Kosztolnyik, *Hungary in the Thirteenth Century*, 49.

<sup>9</sup> Could Bishop Stephen's determination and attitude be explained through Ivo of Chartres' *Decretum*, v: 71 (*De laicis non temere faciendis episcopos*), or, xvi: 296 (*Prelati sunt throni Dei*); and, or Ivo's *Panormia*, v: 90–91? See *PL* 221 vols. Paris 1844–1855, Vol. 161, 59ff., and 1045ff., respectively. For text of the Golden Bull, see H. Marczali, ed., *Enchiridion fontium historiae Hungarorum*. Budapest 1901, 134ff. Katona, *Historia pragmatica*, I:

The circumstances of its origin, and the very contents of this charter of liberties reveal that it evolved out of debates about the hardships experienced during the reign of Andrew II. On account of large land grants, the king's prestige declined, and the district reeves, formerly royal appointees, now dared to claim inheritance of their public status; in such manner, the administration of the realm grew divided among members of the new land nobility who now dared to administer, even conduct, court-of-law proceedings on their own on their estates.<sup>10</sup> Their activities touched upon the lives and economic interests of the lesser nobility and of the lower social strata, while the monarch, who gave away much of his domain, had to seek other sources of revenue, as, for example, by renting out the collection of the *regale*, money due to him from salt tax, and from export – import tolls, thereby placing an almost unbearable economic and social burden on the shoulders of the poor.<sup>11</sup> Previously, because of the intercession of the hierarchy, the monarch attended to the complaints of his ecclesiastics, and, for that reason, he barely touched upon the needs of the Church in his 1222 Charter of liberties. The time schedule – church matters first, before the charter of liberties (Golden Bull) – is evident from the text of the diploma for churchmen, in that among its signatories, the Treasurer, and the Master of the royal table signed also in their capacity as royal reeves, a condition not allowed according to the Charter of Liberties, the Golden Bull of 1222, Art. 30.<sup>12</sup>

The demands presented by members of the Hungarian hierarchy mainly concerned church-related interests addressed by Canon law. "*Fas lex diuina est, ius lex humana; transire per agrum alienum, fas est, ius non est.*" *Fas* was natural, divine law; *mos* was customary and written law. Render to caesar what belongs to caesar; render to God what is due to God. The interesting aspect of this passage was

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750ff.; Hóman, *Ungarisches Mittelalter*, II: 85ff.; T. Bogyay, "A 750 éves Aranybulla." [The 750 anniversary of the Golden Bull] *Katolikus Szemle* 24 (1972), 289ff.; G. Érszegi, "Az Aranybulla." [The Golden Bull] *Fejér megyei történeti évkönyv* 6 (1972), 5ff.; Székely, *Magyarország története*, 1320ff.; Kosztolnyik, *Hungary in the Thirteenth Century*, 77ff. When Hungarian historians mention the Golden Bull, they mean the one of 1222.

<sup>10</sup> This is evident from the papal writ of 15 December 1222, see Potthast, no. 6900; VMH I: no. 73.

<sup>11</sup> See, e. g. RA, no. 316, text CD, III/1, 243f., and RA, no. 317, and, to a certain degree, RA, no. 324. For the role Jews and Moslems might have played in the realm becomes evident from writs issued in the reign of Andrew II, see CD, III/2, 271ff., and later, during Béla IV, as, e. g. CD, IV/1, 174f., CD, IV/3, 86f., CD, IV/3, 443ff; some (?) high ecclesiastics complained, see CD, III/2, 49, 50, CD, III/2, 242f., and III/2, 243f, 349f., 375ff. Also, as evidenced by the Golden Bull, Art. 24, it prevented parceling out portions of the royal domain, Art. 17. Jews could, and did, possess chattel and property in the realm – see, for instance, CD, III/2, 140f., and 271ff.

<sup>12</sup> RA, n. 378; text in VMH, I, 111f.; CD, III/1, 379ff.; the Golden Bull, 1222, Art. 30. The base tone of this church diploma shows similarity with Ivo's *Decretum*, iv: 190 (*quod conuenit regem legibus diuinis subiacerere*), and iv: 191–192, bearing in mind the advice of Pope Pius II: "*Lex imperatorum non est supra legem Dei*"), Ivo's *Decretum*, xvi: 11.

that the wording closely followed the decrees registered in the *Decretum* of Master Gratian, canon lawyer at Bologna in the 1140s.<sup>13</sup>

Gratian, in part two, cause XXIII of his *Decretum*, dealt, for instance, with solving a given problem: What should happen if, or when, the clergy and the faithful of one particular region fell into the sin of heresy and wished to impose their false views upon the Christian (Catholic) population of the surrounding region?<sup>14</sup> Recommended canonical solution: the regional bishops, acting with papal approval, conduct a war against the heretics, and continue the war until the heretics were defeated.<sup>15</sup> On these grounds, Gratian argued, the following problem would arise: was it sinful to go to war? Did the war effort have a noble purpose?<sup>16</sup> In what kind of war could a Christian participate? In a just war. What justifies the war effort?<sup>17</sup> Gratian further argued that one had to confiscate the property, chattel, of any defeated heretic. Gratian further asked whether a judge was allowed to hand down a death sentence?<sup>18</sup> Likewise, what attitude had a bishop to assume in time of war? Could a bishop carry arms and actually fight in

<sup>13</sup> "*Fas lex diuina est: ius lex humana. Transire per agrum alienum, fas est, ius non est.*" See Gratian's "Treatise on Laws," *Decretum*, pt. I, dist. 1, c. 1. *Fas* is natural and divine law, *mos* is customary and written law – see S. Chodorow, *Christian political theory and church politics in the mid-twelfth century: the ecclesiology of Gratian's Decretum*. Berkeley–London 1972, 99ff., esp. 101. See also Thomas Aquinas *de defectibus legis*, saying: "*Cuiuslibet autem subditi vitus est ut bene subdatur ei a quo gubernatur ...*," in his *Summa Theologiae*, lalle, qu. 92, a. 1, ed. P. Caramello, 4 vols. Turin–Rome 1950, I: 418, a reminder of Aristotle's *Politics*, i: 13, 1260a, in *The basic works of Aristotle*, ed. R. McKeon, New York 1941, 1144, or, for that matter, St. Thomas' *Summa*, lalle, qu. 92, c. 2, and, Gratian's *Decretum*, pt. I, dist. 3, c. 4. Also, compare with Ivo of Chartres' *Decretum*, iii: 194, and ii: 6, henceforth MPL, 161, 59ff.; Ivo's *Panormia*, viii: 36, in MPL, 161, 1041ff.; S. Kuttner's essay, "Harmony from dissonance: an interpretation of medieval canon law," (a lecture, 1960, reprinted) in his *History of ideas and doctrines of canon law in the Middle Ages*. London 1992, 1ff.; W. von den Steinen, *Der Kosmos des Mittelalters*, rev. ed. Bern–Munich 1967, 195ff.

<sup>14</sup> Gratian, *Decretum*, pt. II, cause xxiii (Friedberg, *Corpus*, I, col. 889); or, Ivo's *Decretum*, i: 38–39; xvi: 158; ii: 95; xv: 117; xvi: 300. For background, see the study by W. Stelzer, "Zum Scholarenprivileg Friedrich Barbarossas (Autentica 'Habita')." *Deutsches Archiv* 34 (1978), 123ff.; also, K. W. Nörr, "Institutional Foundations of the New Jurisprudence." *Renaissance and renewal in the twelfth century*, ed. R. Benson, et al. Cambridge, MA 1982; repr. Toronto, 1991, 324ff.

<sup>15</sup> Gratian, *Decretum*, pt. II, cause xxiii, qu. 1. Ivo, *Decretum*, xvi: 202; xvi: 302. K. Pennington, "Medieval Law." in J. M. Powell, ed., *Medieval Studies*. 2nd ed. Syracuse 1992, 333ff.

<sup>16</sup> Gratian, *Decretum*, pt. II, cause xxiii, qu. 1, cc. 5–7, to be compared with the Golden Bull of 1222, Art. 7, and the 1231 reissue of the Golden Bull, Art. 15–16, in Marczali, *Enchiridion*, 136abf. (parallel columns).

<sup>17</sup> Gratian, *Decretum*, pt. II, cause xxiii, qu. 2, cc. 1–2; qu. 3, incl. c. 1, quoting Letter 50 of St. Augustine. On St. Augustine, see H. Pope, *Saint Augustine of Hippo*. Westminster, MD 1949, 195ff.; further, Gratian, pt. II, cause xxiii, qu. 3, cc. 3–5. Also, Ivo, *Decretum*, x: 93; x: 119; x: 122.

<sup>18</sup> Gratian, *Decretum*, pt. II, cause xxiii, qu. 5, cc. 1–4, 6–8. Ivo, *Decretum*, x: 2, x: 60; x: 78.

a war?<sup>19</sup> In Gratian's opinion clergy were allowed to support the war effort against a godless enemy, but they themselves could not participate in the struggle.<sup>20</sup>

On a similar ground, and in accordance with canonical decrees – some based closely on the canonical entrees in Ivo of Chartres' *Panormia* and *Decretum* – enacted during the reign of his earlier great predecessor, Coloman the Learned, Andrew II acknowledged the canonical status of all tonsured clerics in the kingdom.<sup>21</sup> He agreed to the status of clerics in courts of law, in that a cleric accused of a crime could only be tried before an ecclesiastical tribunal. He made it clear, though, that were a cleric to accuse a lay person of a crime, the case could only go on trial before a secular court, as prescribed by Gratian who, too, followed previous canonical enactments.<sup>22</sup>

The monarch also granted tax exemptions for the Church. The tax-exempt status of churchmen and church possessions had to be observed by the public tax collector, a decree whose contents can be deduced from Gratian, and from Ivo's *Decretum*.<sup>23</sup> Were the tax collector to be unwilling to respect the tax-exempt status

<sup>19</sup> Gratian, *Decretum*, pt. II, qu. 5, cc. 20, 25 – compare to the 1231 reissue of the Golden Bull, Art. 2, in Marczali, *Enchiridion*, 135b. See the study by Ch. A. Stumpf, "Vom heiligen Krieg zum gerechten Krieg. Ein Beitrag zur alttestamentlichen und augustinischen Tradition des kanonistischen Kriegsvölkerrechts bei Gratian." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 87 (2001), 1ff.

<sup>20</sup> "Episcopi non debent arma gerere;" Ivo, *Decretum*, v:332; v:351. Gratian, *Decretum*, pt. II, qu. 5, cc. 19–20 (the latter based on Isidor, "Sententiarum de summo bono," iii: 53). In the battle with the Mongols at Muhi, in 1241, high Hungarian churchmen fighting for a cause had died in the engagement, as it is evident from the [lack of] signatures on the royal diploma of Béla IV, dated 23 September 1241; cf. RA, no. 709.

<sup>21</sup> Cf. Synod of Tarcal, 1106, Chapter 6 and 14, in RHM, 361, 362. Z. J. Kosztoľnyik, "Ivo of Chartres' discernable influence on the resolutions of the synods of Tarcal, 1106, and of the First and Second Synods of Esztergom, 1104, and 1112." *Medievalia et humanistica*, ns. 30 (2003), 85ff.

<sup>22</sup> The main emphasis and tone of Andrew II's Golden Bulls may rest on, or was formulated in accordance with, Ivo of Chartres' *Decretum*, vi: 230, and that on grounds that "praelati sunt throni Dei," Ivo, *Decretum*, xvi: 296. Further, see Ivo, *Decretum*, v: 227 (bishops: *quod se invicem diligere debeant*), or, v: 345 (based on a decree of Pope Damasus, c. 8), and v: 360 (*quod ecclesiae contradicit, qui episcopo contradicit*), together with v: 362 (dethroning of a bishop), and vi: 233, xvi: 297 (*ut clerici non accusentur ad iudices saeculares, sed ad episcopos proprios*). It mostly agrees with Gratian's *Decretum*, pt. I, dist. xii (based on papal writs), and with *idem*, pt. I, dist. viiii; and, *idem*, pt. I, dist. x, cc. 1–13. Compare Gratian's *Decretum*, pt. II, qu. 5, cc. 26–27, with the Golden Bull of 1222, Art. 5, and 21, and, with the Bull of 1231, Art. 10, 12–13.

<sup>23</sup> See Andrew II's diploma guaranteeing ecclesiastical freedom and privileges; RA, no. 378, text St. L. Endlicher, ed., *Rerum Hungaricarum monumenta Arpadiana*. 2 vols. Sankt Gallen 1849; one-vol. repr. Leipzig 1931, (henceforth: RHM), 417ff.; or, VMH I: 111f.; Katona, *Historia critica*, V: 397ff.; the Golden Bull of 1231, Art. 2, and 21. Further, RA, no. 250, text G. Wenzel, ed. *Árpád kori új okmánytár. Codex diplomaticus Arpadianus continuatus*. 12 vols. Pest 1860–1874 (henceforth: AUO), XI: 96f.; it seems to be unauthentic, but its basic contents were supported by RA, no. 253, AUO, XI: 105f. Compare with

of the Church, or of churchmen, he would draw the king's anger and punishment.<sup>24</sup> The king, on the other hand, expected that the high ecclesiastics would not permit men in royal service to take holy orders, because they would, thereby, escape military service.<sup>25</sup> The issue rested on the understanding reached by the royal court with the Church, as it was discussed in detail by Ivo of Chartres, and cited by Gratian.<sup>26</sup> Likewise, the diploma stated that, if or, when, an ordained cleric, or monk, behaved unworthily of his standing in public, the monarch expected members of the hierarchy to take proper legal action, and to punish the cleric in accordance with established church decrees that were only reconfirmed by Gratian's collection.<sup>27</sup>

The King's law aimed at assuring freedom for the Church, its clerics and its faithful and was signed, in full agreement with the King, by the Palatine (who was also the reeve of Sopron), by Atyuszban the Treasurer, by the Judge of the Realm, and by the Master of the Table (also the reeve of Vasvár), with the royal seal affixed to it.<sup>28</sup> It was only after the issuance of this document that Andrew II had the country assembly (Diet) summoned and promulgated his Charter of Liberties (Golden Bull), to satisfy and protect the demands and interests of all lay people, the free inhabitants, and the service nobility of the kingdom.<sup>29</sup>

In drafting the text of the Charter of Liberties – the Golden Bull of 1222 – the monarch and, most probably, his (ecclesiastical) advisors established the historic base by tracing the liberties of the *servientes*, stratum of the service nobility, to the Laws of King St. Stephen; "...*libertas instituta a sancto Stephano rege*," beginnings that presented proof of strong Latin canonical influence upon early ecclesiastical and temporal legislation in Árpáadian Hungary.<sup>30</sup> Such origins pointed toward

Gratian, *Decretum*, pt. I, dist. 10, where he confronts conflict between natural and temporal law; Ivo, *Decretum*, xvi: 228, xvi: 298 (*Ecclesiae privilegia nullatenus violanda*); xvi: 37 (*Qui res Ecclesiae a regibus petunt, irrita esse debent*). Further, see Ivo's *Panormia*, viii: 152 (based on a decree of Pope Innocent II).

<sup>24</sup> Golden Bull of 1231, Art. 12. Indirectly, Gratian, *Decretum*, pt. II, cause xxiii, qu. 7, c. 1.

<sup>25</sup> See "Andreae II regis Libertas clericorum," Art. 3–4, in RHM, 417ff.; or, VMH, I: 111f. Indirectly, also the Bull of 1231, Art. 12–13; Katona, *Historia pragmatica*, I: 765ff.

<sup>26</sup> Ivo, *Decretum*, vi: 69, and vi: 120.

<sup>27</sup> Gratian, *Decretum*, pt. II, cause 5, qu. 1–6.

<sup>28</sup> RA, no. 378; RHM, 417ff.; VMH, I: 111f.; Katona, *Historia critica*, V: 397ff., who dated it after the issuance of the Bull of 1222, see Katona, *Historia critica*, V: 374ff.

<sup>29</sup> RA, no. 379; text in Marczali, *Enchiridion*, 134aff.; Kosztolnyik, *Hungary in the Thirteenth Century*, 77ff.; Hóman, *Ungarisches Mittelalter*, II: 85ff. For an interesting comparison, see A. Huber, *Österreichische Rechtsgeschichte*. rev. edn., ed. A. Dopsch, Vienna–Leipzig 1901, 135ff.

<sup>30</sup> Marczali, *Enchiridion*, 134a, perhaps an indirect reference to the Laws of King Saint Stephen, Marczali, *Enchiridion*, 69ff., who, Bishop Hartvic recorded in his *Vita s. Stephani regis*, "statutum a se decretum manifeste fecit;" cf. SRH II: 415, 3–4, but one who also wished to give his people its own laws, "... quoniam unaqueque gens propriis utitur legibus." Cf. the preface to King St. Stephen's Laws, in Marczali, *Enchiridion*, 69. Z. J. Kosztolnyik, *Hungary under the Early Árpáds, 890s to 1063*. New York 2002, 165ff. King Ste-

a strong western impact upon early Hungarian legal enactments, be it King St. Stephen's Laws of the 1030s, or Andrew II's Golden Bull of 1222.

In the prefatory part of the Charter, the monarch acknowledged that the freedom the nobles and all inhabitants of the realm gained from King St. Stephen had gradually declined during the reigns of his, sometimes too greedy, occasionally inept, predecessors. Therefore, Andrew II heard the petition of his nobles, "*Nos igitur eorum petitioni in omnibus satisfacere cupientes,*" and did his best to fulfill his duties and make up for mistakes of the past. Indeed, judged by the wording of the Charter, it was issued by the king himself, "*ac alia ad statutum regni nostri reformatum pertinencia salubriter ordinamus,*" so that the monarch may determine the privileges of the King and of the lesser nobility *vs.* those of the high nobility, and to find a solution to effectively deal with public complaints.<sup>31</sup> This writer, for one, would like to note, though, that the charter of liberties (Golden Bull) was issued without the participation of the King's Council, or of the assembly though it is evident from the introductory portion of the text that the king promulgated it after he received petitions from members of the service (lesser) nobility, "*precibus et instancia multa pulsaverunt super reformatione regni nostri.*"<sup>32</sup> That is to say, the monarch took action without consulting members of the hierarchy, or of the high nobility, as recommended and directly referred to in the legislative privileges issued by King Stephen. "... *libertas tam nobilium regni nostri, quam etiam aliorum, instituta a sancto Stephano rege...*"<sup>33</sup>

It was evident, however, that for the enactment of legislation, it was not enough to refer to early Hungarian laws. It was a fatal mistake not to involve high churchmen in the royal legislative process, and it may have been the reason why the Charter of Liberties had to be re-issued through the involvement of members of the church hierarchy.<sup>34</sup> "*Fas lex diuina est, ius lex humana,*" recorded Gratian in the 1140s, an argument that may have been made in front of the mon-

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phen's Laws likewise show strong evidence of the impact of Latin Canon law – *ibid.*, 209f., and Kosztołnyik, "Ivo of Chartres," 88.

<sup>31</sup> Andrew II's Golden Bull of 1222, Preface, in Marczali, *Enchiridion*, 134a. King Stephen further admonished his heir and successor to the throne on the role of members of the hierarchy were expected to play in the secular sphere in his "*Libellus de institutione morum,*" art. iii, SRH, II: 622f. See the comments of Előd Nemerkenyi, "The representation of bishops in the *Institutio* of King St. Stephen of Hungary." *Acta classica* 37 (2001), 79ff.

<sup>32</sup> Marczali, *Enchiridion*, 134a; Kosztołnyik, *Hungary in the Thirteenth Century*, 82f.

<sup>33</sup> Marczali, *Enchiridion*, 134a.

<sup>34</sup> As it is evident from the Golden Bull of 1231, Art. 2, 3, 5, 13, 18–19, 21, 9–10 (in that order!), Art. 28–29, and the conclusion, Marczali, *Enchiridion*, 142b. Z. J. Kosztołnyik, "Triumphs of ecclesiastical politics in the 1231 *Decretum* of Andrew II of Hungary." *Studiosorum speculum: Studies in honor of Louis J. Lekai, O. Cist.*, ed. F. R. Swietek–J. R. Sommerfeldt, Kalamazoo 1993, 155ff.



arch by a member of the Hungarian hierarchy, perhaps by Bishop Stephen of Zagreb.<sup>35</sup>

The ideologist of the Carolingian age, Bishop Hincmar of Reims, discussed the relationship between the monarch and divine law, reasoned about the relationship between the king and the laws he issued,<sup>36</sup> presenting an argument that was taken over and developed by Gratian (in his *Tractatus de legibus*): “*de legibus tunc est iudicandum, cum instituuntur, non cum institutae fuerint.*”<sup>37</sup> In accordance with the Christian outlook of the 1140s through the 1260s, the king was the image of God, his earthly realm a less perfect replica of the heavenly kingdom. The gates of hell could not swallow up the Church, but could indeed destroy the earthly realm. “*Factae sunt autem leges, ut earum metu humana coherceatur audacia ...*”<sup>38</sup> Andrew II wished to preserve his realm from destruction, to keep it from the throats of hell, by (re-)issuing his Charter of Liberties in 1231.<sup>39</sup>

Attempts have been made in the past to compare the English Magna Carta with the Hungarian Golden Bull of 1222, though barely any similarities exist between the two documents. The right of resistance, *ius resistendi*, laid down in Art. 31 of the Golden Bull<sup>40</sup> – and so clearly defined in the Magna Carta<sup>41</sup> – may

<sup>35</sup> Gratian, *Decretum*, pt. I, dist. 1, c. 1. Ivo of Chartres, *Decretum*, ii: 6, iv: 66, viii: 259. The Bull of 1231, RA, no. 479; text in VMH, I: 109f.; or, Marczali, *Enchiridion*, 134bff., esp. 142b. On the educational standards of the clergy in medieval Hungary, see two very impressive studies, one by Gy. Bónis, *A jogtudó értelmiség a Mohács előtti Magyarországon* [Professionals learned in the law in pre-Mohács Hungary] Budapest 1971, 16ff.; the other one, by E. Mályusz, *Egyházi társadalom a középkori Magyarországon*. [Ecclesiastical society in medieval Hungary] Budapest 1971, 171ff.; my review of the latter in *Austrian History Yearbook* 14 (1978), 288ff.

<sup>36</sup> Cf. Hincmar of Reims, *De ordine palatii*, rev. ed., ed. Th. Gross and R. Schieffer, SSrG, Hannover 1980, c. viii; for background, cf. R. McKitterick, *The Frankish kingdoms under the Carolingians*, 4th repr. London–New York 1992, 78f., and 189f.; R. McKitterick, *The Carolingians and the written word*. Cambridge 1989, 40ff., and 60ff.; and, von den Steinen, *Kosmos*, 173ff.

<sup>37</sup> Gratian, *Decretum*, pt. I, dist. iv, c. 3; A. Dempf, *Sacrum imperium*. Munich–Berlin, 1929; 4th repr. Munich 1973, 164ff.

<sup>38</sup> Gratian, *Decretum*, pt. I, dist. iv, c. 1. Further, Ivo, *Decretum*, cc. iii: 3, iv: 188, viii: 333, v: 331, xiv: 47, xvi: 39–40. Ecclesiastics surrounding the monarch, advisors at the royal court could all have all been trained in law; cf. A. Kubinyi, “Königliche Kanzlei und Hofkapelle in Ungarn um die Mitte des 12 Jahrhunderts.” in *Festschrift Friedrich Hausmann*, ed. H. Ebner, Graz 1977, 299ff.

<sup>39</sup> See Preface, Golden Bull of 1231, Marczali, *Enchiridion*, 134b.

<sup>40</sup> “*Statuimus etiam, quod si nos, uel aliquis successorum nostrorum aliquo unquam tempore huic dispositioni contraire uoluerit, liberam habeant harum auctoritate, sine nota alicuius infidelitatis, tam episcopi, quam alii iobagiones ac nobiles regni nostri, omniuersi et singuli presentes et posterii, resistendi et contradicendi nobis et nostris successoribus in perpetuum facultatem.*” Cf. the Golden Bull of 1222, Art. 31, Marczali, *Enchiridion*, 142af.; Z. J. Kosztolnyik, “De facultate resistendi: two essential characteristics of the Hungarian Golden Bull of 1222.” *Studies in Medieval Culture* 5 (1975), 97ff.

<sup>41</sup> Cf. W. Stubbs, ed., *Select charters of English constitutional history*. 8th ed. Oxford 1895, 296ff.; on its significance, and that its text has been divided into 61 clauses only in

rather point toward Aragonese influence instead, influence that can be explained on account of the marriage of King Emery (1196–1204), the elder brother of Andrew II, to Constance of Aragon.<sup>42</sup> In Aragon and in Castile, the *cortes* (parliament) held an important role in government in that, for instance, it forced the monarch to seek its consent before levying new taxes, nor let the king imprison anyone without its consent.<sup>43</sup> In Aragon, the representative *cortes* (parliament) held the monarch responsible for his actions.<sup>44</sup> Likewise, the Magna Carta was a kind of *truce* between the king and his barons;<sup>45</sup> the Golden Bull was *law* issued by the monarch.<sup>46</sup>

Public life in contemporary England was far more advanced politically and economically than in Hungary at this time, as the Magna Carta also dealt with weights and measures, large scale exports and imports in detail.<sup>47</sup> The Bull of 1222, on the other hand, though occasionally detailed, was too general in its contents.<sup>48</sup> The Magna Carta challenged the king who had committed himself against existing laws and institutions, forced him to abide by the laws of the realm.<sup>49</sup> The Bull of 1222 defined laws still in a formative stage in general, and yet, in positive terms. To cite but one example: Art. 23, referred to the monies issued by Béla I (+1063), "... *et denarii tales sicut quales fuerunt tempore regis Bele*," an assertion that might have made good sense in the 1220s, because Andrew II's father, Béla III

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modern times – see A. L. Poole, *From Domesday Book to Magna Carta, 1087–1216*. 2nd ed. Oxford 1955, 4th repr. 1970, 473ff.; F. Barlow, *The feudal kingdom of England, 1042–1216*. 2nd ed, 3rd repr. London–New York, 1976, 421ff.

- <sup>42</sup> On the marriage of King Emery, see the Chronicle, c. 172, SRH I: 463; also, H. Svrita (J. Zurita), *Indices rerum ab Aragoniae regibus gestarum*. Caesaraugustae 1578, 84 and 103; further, Kosztolnyik, *Hungary in the Thirteenth Century*, 28f., and 35, Note 48–49; Szabados, "Imre király házassága," 341ff.
- <sup>43</sup> See J. F. O'Callaghan, *The Cortes of Castile-León, 1188–1350*. Philadelphia 1989, 9ff.; J. F. O'Callaghan, *A history of medieval Spain*. Ithaca–London 1994, 254ff.
- <sup>44</sup> "Eine grosse Besonderheit der aragonischen Verfassungsgeschichte ist das frühe Auftreten einer ständischen Repräsentation," wrote H. Mitteis, *Der Staat des hohen Mittelalters*. 8th ed. Weimar 1968, 414ff; compare with R. N. Merriman's article, "The Cortes of the Spanish Kingdoms." *American Historical Review* 16 (1911), 485ff. Ch. E. Chapman, *A history of Spain*. New York 1918, 90ff.
- <sup>45</sup> See the Magna Carta, 1215, preface, and art. 1, in Stubbs, *Select charters*, 296f; B. Lyon, *A constitutional and legal history of medieval England*. New York–London 1960, 310ff.; J. C. Holt, "The barons and the Great Charter." *English Historical Review* 70 (1955), 1ff.
- <sup>46</sup> "Nos igitur eorum – i. e., nobilium regni nostri, quam etiam aliorum – petitioni in omnibus satisfacere cupientes ..." Golden Bull of 1222, Preface, Marczali, *Enchiridion*, 134a.
- <sup>47</sup> As, for instance, Magna Carta, cc. 13, 34, 39 (confirmed by cc. 52 and 55), cc. 40, 41–42, 47–48, 53, and 59, in Stubbs, *Select charters*, 310ff.
- <sup>48</sup> "Concedimus tam eis [i. e. to the nobles] quam aliis hominibus regni nostri libertatem a sancto rege concessam." Cf. Marczali, *Enchiridion*, 134a.
- <sup>49</sup> Magna Carta, entry "Cum autem pro Deo ...," following Chapter 60, in Stubbs, *Select charters*, 304f.

(1172–1196), issued money of precious metal at the beginning of his reign, while the quality of King Andrew II's monies declined further, year by year.<sup>50</sup>

In a similar manner, Art. 24, pointed to a change in the king's previous policy, in that it declared that only royal servants could serve in public administrative positions in the realm – a meaning further clarified by Art. 31 of the Bull of 1231 – but it did not state that a non-Christian inhabitant of the country could not, for instance be(come) a nobleman. One may bear in mind that a royal tax-collector performed a rather tedious and thankless task, and the king wished to avoid outburst of any anti-Jewish, anti-Moslem confrontation in the realm, by preventing the appointment of members of the non-Christian social strata to positions of fiscal matters in public administration.<sup>51</sup>

The Golden Bull of 1222 was published in seven copies, with copies sent to the papal curia, to the royal court (*apud regem*), two to the heads of religious orders; to the cathedral chapters at Esztergom, and at Kalocsa, and one was deposited with the Palatine, "*ita, quod scripturam pre oculis habeat.*"<sup>52</sup> Although Béla IV's Law of 1267 is looked upon as the third modified version of the Bull of 1222,<sup>53</sup> the actual text only came down to posterity in an 1318 transcript. And yet, the text was incorporated into the 1351 Law of King Louis the Great of Hungary (+1382).<sup>54</sup> The Bull of 1222, and its version of 1231 became the cornerstone of Hungarian constitutional life until 1848.

In articles of the Bull of 1222, Andrew II, guaranteed the maintenance of law and order in the realm,<sup>55</sup> subconsciously followed Gratian's dictum: "*Causa uero*

<sup>50</sup> Golden Bull, Art. 23: money issued to remain in circulation "*a Pasca usque ad Pasca,*" incidentally making it clear that the calendar year reckoning in Hungary at that time began with Easter Sunday. Cf. H. Grotefend, *Zeitrechnung des deutschen Mittelalters und der Renaissance*. 2 vols. Hannover, 1891–1898; repr. Aalen, 1984, I: 140ff. P. Spufford, *Money and its use in medieval Europe*. Cambridge 1988, 123, 136.

<sup>51</sup> Golden Bull, Art. 24, confirmed by Art. 31 of the Bull of 1231: "... *Iudaei et Saraceni non praeficientur,*" not with the meaning, though, that a non-Christian could not be(come) a (Hungarian) nobleman! Being a tax-collector remained thankless sensitive work, had to be performed by nobles, "*nobiles regni,*" and not by non-Christians, in order to avoid an outbreak of anti-Jewish, anti-Moslem social outburst in the realm. Cf. Marczali, *Enchiridion*, 141ab – a clear indication of the fact that non-Christians in Hungary were not standing at the gate, but were *inside* the gate, of the Christian kingdom. See my remarks in Kosztolnyik, "Ivo of Chartres," 139ff.; and, D. Malkiel's reasoning in his essay, "Jewish-Christian relations in Europe, 840–1096." *Journal of Medieval History* 29 (2003), 55ff.; Cf. N. Berend, *At the Gate of Christendom: Muslims, Jews and 'Pagans' in Medieval Hungary, c.1000–c.1300*. Cambridge 2001.

<sup>52</sup> The Golden Bull of 1222, Art. 31, Marczali, *Enchiridion*, 142a.

<sup>53</sup> *Ibid.*, 167ff.; RA, no. 1547. Kosztolnyik, *Hungary in the Thirteenth Century*, 239ff.

<sup>54</sup> Cf. Marczali, *Enchiridion*, 216ff. See F. Somogyi, "The constitutional guarantee of 1351: the Decree of Louis the Great." in *Louis the Great, King of Hungary and of Poland*, ed. S. B. Vardy and A. H. Vardy, New York 1986, 429ff.; F. Somogyi, *Küldetés: a magyarság története*. [Destiny: a history of the Magyars] rev. ed., 3rd repr. Cleveland 1978, 155ff., and 211ff., respectively.

<sup>55</sup> See, for instance, the Golden Bull of 1222, Art. 4–6, 8–12, 18–19, etc.

*constitutionis legum est humanam cohercere audaciam et nocendi facultatem refrenare, sicut ... Ysidorus testatur, dicens [Etymologiae, v:20]: Factae sunt enim leges, ut earum metu humana coherceatur audacia, tutaque sit inter improbos innocentia, et in ipsis improbis formidato supplicio refrenetur nocendi facultas.*"<sup>56</sup> One may add Gratian's remark that "*Consuetudo enim est ius quoddam moribus institutum, quod pro lege suscipitur, cum deficit lex.*"<sup>57</sup>

The king promised that (1) he will annually have a law-day held at Fehérvár, when, and where, anybody may appear before him with personal complaints; were the king be unable to attend, the palatine will substitute for him. (2) He promised that he will not force any lesser noble to come before him (or, before a court of law) just for the sake of appeasing a higher noble – "*furere alicuius potentis.*" (3) He promised that he will not levy taxes, nor will he let military personnel, take forced lodging on the property of a nobleman, or on church property.<sup>58</sup> (4) Were someone found to be guilty in the court of law, nobody among the *potentes* may take the condemned individual under his protection; nor can royal officials, or members of the high nobility, oppress the poor; "*agazones, caniferi et falconarii non presumnant descendere in villis seruiantum*" – a decree that, once again, may be traced back to Gratian. "*Ius civile est, quod quisque populus vel civitas sibi proprium diuina humanaque causa constituit.*"<sup>59</sup>

Church tithe had to be paid in kind. The king decreed that were a service noble to die without a male heir, one-fourth of the property would be inherited by his daughter, and he may dispose of the other three-fourths of the property as he saw fit. Were he to die without a will, the property would be inherited by a close relative; were there to be no close relatives, it would be returned to the king's domain.<sup>60</sup>

Military defense of the realm was every ruler's obligation, therefore, were the king to conduct war beyond the realm's borders, his nobles were under no obligation to go with him, except the district reeves who had to accompany him; were the nobles to be deployed, the king had to pay for their expenses. Were, however, an enemy to invade the country, all nobles had to join the war effort

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<sup>56</sup> Gratian, "Treatise on Laws" (*Decretum*, pt. I, *distinctiones*, One through Twenty), dist. iv; and, compare it with the Golden Bull of 1231, Art. 4, a clarification of the Bull of 1222, Art. 2.

<sup>57</sup> As stated in Art. 1 of the Bull of 1222, the King promised that on the annual Law Day he in person, or his Palatine, will assuredly administer justice to every inhabitant of the realm. See the Golden Bull of 1222, Art. 1, confirmed by Art. 1 of the Bull of 1231, in Marczali, *Enchiridion*, 135ab. Compare it with Gratian, *Decretum*, pt. I, dist. 1, c. 51; Ivo of Chartres, *Decretum*, cc. iv: 108 and iv: 121.

<sup>58</sup> Golden Bull of 1222, Art. 1–3, confirmed by Art. 1–6 of the Bull of 1231, in Marczali, *Enchiridion*, 134ab–136ab.

<sup>59</sup> Golden Bull of 1222, Art. 28, 15 and 13 – in that order – Art. 15 and 13 confirmed by Art. 8 and 7 – in that order – of the Bull of 1231; and, Gratian, *Decretum*, pt. I, dist. i, c. 85.

<sup>60</sup> Important is the reference made to private property, Art. 20 of the Bull of 1222, then Art. 4, reminiscent of King St. Stephen's Laws, ii:2, Marczali, *Enchiridion*, 67ff.

next to king's armed forces. All of these resolutions rested on *ius naturale*, divine law, in this instance recognized as human law, though Ivo of Chartres warned that "*belli tempore qui homines et quae animalia sint securo.*"<sup>61</sup>

In his charter, the monarch determined that were a royal *iobagio* to die in the field of battle, his son, or brother, could obtain a position in the king's service; were a noble to be killed in a military action, the monarch was to reward the nobles's son.<sup>62</sup> The widow of a man condemned to death, or of a man killed in a duel, or of a husband who died a natural death, must not be deprived of her dowry.<sup>63</sup> Only the palatine, or vice-palatine, or the king's Judge may hand down sentence in any case, though even the palatine could not hand down the death penalty without the king's consent.<sup>64</sup> The *bilochus* who (only) handled theft and robbery cases, may pass judgment only with the consent of the district reeve.<sup>65</sup> A further decree permitted just the four major royal *iobagiones*: the Palatine, the Ban(us) – head reeve, the King's Judge, and the Queen's Justice, to hold two offices at the same time.<sup>66</sup>

Were one to accept the assumption that the Hungarian *regnum* formed a part of the *societas Christiana*, headed by two fully equal *spiritual* and *temporal* powers,<sup>67</sup> then one may identify with the point of view that, because of the equal power structure between *regnum* and *sacerdotium*, civil authority (*potestas civilis*), though independent of spiritual authority, cooperated with it within the framework of the concept of *Christianitas*, that is, the *regnum Christianum*.<sup>68</sup> Following such reasoning – secular power independent of the spiritual, and yet cooperating

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<sup>61</sup> Golden Bull, Art. 7; Gratian, *Decretum*, pt. I, dist. 1, cc. 2–4, 8 (based on Isidor's *Etymologiae*, cc. 3–4). St. Augustine's views expressed in his *De civitate Dei*, ed. B. Dombart, Tübingen 1908, iii: 18, 29–31; St. Augustine argued in accordance with Leviticus, xxvi:24, Deuteronomy, xxviii: 36, Judges, ii: 13, Isaiah, v: 25. Ivo's *Panormia*, viii: 54 (*bellum iustum est, quod ex edicto geritur de rebus repetendis, aut propulsandorum hostium causa*), referred to an Old Testament example, explained in Art. viii: 57. Ivo warned that "*belli tempore qui homines et quae animalia sint securo,*" see his *Panormia*, viii: 147.

<sup>62</sup> Occupying a leading position – the Golden Bull of 1222, Art. 10, cf. Marczali, *Enchiridion*, 134abff.

<sup>63</sup> Golden Bull of 1222, Art. 12, Marczali, *Enchiridion*, 134abff.

<sup>64</sup> Golden Bull of 1222, Art. 8–9; and, Bull of 1231, Art. 17–19, Marczali, *Enchiridion*, 134abff.

<sup>65</sup> Golden Bull of 1222, Art. 5; and, Bull of 1231, Art. 13, Marczali, *Enchiridion*, 134abff.

<sup>66</sup> Golden Bull of 1222, Art. 30, Marczali, *Enchiridion*, 142a.

<sup>67</sup> See F. Kempf, "Das Problem der Christianitas im 12 und 13 Jahrhundert." *Historisches Jahrbuch* 79 (1961), 104ff.; von den Steinen, *Kosmos*, 335f., spoke of "die Erschliessung der ausserchristlichen Welt," while Kempf, *Sacrum imperium*, 274, argued about a (new) cultural approach, "... denn es ist ja ein wirklicher, geistiger Status, ein innerer Kulturzustand."

<sup>68</sup> Cf. F. Kempf, "Die päpstliche Gewalt in der mittelalterlichen Welt," *Miscellanea historica pontificalis* 21 (1959), 153ff; and, A. M. Stickler, "Concerning the political theories of the medieval canonists." *Traditio* 7 (1949–1951), 450ff. W. Ullmann, *The growth of papal government in the middle ages*. 2nd ed. London 1962, 88 and 120f., saw these issues differently.

with it – Andrew II in defining the military obligations of the nobility in accordance with the Christian political theorem based on Gratian's teaching. As mentioned above, Gratian did clarify the concept of a just (defensive) war: *quod sit iustum bellum*,<sup>69</sup> arguing that defensive war was not sinful, *militare non est peccatum*, but added that cruelty, evil deeds must not be carried out even in a just defensive war, *que sint in bello iure reprehendenda*.<sup>70</sup> He openly questioned, however, the kind of war a Christian knight could justifiably take part in, *pacata sunt bella, que geruntur, ut mali coheceantur et boni subleuentur*.<sup>71</sup>

The monarch promised that the *nobiles* could retain their liberties dating back to the days of King St. Stephen, while the *hospites*: foreign-born settlers, retain their freedom, "... *et hospites cuiuscumque nationis secundum libertatem ab initio eis concessam, teneantur*."<sup>72</sup> with the understanding, though, that *hospites* could not be appointed to a public office without the approval of the king's council, "*sine consilio regni ad dignitates non promoveantur*."<sup>73</sup> Nor could a non-Hungarian-born *hospes* be given an estate; had he received, or purchased one, an inhabitant of the realm – a lesser noble – had to redeem it.<sup>74</sup> The monarch promised not to donate *ad infinitum* a whole county, or a royal office, to anyone.<sup>75</sup> The monarch may, however, force the regional reeve to keep only a portion of the tax-income that was owed to him; the rest of the money had to be sent to the king.<sup>76</sup> Were the king's reeve to prove unworthy of his office, he would be relieved of his position, and he would have to pay monetary compensation.<sup>77</sup>

The decree of the Golden Bull of 1222 that said that the office of the Chamberlain (*comes camerae*), or of the money-changer, of the salt tax-collector, or of the toll collector could not held by a Jew, or by a Moslem, meant to shield the office holders of those very unpopular positions from public backlash.<sup>78</sup> Jews and

<sup>69</sup> Golden Bull of 1222, Art. 7, and Bull of 1231, Art. 15–16, to be compared with Gratian's *Decretum*, pt. II, cause xxiii, qu. 2, c. 1.

<sup>70</sup> Gratian's *Decretum*, pt. II, cause xxiii, qu.1, c. 4.

<sup>71</sup> Gratian's *Decretum*, pt. II, cause xxiii, qu.1, c. 6. Chodorow, *Christian political theory*, 187ff.

<sup>72</sup> Golden Bull of 1222, Art. 19; Bull of 1231, Art. 26b, Marczali, *Enchiridion*, 140b.

<sup>73</sup> Golden Bull of 1222, Art. 11; modified by the Bull of 1231, Art. 23: "... *nisi incolae esse velint; ... per tales enim divitiae regni extrahuntur*." See Marczali, *Enchiridion*, 138b.

<sup>74</sup> "... *si aliqui collate, uel uendite, populo regni ad redimendum reddantur*;" Golden Bull of 1222, Art. 26. The Bull of 1231, Art. 32, added: "... *vel simpliciter recipiantur*."

<sup>75</sup> "*Integros comitatus uel dignitates quascunque in predia seu possessiones non conferemus perpetuo*;" Golden Bull of 1222, Art. 16 – confirmed by the Bull of 1231, Art. 26a, in Marczali, *Enchiridion*, 139b.

<sup>76</sup> "*Comites iure sui comitatus tantum fruuntur, cetera ad regem pertinencia ... Rex obtineat*;" see Golden Bull of 1222, Art. 29, as modified by the Bull of 1231, Art. 34: "... *ad Regis voluntatem, cui vult, distribuuntur*." See Marczali, *Enchiridion*, 141b.

<sup>77</sup> "... *convictus super hoc, coram omni regno dignitate sua turpiter spoliatur cum restitutione ablatorum*;" Golden Bull of 1222, Art. 14. Confirmed by the Bull of 1231, Art. 7.

<sup>78</sup> Cf. Golden Bull of 1222, Art. 24; Bull of 1231, Art. 31; and, above, Note 51. Compare with the study by R. Holtzmann, "Der Weltherrschaftsgedanke des mittelalterlichen

Moslems (Arabs?) could not occupy the four cited institutions, the *comes* (or, *comites*), in this instance, members of the service nobility, and other public officials cited in the decree, "*ac aliis publicis officiis*," could not be of non-Christian, the article said, but that did not mean that a non-Christian, be he a Jew, or an Arab Ismaelite, could not become a landowner in the realm. On the contrary, the decree stated that the country's non-Christian social stratum played a rather important role in the public life of the realm during the thirteenth century. As it is evident from the 1251 Jewish Law of Béla IV, son and successor of Andrew II, the king appointed and employed qualified non-Christians to public offices, whom he regarded as members of his own household, *royal chattel*, meaning that any crime committed against them he regarded as a crime against the himself, and against the common good as well.<sup>79</sup>

In a similar manner, the article in the Bull of 1222 on finance was important because it decreed that money issued by the king had to stay in circulation for one whole year, from Easter to Easter – meaning also that, at this time in Hungary, they reckoned the year beginning with Easter – and that the *denarius* issued had to have the value of the monies issued in the times of King Béla I (+1063). Most probably, it must have been the opinion of the king's non-Christian financial experts, that the King had to have money in circulation that would be free of inflation, thereby to restore the financial health of the realm's economy.<sup>80</sup> On the other hand, the last article of the Bull of 1222 was significant in that it permitted members of the hierarchy and of the lesser nobility to rise against the king, were the king to break, or abuse, the laws of the kingdom, and they could stage their uprising without punishment. In other words, both bishops and members of the nobility were free to judge the mistakes of the monarch without the fear of judicial retribution.<sup>81</sup>

The Golden Bull of 1222 did not halt the alienation of goods from the royal domain, though it slowed down abuses; however, it did not assure the king of new sources of income. Enforcement of some of its resolutions proved to be difficult. Perhaps the Bull of 1222 was the first Hungarian law that, really, could not

Kaisers und die Souveränität des europäischen Staates." *Historische Zeitschrift* 159 (1939), 251ff.

<sup>79</sup> Béla IV's Law of 1251, in Marczali, *Enchiridion*, 158ff.; further, S. Kohn, *A zsidók története Magyarországon* [History of the Jews in Hungary], Vol. 1, Budapest 1884, 101ff.; and, A. von Meiller, "Österreichische Stadtgeschichte und Satzungen aus der Zeit der Babenberger." *Archiv für österreichische Geschichtsquellen* 10 (1853), 87ff., with text, 146–148; Kosztolnyik, *Hungary in the Thirteenth Century*, 223ff., esp. 226ff.

<sup>80</sup> See the Golden Bull of 1222, Art. 23. For reference to the times of Béla I, consult the Chronicle, Chapter 94, SRH, 1: 358; Z. J. Kosztolnyik, *Hungary under the Early Árpáds*, 374f; Spufford, *Money and its use*, 77f., 99. On the Easter-date, see Grotefend, *Zeitrechnung des deutschen Mittelalters*, 1: 140ff. "Osteranfang" was also in use also in Cologne, see *ibid.*, 1: 142. In the early eleventh century, they began reckoning the year a week earlier at the Hungarian court, beginning with the Day of Christmas – cf. *ibid.*, 1: 205f.

<sup>81</sup> See the Golden Bull of 1222, Art. 31; Kristó, *Die Arpaden-Dynastie*, 186ff.

be enforced. The last article of the *ius resistendi* made the situation more difficult and confusing. Confidence in the king, trust in his leadership, dissipated.

It was under such circumstances that Andrew II, together with his sons, Béla and Coloman, supported by the bishops and members of the high nobility, addressed the public issue anew in a second charter of liberties, the Golden Bull of 1231.<sup>82</sup> Most probably, it was due to the legal educational background of the bishops that the prefatory note of this Bull of 1231 referred directly to the tone of the first chapter of Aristotle's *Politica*, as if to project its spirit. In other words, members of the Hungarian hierarchy were not only educated in Latin Canon law, but moved on familiar grounds in the fields of philosophy and political science of the times.<sup>83</sup> The Bull of 1231 can be regarded as a new charter of liberties, because its wording expanded and explained the previous one, and yet, on essential points differed from it.<sup>84</sup> In 1231, the king attempted to fill the political power vacuum that he unintentionally created by letting his own powers deteriorate, in that he publicly acknowledged the growing power base and increasing dignity of high ecclesiastics. For instance, he decreed that on the annual Law-Day all the bishops make a public appearance, next to the King or, in his absence, the Palatine. He obligated the bishops to review and to judge royal behavior and action, to observe and judge the behavior of royal advisors and courtiers, and of the Palatine.<sup>85</sup> In such a manner, decrees of the Bull of 1222 held as detrimental to church interests – as, for example, Art. 20 and 21 – were omitted of the 1231 version,<sup>86</sup> an approach that reminded one of Gratian's dictum, *ab imperatore ecclesia auxilium postulare debet*, as it followed Gratian's trend of reasoning.<sup>87</sup>

In many respects, the Bull of 1231, was more detailed than the previous one, as, for instance, Art. 17, that asserted that the Palatine held no judicial jurisdiction over churchmen, or over ecclesiastical matters, wording very much in tone with

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<sup>82</sup> See Marczali, *Enchiridion*, 134bff. Background, P. Classen, "Die hohen Schulen und die Gesellschaft im 12 Jahrhundert." *Archiv für Kulturgeschichte* 48 (1966), 155ff.; K. W. Nörr, "Institutional foundations of the new jurisprudence." in R. L. Benson, et al. eds., *Renaissance and renewal in the twelfth century*. Cambridge MA 1982, 324ff.

<sup>83</sup> Cf. Aristotle's *Politica*, i:1, 1252a, in R. McKeon, ed., *The basic works of Aristotle* (New York, 1941), 1127. See Stephen Kuttner's masterful article, "The revival of jurisprudence." in Benson, *Renaissance and renewal in the twelfth century*, 299ff.

<sup>84</sup> See the parallel columns in the cited Marczali edition; Kosztolnyik, *Hungary in the Thirteenth century*, 103ff. Although entirely different, compare it with the German Golden Bull of 1356 – text in W. Altmann–E. Bernheim, ed. *Ausgewählte Urkunden zur Erläuterung der Verfassungsgeschichte Deutschlands im Mittelalter: Zum Handgebrauch für Juristen und Historiker*. 5. Aufl. Berlin 1920, n. 38, and/or in K. Zeumer, *Die Goldene Bulle*, 2 vols. Weimar 1908, Vol. 2.

<sup>85</sup> The Golden Bull of 1231, Art. 2, Marczali, *Enchiridion*, 135b.

<sup>86</sup> As, for instance, resolutions contained in Art. 20 and 21 of the Golden Bull of 1222, were omitted in the 1231 version – see Marczali, *Enchiridion*, 140ab.

<sup>87</sup> Gratian, *Decretum*, pt. II, cause xxiii, qu. 3, c. 2. On Gratian's intellectual background, cf. G. Leff, *Medieval thought*, Baltimore 1958, 130 and 131f., and D. Knowles, *The evolution of medieval thought*. 2nd ed. London–New York 1988, 143ff.



one of St. Augustine's sermons, such as, Sermon xviii, cited by Gratian.<sup>88</sup> The bull in 1231 stated that the King must not force the peoples living on ecclesiastical lands, or on the nobles' estates, to labor for him; the bull ordered that the King would not appoint foreign settlers of noble descent (*hospites*) to public office until they assumed permanent resident status – in modern usage: taken out citizenship – in the realm, "*nisi incolae esse velint*."<sup>89</sup>

The monarch further decreed that family members of condemned thieves and robbers may not be sold into slavery on account of the guilt of the parent(s).<sup>90</sup> Besides the tithe of ten percent, the monarch may not collect an additional five percent of any income.<sup>91</sup> The Bull of 1231, Art. 31, repeated – *recte*: re-defined – the decree of the Bull of 1222, art. 24, that prevented members of the non-Christian social strata from obtaining public offices in the kingdom. A word of explanation is in order here. As discussed above, the decree did not prevent the king from seeking advice and support, from members of the non-Christian social stratum in the realm. Thus, the latter did not stand *at the gate*, but lived and functioned *inside* the gate of the Árpáds' Christian kingdom. In keeping the non-Christians serving in official public capacity out of the limelight both Andrew II, and later his son, King Béla IV, wanted to keep them away from outburst of public anger as they looked upon Jews and Moslems as competent trusted advisors: they were the king's men, his *chattel*, who, because of that, enjoyed the monarch's personal protection.<sup>92</sup>

There is a further substantially different ending of the Bull of 1231. In 1222, it was the Palatine who was authorized to carry out the resolutions of the royal decree; that was why he received a personal copy of the Bull. It was he who had to make certain that he himself, the king, and the nobles adhered to it. Now, nine years later, in 1231, it was the Archbishop of Esztergom (the realm's church primate), who was held responsible for the enforcement of the resolutions. In fact, he was authorized to excommunicate the king were the monarch to break the law!<sup>93</sup>

But even the Bull of 1231 failed to achieve its goal, as Andrew II's son and successor, Béla IV (1235–1270), sought to restore conditions in the realm as of the status quo prior to 1205, when his father ascended the throne, thereby turning the

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<sup>88</sup> Bull of 1231, Art. 23; the wording of the resolution calls for attention: "... *nisi incolae esse velint, ad dignitates non promoveantur*," meaning permanent residency within the borders of the realm. Cf. Marczali, *Enchiridion*, 138b.

<sup>89</sup> Bull of 1231, Art. 17., as if to override Art. 8 of the Bull of 1222; Gratian, *Decretum*, pt. II, cause xxiii, qu. 4, cc. 1–7 (sermon XVIII. of St. Augustine) in Friedberg, I. cols. 899ff.

<sup>90</sup> Bull of 1231, Art. 25.

<sup>91</sup> Bull of 1231, Art. 29.

<sup>92</sup> See Kosztolnyik, *Hungary in the Thirteenth century*, 226f.; Kosztolnyik, comments made in "Ivo of Chartres," 145f. Compare Art. 1231:24, with Gratian, *Decretum*, pt. II, cause xxiii, questions 6 and 7, in Friedberg, *Corpus*, I, cols. 947ff.; further, from a different angle, with Ivo of Chartres, *Decretum*, i: 13, i: 97, i: 118, and ii: 7.

<sup>93</sup> Golden Bull of 1222, Art. 31, to be compared with the Bull of 1231, last entry, in Marczali, *Enchiridion*, 142b.

anger of the high nobility toward himself.<sup>94</sup> The hostility of the Hungarian nobles displayed toward their king was, in part, responsible for the military disaster at Muhi, when the still frustrated and undisciplined nobles lost the military engagement against the Mongol invaders in the spring of 1241.<sup>95</sup>

Only as late as 1267, in the Laws issued by Béla IV, could Andrew II's resolutions of 1231 assert themselves, when the king and the lesser nobles recognized the high nobility's right to be participant in the King's Council.<sup>96</sup> And yet, the nobles' right of lawful resistance, *ius resistendi* to, what they perceived as royal injustice, achieved reality only in the fourteenth century during the reign of Louis the Great of Hungary.<sup>97</sup>

Concluding, one may argue that the resolutions concerning church matters issued by Andrew II, and formulating the two charters of liberties (golden bulls), would not have been possible without the cooperation of, and advice received from, members of the Hungarian hierarchy, all of whom were, evidently, trained in western Canon law; on those grounds, one may conclude that Roman Canon law did, indeed, have an influence upon the legislative activities related to the reign of Andrew II, legislation perhaps not overly successful, but sufficient to preserve and update relations between the Latin west and an East Central European kingdom during the thirteenth century.

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<sup>94</sup> Cf. Master Rogerius, "*Carmen miserabile*," c. 1, SRH, 2: 552f.

<sup>95</sup> Kosztolnyik, *Hungary in the Thirteenth century*, 121ff., and 151ff.

<sup>96</sup> Actually, by 1267 – see the Law of 1267 of Béla IV, in RA, n. 1547; text in Marczali, *Enchiridion*, 168f.; Kristó, *Die Arpaden*, 214ff.; Kosztolnyik, *Hungary in the Thirteenth century*, 239ff.

<sup>97</sup> Somogyi, "The constitutional guarantee of 1351," 429ff. For the text of the decree of 1351, see Marczali, *Enchiridion*, 216ff.; Engel, *The Realm*, 174ff.; Gy. Székely, "Die Einheit und Gleichheit des Adels: Bestrebungen in Ungarn des 14 Jahrhunderts." *Annales Universitatis Budapestiensis, sectio historica* 26 (1993), 113ff.