

Péter BÓNIS, Budapest

The Hungarian Golden Bull and Canon Law

Many studies have attempted to explore the foreign sources of the Hungarian Golden Bull, but the relationship between the Hungarian Golden Bull and canon law has been little studied. The present research attempts to review the influence of canon law on the Hungarian Golden Bull, with particular reference to the Decretum, the papal decretals, and the works of the decretalists. In studying the question of the influence of canon law on the Hungarian Golden Bull, we show that, in addition to the Decretum Gratiani and the papal decretals, among others, probably the Apparatus on the Compilatio tertia of Johannes Teutonicus and the Brocardica of Damasus Hungarus had a significant influence on the drafters of the Hungarian Golden Bull.

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1. The Hungarian Golden Bull and its sources

The Hungarian Golden Bull¹ is a privilege in which the king agreed to limit his power and recognised the freedoms of the lesser royal men, the royal servants, and this privilege was solemnly confirmed by the Hungarian king with his golden pendant seal. Its significance lies in the fact that the king of Hungary then recognised the existence of a social class whose rights could not be infringed by the king.

The Golden Bull did not mark the beginning of the Hungarian feudal state, but it was the first written document to set out the rights of the servientes regis in detail, taking care to

ensure that the list of privileges was complete. The Golden Bull therefore occupies a very important place in the history of the Hungarian constitution.

The Golden Bull was issued in 1222 by King Andrew II, but it was renewed several times and reissued with a more or less changed text. No original copies of the Golden Bull of 1222 have survived. The oldest surviving renewal dates from 1231 and is preserved in the Vatican Archives as a part of the Liber Censuum.

The sources of the Golden Bulls of 1222 and 1231 have already been the subject of a number of studies in the legal historical literature.² Comparisons have been made with the English Magna Charta Libertatum, which dates

¹ The most important editions of the Hungarian Golden Bull: BESENYEI, ÉRSZEGI, PEDRAZZA GORLERO, *De Bulla Aurea Andreae*; BAK, BÓNIS, SWEENEY, *The Laws of the medieval Kingdom of Hungary*. The Latin text and the English translation of the Golden Bull is quoted from this volume.

² BLAZOVICH, *The origins* 181–190; IDEM, *L'ambiente storico* 113–120; IDEM, *Aranybulla* 153–159; BALOGH, *Aranybulla* 61–77; IDEM, *Az európai jogtörténelem* 19–53; HORVÁTH, *Az 1222. évi Aranybulla* 95–127.

from 1215, its textual affinity with some Aragonese privileges has been suggested, and the connection between the Golden Bull and certain customary law books of the Kingdom of Jerusalem has been pointed out.³

All these attempts, however, have failed to fully resolve the problem of the origins of the Golden Bull. The Hungarian Golden Bull was not created under the influence of a single contemporary constitutional charter or a charter of liberty by adopting their provisions, therefore any attempt to find a single legal source was condemned to fail.

The Golden Bull was the result of a longer development, and the nobility had been able to use the rights and privileges set out in the Golden Bull long before 1222. The list of rights of the *servientes regis* set out in the Golden Bull were not entirely new, but it has reflected a longer constitutional history.

All the contemporary sources, be it English, Aragonese or from the Crusade States, indicate a common legal culture which medieval learned men called *ius commune*. All these European privileges had their roots in Western legal culture, in the Roman and canon law systems taught in universities, and were part of the contemporary legal culture. This explains why the English, Aragonese or Jerusalem sources of law listed as possible sources of the Golden Bull also show many similarities, i.e. they point to a common source, the *ius commune*, the Western legal culture in the 13th century.⁴

The *ius commune* is not simply ancient Roman law, because ancient Roman law was obsolete in the Middle Ages, it was not adapted to the needs of medieval society, but useful principles (*argumenta*) could be extracted from it. Roman law needed to be modernised,

and radically rebuilt. Roman law had been modernised by canon law and by the interpretation of the glossators of civil law, and therefore the *ius commune* includes Roman law, canon law and feudal law, as expounded and adapted by the glossators.⁵

The present paper will compare some of the more important provisions of the Golden Bull with the works of the learned teachers of medieval law, the glossators of Roman, canon or feudal law, who may have been the source for the local legal scholars who formulated not only the Hungarian Golden Bull but also other contemporary constitutional documents or privileges.

2. The main goal of the Hungarian Golden Bull was the protection of natural and vested rights of the Hungarian *servientes regis*

The Golden Bull was born out of the discontent of the *servientes regis*.⁶ The *servientes* of the king were unhappy with the king's policies, accusing him of violating their acquired rights, taking their estates and distributing them to others, or imprisoning them without justification. They believed that their natural rights had been violated.

The Golden Bull was created to protect the rights of the *servientes regis*. In order to enforce their claims, romano-canonical principles were invoked. Such an important principle was that no one should be deprived of his rights without fault and without just cause (*nullus potest privari iure suo sine culpa et sine causa*). This was the *basic idea behind the Hungarian Golden Bull*, although it is not

³ D'ESZLARY, *Magna Carta*.

⁴ ZLINSZKY, *Legal Studies* 327–336; IDEM, *Werbőczy jogforrástana* 375; ANDRÁSI, *I rapporti giuridici* 140–146; EADEM, *Ius commune* 7–10; KOMÁROMI, *Nyugati hűbériség* 201–215; IDEM, *Institutionen* 213–229; IDEM, *Ungarische Rechtsentwicklung* 321–324.

⁵ CALASSO, *Diritto comune* 75.

⁶ The *servientes regis* were free warriors and the precursors of the lesser nobility. The rights granted to them in the Golden Bull later became largely the rights of the noblemen. Therefore it is perhaps not excessive to translate *servientes regis* as noblemen, as the translators of the *Decreta Regni Mediaevalis Hungariae* did, although there are some differences.

stated literally in the Golden Bull, but it is undeniable that this principle formed the basis of many of its provisions.

This principle was formulated by the canon law, and it appeared also in the *Brocarda* of Damasus Hungarus, the Hungarian professor of canon law around 1217 in Bologna.⁷ Most of the provisions of the Golden Bull are nothing more than a concretisation of this principle, a concretisation of the protection of natural or vested rights of the *servientes regis* which cannot be impaired or taken away. The protection of natural rights appears in the protection of possessions and tenures, in the protection of personal liberty, in the fight against excessive taxation, and in many other areas of the Hungarian Golden Bull.

3. The protection of personal freedom in the Golden Bull and the *ius commune*

According to the Golden Bull of 1222 the king expressed his wish that "neither we nor our successors should at any time arrest or cause the ruin of any *serviens* for the suggestion of some magnate, unless they first be summoned and duly sentenced by judicial process."⁸

Subsequent legislation has confirmed the protection of personal freedom of the *servientes regis*, e.g. the privilege of 1267 ordered that "no noble on account of evil counsel

should be arrested, imprisoned, or harmed in his person or goods without a judicial hearing, but having been brought into court he should be judged in the presence of barons without wrath, hatred, or favor according to the rule of law."

The doctrine of due process and the protection of personal freedom was acknowledged in many other contemporary charters and privileges throughout Europe. E.g., Art. 39 of the English Magna Charta stated: "No free man shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgement of his peers or by the law of the land."⁹

These provisions are rooted in the *ius commune*. In his *Decretum* (C.2, qu.1), Gratian wrote that no one can be condemned without due process ("nullus sine iudicio ordine dampnare ualeat.")¹⁰ Gratian proved this principle with many authorities. E.g., he quoted Pope Gregory the Great who stated: „Just as without a judgment we do not wish anyone to be condemned, thus what was decided justly, we shall not allow to be deferred with any excuse."¹¹ Gratian quoted a letter of Pope Melciades who wrote on that everything should always be examined diligently, and be judged with justice and love, and that there should be no condemning without a just and true trial (C.2, qu.1, c.13).

⁷ DAMASUS HUNGARUS, *Brocardica*, nr. 2 (ms. Paris, Bibliothèque Nationale, ms. lat. 14320, fol. 213^{rb}): "Nunquam est privandus quis iure suo sine culpa et sine causa." *Idem*, *Brocardica*, ms. Biblioteca Apostolica Vaticana, Pal. lat. 656, fol. 16^v: "Quod nullus privandus sit iure suo sine culpa." Although this legal principle was not literally mentioned in the Golden Bull, it appears in Hungarian charters. Cf. FEJÉR, *Codex diplomaticus*, Tomi IX. Vol. 1., 497.: "nos neminem suo iure priuari"; Tomi X. Vol. 6., 360; Tomi V. Vol. 1. Budae 1829, 34; Tomi X. Vol. 7., 863: "Et quia nos neminem regnicolarum nostrorum suo iusto iure, nequaquam indebite, destitui volumus et priuari." *Ibidem*, 344: "Conuentum ipsorum iustis iuribus sic minus iuste et sine lege destitui nolumus et priuari." Tomi VIII. Vol. 2., 644: "omnia iura canonica et ciuilia in haec concordent, et tradant manifeste, quod ante cognitionem causae nullus iure suo priuari debeat, imo ante omnia restituendus sit spoliatus."

⁸ Golden Bull of 1222: "Volumus eciam quod nec nos nec posteris nostri aliquo tempore *servientes* capiant vel destruant favore alicuius potentis, nisi prius citati fuerint et ordine iudicio convicti." The Latin text and the English translation of the Golden Bull is quoted from BAK, BÓNIS, SWEENEY, *The Laws of the medieval Kingdom of Hungary*.

⁹ BALDWIN, *Due process* 31–50.

¹⁰ FRIEDBERG, *Corpus iuris canonici* I, coll. 438.

¹¹ C.2, qu.1, c.3.

This legal principle was probably well-known to many Hungarian jurists not only because Gratian's *Decretum* was the most diffused textbook of canon law in Hungary and throughout Europe, but also because it appeared also in the *Summa decretalium* of Damasus Hungarus: "Item nota neminem sine iudicio condemnandum."¹²

As we have shown above, according to the principles of *ius commune* no one should be arrested, imprisoned, or harmed in his person or goods without a judicial hearing. In Hungary and throughout Europe, ecclesiastical courts have consistently enforced the principles of canon law. This principle has been introduced in the Hungarian Golden Bull not only because this was an important demand of the *servientes regis*, but also because it would have seemed natural for Hungarian clerics educated at medieval universities to acknowledge this well-known principle of the learned law.

4. The protection of possessions and tenures of the *servientes regis* in the Hungarian Golden Bull

According to the Hungarian Golden Bull of 1222 "possessionibus etiam quas quis iusto servitio obtinuerit, aliquo tempore non privetur." i.e. "no one shall at any time be deprived of possessions acquired by honorable service."

This provision of the Golden Bull was designed to protect tenures acquired through righ-

teous services. It is likely that we should also look for a model for this provision in canon law or in the feudal law.

According to Johannes Teutonicus, no one can be deprived of his tenure without his fault (*nullus debet privari suo beneficio sine culpa*).¹³ In another place Johannes Teutonicus wrote that no one can be deprived of his right unless he has committed a serious crime.¹⁴ In feudal law these serious crimes were called *feloniae*.

The feudal contract implied giving and receiving of landholdings in return for loyalty and services, and in case of felony the overlord could recover the lands, it being unjust that a party be held bound to fulfill his promises when the other violates his. But if there is no breach of contract and no disloyalty, no one can be deprived of his right. The *Libri Feudorum* also emphasised that the nature of the feudal relationship is that the prince cannot take away the tenure of his vassals without their fault.¹⁵ The Hungarian Golden Bull stated the same using *ius commune* as a model.

5. The restitution of despoiled noblemen in the Golden Bull

According to the Golden Bull of 1231 "it is further our wish that neither we nor our successors should at any time seize or cause the ruin of any one, unless he first be summoned and duly sentenced by judicial process. And since these provisions had been confirmed by our oath and that of our magnates, whoever has been despoiled by us, our sons, or anyone else without judicial sentence since that

¹² DAMASUS HUNGARUS, *Summa in tit. De iudiciis* (ms. Paris, Bibliothèque Nationale, ms. lat. 14320, fol. 155^{rb}).

¹³ JOHANNES TEUTONICUS, *Gl. nisi gravi ad C.16, qu.7, c.38 (Lugduni 1584, coll. 1171): "Item arg. quod nullus debet privari suo beneficio sine culpa sua, ut 56. dist. c. satis perversum (D.56 c.7)."*

¹⁴ IDEM, *Gl. satis perversum ad D.56, c.7., satis perversum (Romae 1582, coll. 391): "non enim privandus est quis iure suo, nisi pro gravissimo delicto."*

¹⁵ *Libri Feudorum* 1, 7.: "Natura feudi haec est ut si princeps investierit capitaneos suos de aliquo feudo, non potest eos disvestire sine culpa."; *Libri Feudorum* 1,21(22),2: "Sancimus ut nemo miles eiiciatur de possessione sui beneficii nisi convicta culpa."

time, namely, since the seventeenth year of our reign, complete restitution shall be made to him."¹⁶

This provision of the Golden Bull was meant to ensure a further protection to the property rights of the *servientes regis*. The enforcement of a more efficient legal protection was ensured by ordering that whoever has been despoiled by the king, his sons, or anyone else without judicial sentence since that time, namely, since the seventeenth year of his reign, complete restitution should receive.

Canon law has long urged the restitution in case of despoilment, and demanded that the despoiled holder be immediately reinstated without delay. The canon *Redintegranda* of Gratian's *Decretum* (C.3, qu.1, c.3), which provided that bishops and later all persons deprived of their possessions were entitled to be reinstated, had a particularly great impact on legal history.

The fourth Lateran Council (c. 39) also urged the restitution. This canon later entered in the *Liber Extra* (X 2, 13, 18). After the fourth Lateran Council a lot of new decretals were issued on this topic. The *Compilatio tertia* contains some decretals on this issue, too. Around 1215–1217 Johannes Teutonicus also reiterated the principle contained in the *Decretum*, when he wrote: "*Exspoliatus est prius restituendus*."¹⁷ The Gloss '*In continenti*' of Johannes Teutonicus was perhaps a model for the Golden Bull.

This legal principle was probably well-known to many Hungarian jurists, too, because it appeared also in the *Brocarda* of Damasus Hungarus: "*Spoliatus ante litis ingressum principaliter sit restituendus*."¹⁸

The widespread use of this legal principle is demonstrated by the fact that Accursius also wrote a similar gloss, where he stated: "*Est enim spoliatus statim restituendus*."¹⁹

This passage of the Golden Bull is also very similar to the canon 7, Title 13 of the Second book of the *Liber Extra* of Pope Gregory IX. The *Liber Extra* (X 2, 13, 7) stated: "*Spoliatus etiam a iudice, iuris ordine praetermisso, ante omnia restituatur*." ("Whoever has been despoiled, without judicial sentence, complete restitution shall be made to him.")²⁰

Although the *Liber Extra* was issued in 1234, and the Hungarian Golden Bull was reissued in 1231, it is obvious that the *Liber Extra* needed a longer time of preparation, and perhaps during this time, around 1231 the editor of the *Liber Extra*, Raymundus de Pennaforte had already formulated this legal principle in a way that entered the Hungarian Golden Bull.

Although this famous legal principle was not new at the time of the Golden Bull, but was an old legal principle established by legal custom and canon law, the wording used in the Golden Bull is very close to the above-mentioned phrase of the *Liber Extra*, and it is perhaps not presumptuous to suggest that Raymundus de Pennaforte may have had an influence on the Hungarian Golden Bull's formulation, as regards the version of 1231. If not, we suggest to

¹⁶ Golden Bull of 1231, c. 2: "*Volumus, quod nec nos nec posterius aliquos unquam capiant vel destruant, nisi prius ordine iudiciario conveniantur. Et cum ista sacramento nostro et principum nostrorum fuerint confirmata, si qui per nos vel per filios nostros, vel per quoscumque post idem tempus, scilicet decimo septimo anno regni nostri sine iudicio sunt spoliati, plene restituantur.*"

¹⁷ PENNINGTON, *Apparatus* 216: Johannes Teutonicus, Gl. in *continenti* ad 3Comp. 2.6.3. As to the sources of canon law, see ERDŐ, *Storia delle fonti*; IDEM, *Die Quellen des Kirchenrechts*; IDEM, *Diritto canonico*; HARTMANN, PENNINGTON, *Canon Law*.

¹⁸ DAMASUS HUNGARUS, *Brocarda*, nr. 38 (ms. Paris, Bibliothèque Nationale, ms. lat. 14320, fol. 215^{re}).

¹⁹ ACCURSIUS, Gl. ad recuperandam ad D. 43, 15, 1, de vi et vi armata, l. praetor (Coloniae Allobrogum 1612, coll. 673): "*Est enim spoliatus statim restituendus*."

²⁰ This legal principle was well-known in Hungary. Cf. FEJÉR, *Codex diplomaticus*, Tomi VIII, 644: "*omnia iura canonica et civilia in haec concordent, et tradant manifeste, quod ante cognitionem causae nullus iure suo priuari debeat, imo ante omnia restituendus sit spoliatus.*"

take into consideration the Gloss 'In continenti' of Johannes Teutonicus, which has perhaps influenced the Golden Bull.

6. The quarta puellaris in the Hungarian Golden Bull

According to the Golden Bull of 1222, "if a serviens regis dies without a son, his daughter shall receive a quarter of his possessions, but he shall dispose of the rest as he wishes. And if he shall not have been able to make disposition, those relatives closer to him shall obtain the possessions. If he shall have no relatives at all, the king shall obtain them."²¹

This is the first mention of the filial quarter (quarta puellaris)²² in the Hungarian legal history. Antal Murarik²³ suggested in 1938 that this institution had derived from Roman Law, in particular from the Lex Falcidia.

The lex Falcidia was a plebiscitum in the ancient Roman Empire that restricted the testator's capacity to charge his testament with legacies, namely sums of money or objects the heir must transfer to a third person (legatum). According to the lex Falcidia, no one could bequeath more than three quarters of his property in legacies. In consequence, the heir must receive at least one fourth of the estate free from legacies. Later, this part was named quarta Falcidia.

József Gerics, an outstanding researcher of the Hungarian medieval law stated: "In the Golden Bull, this specific legal provision shows the influence of Roman law through canon law. Murarik's argument about the filial quarter can be confirmed, and the mediating source, which has escaped his attention, can be more precisely identified. The closest

cousin of the 4th article which introduces the filial quarter, and certainly its model, is a passage in Gratian's Decretum (D.2, c.6), taken from Isidorus, which says: 'Sub eodem quoque imperatore Falcidius tribunus plebis legem fecit, ne quis plus extraneis testamento legaret, quam ut quarta pars superesset heredibus, ex cuius nomine lex Falcidia nominata est.'²⁴²⁵

Although I agree with Gerics regarding the Romano-canonical origin of the Hungarian filial quarter, I do not think that the direct source was the quarta Falcidia, as it was mentioned in Gratian's Decretum, because the quarta Falcidia is different from the quarta legitima.

For Hungarian clerics educated at medieval universities, it would have seemed natural to set the birthright portion (portio debita) of daughters at a quarter of the estate, as the quarta legitima (named also quarta iure naturae) was the denomination of the birthright portion (forced share) in the canon law of the Middle Ages.

In 1210 pope Innocent III issued the Compilatio tertia decretalium which included the decretal Raynutius (3 Comp. 2, 18, 13). The decretal Raynutius became part of the Liber Extra later in 1234.²⁶ According to this decretal, there was a litigation between two daughters of Raynutius, Alterocha and Adiecta.

Johannes Teutonicus made an apparatus glossarum to the Compilatio tertia. Regarding the decretal Raynutius he remarked that there are three types of quarta: a) quarta Trebellianica, b) quarta Falcidia, c) quarta legitima or quarta iure naturae.

²¹ Golden Bull of 1222: „Si quis serviens sine filio decesserit, quartam partem possessionis filia obtineat, de residuo – sicut ipse voluerit – disponat. Et si morte preventus disponere non potuerit, propinqui sui, qui eum magis contingunt, obtineant. Et si nullam penitus generationem habuerit, rex obtinebit.”

²² HOMOKI-NAGY, Institutions 225–236.

²³ MURARIK, Az ősiség 163–193.

²⁴ The Decretum was quoted from FRIEDBERG, I, coll. 4.

²⁵ GERICS, A korai rendiség 237.

²⁶ X 3, 26, 16, de testamentis, c. Raynutius, e.g. printed in FRIEDBERG, II, coll. 544.

He said: "Est tertia quarta quae debetur filiis iure naturae, et hanc semper tenetur pater relinquere filio, nisi eum ex iusta causa exheredet."²⁷ In other words, Johannes Teutonicus explained that there is also a third quarta which is due to the children by natural law, and the father is always obliged to bequeath this quarta to his children.

The Glossa ordinaria of the Liber Extra repeated the gloss of Johannes Teutonicus with little changes, in line with the general experience that Bernardus Parmensis usually made only minor changes to the text.²⁸

A fragment of the above-mentioned Apparatus glossarum of Johannes Teutonicus is now kept in a library in Győr, Hungary.²⁹

Formerly, the birthright portion (debita portio) always consisted in a fourth part of the intestate share of the birthright heirs, whatever their number might be, but subsequently Justinian increased the birthright portion in his Novellae, and ordained that when there are four or less of the testator's descendants, the birthright portion should be a third of the intestate share but when there are more than four, it should be one half the intestate share. Hence in the Pandect and Codex it was usually termed "the quarta."

Since in the Digest and in the Codex this legal institution was constantly called quarta, because only later it became a third, the glossators of Roman and canon law and learned

jurists continued to call the birthright portion quarta legitima, so much so that even in the 17th century Arnoldus Vinnius called the birthright portion quarta legitima, and distinguished it from the quarta Falcidia.³⁰

In the light of the above, we can only agree with the eminent author quoted above, who said: "The Golden Bull is thus direct evidence of the Romano-Canonical influence on the Hungarian law."³¹

However, I think that the direct source of the Hungarian filial quarter mentioned by the Golden Bull was the quarta legitima explained by the glossators of the decretal 'Raynutius', especially the Gloss 'Etiam quarta' of Johannes Teutonicus, and not the quarta Falcidia.

7. The tithe paid in coin in the Hungarian Golden Bull

According to the Golden Bull of 1222 "the tithe should not be paid in silver, rather, as the earth brings it forth, it should be rendered in wine and grain, and should the bishops object, we shall not support them."³²

In the Middle Ages, the Catholic church in Europe collected a tax of its own, which was called a tithe. Tithe (decima) means "one-

²⁷ PENNINGTON, *Johannis Teutonici Apparatus* 333: "Ad intelligentiam huius nota quod triplex est quarta. Una dicitur quarta Trebellianica, ut cum aliquis est institutus heres, et rogatus est alii restituere totam hereditatem; talis potest retinere sibi quartam de tota hereditate, et hec dicitur quarta Trebellianica. Est alia quarta que dicitur Falcidia, et hec est debita iure institutionis, ut cum aliquis est institutus heres, et hereditas illa est exhausta per legata uel fideicommissa, tunc heres institutus potest detrachere tantum de singulis legatis seu fideicommissis ut habeat quartam, ut instit. de fideicom. hered. § Set quia. Est tertia quarta que debetur filiis iure nature, et hanc semper tenetur pater relinquere filio, nisi eum ex iusta causa exheredet, et hec quarta uocatur debitum bonorum subsidium. Et si sunt iiii. filii, uel pauciores, habebunt trientem. Si plures, habebunt semissem, ut C. de inoffic. testa. authen. Nouissima. Quandoque tamen pater necesse habet relinquere tres partes sue substantie suis filiis, quarta parte suo arbitrio reseruata, scilicet si sunt ei filii curiales uel filie nubentes, ut in authen. de triente et semisse § Excipiatur, coll. iiii. jo."

²⁸ Gl. quartam partem per Trebellianum ad X 3, 26, 16, de testamentis, c. Raynutius (Lugduni 1581, coll. 1184).

²⁹ VIZKELETY, *Handschriftenfragmente*. Frag. nr. 41, fol. 1^r was reproduced under Abb. 17.

³⁰ VINNIUS, *In quatuor libros Institutionum* 450. Similarly DONELLUS, *Opera omnia* 459: "De quarta legitima quae dicitur debita portio."

³¹ GERICS, *A korai rendiség* 237.

³² Golden Bull of 1222: "Decimo argento non redimantur, sed – sicut terra protulerit – vinum vel segetes persolvantur et si episcopi contradixerint, non iuvabimus ipsos."

tenth", because people were supposed to give the Church one-tenth of all the income they earned.

The tithe (*decima*) is the tenth part of the increase, yearly arising from the profits of lands, from the stock upon lands, and from the personal industry of the inhabitants. The first species being usually called predial, as of corn, grass, hops, and wood; the second mixed, as of wool, pigs, consisting of natural products, but nurtured and preserved in part by the care of man; and of these the tenth must be paid in gross. The third one was called personal, as of manual occupations, trades, fisheries, and the like; and of these only the tenth part of the clear gains and profits is due.

Tithes could be paid in goods produced by the peasant farmers or in money. The tithe paid in coin usually caused a lot of hardship and was very unpopular, therefore the *servientes* demanded that the tithe should not be paid in silver coin, rather, as the earth brings it forth, it should be rendered in kind.

The reluctance of the producers to the obvious attempts of the church to collect the tithe in coin, which forced them to market their crops, was not successful; within a year, on 29th March 1223 Pope Honorius III rescinded the validity of this article.³³ After the letter of pope Honorius III, it was obvious that the renewal of the Golden Bull in 1231 omitted it.

This shows the great political influence of the papacy, since the Roman Pontiff was able to force the king to modify an already enacted law according to the wishes of the Roman Pontiff. The Roman Pontiff, who had exercised universal supremacy over the whole of Western Christendom since Pope Gregory VII, had a say not only in the choice of rulers and emperors, but also in the legislation of individual countries. By the universal coercive power of canon law, he could order this earlier provision on the tithe of the Golden Bull of

1222 to be set aside by the king. Therefore the omission of this passage attests the influence of canon law on the Golden Bull.

Perhaps a passage of the *Notabilia* written by Paulus Hungarus is related to this issue. Paulus Hungarus wrote: "*Item in decimis exigendis et persolvendis consuetudo regionis debet observari, et est notandum pro clericis Hungarie.*"³⁴

Paulus Hungarus's overly concise *notabilia* do not allow us to know exactly which details of tithing the author is referring to, nor do we know what he means by the customary law he mentions in favour of the Hungarian clergy.

Pope Honorius III rejected the Golden Bull's original provision on tithe (which prohibited the tithes to be claimed in silver coin), because it was in breach of earlier legal custom and immemorial usage, as the Roman Pontiff stated. Perhaps this is what Paulus Hungarus refers to, and what he means by the custom in favour of the Hungarian clergy, which allowed the tithes to be claimed in money by the clergy. This was very favorable to the clergy, but very detrimental to the *servientes regis* who sought help from the king against the excessive taxation.

8. The excommunication as a punishment in case of infringement of the Golden Bull

According to the Golden Bull of 1231 "we agree of our free will that if we, our sons, or our successors attempt to infringe upon this liberty which we have granted, the archbishop of Esztergom shall have the authority, after proper warning, to bind us, or them, in the chains of excommunication."³⁵

³³ THEINER, *Vetera monumenta* I, 38–39.

³⁴ KAPITÁNYFY, SZEPESY, Paulus Hungarus 285–288.

³⁵ Golden Bull of 1231: "*sive nos sive filii nostri et successores nostri hanc a nobis concessam libertatem infringere voluerint, Strigoniensis archiepiscopus, premissa legitima admonitione, nos vinculo excommunicationis et eos innodandi habeat potestatem.*"

Even before the Golden Bull was issued, the Church claimed to have the power to punish and disempower kings, to excommunicate them, to remove them from their office and to release their subjects from the duty of obedience.

According to the statement of Gregory I a king who opposes his decisions "shall lose his office, dignity and power", and if he does not repent, he shall be excommunicated and suffer the final damnation. While Gregory I referred to excommunication, Gregory VII interpreted this text as justifying not only the king's excommunication but also his deposition. Gregory VII's premise was that excommunication, which is spiritual in nature and thus a punishment far greater than the deprivation of temporal office, also implies the loss of a purely temporal power.

Gregory VII applicated the Gelasian doctrine: "There are two things which govern this world essentially: the sanctified authority of the bishops and the power of kings. Of the two, the task of the priests is more difficult, inasmuch as they are accountable to the divine tribunal for the kings themselves."³⁶ Then, after a few words of interjection, he says: "You know, then, that in such matters you are subject to their judgment, not they to your will."

Later, not only the church, the pope or the bishops were able to take action against kings who broke the church's laws or their own oaths, but also the lords were given a powerful weapon by the development of medieval legal doctrines on the contractual origins of public power. According to these, the nobles entered into a contract with the sovereign, which was confirmed by the king's oath, and from which mutual rights and obligations arose. If one of the parties broke the contract, the other party was not obliged to fulfil it, i.e. could ask for the contract to be dissolved. A feudal oath was dissolved when either the lord or the vassal broke the contract.

Ancient Roman law only allowed withdrawal from a contract in case of non-performance in innominate real contracts. In the case of named contracts (e.g. sale of goods), Justinian law did not allow this. As the *Glossa ordinaria* put it, "*si contractum venditionis celebrasti et perfectus est, emptore invito ab eo recedere non potest.*" If the obligor failed to perform, the creditor could sue him, but could not withdraw from the contract. This was the view of the civil glossators. Accursius, for example, held that if the buyer did not perform, he could only be sued for payment of the purchase price, but could not be avoided.

This rigid view of Roman law caused many difficulties. It was cumbersome and costly to sue the defendant and, above all, it took a long time. The interest of the claimant would have been better served by a *resolutio*. However, Justinian's law only allowed this in the case of innominate real contracts.

Adherence to Roman legal sources was less binding for the decretists. Around 1188, the famous decretist, Huguccio argued in his *Summa decretorum* that one who fails to fulfil his obligation, should not expect to receive the counter-performance (*fides non est servanda ei, qui frangit fidem*). The principle that a material breach of a treaty by one party entitles the other party or parties to denounce the contract or withdraw from the treaty was repeatedly applied in his *Summa*, for example in the feudal law or in marriage law.

If the overlord fails to fulfil his obligation, the vassal is also released from his obligation. The prelate must respect his subordinates, for he can only demand that they fulfil their obligations, if he himself had fulfilled his obligations to them.

³⁶ ULLMANN, *Medieval Political Thought* 41; CANNING, *A History* 84–109.

According to Huguccio, there must be reciprocity between the superior and the subordinate.³⁷

This principle seems to have been first applied to civil contracts by Goffredus Tranensis.³⁸ According to Goffredus, the sanction for a party who breaks a contract is that the other party is not obliged to fulfil it. Hostiensis held the same view.

Speaking of the oath, Hostiensis considers the principle *fides non est habenda cum infidelibus* as a kind of implied condition (*conditio tacita*). In his view, every contract must include the implied condition that the contract is binding only if the other party keeps his promise.³⁹ This was also considered an implied condition by pope Innocent III in a decretal (X 2, 24, 25).

9. Conclusions

As we have seen from some of the examples mentioned above, neither the Hungarian Golden Bull, nor any other European constitutional charter was born in a legal vacuum, from nothing, but charters setting out the rights of nobles and sometimes burghers were developed and were formulated in the Middle Ages under the influence of Romano-canonical legal science taught in European universities.

The Golden Bull of 1222, and especially the Golden Bull of 1231 contains many references to sources of medieval Roman law, canon law and feudal law. A textual comparison shows that Johannes Teutonicus, Damasus Hungarus, the *Libri Feudorum* and papal decretals had a very important influence on the Hungarian Golden Bull. All this demonstrates that the Hungarian Golden Bull reflects

the influence of European legal ideas and that the *ius commune* had a significant influence on the Hungarian Golden Bull.

Correspondence

Dr.habil. Péter BÓNIS
associate professor
Károli Gáspár University
Department of Legal History
Viola u. 2-4
1042 Budapest, Hungary
bonispbp@gmail.com
ORCID-No. 0009-0009-3710-4077

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³⁷ HUGUCCIO, *Summa ad C.28, qu.2, c.2, c. si infidelis, s.v. nec est fides ei servanda* (Paris, Bibliothèque Nationale, ms. lat. 15397, fol. 72^{rb}): “arg. quod fides non est servanda ei, qui frangit fidem.”; HUGUCCIO, *Summa ad D.95, c.7* (Paris, Bibliothèque Nationale, ms. lat. 15396, fol. 95^v): “Et hic est arg. quod non petat debitum, qui quod debet, non impendit, nec enim fides videtur servanda ei, qui fidem non servat, ar. xxxii q. vi, Si ducturi iniquum, xviii q. ij, Abbatibus. Debet enim esse inter praelatos et subditos quaedam reciprocatio, ut xxii q. v c. Prodest.” Cf. D.95, c.7; FITTING, *Summa* 26: “Iniquum est enim ei qui contra fidem fecit fidem servari.”

³⁸ GOFFREDUS TRANENSIS, *Summa in X 1, 35, de pactis, n. 8* (Venetiis 1586, fol. 55^{ra}): “poena non servantis pactum est ne alius teneatur stare pacto et poena apposita committatur.”

³⁹ HOSTIENSIS, *Summa in X. 2.24., de iureiurando, n. 3* (Venetiis 1574, coll. 670): “Non servanti enim fidem, non est fides servanda. Ideo iuramentum non ligat qui praestitit, dum is cui praestitum statuerat, servare negligit quod promisit.”

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