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Hungarian State Organisation – The System of Donations and the Resulting Consequences until the 16th Century

Introduction

The birth of the Hungarian state resulted from the construction and organisation of a hegemonic power over the territory and population that had been occupied (in part from the defeated and subdued prominent members of the kindred and other Hungarian *liberi*), and thus controlled by Grand Prince Géza and his son, the first king of Hungary. By 972, only Géza and his close relative, Koppány (and perchance someone from Koppány's ascending line, if any of them was still alive) remained from the Árpáds' princely kindred in the territory subjected to the Árpáds. Established and expanded by force, the power of Géza was secured by organising a new type of dominance. In 972, the Grand Prince asked the Holy Roman emperor to send priests to convert the Hungarians. Then, to establish a peaceful relationship, Géza sent twelve of his prominent men *(XII primates Ungarorum)* to the *Hoftag* held by Otto I in Quedlinburg on the Easter (23 March) of 973, and, through his envoys, relinquished his claims for the occupied Bavarian and Moravian territories. Gyula Kristó assumed that the reason underlying this search for alliance was Géza's attempt to find means to avert the danger arising from the alliance between the Holy Roman and the Byzantian empires, sealed by the marriage of co-emperor Otto II and the Byzantine princess Teophano.[1] However, there is no trace of Byzantium's efforts against Hungary, their plans did not exceed the defeat of the Bulgarians. The occupation of the Carpathian Basin never occurred to the emperors in the 9th–10th centuries, even the "ancient Sirmium lost its strategic significance and charm in this period" for the Byzantian Empire.[2] It became clear to

[1] Kristó 1985: 46.
[2] Bóna 2000: 74.

the numerous attendees of the *Hoftag* held in Quedlinburg that, building a monopoly of power in the Carpathian Basin, the Grand Prince Géza became a power factor to be reckoned with.[3] Such recognition was most likely a considerable factor in the relations and alliances that Géza established to create a safe environment for his power. From the alliances he made through the marriages of his children, the most crucial proved to be the marriage (995–996) of his son, Stephen and Gisela, the daughter of Henry the Quarrelsome and the sister of the new duke of Bavaria, Henry IV. Incidentally, in accordance with the agreement, the Bavarians gained significant territories on the two banks of the Danube as a result of the marriage, establishing the Hungarian–German borders along the Morva and the Leitha for centuries.

Although the factual circumstances of the way Géza built his country are unknown, his son Stephen clearly set up his own dominance with the help of his father's system of princely power, completing it as the first king of the country surrounded by the Carpathians.

Since when have the Hungarian state existed?

The building of Géza and Stephen's power, the process that resulted in the organisation of the new type of Christian royal power linked to King Stephen I, is commonly described as the foundation of the state. According to Pál Engel, however, defining this process in such a way is "somewhat" anachronistic, "as the political system established in that period had been far from earning the name 'state' for centuries to go".[4] Albeit Engel criticised the premature nature of the term "state" from the expression "foundation of the state", in a legal sense, it is the "foundation" part that may raise concerns. That is because the foundation of a state or, indeed, the establishment of any system meant to serve

[3] The ceremony in Quedlinburg was held with the attendance of the two emperors (Otto I and his son and co-ruler Otto II) and their wives, with "external participants" such as the vassals of the Empire: King Harald Bluetooth of Denmark and Prince Pandulf Ironhead of Benevento; Duke Boleslav II of Bohemia, Bolesław (the later Bolesław II the Bold), the son of Duke Mieszko of Poland, sent as a hostage by his father; the envoys of the pope, the envoys of Emperor John Tzimiskes of the Byzantian Empire *(legati Grecorum),* 12 *primates* of Hungary, two dignitaries from Bulgaria, the envoys of Prince Yaropolk of Kiev, and the representative of the Spanish Umayyads. Bóna 2000: 73; Gulya 2002: 27; Katus 2000: 279.

[4] Engel 2001: 26.

a specific purpose presupposes an individual legal act (linked to a specific occasion, that is, place and time) aimed at creating and ensuring the required organisational and operational preconditions and – besides that or together with that – at determining, adopting and recording the organisational and operational rules. Accordingly, the key question is whether the political structure and power organisation established by St Stephen in the footsteps of his father, on the basis of Christian principles, can be considered a state based on its features. Therefore Engel – just like many before him at the beginning of this century, such as Márta Font or Endre Sashalmi – following Otto Brunner and Joseph R. Strayer's definition of the state, rejected the existence of St Stephen's state, Sashalmi even argues that the use of the concept of the state for "medieval political arrangements" is outright misleading.[5] True, if we consider the modern criteria of the state, the power structure and political organisation established under St Stephen bear no more than a few features of statehood. Nonetheless, if the "modern" state exists, then its natural precursor is a "non-modern" or, if you like, "archaic" state, given that the state – which, according to many, can (only) be equated with the modern state – is not established by compliance with joint criteria that can be or are determined in advance, but it comes into being by functioning in institutions created by the power and political factors, by suitably shaping the existing power and political interests, and by systemising novel institutional solutions with measures and legal norms that enable the assertion of the current power and political goals and aspirations. Taking also the historical antecedents into account, the state has no characteristics independent of the given historical period that would allow for a definition uniformly applicable for every state, fully defining statehood and providing an exhaustive list of state quality. On the other hand, there are typical features that characterise the functioning of a state, organisational and institutional solutions and manifestations that indicate or show statehood and the existence of a state.

After unifying the provinces of the princely kindred of the Árpáds by defeating Koppány in 998, St Stephen had himself crowned king at the Christmas of 1000 (25 December 1000 or I January 1001) with authorisation from the pope, thus gaining Christian royal legitimacy or, with a modern term, international personality in Europe. According to the nearly contemporary account penned by Bishop Thietmar of

[5] Font 2009: 92–93; Sashalmi 2006: 9–10; Makk 2010: 17–18, 20–21.

Merseburg, Stephen received a "crown and blessing" from the pope through the "favour and encouragement of the emperor" *(imperatoris gratia et hortatu)*.[6] József Deér argued that "at the turn of the 10th and 11th centuries, the bestowal of a crown upon a Christian ruler did not depend on the sovereign decision of the pope but was only possible with the consent of the emperor, that is, the ruler who actually controlled the Christian world".[7] Otto III undoubtedly played a role in Stephen's coronation – or in the pope's sending of the crown according to tradition[8] – although, since it is not evidenced by any surviving data, the emperor's approval was not a formal requisite for the validity of the papal authorisation of the anointment.[9] Visiting Rome by the end of the year 1000, the emperor aspired to resurrect the Roman Empire with Pope Sylvester, who was his former tutor, Gerbert d'Aurillac. Due to that, whether as the initiator of Stephen's coronation or as the supporter of the pope's decision, Otto was interested in Hungary's integration into the "Christian empire without this being an actual dependent relationship for Stephen".[10] A sovereign ruler, St Stephen continued his father's policy seeking peace with the country's potent neighbour, Byzantium, and with his brother-in-law, Henry II. He only got involved in a conflict with Conrad II in 1030, after the extinction of the Saxon (Salian) dynasty and chased the emperor's troops attacking Hungary to Vienna and then crushed them. Stephen "lived in peace" with the son of Prince Svyatoslav of Kiev, Vladimir, the only proof of which is the lack of armed conflict between them.[11] In 1018 the German–Polish peace treaty resulted in the settlement of the relationship between Stephen and the Poles, which had been uneasy due to the almost continuous conflicts between the emperor and the Polish

[6] Kristó 1999: 110.

[7] Deér 1938: 96.

[8] Endre Tóth's reasonably correct arguments are against the strongly embedded tradition of the sending of the crown: "The significance of the anointment in the coronation cannot be questioned by the data that report on the bestowal of regalia […]. Of course, theoretically neither the pope's nor the emperor's sending of the crown can be ruled out: however, this was not necessary and in Stephen I's case there is no trace of it in the 11th-century sources. […] in the 11th century, the quality of the coronation was not given primarily and prominently by the crown but by the anointment *(unctio)*. The role of the Hungarian coronation crown as a sole and true coronation regalia, emerging from the mid-12th century, cannot be projected onto the 11th century." Tóth 2000: 58.

[9] Holub 1944: 38.

[10] Engel 2001: 29.

[11] Font 2022: 96–97.

prince, aggravated also by Boleslav the Brave's invasion of Hungary in the years before 1018.[12]

A sovereign ruler, St Stephen issued his own currency. The inscription on the obverse of the obulus (half a denarius), modelled on German coins, reads *Stephanus Rex,* while the reverse reads *Regia Civitas.* Stephen's first money, however, was the silver denarius minted before 1006, at the time of or shortly after the coronation. The obverse depicted a hand holding a winged lance, with the inscription *Lancea Regis,* while the revers reads *Regia Civitas.*[13]

Kristó obviously considered "legislation" a feature of a sovereign ruler, recalling St Stephen's two "Books of Laws".[14] It is accepted and uncontested that the mandatory rules of conduct made by the first king of Hungary should be defined as laws. Even those, such as Engel, who doubt the existence of St Stephen's state, agree that laws and books of laws did exist as early as in the 11th century. Engel stressed that "two Books of Laws originate from Stephen himself", continuing his related explanation with outlining the history of St Ladislaus's "Books of Laws".[15] But if after the reign of the first king, the Hungarian state was indeed, "far" from being established "for centuries to go", then defining St Stephen's rules as laws or books of laws would be just as anachronistic as defining his political organisation as a state. Because in terms of the strictly regulated order of legislation, the modern concept of law – existing within the modern frameworks of the state – cannot be equated with the so-called "legislation" that resulted from the unconditional power characterising the era of state organisation, which, thus, is to be considered "royal law-making". However, by prescribing mandatory rules of conduct, the king – the first king of Hungary in our case – did in fact become a legislator just as much as today's legislature functioning on the basis of principles and rules enshrined in the constitution or fundamental law. Kristó argued that St Stephen's "First Book of Laws was essentially the first criminal code". Yet, even though it defined several delicts and prescribed the related punishments, deeming the first *decretum* – drawn up and edited by the Saxon Thankmar between

[12] Kristó 1999: 73.
[13] Bóna 2000: 84.
[14] Kristó 1999: 59–60.
[15] Engel 2001: 37.

1024 and 1025[16] – a "criminal code" would indeed be anachronistic, as the legal dogmatic features of criminal codes crystallised only in the 19th century.

In line with Kristó's opinion, the issuance of charters should also be considered an indicator of the functioning of the state. Even though no original, authentic charters survived from the time of St Stephen's reign, the earliest interpolation – dated 1002 but actually drawn up in the 12th century – summarising the rights of the Pannonhalma Abbey was based on a charter issued under the first king of Hungary. The Greek-language deed of foundation of the Veszprémvölgy Convent also dates back to St Stephen's reign (issued before 1002), but in this case only the text is original, as the surviving transcriptions were made in 1109, under King Coloman.[17]

As for the organisational features of the state functions of royal power, St Stephen administered the territories subjected to his power by establishing castle *ispanates (comitatus castri)* and castle counties. It should be noted, however, that the administration through castle *ispanates* and castle counties cannot be considered public administration[18] either under St Stephen or during the era of his successors from the Árpád dynasty or under the kings of diverse dynasties. In Engel's approach, counties cannot be considered a type of "administrative units", so he, too, used the word "public administration" in quotation marks, obviously as a comparison. These institutions subordinated to the *ispáns,* as well as the *ispáns* themselves at the head of the castles and the counties, were bodies of the royal government, whose operation and functioning necessarily included administrative tasks and activities enforcing the royal will. The king assembled his royal council from ecclesiastical and secular dignitaries (both foreigners and Hungarians) directly (i.e. personally) beholden to him, and the secular members of the council, with regard to their tasks, were primarily the king's *ispáns.* "Linked to the person of the ruler", this council had no jurisdiction but only duties set forth by the king.[19] The king adjudicated at his discretion in his court or through delegated judges.

[16] Csóka 1974: 154–159, 172–173.

[17] Szentpétery 1930: 36; Fejérpataky 1892: 21–22, 31–32, 38–39.

[18] Makk 2010: 24; Engel 2001: 65.

[19] Bónis s. a.: 95–96.

Opposing those who rejected to classify St Stephen's power structure and political organisation as a state, Ferenc Makk correctly explained that "as a *state,* under the leadership of the king and through its own laws and existing institutions, St Stephen's political structure organised and administered the whole life of the people under its authority in a sovereign way, while it also expressed and enforced the interests and aspirations of the ruling (ecclesiastical and secular) elite". We agree with his opinion that "these *standards of statehood, criteria of the state* […] have been included in several definitions of the state, obviously to various extents and emphases".[20]

No less noteworthy is Makk's remark that "in medieval times, there was no fully equivalent term in Latin or other language to indicate today's modern concept of *state* and express its modern meaning".[21] Consequently, it is indeed "conceptually" impossible to expect a definition adequate for the modern state from medieval literates, but the organisational and operational empirics of the state can be identified.

Makk also noted that terms related to the state, indicating the organisation and functioning of the state, did exist in the Middle Ages: first, *monarchia,* as the determining factor of the exercise of political power, the power structure and political organisation operated by the king, and, second, *regnum*.[22] The latter appeared in early Hungarian sources, used in the meaning of royal power (specifically and in general), and of those subjected to the king's power: the territory under the king's power, as well as the people subjected and subdued to it. Later, the term *regimen* also appeared in addition to *regnum.*

To clarify the meaning of *regimen,* we ought to turn to the peace document between King Béla IV and his elder son Stephen, drawn up on 23 March 1266 on *Insula Leporum* (today Margaret Island), where *regnum* is consistently paired with *regimen* and in each case in terms of *rex iunior* Stephen, in the context of the lawsuits arising in the territory under Stephen's "governance" or of the king's barons and *servientes* living under his son's "governance". Both *regnum* and *regimen* are used as a specific determinant of place in each case, that is, indicating the lawsuits arising in the territory under the *rex iunior* or the king's barons and *servientes* living in the territory under the *rex iunior,* as well as

[20] Makk 2010: 28.
[21] Makk 2010: 27.
[22] Makk 2010: 27.

the evildoers who flee from the king and his country to his son or his son's territory, or, on the contrary, from *rex iunior* Stephen and his territory. Jenő Szűcs argues that the treaty concluded at Pozsony (Bratislava) before 5 December 1262 and the confirmations thereof, including the peace concluded on *Insula Leporum,* created the two rulers' separate "spheres of power" within the frameworks of a single, unified *regnum,* but "neither half of it was a country in the real sense, where the delimited territory and the scope of subjects would have overlapped", despite the fact that the king and his "jurists" strove to maintain "something from the conceptual unit of supreme power and the country", which they expressed by distinguishing the king's country and power from the governance of the *rex iunior:* while the king had a country, the *rex iunior* had governance.[23] Based on the peace concluded on *Insula Leporum* and other charter sources, the term *regimen* not only meant the territory under royal power but also the king's power itself, by whose virtues he adopted rules, granted donations and imposed taxes. Just like *regnum, regimen* was used as a collective term, indicating a set of actually exercised prerogatives, and – also like *regnum* – it bore the meaning of the royal power in general, actually or possibly abstracted from the person of the ruler. Having said that, it is important to stress also that the treaties concluded between King Béla IV and *rex iunior* Stephen aimed at the actual distribution of power within the frameworks of the state. Stephen had no intention to create another country (state) with "independent territory", he only strove to exercise, as long as he waited to ascend the throne, full royal power over those subjected to him, as his father did over his own subjects. That, however, required a territory under the *rex iunior's* power. This territory subjected under the *regimen* provided the frameworks or, rather, the reality of the "personal" exercise of power over those beholden to the *rex iunior,* his own subjects, both within and outside the territory. It should be noted, however, that within the territory, to maintain reciprocity, the *rex iunior* had to exercise this power over those beholden to the king in a way that guaranteed the agreed concessions. This, in turn, in addition to the mutual recognition of the full jurisdiction over the territory of each, required the necessary cooperation of the king and the *rex iunior.* Therefore, a special "joint" tribunal was also set up by the king and the *rex iunior,* which acted with their power and authority.[24]

[23] Szűcs 2002: 164.

[24] Béli 2013: 4.

The particularities of ownership and their role in the obligation-based personal relations with the king and in the state apparatus until the 13th century

Royal power rested on the king's vast estate, which enabled him to properly sustain and grant benefices to the ecclesiastical and secular persons who served him – who were personally beholden to the king and were received in the court, the royal "household" *(domus regia, aula regia, curia regia)* – and to exercise fully independent power over all other groups of the population who provided services to the king. As József Deér explained, the system was based on the royal court, and the king "governed the country with his household *(familia regia)* as if it was his private property".[25] The king's power not only covered his *familia* (in a broad sense: all who owed personal service, and all beholden to the king, serving on various royal estates, carrying out activities outside agricultural production or forced to carry out agricultural production activities, with livelihood ensured from the cultivation of royal estates),[26] but also those not included in his *familia,* that is, who were neither beholden personally to the ruler nor in an *in rem* dependent relationship with him but only owed to perform certain "public obligations": to provide military service in the event of attack of an external enemy and to pay the related taxes (the latter demonstrably from the early 12th century), and to comply with the religious and ecclesiastical requirements imposed by the king on everyone. The king's such despotic rule had no limits other than the customs and morals considered or followed for the sake of the maintenance and protection of his power, and of the interests of the members of his *familia:* essentially the rules of customary law and canon law. Consequently, until the 12th century, the king not only had jurisdiction and so-called royal prerogatives but held an unrestricted power over everyone and everything as a result of the system of the personal relations based on obligations, since the exercise of any authority by anyone depended on the king's discretion.

From the outset, ownership was a key factor in the establishment and operation of the system of exercising royal power. At examining the types of "private ownership", Engel made a specific observation concerning the castle estates, distinguished from the king's "private property",

[25] Deér 1938: 102.

[26] Bónis s. a.: 79–90, 91–92.

that is, from the estates assigned to the system of royal courts, manor houses and forest *ispanate* [Hung.: *erdőispánság*] manors: "Royal castles, along with the castle estates and population that belonged to them, is generally considered a type of the king's estates. Most experts believe that castle estates were the king's lands separated for military purposes, and the castle population consisted of the king's servants, whose special obligation was military service. However widespread, this view […] we must ignore, as royal castles had nothing to do with the institution of landlords. It appears that the castle estates were the opposite of – the king's or anyone else's – private property, and the castle population consisted of categories of people who kept their freedom and were not submitted to a landlord's power."[27] In one of his earlier works, at discussing the legal status of the castle population *(populi castri),* Engel argued that the land they possessed was their own. As he put it, "the land was theirs, in the sense that no one could drive them from it", adding that the land possessed by the castle population was also called "the land of the castle" or "castle land" *(terra castri),* "and, in a certain sense, it was considered to be owned by the castle", noting that the "castle population was subjected to the rule of the castle, and, thus, to the castle *ispáns,* who, in turn, governed it on behalf of the king".[28] This assumption is flawed because the castle had no personality, that is, it was not a legal entity, therefore it had no property. We must also add that instead of representing the castle, the *ispán* represented the king as the owner, since the castle had, and could not have, an owner other than the king. The castle population undoubtedly had some sort of right of disposal, but their civil law relations were determined by their legal status, essentially by the fact that they had no right to abandon the service of the castle with a unilateral statement or by implication (by leaving without permission). The rights of the *populi castri* were restricted to the possession arising from the fulfilment of their service obligations, and to the collection of the proceeds of their agricultural production. Therefore, their right of disposal was also limited to such proceeds. Assigned to fighting and hold offices in the castle without paying taxes, the castle warriors' *(iobagiones castri)* status was similar in terms of possession, noting that – most likely from the outset – their status and estates were *de facto* inherited by their heirs, and this *de facto* inheritance

[27] Engel 2001: 70–71.

[28] Engel 2001: 63.

became established customary law over time. As a result of their status, the situation of castle warriors differed from that of the *populi castri*. The reason, as observed by Attila Zsoldos, was that "the stability of the status and possession of the castle population […] was fully dependent on the king's good grace, without expressed protection provided by the applied legal principles".[29] This showed especially in the 13th century, when the king granted a large number of *populi castri* along with their lands (as quasi accessories). Castle warriors, on the other hand, could not be alienated with their land. On the contrary: as Zsoldos observed, "in the 13th century, the kings of Hungary recognised that the status of castle warriors […] entitled them to the possession of land. Nonetheless, this recognition did not mean that the kings would relinquish, even to the slightest extent, their royal ownership (jus regium) of the *iobagiones castri* and their lands".[30] Although castle warriors possessed the lands assigned to the provision of the service resulting from their status as their own, and the same right was recognised by the king in terms of their legal heirs, the castle warriors – precisely due to the particularities of their status – were not the owners of the lands assigned to them from the castle estate, that is, the right of ownership was not divided between the king and the *iobagiones castri*. Therefore, as only the king's ownership is construable in terms of the land given to the castle warriors, there is no reason to talk about the "royal ownership" of the king. At the same time, the castle warriors' ability to acquire land property at their own expense was not limited, thus, they could obtain the ownership of other lands (outside the castle estate).

Chapter 6 of Book I of St Stephen's laws declared the ownership of private persons: "[…] anyone shall be free to divide his property, to assign it to his wife, his sons and daughters, his relatives, or to the church; and no one should dare to change this after his death."[31] The preposition *sua* (own) indicates both movable and immovable property, including the estates and lands kept under the power of the private individual, that is, possessed by him as his own. That was reiterated by Title 2 of Book II of St Stephen's laws with a particularly significant addition: "everyone during his lifetime shall have mastery over his own property and over donations of the king, except for that

[29] Zsoldos 1999: 84.
[30] Zsoldos 1999: 85–86.
[31] Bak et al. 1999: 3.

which belongs to a bishopric or a county, and upon his death his sons shall succeed to a similar mastery."[32] Chapter II of Book II definitely indicates those who belong to the king's immediate environment (the *aula*), as it includes not only one's own property *(propria)* but also royal donations *(dona regis),* and (until the end of the 12th century) such donations were granted to no one but the king's prominent men directly beholden to him and accepted into his *familia*. The highlighted provisions of the two decrees suggest that the king gave formal recognition of ownership rights for his loyal followers beholden to him and belonging into his *familia*. Clearly, from among the attributes of ownership, the right of disposal was recognised as right of disposal in the event of death. The reasonable explanation is that at the time of the adoption of the decree, the latter may have been the more frequent and spectacular case of the exercise of the right of disposal, especially because, pursuant to the relevant provision, those who acquired property as a result of the owner's disposition not only included the owner's wife and daughter, but also an entity that did not belong to his family, namely the church. The fact that property donations were rendered hereditary reveals an important characteristic of St Stephen's state construct: that "it completely lacked the application of the principle of vassalage".[33] Consequently, "no fiefs existed in Hungary, neither at that time nor later. The owners always acquired full ownership of the land as *allodium* or, as it was called in Hungary, *praedium*".[34]

A further rule of inheritance, prescribed in the third statement of Chapter 26 of Book I of St Stephen's laws, was added to the above two concerning the ownership of private individuals: if someone (a man) died without a male heir (noting that *haeres* always meant male heirs in the order of legal succession), then his goods were inherited by his kins, if he had any, and if not, the king was his heir. Thus, the king confirmed the customary, existing order of inheritance that followed the principle of kindred, by considering and indicating himself the necessary heir of ownerless property. That said, the rule of kindred applied also in the inheritance of royal donations, as the reinforcement of the right of the sons – the male descendants – of the decedent (enforceable in equal

[32] Bak et al. 1999: 9.
[33] Deér 1938: 103.
[34] Engel 2001: 71.

proportions) to the land donation meant following the order of descent in inheritance.[35]

Charters of the 12th century concerning the disposition in the event of death prove that the rules prescribed in the above decrees did indeed prevail among those who belonged to the *aula*. Testators disposed of their inherited, granted, or otherwise acquired (not as a royal donation, that is, purchased) lands with the permission or confirmation of the king, which permission meant that the ruler waived his right *in rem* retained regarding the donation – including, by definition, the right to inheritance – joined by the consent of the testator's kin with inheritance rights, if he had any.[36] The royal donations granted to the king's prominent men are known from these dispositions in the event of death, as no donation deeds were drawn up for laymen until the late 12th century. While churches, in order to protect their property rights, managed to obtain deeds of proof of royal donations from the outset, the king's oral measure had been sufficient for private individuals for the time being, which most likely included ordering the handover of the assets. The implementation of the handover was most likely proven by a deposition made before the king and his *aula* by the person assigned for the task.

The deeds of donation convince us of that the prominent men who belonged to the king's immediate environment exercised their right of disposal concerning their property with the active contribution of the dignitaries of the king's *aula*. Interwoven with kinship ties, in this community of those directly beholden to the king, an owner's advocacy mainly depended on his relationship with the king and on the office he held. Chapter 20 of King Coloman's First Decree, adopted around 1100 on the basis of St Stephen's principles, prescribed that the right of disposition was universally limited by the king's retained right *in rem* (jus regium) in the case of royal donations, but still acknowledged the limited ownership of the grantee's descendants and *germani,* that is, (paternal) brothers. This restriction could only be lifted by individual exemption, the king's waiver of the jus regium. In addition, the provision set forth a special benefit to those whose land had been donated by the first king, including particularly the descendants of the prominent grantees from abroad, as the possession of their lands became embedded, as an equivalent of the settlement areas of "Hungarian" (born) noblemen.

[35] Eckhart 1932: 288.

[36] Béli 2017: 101–102.

The recognition of the right of *germani* was a benefit of the first grantee, whose *germanus* or *germani* otherwise inherited, as legal heirs, the assets not acquired as royal donations.[37]

Extension of the rules concerning ownership

In the early 13th century, the king's *familia* began to disintegrate and personal obligation-based bonds with the king started to loosen, while the weight of the church and the royal council grew in the exercise of power. Due to the changes occurring in the universal church, King Coloman was the first to make a concession to the Hungarian church, extended by his successors' further confirmations. In decrees made with the involvement of his council in 1222, 1231 and 1233, King Andrew II set forth rules regulating the jurisdiction and financial benefits of the church, promoting the functioning of the Hungarian prelature and church for their own interests, as well as their actual influence on the royal exercise of power. Regulating the jurisdiction of the church, the decree issued for clergymen in 1222 referred the lawsuits involving church property to the jurisdiction of the Holy See: "If a layman dares to bring any one of these before a lay judge, either due to possession, theft, or lands, or any other claim, he shall suffer the actual loss of his case."[38] This wide-flung freedom of the church was maintained by the king also in the so-called Oath of Bereg made in 1233, with the exception of lawsuits for real property: "[…] we want and agree that the clerics and churchmen answer before a judge of the church, and settle all lawsuits, except for those concerning lands", as "[…] the lawsuits for church lands and lands of churchmen are tried and concluded by the king of Hungary at all times […]" (Article 8).[39]

By the late 12th century, the dignitaries of the king and the officeholders of his court emerged from the noblemen identified as *nobiles* in the decree attributed to St Ladislaus. These distinguished men, differentiated from the *nobiles* with the name *iobagio* which

[37] Béli 2017: 104–105.
[38] Fejér 1829–1844: III/1. 379.
[39] Fejér 1829–1844: III/2. 319.

appeared in 1172,[40] were mentioned as *barones* more and more often from 1218 onwards. By the early 13th century, there was a large number of free landholders, royal servitors *(servientes regis),* and *nobiles* suitable to take up arms, whom the *iobagiones,* the *barones* and their close relatives were able to commit for military service as *familiares* on account of holding offices, and related benefices such as those arising from being county *ispáns,* and the significant royal donations, which improved their military potential and increased their influence in the royal council. After the Mongol invasion, the royal council, which was increasingly influenced by the *barones* due to the land donations, became a *de jure* power factor in the fields of governance, legislation and the judiciary. During the reign of Ladislaus IV, the country was basically governed by groups of barons and oligarchs.

From the early 13th century onwards, a group of freeholders are mentioned as *servientes regis* (royal servants) in the charters, who, merging with the remnants of the archaic nobility by the end of the century, came to play a role in the shaping of power relations, although only on the countryside – that is, outside the royal court – for the time being. This was also facilitated by the fact that the ownership of freeholders received legal recognition and protection. The status of these freeholders, subjected to the jurisdiction of royal judges and obliged to fight under the flag of the *ispán,* was first labelled as *servientes regis* in 1212.[41] The first case of elevation to the status of royal servant is known from 1217,[42] and their legal status were regulated in several sections of the Golden Bull issued in 1222. From the aspect of the legal status of the royal servants, the key measures were the provision protecting their personal freedom, the renowned Article 4, and the provision concerning the jurisdiction of the county *ispáns,* pursuant to which "the *ispáns* of counties shall not render judicial sentences concerning the estates of the *servientes* except in

[40] In 1172, Konrad was indicated in his will as "regis ioubagio regionis Ungarie". Fejér 1829–1844: II. 185.

[41] The latter were called royal servitors ("liberi et servientes regis") in the lawsuit of Abbot Hysis of Pécsvárad against Sela's son Wolfgang and Kozma's son Jacob. See Wenzel 1860–1874: VI. 355.

[42] Orosz, who served at the Barancs Castle with "the military equipment of a nobleman", and his brothers were exempted by Andrew II from the jurisdiction of the Zala Castle (removing them from the *iobagiones* of the saint king) along with their estates, granting them the golden and eternal freedom of being royal servitors ("[…] cum prediis, Camar scilicet, Wirmile et Mura, terris pariter eorundem ad eos hereditario jure pertinentibus, aurea et perpetua perfrui libertate, et inter servientes regis annumerari perpetuo"). See Wenzel 1860–1874: XI. 141.

cases pertaining to coinage and tithes" (Article 5).[43] Article 7 regulating the order of going to war narrowed the jurisdiction of county *ispáns* by guaranteeing the royal servants' right to go to war under the king's flag in the event of an attack of an army of an enemy against the country.[44]

From among the above provisions, Article 4 deserves special attention: "If a *serviens regis* should die without a son, his daughter shall receive a quarter of his possession but he shall dispose of the rest as he wishes. And if, prevented by death, 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."[45] Clinging to the wording of the article, this would indeed be a rule of inheritance, and accordingly, those striving to explain it tend to start from this fact and return to it. However, the essence of the context reveals something more: just like Chapter 6 of Book I of St Stephen's laws, Article 4 of the Golden Bull seeks to record the owners' right to free disposal, adding the recognition of the filial quarter *(quarta puellaris)* as a reserved share benefitting the daughter of the owner – the *serviens regis* in this case – which had already been an established custom among those bearing the legal status of *nobiles.*[46]

Thus, Article 4 of the Golden Bull of 1222 enshrined that the royal servants were given the ownership right enjoyed by the *nobiles.* That made them freeholders equivalent to nobles also in a formal sense, that is, they rose to the rank of *nobiles* as owners.

The guarantees of civil law rights that determined the noble status were also emphatic in the petition submitted by the royal servants and nobles who held a meeting near Esztergom in 1267. Later accepted by the king and his sons, the petition included issues such as disposition in the event of death, clarification of the order of inheritance after nobles, and the protection of the rights of heirs. Article 6 of the *decretum* regulated the process applicable for the estate of noblemen who died without an heir: "if any of the nobles should die without heirs, his goods and property shall not for the moment be distrained or given to anyone, or granted to anyone by hereditary right until his relative and clansmen have been summoned to our presence, and a decision has been given in

[43] Bak et al. 1999: 32–33.
[44] Váczy 1927: 274; Zsoldos 2022: 20–21.
[45] Bak et al. 1999: 32.
[46] Béli 2018: 1010–1011.

their presence and that of our barons, just as the rule of law prescribes. In the meantime, however, the relatives and kinsmen of the deceased shall preserve his possession and goods."[47] Article 9 prescribed the order of inheritance: "if any noble should die in campaign without an heir, his property, no matter how acquired, shall not revert to the hand of the king, but shall be granted to a relative or kinsman of the man who died on campaign, specifically in the following manner: property which he had by hereditary right should remain with his kindred, but what was bought or acquired shall be left to whomever he wished to give during his lifetime."[48]

Antal Murarik argues that the sections of the decree of 1267 concerning inheritance is the result of a kind of compromise, which showed in the restriction of the assertion of the *fiscus*'s – more correctly, the king's – right and the free disposal of nobles.[49] However, that was in fact not the essence of Article 9, but the effort to have the king declare the inheritance of the "possesiones hereditariae", the inherited or ancestral land in accordance with the principle of kindred, along with lands "quoquomodo acquisitae", that is, lands acquired in any manner, provided that the deceased who died in a campaign made no disposal in the event of death. The text clearly reveals that the term "quoquomodo acquisitae" referred to the acquisition of immovable property in a way other than by donation, as the acquired lands were labelled "emptiae vel acquisitae", the term formally used for non-donated property. The nobles who submitted the petition to the king and his sons were ultimately seeking to achieve the enforcement of the disposition in the event of death made – perchance orally – by those who started out for a campaign.

From among those who discussed the above decree, Jenő Szűcs carried out one of the most thorough analyses. Based on Article 10 of the Golden Bull prescribing that if a *serviens* dies in a campaign, his son shall receive whatever appears appropriate to the king, Szűcs argued that Article 9 of the decree of 1267 was "a brand new rule of inheritance law that sprouted from an old seed", and – just like Murarik – he perceived it as the restriction of the inheritance of the treasury.[50] However, these findings declaring the restriction of the jus regium are incorrect due to

[47] Bak et al. 1999: 40.

[48] Bak et al. 1999: 41.

[49] Murarik 1938: 109.

[50] Szűcs 1984: 346.

the misinterpretation of the term "emptiae vel acquisitae": there is no new element in the described order of inheritance, as neither its merit nor its essence differs from the principle of inheritance that can be traced back to the age of St Stephen and prevailed in customary law.

Contrary to Article 9, Article 6 records a completely different set of facts. The provision pertains to those who died without a descendant heir: "si aliquem de nobilibus sine heredibus mori contingeret", and to their assets. Thus, interpreted correctly, the term "possessiones et bona ipsius" refers to the heritage as a whole, that is, all of the decedent's assets, including those acquired by donation. This explains the claim that until the relatives were heard, the goods and property should not be distrained or given to anyone, or granted to anyone by hereditary right. The nobles' request thus aimed at clarifying in the presence of the king and the barons, within the framework of a legal procedure, the origin of the assets that made up the legacy, that is, the legal title of each asset owned by the decedent, complemented with the legitimate expectation that the entire estate will be left in the possession of the relatives until the completion of this investigation. It is plain to see that the reason underlying the claim is not the restriction of the jus regium, but rather the grievances suffered by the relatives of those who died without a descendant heir due to the occupation of the decedent's estate by others. Article 6 is therefore logically linked to Article 5, because ultimately the prohibition prescribed therein was also aimed at preventing the unlawful occupation of property.

The "introduction" of the decree of 1351 formulated a specific interpretation of Article 4 of the Golden Bull concerning free disposal: "We accept, approve, and confirm the […] letter of […] king Andrew II, our […] predecessor, validated with his golden bull, untouched by any doubt and, transcribed word for word, inserted in this charter with all the liberties contained in it, with the sole exception of […] one paragraph to be excluded from this privilege, namely, that contrary to the clause according to which 'noble men, dying without heirs should be able and allowed in life and death to give, grant, sell, or alienate their estates to churches or to others whom they wish', they should in fact have no right at all to do so, but the property of these same nobles should descend to brothers, collateral relatives, and clansmen by right and according to law, pure and simple, without anyone's objection."[51]

[51] Döry et al. 1976: 129–130.

Declaring the right of free disposal, the *narratio* of Article 4 of 1222 is identical to that of Chapter 6 of Book I of St Stephen's laws. However, based on the legal terminology of the 14th century, the more than one century old text of St Stephen's provision was reasonably construed as a rule specifically prescribing the order of inheritance, and therefore, Article 4 was amended in accordance with the customary law that prevailed from the outset. Yet, no less importantly, this did not mean the universal abolition of the owners' free disposition,[52] but that – just like before – the free disposition in the event of death (provided that it did not follow the order of legal inheritance) required the consent of those intitled to inherit if there were any, or otherwise the king's permission. The Angevin rulers, as well as Sigismund, consistently asserted their jus regium in terms of the ownerless assets of those who died without an heir, expressly forbidding or mostly rejecting the disposition of the *sine haerede* decedents, acknowledging the right to inheritance of the collateral relatives up to the third degree at most.[53] This practice changed from the 15th century onwards. From that time, due to the strengthening political influence of the nobility, the rule of *aviticitas* of Article 4 of the decree of 1222, prescribed in the decree of 1351, prevailed in terms of all collateral relatives.

King Louis I's decree of 1351 proved to be crucial from the aspect of the fate of the emerging Hungarian "estate" of nobility, the royal servants and the *nobiles* who were formally considered to have the same legal status already in the decree of 1267. By transcribing Andrew II's decree of 1222, King Louis's decree summed up the benefits guaranteed to the *servientes regis* and the *nobiles* as noble rights. The Golden Bull, which had fallen into oblivion, became the bearer of noble rights from 1351 onwards due to the transmission of further decrees, and later served as the basis of the four fundamental noble rights enshrined in the *Tripartitum,* namely that noblemen can only be tried in ordinary court proceedings, they are only subjected to the power of the lawfully crowned ruler, they are free to enjoy their estates free of tax, and, in return, they are obliged to defend the country in the case of war, and, with fellow nobles, they can exercise the *ius resistendi* if the king violates the freedoms of the nobles.

[52] Csukovits 2022: 192.

[53] Engel 2001: 153.

Particularities and social effects of the donation system

The royal donation *(donatio regia)* was a reward granted by the king to those who showed loyalty and performed a faithful service, basically a transfer of real estate in return for the services and in order to maintain loyalty and encourage further service. The donations were granted from the royal estates at first, while later, from the late 13th century, more and more from the assets inherited by the king. The donation could be made "de manibus regiis", that is, with the king giving both the right and the property, or "de manibus alienis", where the ruler only bestowed the right upon the grantee, given that someone else was in possession of the property, from whom the grantee could acquire possession through a lawsuit by proving that the possessor had no legal title, which basically made him a wrongful possessor. The latter may have taken place if the grantee, to whom the king had promised a donation, designated the subject of the donation himself, and in his request *(impetratio)* referred to the fact that it was an inherited, thus, grantable asset, unlawfully possessed by one or more persons. The typical case of a litigious donation *(donatio litigiosa)* was, however, when the possession of a third party was discovered in the course of the registration, as the possessor objected to the donation and the registration.

Recording the fact of the donation, its legal basis, and the rights derived from it, the royal deed of donation became an essential part of the *donatio regia* from the early 13th century (from 1205). Another type of royal donation, namely a benefit made "de manibus regiis", included the manumission of people who belonged to the population of the castle, mostly *iobagiones castri,* less often castle servants *(conditionarii),* and their elevation to the legal status of *servientes regis* or *nobiles.* This not only entailed the termination of the jurisdiction of the castle *ispán* over the manumitted, but the ownership of the lands they possessed was also transferred to them. The issuance of a royal charter was a necessary and indispensable part of such *manumissio* as well, in order to prove and justify the new (free) status and – just like the royal donation deeds – the legal title of the transfer of the ownership and possession.

From the 13th century, the legal title, too, was indicated in the deed of donation, if the subject of the donation was an asset inherited by the king. Since no other types of estates were donated from the 15th century onwards, the indication of the legal title became an indispensable requirement. The legal titles were basically grounds for inheritance, based

on which the inherited asset became grantable as a royal donation in line with the law. Such grounds were the default of heirs *(defectus seminis)* and infidelity *(infidelitas, nota infidelitatis). Defectus seminis* occurred with the death of an owner who had no heirs left, or rather, had no relatives entitled to inherit the real estate he owned. In case of a donated asset, "vacancy" *(caducitas)* led to the revival of the king's latent right *in rem,* if the *sine heredae* decedent possessed a donated asset burdened with jus regium. Due to infidelity, all the property of the condemned person was acquired by the king, based on the judgment rendered by the judge, retroactively to the date when the infidelity was committed.

An invention of the Angevin kings of Hungary, "prefection" (Lat.: *praefectio,* Hung.: *fiúsítás*) was a special element of the donation system. As a result of the procedure, by the king's grace, a noble woman could gain full legal capacity, that is, the rights of a noble man (thus, she became the quasi-male legal heir of the legal predecessor). This special grace was first exercised in 1332, when Margaret, the daughter of Ladislaus *de genere* Nádasd, the wife of Castellan Paul Magyar of Gimes, was vested with a male's right of inheritance by King Charles I as regards the assets of her father and paternal uncle, who both died without a male heir: "[…] without hindrance of the long-standing customary law of our country, Hungary, that allows only the male heir to acquire his paternal inheritance […], by our special royal grace and the fullness of the royal power […] we declared her the true heir."[54]

The "promotion of a daughter to a son" *(praefectio filiae in filium),* in short, prefection *(praefectio)* was basically a royal donation granted at the request of a noble father or paternal male relative without a male legal heir *(deficiens),* or an intermediary, most often the woman's husband, by which the king declared the woman to be the male heir of the *deficiens*'s property inherited or to be inherited by the king in line with the law, and frequently granted it also as a new donation *(nova donatio).* The opportunity inherent in prefection to bind close followers more closely was recognised, exploited and institutionalised by King Louis I, as he often made the *praefecta*'s husband – or future husband by advocating the marriage – a rightsholder as well. If the person submitting the request *(impetrator)* was the *deficiens* himself, the act came into effect provided that he had no legitimate sons later.

[54] Fejér 1829–1844: VIII/3. 592.

The royal consent *(consensus regius)* and the new donation *(nova donatio)* should be considered to be special donation titles. Based on royal consent, the donation was acquired by a person donated by the king at the request of the *deficiens,* or a person to whom the *deficiens* alienated his assets with the consent of the king. In the latter case, the *consensus regius* became immediately effective. On the other hand, in the cases of *adoptio filialis,* prefection, *legitimatio,* or *adoptio fraternalis,* the entry into force of the royal consent was made conditional on a future fact, since if the *deficiens* had a legitimate son later, the consent did not come into effect. The abovementioned *adoptio fraternalis* was an inheritance contract between two nobles in the event of the *deficiens*'s death, in favour of the survivor.

Nova donatio evolved from the renewal of the deed of donation. If someone lost their royal donation deed or it was damaged to the extent that it became unfit to verify the recorded facts, they requested the issuance of a new deed. In such cases, to prove his entitlement, the applicant also referred to the fact that he himself was or he and his legal predecessors were in long, peaceful possession of the donation. The king accordingly issued a new deed. By the end of the 13th century, the reference to a long, peaceful possession was in itself sufficient to issue a new letter. By that time, not only the deed was called new deed of donation *(novae litterae donationis),* but the donation was also named *nova donatio.* The new donation confirmed or provided the grantee's legal title. If someone subsequently evicted the grantee of a new donation from his estate, he could claim and sue for the donation by referring to his legal title. The new donation acquired a specific interpretation – linked to the *nova investitura* known from fiefdom[55] – during the reigns of the Angevin kings and Sigismund, namely the transfer of the possession of a benefice *(beneficium)* or fief to a new rightsholder. In case of inherited assets, the donation was transferred by the Angevin kings and Sigismund as a new donation, with the indication of the fact and legal title of the inheritance. This solution was used as a kind of reinforcing legal title for the donation of inherited assets, emphasising the grantee's lawful acquisition. That type of grant also gave the opportunity for nobles closely connected to the royal court to increase their estates through a new donation, and thus, by proving their possession, they could omit,

[55] Béli 1995: 60–61.

even exclude their otherwise entitled, less powerful non-possessing relatives from those who had the right to claim the asset.[56]

The king maintained the jus regium in terms of the donation by defining the order of inheritance and the scope of those entitled to inherit. On many occasions until the early 14th century, the king ensured the inheritance not only to the donor's brother (brothers) but also their descendants. The ruler could designate also the donor's daughters as heirs, if he wanted to give them inheritance rights as a special grace: "haeredes et posteritates utriusque sexus", that is, he vested a woman with the inheritance rights of men as regards the donation. On a few occasions – not very often – in the 13th century, the king did not retain a right *in rem* as regards the donation, but gave free disposal to the grantee, formulated accordingly, by listing the acts of disposal *(eandem possessionem sibi iure perpetuo donavimus, contulimus, ut tam donandi, quam venendi, seu dimittendi in ultimo testamento cuicumque volverit liberam absolutam habeat facultatem).* The donation granted with that type of free disposal was indeed just like property acquired outside of the system of donation. However, only the grantee himself was entitled to enjoy this freedom, since in the lack of his disposal, the king granted the right of inheritance mostly to male descendants, as was otherwise the custom.

The royal donation played a decisive role in the development of the nobility. The true distinguishing feature of nobles was the free ownership and possession of their land, unburdened by any personal taxes, levies in crop or cash, and land rent. Therefore, a freeholder *(homo possessionatus),* that is, a person who actually had a freehold of immovable property[57] or acquired a freehold (outside the jurisdiction of a free village or city), and due to his property was also able to fulfil his military service by sending one or more suitable armed men, enjoyed the rights of nobles. The fact that (free) possession, or more precisely free ownership of real property became the primary factor in terms of nobility was aptly grasped by Erik Fügedi: "A significant part of the Hungarian nobility acquired their status by the grace of the king along with their property. During the

[56] Csukovits 2022: 19; Engel 2001: 154; Béli 1995: 64.

[57] As Andrew III – compared to his predecessors – issued very few deeds of acceptance among the royal servants, Elemér Mályusz concluded that in the last decades of the 13th century, the royal servants and *iobagiones castri* came so close to each other, "they became one to an extent where a formal crossing of that boundary was no longer necessary, and as the castle warriors could enjoy the benefits of the social situation of their new fellows even without authorisation, they no longer requested royal privileges". Mályusz 1942: 427–428.

reigns of Stephen V and Ladislaus the Cuman, the almost exclusive way to gain such status was through the recognition of outstanding military service […]. But a new definition appeared already under Andrew III: the main distinguishing feature of a nobleman was property held as *homo possessionatus.* As the social development advanced, the emphasis on the freeholder status of nobles was reinforced to such an extent that by the 1330s it completely supplanted military service. During the reign of Charles I, property relations also changed to a great extent, and the perception slowly developed that the only source of property ownership was the royal donation […]."[58] The proof of rightful possession and lawful acquisition of rights became of decisive importance as early as in 13th century. In addition to the royal deed of donation, in case of all other types of real estate acquisition, the same purpose was served by the letter of record *(littera fassionales)* issued by the places of authentication *(loca credibilia)* for the *homo possessionatus,* based on the oral deposition of the parties. That type of charter was intended not only to certify ownership or rightful possession, but also to guarantee the lack of legal obstacles to acquiring the ownership or taking temporary possession of the property under a legal title (that the jus regium, the rights of relatives to an inherited property, or the existing rights of a third party are not violated). That guarantee was ensured by a warranty given by the transferor of the possession or ownership of the property, usually formulated as the transferor's obligation to protect the rightsholder "suis laboribus et expensis", that is, with his own efforts and expenses. This kind of stipulation can also be found in division letters, requested by members of an undivided community of property concerning the division *(divisio)* of their property based on an amicable settlement or a judgement.

From the latter half of the 14th century, there was an increase in the number of those who acquired lands and property not burdened with peasants' services, through their income resulting from agricultural production or services provided as non-noble *familares* beholden to the king. Due to this process, nobles' prerogatives were based more and more on wealth. In addition, as the number of freeholders grew, these prerogatives were somewhat devalued, prompting those who had nobility by birthright and formal acts to take action against those who rose to *de facto* nobility through their talent. The fact that many burghers

[58] Fügedi 1984: 127.

and peasants also gained nobility conflicted with the king's interests too, since the *homines possessionati* with nobles' prerogatives were not obliged to pay taxes. By the latter half of the 15th century, this led to the adoption of statutory provisions restricting the rise of those of "low" origin. The provisions recognised no other nobility but "[…] true nobility or privilege of nobility bestowed by the kings" (Act I of 1467).[59]

Nobility could therefore be obtained with a royal deed of elevation to the community of royal servants or nobles *(in coetum servientium regalium seu nobilium regni).* In that way, the king granted the noble rank along with the release of the land owned on the basis of a previous legal situation (which thus became a freehold). The terminological duality distinguishing the elevated *servientes regales* or *regales* from *nobiles* remained even at the end of the 14th century. The rank of *nobiles* became the only equivalent of the noble status from the 15th century onwards. By the end of the century, only de jure nobles could acquire a freehold (in the sense of the customary law of Hungary), that is, the ownership of nobles. At the same time, those who were granted a royal donation also became formal nobles, provided that they had not previously belonged to the ranks of "true" nobles by birthright or a formal act. Full legal capacity was thus identified with the legal status of a nobleman, and the political rights exercised in the autonomous bodies of the county and in the diet were also attached to this.

The obvious way to acquire a freehold property (not burdened with peasants' services) was royal donation. Such grant was given to the nobles who served the king, who – from the early Angevin period – had distinguished themselves in consolidating the power of Charles I, those who were elevated by the king, that is, members of the new aristocracy. Among the nobles, the possibility of acquiring wealth was mostly available for the servants (squires, youths and *miles* of the royal court) who belonged to to the organisation of the king's *aula* or palace, his "private court"[60] formed in the third decade of the 14th century. Among them, the *miles* at the top of the hierarchy received *honor* estates, too, for the duration of their service, and through their service, they and their descendants could rise to the ranks of barons. Serving the barons and lords, noble *familiares (familiares notabiles)* were remunerated according to the lord's discretion, on the basis of the agreement concluded with

59 Döry et al. 1989: 165.
60 Engel 2001: 126.

their overlord, in which mostly only the pledge of protection, support and sustenance were prescribed as consideration for the service. The barons and *ispáns* held their office in return for the corresponding royal income, the *honor.* The castles, castle demesne and provinces assigned to a separate government were administered and operated by their lords with the multitude of their *familiares,* by relinquishing a part of the income received. The barons' *familiares* serving in the royal court were in an exceptional position, similar to the nobles serving in the king's *aula,* who not only benefited from their lord's *honor,* but also received a royal donation several times through their service, with the intercession of the lord. In addition to the transfer of income, the overlords sometimes fulfilled their obligation for sustenance by providing free use of a part of their land, or by sub-mortgaging a mortgaged property possessed under a mortgage loan agreement. Overlords also donated property at the expense of their own real estate assets. With this private donation, the donor acquired (free) property, on which the overlord had no reserved right *in rem,* although such a right could not have been asserted anyway.[61]

The acquisition of wealth and the provided services sometimes opened up the path of ascension to the ranks of lords for wealthier noble *familiares* who performed significant services, as well as for their descendants.

The political advancement of freeholder nobility and its impact on the functioning of the state

From the 13th century, the kings of the Árpád dynasty exercised their power by relying on a council made up of barons and prelates. No factors other than the council members had a formal role in the king's acts of power. After Charles I consolidated his power, the Angevin kings governed with the new baronial elite, by entrusting the royal castles to their barons and *ispáns,* who held their office as *honor,* which means that they had the right to dispose with all the royal income assigned to their office by the king from the demesne of royal castles. The natural lord of his country, the king, after hearing his council, acted and ruled in matters of war, adopted binding rules, operated the royal courts and delegated judges, while preserving and using, but, in accordance with his power needs, also modifying the organisational solutions that were

[61] Bónis s. a.: 261–265.

useful and expedient for the already established judicial forums. Not having the right of succession, Sigismund became a ruler from the choice of the barons by accepting the conditions of the league that raised him to the throne. In essence, this meant that Sigismund was obliged to exercise his royal power together with the league by observing the customary law of the country and keeping his barons and councillors for the rest of his life, and not to grant positions or royal donations to foreigners. In the wake of his coronation, forced to fulfil the expectations of the members of the league, Sigismund gave a significant portion of the royal estates to his electors by royal donation. As the king managed to free himself from the yoke of the league, he consolidated the royal power after 1403 by distributing the wealth confiscated from his opponents, providing large donations to his followers and smaller grants to their *familiares*. Relying on his loyal barons and servants of the aula, Sigismund ruled with full power modelled on the Angevin kings. In this power structure, the nobility had yet to wait for a significant role.

A demand concerning the exercise of royal power was formulated for the first time by the nobles and royal servants meeting near Esztergom in 1267. According to Section 8 of the requests later confirmed in a decree, an assembly was to be summoned in Fehérvár,[62] where the king would remedy the complaints with the involvement of two or three noblemen (as co-judges) from each county. Eventually, no such assembly had been summoned, but in 1268, on the basis of Article 5 of the decree, Béla IV delegated judges and courts to investigate violations. These tribunals composed of the county *ispáns* and noblemen of the county (five co-judges worked with the county *ispán* and palatine in Somogy County, while in Zala County the tribunals operated with six or four noble co-judges in addition to the county *ispán*).[63] By the 1270s, in line with this custom, the county courts operated with four noble associate judges, which was enshrined in Andrew III's decree of 1290/91, prohibiting the county *ispáns* from adjudicating without noble co-judges. These noble judges of county courts *(judices nobilium, quatuor judices nobilium)* – who (verifiably from the early 15th century) were identified in Hungarian with the name *szolgabíró* – initially came from the ranks of the wealthier, more affluent nobles. Due to exemptions from its jurisdiction from the second decade of the 14th century, and then to Louis I's measure referring property cases

[62] Váczy 1938: 60; Holub 1944: 116; S. Kiss 1971: 7.

[63] Béli 2022: 49–50.

to the royal courts, the authority of the tribunal was largely eroded by the middle of the century. The county courts thus acted only in minor civil lawsuits and in the criminal cases of non-nobles. Recruited from the modestly wealthy noblemen of the county in the second half of the 14th century, the members of the tribunal had a role as co-judges in the congregation held for adjudication by the county *ispán* – in his own right at first, then by royal order after the consolidation of the power of Charles I – and in the palatine's general congregations, as well as in the performance of judicial assistant duties upon request in the trials before the royal courts. As a result of a provision of the decree adopted in Temesvár (Timişoara) in [October] 1397, the weight of the county's authority increased again, with the authorisation to handle cases of acts of might and the abolition of the previous exemptions. Moreover, the county authority was tasked with the censuses necessary for the establishment of the *militia portalis,* a new recruitment system based on the number of peasant holdings. By virtue of Sigismund's decree of 31 August 1405, the cases where justice was not administrated before the landlords' courts *(sedes dominalis)* of prelates, barons, nobles and "people of other statuses", were brought under the jurisdiction of the county courts: "[…] and if the lords of these villagers or peasants should refuse to administer justice or are lax in doing so, then that lord for having failed to do justice should be legally summoned to the court of the *ispán* or his *alispán* or the noble magistrates [*judices nobilium*] of that county where justice was refused" (Article 10).[64] Due to this, the authority of the county covered all the landlords' estates and manors in the county, which means that the jurisdiction of the county and the county court was established on a territorial basis, and the landlords who owned property in the county were brought under the jurisdiction of the county in terms of the cases concerning their peasants. Article 2 of Sigismund's order of 8 March 1435 also intended to increase the authority of the county by prescribing that wealthy freeholder noblemen *(nobiles bene possessionati)* were to be selected as officeholders: "Noble magistrates [*judices nobilium*] of every county must be elected and appointed from the richer and wealthier noblemen whom all the nobles of that county by common consent regard and consider suitable for that office."[65]

[64] Döry et al. 1976: 222.

[65] Döry et al. 1976: 262.

The first Hungarian textbook of law, attributed to the *canonicus lector* of Eger, John Uzsai, was completed in 1351 titled *Ars Notaria*.[66] Among the series of letter samples of county authorities, this formulary also presented versions of summons to assemblies sent by the county *ispán* and the *judices nobilium*. Obliging noblemen to attend the assembly on pain of a fine (3 marks), these letters report on county assemblies, where not only adjudicating activities were carried out, but the attendees also deliberated on public matters and, inter alia, the collection of royal taxes.[67] According to the formulary, such assemblies – not, or not only summoned for adjudication – had already been common by that time. This is indicated by a letter from the authorities of Borsod County dated 15 December 1312, in which the noble co-judges, who penned the letter, were identified as having been selected by nobles: "quatuor iudices per nobiles pro tempore constituti".[68] Noble co-judges selected alongside the county *ispán* already appeared in the charters issued by a palatine who adjudicated in his county in 1268. It was emphasised in each of the six letters that the king's delegates were chosen from among fellow nobles of the county: "King Béla […] sent five nobles from this county, chosen by all the nobles of this county […] to accompany us." Nonetheless, this election presupposes an *ad hoc* assembly for the time being, as reported to the king by the five noblemen themselves, delegated to their county with a royal mandate, to be the co-judges of the palatine and *ispán* of Somogy County. Jenő Szűcs labelled these noblemen of Somogy county "bodies of *iudices nobilium*" or "local elected bodies", refining it later as "elected men". Yet, Szűcs still emphasised the fact that one of them was a *iudex nobilium,*[69] which strongly suggests the assumption that the noblemen of the county had an assembly, with an established organisation, to elect such officeholders, that is, noble co-judges, albeit the tribunal of the palatine or county *ispán* was delegated by the king, which, thus, gained and exercised its jurisdiction as a delegated royal tribunal.[70] In fact, however, based on the cited letter from Borsod County, it cannot be assumed that county assemblies where county officeholders were also elected were held earlier than the second decade of the 14th century.

[66] Bónis 1972: 30–33.
[67] Kovachich 1799: 6–7.
[68] Fejér 1829–1844: VIII/1. 480.
[69] Szűcs 1984: 383; Szűcs 2002: 191.
[70] Béli 2022: 49–50.

Electees from the county nobles' own ranks appeared frequently also in the palatine's general congregations by the 14th century. They were jurors elected in the usual number (12), acting alongside the *iudices nobilium,* mentioned from the third decade of the 14th century by the letters issued on the occasion of the palatine's public tribunal. Dated 23 May 1324, one of the first such letters was issued of the general congregation held by the palatine for Szabolcs County: "duodecim jurati et quatuor judices nobilium".[71] The jurors were elected by the noblemen who attended the assembly, that is, theoretically by all county nobles. Having regard to that fact too, such election for the performance of this kind of task, and for filling the office of the county *iudices nobilium,* had presumably been an established practice. The frequency and the reasons of public interest – other than the election of county officials – of the noblemen's assemblies cannot be clarified until the late 14th century. Later – known from the reign of Queen Mary of Hungary – one of the primary tasks assigned to the county assembly was the election of the representatives sent to the diet. In connection with the confirmation of the decree of 1351, the representatives of the nobles of the country were mentioned also by the decree of 22 June 1384: "eorum (viz.: nobilium regni) nuntii."[72] Sigismund's orders issued in Temesvár in [October] 1397 speak of "four noblemen of tried qualities acting with the full authority of their peers" *(quatuor probi nobiles viri plena potestate ceterorum consociorum ipsorum fungentes)* sent from each county of the country.[73] These men of tried qualities – that is, trustworthy men – came from among the wealthy nobles of the county. In the first half of the 15th century, becoming more and more suitable for asserting the interests of the freeholder nobility, the county organisation functioned mainly under the influence of the *bene possessionatus* nobility, who shaped and determined the management of county-related matters in the county assembly. The vice-*ispáns* came from among the wealthy nobles who performed the duties of castellans and stewards as the obligation-bound *familiares* of the lords, while the representatives sent to the diet were elected from the ranks of the *bene possessionatus* nobles. It is clear from Article 60 of King Mathias I's *decretum maius* of 1486 that the county was dominated by these prominent countryside nobles by the end of

[71] Nagy et al. 1909: 196.

[72] Döry et al. 1976: 144.

[73] Döry et al. 1976: 160.

the 15th century. This article prescribed that county *ispáns* are to be selected from *barones* or *bene possessionati:* "appoint in every county, with the counsel and will of the lord prelates and barons, a baron or other respected and wealthy propertied man who seems to be able and suitable to the post of county *ispán,* […] also select a respected man from that county but not from elsewhere as *alispán* or *alispáns*", that is, the county *ispán* was to appoint vice-*ispán* or vice-*ispáns* from among the *bene possessionati* of the county.[74] Freeholder noblemen had undoubtable influence in the construction of the autonomous county organisation. The most crucial right for the functioning of that organisation – with a modern term: the budget right – was provided by Article 64 of the decree of 25 January 1486 by introducing the household tax: "all and each individual possessor […] to pay and be obliged to pay, to the treasury of the community, the costs ordered by their community from their possessions and goods in proportion and according to their share, […] as when the affairs of the county are at stake, everyone should pay taxes."[75]

The Esztergom assembly of nobles and royal servants in 1267 was indeed an important moment in the emergence of the nascent nobility on the political stage, but this did not mean that they were powerful actors in the shaping of political relations and royal legislation. During Ladislaus IV's reign, the nobles who participated in the royal congregations could indeed influence the formulation and establishment of the rules, but those rules were adopted and sanctified by the king and the barons and prelates, or the secular element of his council, according to the circumstances of the assembly shaped by the power relations. Although the congregations convened as early as in 1267, the assembly of Pest in 1277, and also those held under Andrew III have been regarded by some as diets, these late Árpád era royal congregations were in fact only prototypes of future regular diets operating under the substantial political influence of the nobility.[76] These congregations lacked both an established organisation and a fixed operating order, and the nobles attended them based on their personal freedoms and individual rights. Albeit three *congregationes* followed one another from 1298, these were

[74] Döry et al. 1989: 299.

[75] Döry et al. 1989: 301.

[76] Eckhart 2000: 94; Holub 1944: 118–119; Degré 2010: 87; Csizmadia et al. 1995: 99, 130; Engel 2001: 94; Kristó 2003: 265; Mezey 2003: 109.

occasional in terms of the number of nobles present. At the same time, while such attendees – whose number is not indicated in the surviving sources – were indeed *nobiles regni,* that is, nobles of the realm, they did not represent the nobility of the country, and, therefore, they could and did express nothing but the requests agreed upon by them during the congregation, which was not equivalent to the requests of the nobility as a whole. Although the actors of the future diet (assembly of estates) came into play in the last years of the 13th century, it would not be correct to perceive this as the existence of estates, or, more precisely, nobility constituting an estate. As György Bónis pointed out referring to the clause of the decree of 1298: "Here we have the assembly of estates, which acts in the name of the country of estates – before the Hungarian estates were even formed".[77] However, this paradox is only apparent, since the *congregatio generalis* of 1298 showed similarities with the diet only in its constituent elements.

During the reigns of the Angevin kings and Sigismund, the prelates and barons were still "almost indispensable factors in the creation of generally applicable rules due to their financial power and political weight", while "the masses of nobles or their representatives were by no means such a necessary factor in legislation until the 1430s".[78] Among the nobles, those distinguished by the name "proceres" and identifiable with the *bene possessionatus* nobles occasionally participated in legislation. Their attendance and invitation depended on the discretion of the king, who decided, by virtue of his power, whether he wished to rely only on the advice of his barons, or he would also expect the cooperation of nobles in the adoption of binding rules. In the latter case, alongside the prelates and barons, the nobles present contributed to the adoption of royal regulations as the full-power representatives of nobility as a whole, that is, of all absent nobles. According to the introduction of the decree of 8 March 1435: "De […] necnon nobilium regni nostri totum corpus eiusdem regni cum plena facultate absentium representantium unanimi consilio."[79]

With the death of Sigismund, a profound change occurred in the political and administrative relations. The aspirations of the emerging

[77] Bónis s. a.: 169.
[78] Bónis 1976: 50–51.
[79] Döry et al. 1976: 261.

nobility to participate in the formation of national politics came to the surface. The articles of the decree of 29 May 1439 already record the attributes of the state of estates governance. Article 1 ordered the restoration of the country's laws and old customs with the involvement of prelates, barons and nobles ("prelatorum et baronum ac regni nobilium consilio et auxilio"). Article 2 concerned the election of the palatine: "the palatine is to be selected by the royal majesty with the unanimous will of the prelates, barons and nobles of the country, since, as the old customary law of this country requires, this palatine is to be able and obliged to administer law and justice on behalf of the people of the country for the royal majesty and on behalf of the royal majesty for the people of the country."[80] Those gathered at the diet made it the duty of the king to protect the country with his own mercenaries, in such a way that the king could not order a national *insurrectio* unless he could no longer fulfil the duty of protection through his own efforts. A further requirement was that the country's nobles were not to be led beyond the borders of the country "as demanded by their old liberty" (Article 3). It was also ordered that the king could not change the quality of the minted coins "without the advice of the barons, prelates and nobles of the country" (Article 10). Furthermore, it was forbidden for anyone to hold secular and ecclesiastical offices at the same time, as well as the granting of secular and ecclesiastical offices to foreigners, the donation of estates to foreigners or for money, and the king's demand for accommodation at the estate of an ecclesiastical or secular property holder.

In the spring of 1439, the uproar of the nobility after the king's return led not only to the fact that King Albert fulfilled the demands made in the diet, but under the pressure exerted on him, he began an almost endless series of donations entailing further serious consequences. According to Engel, the king donated "almost half" of the still existing approximately sixty castle estates, which effectively liquidated the royal land wealth: "From then on, the king was only one of the mightiest property holders."[81]

[80] Döry et al. 1976: 287.

[81] Engel 2001: 234.

How can we identify the Hungarian state by the end of Sigismund's reign?

To describe the "medieval state", the political structure and governmental organisation connected to the Árpád and Angevin dynasties, Ferenc Makk coined the term dynastic state, having also regard to the fact that "both dynasties formed the internal cohesion and important unifying factor of the Kingdom of Hungary and the Hungarian state". Makk argued that "except for the last decades of the Árpád era and the period of the provincial lords at the beginning of the Angevin regime, the predominance of the power of the king prevailed in the management of the country against all other social forces". Considering it "the most suitable" term, Makk defined dynastic state as "the political, institutional and territorial state organisation of the Kingdom of Hungary in the Carpathian Basin, commencing with the reign of St Stephen". He added that this dynastic state was replaced by "a new version of the medieval Western European state after the reign of Sigismund", namely the so-called "state of estates, which stretched far beyond the Middle Ages until the fall of the estate system in 1848, and can be defined as a completely new, more proportional and more democratic form of the distribution and exercise of power between the king embodying the dynasty and various social forces, that is, the estates".[82]

Highlighting the king's preponderance in the exercise of power and state government, Makk indeed pointed out the essence of the period. The rule of the kings of the Árpád and Angevin dynasties, as well as that of Sigismund after 1403, is undoubtedly characterised by the royal power surpassing all social forces. Nonetheless, the Sigismund era state – since the "dynasty" of his era was represented solely by Sigismund himself – makes the applicability of the above definition unstable in the first place. Sensing this, Makk argued that the time limit of the dynastic state characterised by the Árpáds and Angevins was marked by the end of Sigismund's reign decades later. In the context of Makk's justification, the use of the epithet "dynastic" is acceptable, at least for the state of the Árpád and Angevin rulers. However, that epithet alone carries no qualifying content that would point only to the state of the Árpáds, the Angevins and Sigismund, since from the 16th century, in several successive periods of the modern Hungarian state, the

[82] Makk 2010: 29.

development of Hungarian state history was in fact defined by another dynasty: the Habsburgs.

The concept of the state of estates [Hung.: *rendi állam*] is long-established and used. Defining the concept of "estate" [Hung.: *rend*], Engel grasped the essential criterion as the interference in the governance of the country, arising from the legal situation. "The 'estates' essentially consisted of those who were considered landlords, that is, landholders of some type. All who lived under the power of a landlord […] were outside the framework of the 'estates'." In other words, the estates encompassed freeholders (who were not subject to a landlord's authority and owed no peasants' service) or "a group of landowners with the same legal status".[83] The operational principle of the state of estates was to ensure the estates' participation in political decision-making, their systemic participation in the functioning and operation of the decision-making bodies, and thus in the shaping of the state administration. According to Engel, the two characteristic features of the state of estates were the diet (assembly of estates) and, related to this, the principle of representation of the estates.[84] These were joined by – as a third element, if you like – the organisational and operational rules established by the decision-makers, that is, the provision of the legal framework.

The concept of the state of estates includes and can be defined by the distribution of decision-making power between the ruler and the estates, and by the actual exercise of the royal rights by the king. Considering the exercise of royal power to be evident in the states of estates, there is no reference to the king as the exerciser of power in the name used to identify this type of state, and it is unnecessary, too. Since it is the estates that appear in the name, as the other effective factor in addition to the king in the exercise of power – that is, the word "estates" carries the specificity that is suitable and sufficient for distinguishing the state indicated by it – highlighting an equally effective factor other than the king seems useful and reasonable to distinguish the state functioning as the precursor of the state of estates. Before the establishment of the state of estates, the sole political decision-maker was the king, who, from the outset, necessarily relied on his dignitaries in exercising and maintaining his royal power. These prominent men were the prelates and the secular members of the king's narrower circle: his *ispáns*, the *nobiles*, then his

[83] Engel et al. 2003: 193.
[84] Engel et al. 2003: 194.

iobagiones, the barons and members of the royal council. Serving as a council, they could be the influencers and even the initiators of the king's orders and measures, also reinforcing the royal decisions with their unanimous consent. In this way, they were determining factors in the exercise of royal power and the functioning of the state. Taking all that into account, in naming this type of state, a reference to such prominent men and their body around the king, the royal council, would be most justifiable. For lack of a better choice, an appropriate epithet – as reference to the members of the royal council – would be "aristocratic". In my opinion, if it is necessary to distinguish it with a single epithet, the power structure and political organisation that can be described from St Stephen's reign to 1439 can be called an aristocratic state, more precisely the aristocratic Hungarian state.

The power structure and political organisation established by the first king of Hungary, the state of St Stephen, proved to be viable. Surviving the disturbances following the death of the first king, the Árpád descendants built and maintained their power on the inherited structure. The integrity of the state of St Stephen was not broken even when royal power was actually divided in the latter half of the 13th century between Béla IV and his older son, nor in the late 13th century, when oligarchs became provincial lords. True, however, that not a single lord was able to achieve at least tacit support for his quest for independence from the church, which "perhaps nowhere was as much a supporter of the central power as in Hungary".[85] The power of the Angevin kings and Sigismund was also based on the institutions of the Árpád era. In order to achieve their political goals and to ensure their monopoly exercised with the support of the royal council and their dignitaries, the royal donation, the solution used since the reign of the first king to oblige the faithful, was left untouched, and only minor but effective modifications were made to the donation system from the aspect of the exercise of power. The wealthy element of the freeholders, the *bene possessionatus* nobility, was formed as a result of the royal donation practice and *familiaritas.* Emerging from their former powerless role in political decision-making, the *bene possessionati* became an influential factor in the diet from 1439, then, after losing some of their power-influencing weight under Mathias Corvinus, they returned as a renewed and unavoidable force after 1490. By the early 16th century, the diet actually functioned as a body dominated by the

[85] Fügedi 1986: 180.

freeholder nobility. By the late 15th century, the *bene possessionatus* elite formed the right to represent itself in the royal courts and in the royal council. At the same time, the *bene possessionatus* nobility occupied the bodies of the county as well. It was enshrined in law that all landowners, including the holders of the largest properties, were under the authority of the county, and that the county *ispán* could only appoint vice-*ispáns* with the consent of the nobility of the county. And in the convention dated 13 October 1505, it was laid down that in the event of Vladislaus II's death without a male heir, a foreign ruler would not be chosen.

With the rise of the nobility, a system of ideas took shape as the political credo of the Hungarian nobility and a decisive influence on their outlook, penned by István Werbőczy. In Title 3 of Part I of the *Tripartitum,* deriving from the first Hungarian king, Werbőczy defined the reciprocal (public law) relationship between the king and the nobility, which formed the basis of the exercise of power and was manifested in the country's holy crown: "But after the Hungarians […] elected him their king and crowned him of their own free will, and then was transferred by the community, out of its own authority, to the jurisdiction of the Holy Crown of this realm and consequently to our prince and king, the right and full power of ennoblement, and therefore of donating estates which adorn nobles and distinguish them from ignobles together with the supreme power and government. Hence all nobility now originates from him, and these two, by virtue of some reciprocal transfer and mutual bond between them, depend upon each other so closely that neither can be separated and removed from the other and neither can exist without the other."[86]

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