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THE GOLDEN BULL OF 1222 AND THE HISTORICAL CONSTITUTION

András II (1205-1235) imposed new taxes to be able to support his lavish lifestyle, but he mostly outsourced the collection of these taxes. To increase the number of his allies despite the general discontent, the king gave away royal estates one after another. In response to the protests of the royal servants and the lords on Imre's side, András II issued the Golden Bull of 1222, in which he promised to abide by the law and to abandon his lavish lifestyle.¹

The Golden Bull was named after the pendant seal that authenticated the charter. From the time of King Béla II onwards, the king used a gold seal on all important documents, but only the Golden Bull of 1222 is usually written with capital letters. It should be added that our historiography also mentions two other golden bulls: the second one was issued by András II in 1231 at the request of the high priests and two of his sons. The third golden bull was issued by King Béla IV, together with his two sons, Stephen the Younger and Béla, Prince of Slavonia.²

From the time of the pamphlet-writing of the 1790s onwards, *Magna Carta Libertatum*, issued by King John Lackland of England on 15 June 1215, was widely held to be the model for the Golden Bull. It was around this time that people began to analyse the supposed or real similarities between the English and Hungarian historical constitutions.³ Inspired by this, Count István Széchenyi

1 Zsoldos 2011, p. 1

2 Eckhart 1946, p. 34

3 Aranka 1790; Concha 1880, 2, pp. 33–44; Andrassy 1927, pp. 161–178; Fest Sándor: *Magna* 1934, pp. 273–289; Fest 1941, pp. 105–134; Haendel 1942, 1–3, pp. 123–128; Závodszy 1987, 1, p. 10–18

wrote in his diary on 15 October 1832: “Magna Carta and the Golden Bull were born, as it were, from the same brain as a result of the crusades.”⁴ József Gerics, on the other hand, has confirmed in several studies that the Golden Bull of 1222 is a product of the 13th century, the “juristic century”, which began under the influence of the Fourth Council of the Lateran⁵ of 1215.⁶ Canon-law rules stipulated that the state could only function according to legally ordered rules. The Golden Bull of 1222 is our first law that was drafted at the request of the political nation and in which the king agrees to a limitation of his rights,⁷ although it only became the basis for the fundamental rights of the nobility with the law of Lajos the Great issued in 1351.⁸ This was the beginning of the development of legislative legal policy in Hungary.

The Golden Bull was also the opening of a new era. Familiarity, the Hungarian version of feudalism, was prevailing increasingly strongly.⁹ Although the feudal contract was not concluded between people of equal rank, it did not result in unconditional obedience. A vassal owed allegiance to his liege, but was only required to perform military service or administrative duties that did not conflict with the dignity of a free man and respect for the church or the king. The liege was also bound by the contractual relationship. In exchange for loyalty, he was obliged to give consideration and protection to his vassal. If the liege failed to honour the contract, which was a reciprocal obligation, the vassal was released from his obligations.

Several provisions of the Golden Bull of 1222 can be considered true accomplishments of our historical constitution. The Golden Bull is the cornerstone law of the Hungarian historical constitution, confirmed by Lajos I (the Great) in 1351, Queen Mary in 1384, Matthias I in 1464, István Werbőczy

4 Széchenyi 2002, p. 636

5 The Fourth Council of the Lateran was convened by Pope Innocent III (also known as the “Jurist Pope”) based on a bull of 19 April 1213, and was held from 11 to 30 November 1215. See: Gergely 1982, p. 92

6 Gerics 1976, p. 97; 1980, p. 90; 1987, p. 237

7 Kristó 2014; Érszegi 1990; De bulla aurea 1999

8 Eckhart 1946, p. 29

9 Szekfű 1912; Bónis 1947, p. 111; Szűcs 1993, p. 19

in his *Tripartitum* and in the royal letters of avowal. This was the first time in the history of Hungarian legislature that an attempt was made to limit executive power by means of positive laws.¹⁰ It is also a symbol of constitutional traditions, as it declared certain freedoms and, for the first time, limited the power of the king by secular legislation. The king undertook not to arrest royal servants without a legal ruling (Article 2). On this basis, István Werbőczy declared in Article 9 of Part I of his *Tripartitum* that nobles “may not be arrested in person anywhere and by anyone without a prior warrant or summons to a lawsuit and a legal sentence, at the urging, complaint or request of anyone.” (Cf. with Sections 95, 97, 101, 141-147, 152, 153, 158, 165, 170, 267, 268, 296, 476, 537 of Act XXXIII of 1896).

The Golden Bull declared some of the property rights of the royal servants and gave them the right to go to court to redress their alleged or real grievances. This is because the king undertook that every year, on St. Stephen’s Day, he would hold a legislative day in Székesfehérvár, and that all royal servants could appear there freely if they wished (Article 1). Another section states, as we would say in modern language, that no one may be deprived of their rightful judge. This is why we consider the Golden Bull the foundation of fundamental constitutional rights.

Since these laws also bound the King, to secure this the palatine was gradually given not only private but also public judicial powers. Article 6 of the so-called Palatine’s Articles of 1485 stated this power regarding the palatine: “He shall settle any discord between the King and the inhabitants of the country.” Another statement by Matthias can be quoted regarding the powers of the palatine: “If anyone wishes to bring a suit against our person, he will find a judge in the person of the palatine, who represents the nation (*universitatem regni*).”¹¹ István Werbőczy’s *Tripartitum* testifies to the same: “The royal majesty must bring all complainants and litigants before the palatine of the country and respond through the director of his affairs.” (*Tripartitum* Part II, Art. 39.). The independence of the office of the palatine

10 Bónis 1947, pp. 164–166, p. 169

11 Quoted by: Timon 1919, p. 693

was also ensured by the fact that he was elected by Parliament beginning with the entering into force of Act II of 1439.

The clause of the Golden Bull empowered the nobles, collectively and individually, to resist the ruler's measures (*jus resistendi*): "We have also decreed that if any one of us or our successors should at any time desire to act contrary to these decrees of ours, by virtue of this charter both the bishop and the other serfs¹² and nobles of our country, collectively and individually, shall have liberty, now and hereafter, for ever and ever, to resist and oppose us and our successors without any fault of disloyalty."¹³

In other countries, the right of resistance stemming from feudal law slowly vanished,¹⁴ but in Hungary it was reaffirmed in István Werbőczy's *Tripartitum* (*Tripartitum* Part I, Section 9, Art. 6.) Even the *Quvadripartitum*, which was written in opposition to the *Tripartitum*, contained the full text of the Golden Bull.¹⁵ Thereafter, the Hungarian estates constantly invoked their right of resistance against the Habsburgs' absolutist aspirations. In 1604,¹⁶ István Bocskai gave an expansive interpretation of the right of resistance, saying that it should be asserted even if the king violated the rights or customary laws of the country.¹⁷ In 1605, in a proclamation¹⁸ to the public of Europe, the Hungarian estates condemned Rudolph for not caring for the welfare of the nation, for disregarding divine law and for behaving like a tyrant. This was the first time in history that the resistance clause of the Golden Bull was invoked by the estates.¹⁹ Gábor Bethlen himself, when he joined the anti-Habsburg alliance in 1619, had Peter Alvinczy prepare a proclamation in Latin and Hungarian entitled

12 At that time, serfs were still understood to be the nobility of the country.

13 Cf.: "If any of the successors of the chief Álmos and any of the descendants of the other princes should break the agreements concluded under oath, they shall be cursed for ever." Anonymus: *Gesta Hungarorum* <https://mek.oszk.hu/02200/02245/02245.pdf>, p. 5

14 Degré 1980, 6, p. 369

15 Illés 1931, p. 8

16 Eckhart 1933, p. 133

17 Révész 1934, 7–8, pp. 271–272 For the question, see: Péter 1984, pp. 66–71; Varga 2006/1, pp. 29–41

18 Károlyi 1899, p. 168

19 Benda 1971, p. 326

Querela Hungariae Hungary's Complaint, which was later published in several editions. In it, the violations of religious freedom and of the constitution of the estates are listed at length, as he wanted to justify his campaign.²⁰ Meanwhile, the Transylvanian estates also wanted to secure the right of resistance against Gábor Bethlen. For this purpose, at the time of the prince's election, the *ius resistendi* was confirmed by law: "since many of the princes who had been ruling over the principality and exercised authority over it, became abusive and forgot the right of election, *rapinam arbitrato principatum*, readily committed lawlessness and many other indecent things, from which a terrible danger to our country has always resulted: we have therefore decided that if the prince should act in an exorbitant manner, and innovate anything *contra jurimentum nobis praesitum*, the cities, councils, Szekler and other captains and officers will be freed from loyalty and may assemble, so they may be able to resist him *absque nota infidelitatis, juxta contenta decreti*."²¹ In fact, they went even further in extending this constitutional right not only to Szeklers and Saxons, but even to citizens of the towns.²²

George Rákóczi I followed Gábor Bethlen's example when he sent his troops against the Habsburgs in early February 1644. After the capture of the fortification of Kálló, he addressed a proclamation to the Hungarian estates,²³ in which he listed at length the religious grievances of the Protestants and the Habsburgs' desire to make Hungary a hereditary dominion. He declared that he had not taken up arms for his own self-interest, but because he wanted to restore the country's liberties.²⁴

A similar declaration was attempted by those involved in the Zrínyi-Frangepán-Wesselényi conspiracy²⁵. Imre Thököly, who founded an independent principality in northern Hungary in opposition to the Habsburg absolutism, claimed in 1684 that, because of the resistance clause, the law of

20 Török 1883, p. 4. Cf.: Imre 1995

21 Szilágyi 1880, pp. 359–360

22 Makkai and Szász 1987, p. 645; Rácz 1992, p. 117

23 Rákóczi 1644

24 Horváth 1872, pp. 444–445

25 Pauler 1876, I–II

Andrew (András) of Jerusalem was the soul of Hungarian freedom, which completely and utterly released the practitioner of law from the accusation of rebellion.²⁶

After the defeat of the war of independence led by Imre Thököly and the recapture of Buda, the Habsburgs regarded Hungary as a province conquered by force of arms. Therefore, at the Diet of 1687, the intimidated estates renounced their right for resistance²⁷ with the following justification: “Besides, the status and estates recollected the benevolent proposal of His Most Holy Majesty, which is intended to correct the only clause contained in the 31st article of King Endre the Second, issued in the year 1222, that is, rather the freedom to resist and to oppose kings for the reasons stated therein, although in the said part of the same article the right sense was only sought to be twisted into some other perverse sense by the ill-willed interpretation of some, and it never came into the mind of the more judicious status and estates of his Most Holy Majesty that, pursuant to it, anyone might rise in arms and revolt against their lawful king and lord (as it was perverted by the evil intentioned and rebellious).” (Act IV of 1687). However, Hungarian public opinion still held that the right of resistance remained in force, since the estates only renounced it under pressure.

Ferenc Rákóczi II issued his proclamation starting with the words “*Recrudescunt inclytæ gentis Hungaræ vulnera*” (“*The wounds of the great Hungarian nation have opened again*”)²⁸ in Latin and French to the Christian world in 1703, on the causes and purpose of the War of Independence, at Munkács (today: Mukachevo, Ukraine),²⁹ at the start of the War of Independence. In it, he describes how Gabriel Báthory, Bocskai and Bethlen, George Rákóczi and Thököly had taken up arms earlier because of the violation of ancient liberties.

26 Hóman and Szekfű 1935, p. 203

27 Bartoniek 1987, p. 98

28 The proclamation was drafted in beautiful Latin by Rákóczi’s closest collaborator, confidant and later chancellor, Pál Ráday, and Rákóczi made corrections in the text himself. It has been translated into Hungarian, while translations of it in Polish, Dutch, German and Turkish, as well as an English extract, are also known.

29 Rákóczi’s proclamation, 2004

One after the other, he listed the violations, even mentioning legal provisions, highlighting the abolition of the right to freely choose a king, and the resistance clause of the Golden Bull.

Rákóczi wrote two works on the philosophy of state in French between 1722 and 1725: *Réflexions sur les principes de la vie civile et de la politesse d'un chrétien* (A Christian's reflections on the principles of civil life and politesse); *Traité de la puissance* (Treatise on power). To the latter, he added, as an appendix, a French translation of *St. Stephen's Admonitions to Prince Imre*, and quotes from the Golden Bull. The two closely related works, together with Rákóczi's will of 1732, were later published in print under the title *Testament politique et moral du Prince Rakoczi*.³⁰ He also produced a Latin version of the *Traité* for the Hungarian nobility, entitled *Tractatus de potestate*.³¹ In his *Treatise on Power*, Rákóczi described the way in which a king should exercise his power. He stated that a ruler has the right to rely on the nation to counter unlawful attacks. He supported his statement with the Golden Bull and St. Stephen's Admonitions.³²

The noble-school reformers of 1790 referred unanimously to Article 31 of the Golden Bull.³³ Among them, Ignác Martinovics – who held the most radical views – and his companions were beheaded on the Vérmező on 20 May 1795. A gentle priest-teacher,³⁴ Benedek Virág, subsequently translated the Golden Bull into Hungarian.³⁵

The *vis inertiae* right of the noble counties, i.e. the right to passive resistance, was also derived from the Golden Bull's resistance clause, which was abolished

30 Political and moral will of Prince Rákóczi (The Hague, 1751).

31 Ferenc Rákóczi, one of the most literate persons of his time, was able to write in Hungarian, Latin and French to a high standard.

32 Political and moral will of Prince Rákóczi II. (Study and subject notes by Béla Köpeczi; Latin text edited by István Borzsák; French texts edited by Iлона Kovács = Testament politique et moral du prince François II Rákóczi / avec une étude et des commentaires de Béla Köpeczi; texte latin établi par István Borzsák; textes français et appareil critique établis par Iлона Kovács. Akadémiai Kiadó, Budapest 1984); Bene 2007, pp. 1035–1058; Havas 2006, 1–2, p. 138

33 Degré 1980, 6, p. 369

34 Benedek Virág introduced himself as “the former royal teacher of the gentle sciences.”

35 Virág 1805

by Act IV of 1687, but was considered to apply only to active, armed resistance, while the counties retained their right to passive resistance.³⁶

A rule was first established on the basis of Articles 4-6 of Act I of 1504, which authorised the deputy ispan (county head) to refuse to execute royal decrees and orders, in tax matters, that had not been voted by the National Assembly and not adopted as law. This principle was raised to a general level by Act XXXIII of 1545, which was issued under the title *Letters from the King or his Governor contrary to the laws of the country, which are not to be retained in the return of property*. Thus the practice developed whereby the jurisdictions did not enforce the objected royal or government decree, but merely addressed a remonstrance (*remonstratio*) to the king in which they listed their grievances.³⁷ If, at the monarch's repeated urging, the decree was not enforced, a royal commissioner was appointed to the county, and as a last resort the county house was occupied by the military. In response, the officers of the most determined counties resigned their offices. The idea of punishing the county officials was raised in the Vienna government, but no appropriate legal provision was found to this end.³⁸

The constitutional protection role of the noble counties was also necessary, as there were multiple instances in which the Habsburg rulers did not convene a national assembly and tried to govern, collect taxes and raise soldiers by decrees. This practice began during the reign of Leopold I (1657-1705). As an accomplishment, Joseph II (1780-1790) was convinced to revoke his unconstitutional decrees on his deathbed.³⁹

36 Egyed 1929, p. 76, p. 109

37 As a continuation of this, the jurisdictions retained the right under Article 19 of Act XXI of 1886, according to which: "The judicial authority may, within the limits of this Act, appeal against a government decree before its enforcement if it considers the decree to be contrary to the law or inappropriate in view of local conditions. But if the Minister, notwithstanding the reasons given, demands enforcement, or if he prohibits the authority of the law from enforcing its decision the second time, the government decree shall be complied with and shall be enforced immediately and unconditionally [...]"

38 Soós 2007, 1, p. 112

39 Stipta 2020, p. 196

The last major constitutional defence action by the noble counties took place in 1822-23.⁴⁰ Francis I had not convened a parliament since 1812 and ruled by decrees in an unconstitutional manner. He also tried to limit the autonomy of the counties and the functioning of their institutions, while raising the war tax two and a half times. Of the 52 counties, 42 complained against the decrees, 15 of which backed down after the first royal reprimand letter. After two royal decrees, 19 counties refused to implement the tax decree. By the autumn of 1822, there were still eight counties (Trencsén, Nyitra, Bars, Nógrád, Zemplén, Sopron, Zala, Veszprém) which continued to stubbornly resist both matters, while four counties (Varasd, Vas, Komárom and Ung) continued to resist only the taxation. The king then appointed royal commissioners and sent military to the centres of the individual counties that had shown resistance. In protest, the whole of Bars county council resigned their offices to prevent enforcement.⁴¹ In the end, the counties won again, as the king was forced to convene the National Assembly of 1825-1827, which also marked the beginning of the reform era. In the proceedings of the National Assembly of 1827, it was declared that “*Quippe congregationes comitatum legalia potestas executia in aere legum custodes sunt.*” (“The county assemblies are not only the executors of the law, but also its guardians.”)⁴² Ferenc Deák stated in 1833: “[...] the counties were the utmost guardians of our civil liberty.”⁴³ In his 1935 speech he also stressed that the counties were also the guardians of individual rights.⁴⁴ In recognition of all these merits, Lajos Kossuth included in the preamble of Act XVI of 1848 the statement, which has become a byword, that the counties are the “bastions of Hungary’s constitutionality.”

The historical constitution is a set of cardinal laws, customary rules and principles laid down by jurisprudence (legal literature) from different periods.⁴⁵

40 Horváth 1868, p. 107, pp. 111–112

41 Praznovszky 1987, p. 119; Molnár 2003, p. 389; Erdmann 1989, pp. 8–11; Völgyesi 2009, pp. 173–198

42 Quoted by: Szivák 1906, p. 25

43 Molnár 2001, p. 107

44 Stipta 2020

45 Horváth 2014, p. 23; Mezey 1995, p. 207

The Fundamental Law declared in the National Avowal that the historical Constitution is part of the collective memory of the nation: “Our Fundamental Law shall be the basis of our legal system. It shall serve as an alliance of Hungarians of the past, present and future. It is a living embodiment of the nation’s will, an expression of the ideals by which we collectively aspire to live.” Article R(3) of the Fundamental Law adds: “The provisions of the Constitution must be interpreted in accordance with their purposes, the National Avowal and the achievements of our historical Constitution.” Again, the historic Constitution is mentioned in the National Avowal: “We honour the accomplishments of our historical Constitution and the Holy Crown, which embodies the constitutional continuity of Hungary and national unity.”

The term “accomplishment” has undoubtedly not been widely used in Hungarian legal literature, since it comes from European legal literature (*acquis communautaire*).⁴⁶ In my opinion, the legislator’s intention was to apply constitutional principles that have stood the test of time. That is to say, one cannot arbitrarily pick out a piece of legislation from the last thousand years which, for some reason, is to our liking, but which has already been repealed. Nor, for example, have forgotten laws ever been part of the historic Constitution. The volumes of the *Corpus Juris Hungarici* were initially compiled by private collectors, and for various reasons some laws were omitted from them. For example, they were researched by Márton György Kovachich⁴⁷ (1744-1821), keeper of the university library, and his son, József Miklós Kovachich (1798-1878), archivist at the National Museum (e.g. the Golden Bull of 1231, the laws of 1267, 1290, 1298, 1385, 1397, 1440, 1444). It was discovered that more than thirty laws were not included in the *Corpus Juris Hungarici* at all, while others were published with incorrect wording, based on copies.⁴⁸

The historical constitution is an important reference point for the interpretation of the law, but it is also possible to refer to specific laws that are

46 Varga 2016, 4, p. 88; Zlinszky 2005, p. 3; Balogh 2014, pp. 23–44

47 V. Windisch 1947; 1998;

48 Vestigia, pp. 1790–1801

not outdated and do not contradict the concept of modern, changing law. This is a task for the Constitutional Court and jurisprudence.

We must therefore agree with Gejza Ferdinandy: “The state-preserving power of historically evolved institutions is undoubtedly much greater than that of those which have been encapsulated in precise legislation by a juristic mind contemplating precise laws.”⁴⁹

In Hungary, the primacy of law has always been preserved by the relatively continuous operation of the National Assembly. This principle was also declared in Acts X and XII of 1791. As a consequence, there was no need to apply a different source of law principle to the so-called fundamental laws (*lex fundamentalis*). Fundamental laws were invoked in countries under absolute government: for example, in France from the 1570s⁵⁰ and in the hereditary provinces of the Habsburgs, where the ruler created the highest level of legislation in a sovereign manner. In our country, the so-called cardinal laws (*leges cardinales*) were only selected for their content and not for their place in the hierarchy of legal sources. According to Gyula Szekfű, the term ‘cardinal laws’ has been used since the 17th century.⁵¹ Ferenc Toldy and Gyula Schwarz, among others, described these laws as “being the cornerstone of our Constitution.”⁵² According to Tivadar Pauler: “In view of the structure of the itemised legal science and the development of our legislation, the laws which are considered cardinal laws are, first of all: those which the legislature expressly calls as such or has undoubtedly characterised as such by its actions, but since our legislature has never attempted a systematic listing of the fundamental laws, they were never defined in detail and their scope was never established exhaustively; and secondly: the laws which, by virtue of their content incorporating the fundamental principles of the constitution, have proved to be cardinal laws.”⁵³

László Trócsányi gives a narrower interpretation of the term ‘cardinal laws’ when he states that “In the 19th century, the concept of constitution was linked

49 Ferdinandy 1902, p. 4

50 Sashalmi 2006, p. 21

51 Hóman and Szekfű 1929, p. 170

52 Schvarcz 1887; Toldy 1866

53 Pauler 1860, p. 347

to the cardinal laws, and laws were distinguished according to their content. Laws which regulated the structure and functioning of the organisation of the state were called cardinal laws.”⁵⁴

The cardinal laws were collected by József Hajnóczy,⁵⁵ Elek Fényes⁵⁶ and István Széchenyi⁵⁷, among others. All collectors regarded the articles of the Golden Bull of 1222 as cardinal laws.

The Golden Bull is also a symbol of the Hungarian constitutional tradition, which is why the Constitutional Court of Hungary chose the pendant seal of the Golden Bulla as its symbol. The members of the Constitutional Court wear a copy of the seal of the Golden Bull around their necks during public sittings.

54 “Bevezetés az alkotmányjogba” 2016, p. 48. Cf.: Szalma 2012, 11–12, pp. 499–505; Szalma 2002, 9, pp. 378–386

55 Hajnóczy 1958

56 Fényes 1842–43, p. 1

57 Széchenyi 1864

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