

The Sources of Hungarian Legal History
(1000-1849)

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THE LAWS OF KING STEPHEN I
(1000-38)

[BOOK ONE]

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Preface to the royal law

The work of the royal office subject to the rule of divine mercy is by custom greater and more complete when nourished in the Catholic faith than any other office. Since every people use their own law, we, governing our monarchy by the will of God and emulating both ancient and modern caesars, and after reflecting upon the law, decree for our people too the way they should lead an upright and blameless life. Just as they are enriched by divine laws, so may they similarly be strengthened by secular ones, in order that as the good shall be made many by these divine laws so shall the criminals incur punishment. Thus we set out below in the following sentences what we have decreed.

Here are the chapters of this book:

1. The state of ecclesiastical things.
2. The powers of the bishops over church goods and their accord with laymen.
3. What sort of person a witness and accuser of clerks may be.
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5. The work of priests.
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1. The state of ecclesiastical things.¹

Should anyone, swollen with haughty pride, hold the house of God in contempt, or mistreat the possessions consecrated to God and placed for His service under protective royal immunity, or presume to injure them, let him be excommunicated as an invader and desecrator of the house of God. It is fitting that he should also feel the indignation of his lord, the king, whose good will be disparaged and whose good order subverted. Therefore the king commands that the immunity which he has granted be preserved unimpaired by everyone subject to him. He gives no assent nor should assent be given to foolish assertions that possessions ought not to be given to the church, that is, to the Lord of Lords. Rather they receive the protection of the king in the same way as his own inheritance. He gives even more attention to them, for, just as God is greater than man, the affairs of God take precedence over the possessions of mortals. Thus the man who glories more in his own than in the things of the Lord is badly deceived. The divinely ordained defender and keeper of the things of God ought not only to preserve them with diligent care, but also increase them, and those things which we have called the more important should be defended and increased even more than his own things. If anyone, therefore, should be so foolhardy as to try through the devices of his own wickedness to turn the king away from right purpose, and it should appear that no remedies can be effectively applied, even though he may be temporarily necessary, he should be cut off by the king and cast away just as according to the Gospel: If your foot, or your hand, or your eye offend you,

2. The powers of the bishops over church goods and their accord with laymen.³

It is our will that bishops have the power to oversee, rule, govern, and dispose of church goods according to the authority of the canons. And we enjoin that laymen should be obedient in their service to the bishops ruling the churches and defending widows and orphans, even as they are to be obedient in holding fast to their Christianity. The *ispánok* and judges⁴ should mete out justice according to the precepts of divine law in concert with the prelates. Just law should in no way be perverted by lies or false witness, by perjury or bribes.

3. What sort of person a witness and accuser of clerks may be.

The witnesses and accusers of clerks should be without infamy,⁵ having wives and sons, and in all ways professing Christ.⁶

4. Similarly on the same.

No one should accept the testimony of a layman against a clerk. No one should presume to try a clerk in public, rather only in a church.⁷

5. The work of priests.

Be it known to you, brethren, that the priest works more than any one of you. Each of you bears his own burden, but he bears his own and the burden of all others. Therefore, as he labors for you, so you should work for him with all your strength, even, if necessary, laying down your lives for him.⁸

6. Royal concessions of free disposition of goods.

We, by our royal authority have decreed that anyone shall be free to dispose his property, to assign it to his wife, his sons and daughters, his relatives, or to the church⁹; and no one should dare to change this after his death.

7. The preservation of royal goods.

It is our will that just as we have given others the opportunity to master their own possessions, so equally the goods, warriors,¹⁰ bondmen,¹¹ and whatever else belongs to our royal dignity should remain permanent, and no one should plunder or remove them, nor should anyone dare to obtain any advantage from them.

8. The observance of the Lord's day.

If a priest or *ispán*, or any faithful person find anyone working on Sunday with oxen, the ox shall be confiscated and given to the men of the castle¹² to be eaten; if a horse is used, however, it shall be confiscated, but the owner, if he wishes, may redeem it with an ox which should be eaten as has been said. If anyone uses other equipment, this tool and his clothing shall be taken, and he may redeem them, if he wishes, with a flogging.¹³

9. More on the same.

Priests and *ispánok* shall enjoin village reeves¹⁴ to command everyone both great and small,¹⁵ men and women, with the exception of those who attend the fire, to gather on Sundays in the church. If someone remains at

10. The observance of Ember days.¹⁶

If someone breaks the fast known to all on the Ember day, he shall fast in prison for a week.

11. The observance of Friday.

If someone eats meat on Friday, a day observed by all Christians, ¹⁷ he shall fast incarcerated during the day for a week.¹⁸

12. Those who die without confession.

If someone has such a hardened heart — God forbid it to any Christian — that he does not want to confess his faults according to the counsel of a priest, he shall lie without any divine service and alms like an infidel. If his relatives and neighbors fail to summon the priest, and therefore he should die unforgotten, prayers and alms should be offered, but his relatives shall wash away their negligence by fasting in accordance with the judgment of the priests. Those who die a sudden death shall be buried with all ecclesiastical honor, for divine judgment is hidden from us and unknown.

13. The observances of Christianity.

If someone neglects a Christian observance and takes pleasure in the stupidity of his negligence, he shall be judged by the bishops according to the nature of the offense and the discipline of the canons.¹⁹ If he rebelliously objects to suffer the punishment with equanimity, he shall be subject to the same judgment seven times over. If, after all this, he continues to resist and remains obdurate, he shall be handed over for royal judgment, namely to the defender of Christianity.²⁰

14. On homicide.

If someone driven by anger and arrogance, willfully commits a homicide, he should know that according to the decrees of our council²¹ he is obliged to pay one hundred ten gold *pennae*,²² from which fifty will go to the royal treasury, another fifty will be given to relatives, and ten will be paid to arbiters and mediators.²³ The killer himself shall fast according to the rules of the canons.²⁴

More on the same.

If someone kills a person by chance, he shall pay twelve *pennae* and fast as the canons command.

The killing of slaves.

If someone's slave kills another's slave, the payment shall be a slave for a slave, or he may be redeemed and do penance as has been said.

More on the same.

If a freeman kills the slave of another, he shall replace him with another slave or pay his price, and fast according to the canons.

15. Those who kill their wives.

If an *ispān* with a hardened heart and a disregard for his soul — may such remain far from the hearts of the faithful — defiles himself by killing his wife, he shall make his peace with fifty steers²⁵ to the kindred of the woman, ac-

cording to the decree of the royal council, and fast according to the commands of the canons. And if a warrior or a man of wealth commits the same crime he shall pay according to that same council ten steers and fast, as has been said. And if a commoner²⁶ has committed the same crime, he shall make his peace with five steers to the kindred and fast.²⁷

16. Drawing the sword.

In order that peace should remain firm and unsullied among the greater and the lesser of whatever station, we forbid anyone to draw the sword with the aim of injury. If anyone in his audacity should put this prohibition to the test, let him be killed by the same sword.

17. On perjury.

If a powerful man of stained faith and defiled heart be found guilty of breaking his oath by perjury, he shall atone for the perjury with the loss of his hand; or he may redeem it with fifty steers. If a commoner commits perjury, he shall be punished with the loss of his hand or may redeem it by twelve steers and fast, as the canons command.²⁸

18. On manumission.

If anyone, prompted by mercy, should set his male and female slaves free in front of witnesses, we decree that no one out of ill will shall reduce them to servitude after his death. If, however, he promised them freedom but died intestate, his widow and sons shall have the power to bear witness to this same manumission and to render *agape*²⁹ for the redemption of the husband's soul, if they wish.

19. Gathering at church and those who mutter or chatter during mass.

If some persons, upon coming to church to hear the divine service mutter among themselves and disturb others by relating idle tales during the celebration of mass and by being inattentive to Holy Scripture with its ecclesiastical nourishment, they shall be expelled from the church in disgrace if they are older, and if they are younger³⁰ and common folk they shall be bound in the narthex of the church in view of everyone and punished by whipping and by the shearing off of their hair.

20. Inadmissibility of accusations and testimony of bondmen or bondwomen against their masters or mistresses.

In order that the people of this kingdom may be far removed and remain free from the affronts and accusations of bondmen and bondwomen, it is wholly forbidden by decree of the royal council that any servile person be accepted in accusation or testimony against their masters or mistresses in any criminal case.

21. Those who procure liberty for bondmen of others.

If anyone thoughtlessly brings the bondman of another, without the knowledge of his master, before the king or before persons of higher birth and dignity in order to procure for him the benefits of liberty after he has been re-

leased from the yoke of servitude, he must know that if he is rich, he shall pay fifty steers of which forty are owed to the king and ten to the master of the bondman; but if he is poor and of low rank, he shall pay twelve steers of which ten are due to the king and two to the master of the bondman.

22. Those who enslave freemen.

Because it is worthy of God and best for men that everyone should conduct his life in the vigor of liberty, it is established by royal decree that henceforth no *ispán* or warrior should dare to reduce a freeman to servitude. If, however, compelled by his own rashness he should presume to do this, he should know that he shall pay from his own possessions the same composition, which shall be properly divided between the king and the *ispánok*, as in the other decree above.

Similarly on the same.

But if someone who was once held in servitude lives freely after having submitted to a judicial procedure³¹ held to consider his liberty, he shall be content with enjoying his freedom, and the man who held him in servitude shall pay nothing.

23. Those who take the warriors of another for themselves.

We wish that each lord have his own warriors and no one shall try to persuade a warrior to leave his long-time lord and come to him, since this is the origin of quarrels.

24. Those who take guests³² of another for themselves.

If someone receives a guest with benevolence and decently provides him with support, the guest shall not leave his protector as long as he receives support according to their agreement, nor should he transfer his service³³ to any other.

25. Those who are beaten while looking for their own.

If a warrior or a bondman flees to another and he whose warrior or man has run away sends his agent to bring him back, and that agent is beaten and whipped by anyone, we decree in agreement with our magnates that he who gave the beating shall pay ten steers.

26. Widows and orphans.

We also wish widows and orphans to be partakers of our law in the sense that if a widow, left with her sons and daughters, promises to support them and to remain with them as long as she lives, she shall have the right from us to do so, and no one should force her to marry. If she has a change of heart and wants to marry and leave the orphans, she shall have nothing from the goods of the orphans except her own clothing.³⁴

More about widows.

If a widow without a child promises to remain unmarried in her widowhood, she shall have the right to all her goods and may do with them what she wishes. But after her death her goods shall go to the kin of her husband, if she has any, and if not, the king is the heir.

27. The abduction of girls.

If any warrior debased by lewdness abducts a girl to be his wife without the consent of her parents, we decree that the girl should be returned to her parents, even if he raped her, and the abductor shall pay ten steers for the abduction, although he may afterwards have made peace with the girl's parents. If a poor man who is a commoner should attempt this, he shall compensate for the abduction with five steers.³⁵

28. Those who fornicate with bondwomen of another.

In order that freemen preserve their liberty undefiled, we wish to warn them. Any transgressor who fornicates with a bondwoman of another, should know that he has committed a crime, and he is to be whipped for the first offense. If he fornicates with her a second time, he should be whipped and shorn; but if he does it a third time, he shall become a slave together with the woman, or he may redeem himself. If, however, the bondwoman should conceive by him and not be able to bear but dies in childbirth, he shall make compensation for her with another bondwoman.

The fornication of bondmen.

If a bondman of one master fornicates with the bondwoman of another, he should be whipped and shorn; and if the woman should conceive by him and dies in childbirth, the man shall be sold and half of his price shall be given to the master of the bondwoman, the other half shall be kept by the master of the bondman.

29. Those who desire bondwomen as wives.

In order that no one who is recognized to be a freeman should dare commit this offense, we set forth what has been decreed in this royal council as a source of terror and caution so that if any freeman should choose to marry a bondwoman of another with her master's consent, he shall lose the enjoyment of his liberty and become a slave forever.

30. Those who flee their wives by leaving the country.

In order that people of both sexes may remain and flourish under fixed law and free from injury, we establish in this royal decree that if anyone in his impudence should flee the country out of loathing for his wife, she shall possess everything which her husband rightfully possessed, so long as she is willing to wait for her husband, and no one shall force her into another marriage. If she voluntarily wishes to marry, she may take her own clothing leaving behind other goods, and marry again. If her husband, hearing this, should return, he is not allowed to replace her with anyone else, except with the permission of the bishop.

31. Theft committed by women.

Because it is terrible and loathsome to all to find men committing theft, and even more so for women, it is ordained by the royal council that if a married woman commits theft, she shall be redeemed by her husband, and if she commits the same offense a second time, she shall be redeemed again; but

32. Arson of houses.

If anyone sets a building belonging to another on fire out of enmity, we order that he replace the building and whatever household furnishings were destroyed by the fire, and also pay sixteen steers which are worth forty *solidi*.³⁶

33. On witches.

If a witch is found, she shall be led, in accordance with the law of judgment into the church and handed over to the priest for fasting and instruction in the faith. After the fast she may return home. If she is discovered in the same crime a second time, she shall fast and after the fast she shall be branded with the keys of the church in the form of a cross on her bosom, forehead, and between the shoulders.³⁷ If she is discovered on a third occasion, she shall be handed over to the judge.³⁸

34. On sorcerers.

So that the creatures of God may remain far from all injury caused by evil ones and may not be exposed to any harm from them — unless it be by the will of God who may even increase it — we establish by decree of the council a most terrible warning to magicians and sorcerers that no person should dare to subvert the mind of any man or to kill him by means of sorcery and magic. Yet in the future if a man or a woman dare to do this he or she shall be handed over to the person hurt by sorcery or to his kindred, to be judged according to their will. If, however, they are found practicing divination as they do in ashes or similar things, they shall be corrected with whips by the bishop.

35. The invasion of houses.

We wish that peace and unanimity prevail between great and small³⁹ according to the Apostle: Be ye all of one accord, etc.,⁴⁰ and let no one dare attack another. For if there by any *ispán* so contumacious that after the decree of this common council he should seek out another at home in order to destroy him and his goods, and if the lord of the house is there and fights with him and is killed, the *ispán* shall be punished according to the law about drawing the sword.⁴¹ If, however, the *ispán* shall fall, he shall lie without compensation. If he did not go in person but sent his warriors, he shall pay compensation for the invasion with one hundred steers. If, moreover, a warrior invades the courtyard and house of another warrior, he shall pay compensation for the invasion with ten steers. If a commoner invades the huts of those of similar station, he shall pay for the invasion with five steers.

End of the first book.

In the name of the Holy Trinity and Indivisible Unity. Andrew, by the grace of God, King of Hungary, Dalmatia, Croatia, Rama, Serbia, Galicia, and Lodomeria.¹ In perpetuity.

Since the liberties established by St. Stephen the king² in favor of the nobles³ of our realm as well as of other persons have been diminished in many respects by the authority of certain kings, some of whom in personal anger took vengeance, others of whom paid heed to the false counsel of wicked and self-seeking men, these same nobles have repeatedly impertuned our Serenity and that of their kings, our predecessors, with numerous petitions and entreaties for reform of our kingdom.

We therefore desire to fulfill their requests in all respects; as we are obliged to do — especially because between them and us this circumstance has often led to no inconsiderable bitterness, which ought rightly to be avoided for the better preservation of the royal dignity which can be done better by no one other than by them. We grant both to them and to other men of our kingdom the liberty given by the holy king, and we salubriously ordain what further pertains to the reformation of the state of our kingdom in this manner:

1. That we are bound to celebrate the feast of Saint Stephen annually in Székesfehérvár⁴ unless we should be beset by some urgent matter or prevented by illness. And if we cannot be present, the palatine⁵ will definitely be there for us, and shall hear cases in our place, and all the *servientes*⁶ who wish shall freely assemble there.

2. It is further our wish that neither we nor our successors should at any time seize or cause the ruin of any *serviens* for the benefit of some magnate, unless they first be summoned and duly sentenced by judicial process.⁷

3. Similarly, we shall gather neither the *collecta* nor the freemen's pennies⁸ on the estates of the *servientes*, and shall not exact hospitality in their houses or villages unless we have been called [there]. We shall not collect any taxes at all from people attached to their churches.⁹

4. If a *serviens regis* should die without a son, his daughter shall receive a quarter of his possessions¹⁰ 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 rela-

5. The *ispánok* of counties¹ shall not render judicial sentences concerning the estates of the *servientes* except in cases pertaining to coinage and tithes. The *ispánok* of castles² shall render judicial sentences on no one except those attached to their castles. Thieves and robbers shall be judged by royal judges,³ but only in the presence of the *ispán*.

6. Similarly, people united in a sworn association shall not be able to accuse thieves, as they have been accustomed to do.⁴

7. If the king, however, wishes to lead an army outside the kingdom, the *servientes* shall not be obligated to accompany him unless it be at his expense and, after his return, he shall not permit judgment against them concerning the campaign.⁵ If, however, the army of an enemy should advance upon the kingdom, every one without exception is obligated to go. Also, if we lead an army beyond the realm, all those who hold counties or receive money from us are bound to accompany us.⁶

8. The count palatine shall judge without differentiation all the men of our realm, but cases concerning nobles condemned to capital punishment and loss of possessions shall not be concluded without the king's knowledge. He [the palatine] shall have no deputy judge except for the one at his own court.⁷

9. Our judge royal⁸ shall be able to judge all while he resides in our court and shall have the right to pass sentence anywhere in cases initiated at the court, but when he stays on his estates he shall not be able to dispatch bailiffs or cite parties to a suit.

10. If one of the baronial retainers⁹ who holds an honor²⁰ should die in a campaign, his son or brother is to be granted a similar honor; and if a *serviens* dies in the same way, his son shall receive whatever appears appropriate to the king.

11. If foreigners, indeed honorable men, come to the kingdom, they shall not be raised to dignities without the consent of the kingdom.²¹

12. The wives of those who die either by capital punishment or in a duel or for any other reason, shall not be cheated out of their dowry.²²

13. Baronial retainers shall follow the court or travel anywhere so long as they do not oppress or despoil the poor.

14. If any *ispán* does not honorably conduct himself according to the character of his comital office or brings ruin to those attached to his castle, and if this is proven, he shall make good the damage and be dishonorably deprived of his office in front of the whole kingdom.

15. Grooms, houndsmen, and falconers shall not presume to descend upon²³ the villages of *servientes regis*.

16. We shall not bestow whole counties or any other dignities as estates or possessions in perpetuity.²⁴

17. Also, no one shall at any time be deprived of possessions acquired by honorable service.²⁵

18. Similarly, *servientes* who have received permission shall be free to go from us to our sons, or from the older to the younger, without their possessions being wasted.²⁶ We shall not receive any one whom our son has condemned legally or whose case has been opened before him until it shall be concluded in his court, and our son shall do likewise.

19. Castle-warriors²⁷ shall be preserved in the liberties established by the holy king. Similarly foreign guests of whatever nationality shall be preserved in the liberties originally granted to them.²⁸

20. The tithe should not be paid in silver, rather, as the earth brings it forth, it should be rendered in wine and grain,²⁹ and should the bishops object, we shall not support them.

21. The bishops shall not give the tithe from properties of *servientes* for our horses, nor shall their people be obliged to convey these tithes to royal estates.³⁰

22. Our pigs shall not be pastured in the forests or meadows of the *servientes* against their will.

23. Our new coins shall be valid for a year from Easter to Easter, and pennies shall be the same as they were under King Béla.³¹

24. Ishmaelites and Jews shall not be allowed to become counts of the chamber of the mint, of salt, and of tolls [or] nobles of the realm.³²

25. Salt should not be stored in the center of the kingdom except in Szabolcs and Szeged, but in the borderlands.³³

26. Possessions shall not be granted outside of the realm; if some have been given or sold, they shall be returned to the inhabitants of the realm for a reimbursement.

27. The *mandarina* shall be rendered in the manner established by King Coloman.³⁴

28. If any one has been duly sentenced in judicial proceedings no magnate should defend him.

29. *Ispánok* shall enjoy only the rights of their office; the king shall receive the rest which pertains to him, namely: the bucket tax, tolls, the ox-tax,³⁵ and two-thirds of the castle dues.

30. Similarly, no one other than these four baronial retainers — the palatine, the *ban*,³⁶ the judge royal, and the judge of the queen's court³⁷ — shall hold two offices.

31. And in order that this grant and ordinance or ours shall be valid in our time as well as in that of our successors in perpetuity, we ordered seven exact copies to be drawn up and authenticated with our golden seal, so that one shall be sent to the lord pope and he shall have it copied into his register,³⁸ the second copy shall be kept in the custody of the Hospital,³⁹ the third in the custody of the Temple,⁴⁰ the fourth with the king, the fifth at the cathedral chapter of Esztergom, the sixth at that of Kalocsa, and the seventh with the incumbent palatine, so that he, having this document always in his sight, should not deviate from the foregoing terms in any respect, nor permit the

king, the nobles, or anyone else to deviate from it, so that they should not only enjoy their liberty but also because of this remain ever faithful to us and our successors and not refuse the obligations rightly due to the royal crown.⁴¹

We have also decreed that if we or any of our successors at any time should seek to oppose the terms of this settlement, both the bishops and other baronial retainers as well as the nobles of the realm, singularly and in common, both present and future generations, shall by this authority have the right in perpetuity to resist and speak against us and our successors without the charge of high treason.⁴²

Given by the hand of Cletus, chancellor⁴³ of our court and provost of the church of Eger, in the year of the Incarnation of the Word one thousand two hundred twenty-two, when venerable John is Archbishop of Esztergom, the venerable Ugrinus the Archbishop of Kalocsa, Desiderius Bishop of Csánád, Robert of Veszprém, Thomas of Eger, Stephen of Zagreb, Alexander of Várad, Bartholomew of Pécs, Cosmas of Győr, and Briccius of Vác,⁴⁴ in the seventeenth year of our reign.⁴⁵

In the name of the Holy Trinity and Indivisible Unity. Andrew, by the grace of God, King of Hungary, Dalmatia, Croatia, Rama, Serbia, Galicia, and Lodomeria. In perpetuity.

Since the liberties established by St. Stephen and the king in favor of the nobles of our realm as well as of other persons have been diminished in many respects by the authority of certain kings, some of whom in personal anger took vengeance, others of whom paid heed to the false counsel of wicked and self-serving men, these same nobles have repeatedly importuned our Serenity and that of their kings, our predecessors, with numerous petitions and entreaties for reform of our kingdom.

We therefore desire to fulfill their requests in all respects, as we are obliged to do — especially because between them and us this circumstance has often led to no inconsiderable bitterness, which ought rightly to be avoided for the preservation of the royal dignity which can be done better by no one other than by them. We grant both to them and to other baronial retainers and ser-vientes regis of our kingdom the liberty given by the holy king, and we confirm what further pertains to be ordained for the state of our kingdom in this manner.

1. That we are bound to celebrate the feast of Saint Stephen annually in Székesfehérvár unless we should be beset by some urgent matter or prevented by illness, so that there the oppressed can present their grievances without fear. But if we cannot be present, the palatine is obliged to attend so that he can hear cases in our place, and all our *servientes* and others, who wish shall freely assemble there without fear.¹ The prelates of the churches, both archbishops and bishops, unless they shall be prevented by canonical impediment, are obliged to attend in order to hear complaints of the humble and confirm liberties which may possibly have been violated. If meanwhile, the palatine should badly manage the affairs of king and kingdom, they shall petition us to install a more suitable person of our choice in his place, and we shall look favorably upon their requests.

2. It is further our wish that neither we nor our successors should at any time seize or cause the ruin of any one, unless he first be summoned and duly sentenced by judicial process.² And since these provisions had been confirm-

ed by our oath and that of our magnates, whoever has been despoiled by us, our sons, or anyone else without judicial sentence since that time, namely, since the seventeenth year of our reign,³ complete restitution shall be made to him.

3. *Similarly we shall gather no collecta, no levies, nor the chamber's profit,*⁴ however it may be assessed, from anyone of whatever nation or rank on any occasion, except from those who are held to owe land-rent to the royal treasury.

4. Neither shall we, nor our grooms, nor falconers, nor houndsmen, nor teamsters descend upon the houses or villages of the servientes against their will; if, however, it should happen that we or our said officers should descend anywhere, we shall pay the just value as described below.⁵ And since on account of our descensus, that of the lady queen and our sons as well as that of the archbishops, bishops, barons, and our nobles we appear to have caused intolerable damage and hardship throughout our whole kingdom, we decree that it be strictly established that nothing should be received by our kitchen or theirs unless a just price has been paid. Similarly, no cereals, wine, or other necessities shall be received unless a just price has been paid.⁶

For the native husbandman who has been denied justice, three peasants⁷ from the village shall swear an oath and on their oath the foreign guest, whoever he was, shall render to the husbandman full justice in the royal fine,⁸ or the lord of the village, whoever he is, whether archbishop, or bishop, or noble shall personally be held to pass judgment.⁹ But those noblemen who do not render justice according to these terms of our statute shall be excommunicated by the bishop of their diocese and will be regarded excommunicate by us until they have properly given satisfaction to the person who suffered the injury.

5. *If a servient of ours should die without an heir, his daughter shall receive a quarter of his possessions 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 possession]. If he shall have no relatives at all, the king shall obtain them.*¹⁰

6. *The ispánok of counties shall not render judicial sentences concerning the estates of the servientes and in villages or churches except in cases pertaining to coinage and tithes. The counts of county castles shall render judicial sentences on no one except those attached to their castles. Thieves and robbers shall be judged by royal judges but only in the presence of the ispán.*¹¹

7. *People united in a sworn association shall not be able to accuse thieves, lest they oppress the innocent folk.*¹²

8. *When we lead the army outside the kingdom, the nobles do not have to come with us except for the counts, hired soldiers, castle warriors, and both those who are obliged to serve by reason of their office and those to whom we have granted substantial possessions. If, however, the army of an enemy*

*should advance upon the kingdom, everyone without exception is obliged to oppose the enemy for the defense of the homeland. And if the attacking army retreats, they must pursue it for revenge.*¹³

9. *The count palatine shall judge without differentiation all the men of our realm except ecclesiastical persons and clerks, and cases concerning marriage, dowry, and other ecclesiastical matters which appear to belong for whatever reason to ecclesiastical jurisdiction.*¹⁴ *Cases concerning nobles condemned to capital punishment and loss of their possessions shall not be concluded without the king's knowledge by any judge. The palatine shall have no deputy judge except for a single one at his own court. And he should be careful not to judge or condemn anyone contrary to these statutes.*¹⁵

10. *Our judge royal shall be able to judge all while he resides in our court and shall have the right to pass sentence anywhere in cases initiated at our court, but when he stays on his estates or elsewhere outside our court, he shall not be able to dispatch bailiffs or cite parties to a suit.*¹⁶ And because many people suffer harm from false bailiffs, their summons or testimony shall not be valid without the witness of the diocesan bishop or the chapter. The accused bailiff should clear himself in major matters only by their testimony; in minor matters by the testimony of neighboring convents or monasteries.¹⁷ No one shall keep a bailiff with him for a year or two or longer, but only until the case for which he was commissioned is completed.

11. *If guests, foreign noblemen, come to the kingdom, they shall not be raised to any position of dignity, unless they wish to become residents, without the consent of the kingdom; because such persons take away the riches of the realm.*

12. *The wives of those who died either by capital punishment or in a duel or for any other reason shall not be cheated out of their dowry.*¹⁹ *The wives of thieves and robbers and their children shall not be sold for the crimes of the fathers.*

13. *We shall not bestow whole counties or any other dignities as estates or possessions in perpetuity.*²⁰

14. *We order that castle-warriors shall be preserved in perpetuity in the liberties established by the holy king, similarly foreign guests of whatever nationality in the liberties originally granted to them.*²¹

15. *We shall not force the dependents of the servientes and the churches to cut fences or dig ditches, to work in the gardens or other royal buildings and workshops.*

16. *We shall not collect a tithe beyond the twentieth that is due to the king by ancient custom, because that burdens the people.*

17. *Our pigs shall not be pastured in the forests or meadows of the servientes against their will.*²²

18. *Jews or Saracens shall not be counts of the chamber of the mint or of the salt or other public officers.*²³

19. Possessions shall not be granted outside of the realm; and if some have been given or sold, they shall be returned to the inhabitants of the realm for a reimbursement, or simply reclaimed.²⁴

20. Similarly, for every marten pelt four pondera²⁵ are to be paid. From whatever sum this amounts to, one-third shall go to the lord of the property and two-thirds to the lord of the land.²⁶

21. *Ispánok* shall be content with the rights of their office, the royal income, namely, the bucket tax, tolls, the ox-tax, and two-thirds of the castle dues shall be distributed according to the wish of the king.²⁷

22. Similarly, whenever anyone should be condemned by judicial procedure, their goods may either be retained by us or given to whomever we wish, as it pleases us. But we do not wish their villages to be burnt down.²⁸

In order that these shall be firm and unchanged in our time as well as in that of our successors, we have confirmed them by our corporeal oath and those of our sons, and validated them with our seal and those of our sons.²⁹ We agree of our free will that if we, our sons, or our successors attempt to infringe upon this liberty which we have granted, the archbishop of Esztergom shall have the authority, after proper warning, to bind us, or them, in the chains of excommunication.³⁰ Given in the year of the Incarnation of the Lord one thousand two hundred thirty-one, and in our twenty-ninth regnal year.³¹

We, Béla, by the grace of God, King of Hungary, and Stephen, by that same grace, junior King of Hungary and Duke of Transylvania,¹ and Béla the younger, Duke of all Slavonia,² notify all who see the present letter that the nobles of all Hungary, who are called *servientes regis*, came to us to ask humbly and devoutly³ that we deign to preserve them in the liberty granted and established by the holy King Stephen,⁴ so that they may serve us and the crown with greater faith and affection the more graciously we grant them liberties.⁵ Since we considered their petitions and requests both just and lawful, we have, with the counsel and assent of our barons, been moved to grant them, believing that the state of the realm shall be better safeguarded by this act.

1. We have ordered, therefore, that taxes or exactions assessed by the chamber⁶ or for any other reason should never be received from the dependents of the nobles, nor shall they be troubled for the exaction of *descensus* by us or by others.⁷

2. Further, it is our wish that all castle land or land in the hands of the *udvarnokok* on which people were brought together in our name or in that of the queen, shall be restored to the castle and to the *udvarnokok* lest the villages should come to enjoy the privileged name of free guests.⁸

3. Further, we ordered that no noble on account of evil counsel should be arrested, imprisoned, or harmed in his person or goods without a judicial hearing,⁹ but having been brought into court he should be judged in the presence of barons without wrath, hatred, or favor according to the rule of law.¹⁰

4. Further, we granted that nobles who wish to transfer their allegiance to either of us should, after requesting and obtaining leave, have the unrestricted right so to transfer without their possessions being therefore wasted.¹¹

5. Furthermore we decreed that the lands of the nobles, which the people of our free villages¹² or those of the queen, or *udvarnokok*, or men of the castles have at any time occupied and retained, shall be restored to those nobles in accordance with the trust and wisdom of two of our barons, in whom we and these nobles shall have confidence.¹³

6. Further, we wish that if any of the nobles should die without heirs, his goods and property shall not for the moment be distrained or given to any-

one, or granted to anyone by hereditary right until his relatives and clansmen have been summoned to our presence, and a decision has been given in their presence and that of our barons, just as the rule of law prescribes. In the meantime, however, the relatives and clansmen of the deceased shall preserve his possessions and goods.¹⁴

7. Further, we decreed that if we happen to send an army to occupy or acquire kingdoms and territories, we shall not force the nobles into the army against their will, except for the person who wishes to join voluntarily or for money. We shall not compel anyone against his will to go to the aid of our sons or of anyone else.¹⁵

8. Further, we ordered that each year at the feast of the holy king one of us shall come to Székesfehérvár and two or three nobles from each county shall gather so that in their presence satisfaction shall be given to all petitioners for all the damages and injuries caused and committed by anyone whatsoever.¹⁶

9. Further, if any noble should die on 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 clansman of the man who died on campaign, specifically in the following manner: property which he had by hereditary right should remain with his clan, but what was bought or acquired shall be left to whomever he wishes to give it during his lifetime.¹⁷

10. Further, the cases of nobles shall be expedited without petitions.¹⁸

And we shall keep and preserve these same nobles inviolably in these and all other liberties established by the holy King Stephen, so help us God, His holy Gospels, and the life-giving word of the Cross.¹⁹ But if any of us, God forbid, should be in the future a trespasser of the present statute and of the liberties established by the holy King Stephen, the archbishop of Esztergom shall compel him through ecclesiastical sanctions to observe the foregoing inviolably, just as we each equally agreed.²⁰ So that this our ordinance shall receive the force of eternal validity, we commanded this letter to be sealed with our seals. Given in the year of our Lord, one thousand two hundred sixty-seven.²¹

Louis, by the grace of God king of Hungary, Croatia, Rama, Serbia, Galicia, Lodomeria, Cumania, and Bulgaria, prince of Salerno and lord of the honor of Monte Sant'Angelo,¹ to all of Christ's faithful, both present and future, to whose notice these presents may come, greetings in Him who grants to kings a felicitous reign, and triumphant victory. The throne and power of the royal majesty are recognized as strong when the royal majesty maintains by provident foresight the peace and tranquility of its subjects and when those subjects are granted, as a deserved reward, expanded liberties, as well as the acknowledgment and confirmation of privileges given them with dutiful consideration by previous kings. For the preservation of loyalty, drawing on its own origin as something arising from the innate laws of reason, remains steadfast and thus always becomes firmly established among subjects when the prince exhibits benevolence toward his own gentlemen of the realm, with the result that the strength of loyalty does not weaken unless the flame of life is extinguished in the body.² Therefore, we wish to bring to the notice of all by these presents that the community and total universality of the barons, nobles, and lords of our kingdom³ appeared in our royal presence, where they demonstrated and recalled to our memory their loyalty, the burdens they had undertaken, and the outstanding merits of their steadfast services carried out with consummate zeal, loyalty, and devoted attention to our royal majesty in all our affairs and in those of the kingdom, in good times and bad. They showed us a certain charter of privilege from the most illustrious prince Andrew, son of king Béla III, once renowned king of Hungary, our ancestor and predecessor of revered memory. This charter, containing the matters set out below, is validated by his golden bull and renews and confirms the liberties granted to them, according to the said charter, by St. Stephen, king and apostle of the Hungarian people.⁴ They humbly, with one voice and one wish, besought our majesty that we deign to affirm the charter by accepting, ratifying, and approving it, and causing it to be transcribed word for word together with all their liberties contained therein (with the exception of only one article, as stated below); and by renewing those same liberties contained in the said charter, we confirm in accordance with the clemency of royal benevolence and through our royal authority, by means of our own charter of privilege, their right to hold and enjoy those liberties in the future in perpetuity. The content of that charter is this:

(Decree of 1222, the Golden Bull of Andrew II)

We, therefore, having listened with royal favor to the petition of the said barons, lords, and nobles of our kingdom, having considered and recalled to our memory their faithful obedience and most sincere good will with which they were eager to please our majesty and endear, and in general recommend themselves to us in all our affairs and those of the kingdom, in good times and bad, particularly in avenging the innocent blood of the late lord Andrew, king of Jerusalem and Sicily, our dearest brother of blessed memory, the bitterness of whose savage murder filled the lands and territories of almost the entire world, by setting out with us to the said kingdom of Sicily and facing intrepidly the unforeseen circumstances of fate and all kinds of personal danger.³ We wish to concur favorably with their request and to fulfill their wishes, in order to encourage them to engage with dedicated mind in similar works of faithful service. We accept, approve, and confirm the above-mentioned letter of the lord king Andrew II, our dearest ancestor and 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 the above-mentioned 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,⁶ with the gracious consent of the most serene princess, the lady Elizabeth, by the same grace, queen of Hungary, our dear mother,⁷ and in accordance with the counsel of our barons, we confirm the same liberties in the words of the above-mentioned bull of privilege issued by lord king Andrew, and we renew them out of our royal benevolence and order that they shall be held and enjoyed by them in perpetuity for the future. Furthermore, on behalf of a more serene condition and peaceful situation for these same men, our gentlemen of the realm, and in accordance with the wish of our mother and the counsel of these same men, our barons, we, following our usual generosity, have thought it best to concede liberties of the following sort, by adding what is written below:

1. That if prelates or any clergy proceed against nobles of our kingdom in any suit and litigate in the court of any judge of our kingdom, then, in the matter of the lawsuit, while the case is pending, they are not allowed to impose an interdict upon the laymen or pronounce a sentence of excommunication against them, as has been the usage and custom until now, without the royal majesty's knowledge and notice.⁸ And if the same clergy or prelates should be lawfully, with full process of law, condemned by any judge, then they should fall

immediately under the penalty for the same trespass as that which they intended to impose and inflict upon their opponents.

2. Archdeacons cannot and must not exact, as they used to by evil custom, one mark for the funeral of men murdered by one person or by many.⁹

3. Small convents must cease from issuing letters of confirmation on inheritance of property, and their seals shall be without any authority.¹⁰

4. The chamber's profit is now to be paid with three groats¹¹ to be minted in our Chamber, just as in the time of the famous lord prince Charles, late king of Hungary, our dearest father of sacred memory, when three groats were paid for a whole plot; and of these groats one must be worth six pennies of our Chamber in the value and quantity of six broad Viennese ones, and fourteen of them count for one *ferro*.¹² However, no additional pennies or victuals viz. as fee for the taxation, are to be exacted.¹³

5. Tax-collectors should not assess reeves and servitors living on their own property or their bondsmen, nor exact the chamber's profit from them;¹⁴ and generally speaking, they shall not receive and exact more than three groats.

6. Furthermore, we and the lady queen will cause the ninth part of all their crops and vines to be exacted from all our tenant peasants holding ploughlands and vineyards in any free village of ours of whatever kind,¹⁵ and also in the *udvarnok* villages by whatever name they are known,¹⁶ and the villages of the queen, with the exception of walled cities; and similarly the said barons and nobles should exact and take for their own use the ninth part of all their crops and vines from all tenant peasants holding ploughlands and vineyards on any of their estates.¹⁷ And also prelates and clergy having tenant peasants should exact first the tithes and after that similarly the ninth part of all their own crops and vines.¹⁸ And if anyone should act differently as to the above exactions, we shall cause that on the estates of such a recalcitrant person who violates our present order, the ninth part of his fruits and vines be exacted for our own use without any allowance and dispensation, so that, in this way, our honor might be increased and our gentlemen of the realm might serve us more loyally.

7. Our vice-chancellor should receive and have his fee from properties that can be donated by us and our successors, according to their size, namely from a property bringing a revenue of ten marks, one mark, and the scribe should receive one *ferro*; from larger properties bringing a revenue of twenty marks, two marks, and likewise one *ferro* for the scribe, and so on, according to the increase of revenue from properties found to be free for donation in the future.¹⁹

8. No unlawful tolls, moreover, must be levied on dry land²⁰ and on rivers on those ascending or descending; only those who cross by bridge or in ferries must pay, for we have realized that nobles and

nonnobles of our kingdom are greatly, indeed, too much oppressed by these tolls.

9. Furthermore, if any noble is condemned in a process of law by the palatine or the judge royal or any other judge, for defeat in judicial combat in cases of violent trespass,²¹ frivolous prosecution,²² false court appearance,²³ or proffering forged documents, or for any other capital offense,²⁴ the judge of such a case must seize such a condemned man and hold him for three days to allow peace to be restored and ordered between the parties; and if they do not reach agreement, then he must hand over the condemned man into the hands of his adversary who may inflict on him the penalty according to the custom of the realm and as required by law.²⁵ And if the plaintiff causes the death of the condemned party or inflicts any other penalty customary in the kingdom and required by law, then the latter shall be released without any payment or attachment of his property by the judge and the plaintiff.

10. Sons and brothers, relatives, sisters and wives should not be made liable for the crime of such an executed man, but should remain safe and undisturbed in their estates, houses, and property. Moreover, if a man condemned in the above manner is able to come to an agreement with his opposing party, the judge may take no more than fifty marks,²⁶ and has to grant him a reasonable date for completing payment; and if he does not pay up by the date given to him, the judge may on the expiration of that date, with the assistance of a royal bailiff and the witness of any authenticating chapter or convent, take possession of a portion or portions worth fifty marks from his property,²⁷ until it is or they are redeemed for that fifty marks by those who are known to be most entitled to redemption.²⁸

11. We grant the petition of these same nobles, that all true nobles established within the borders of our kingdom, including also those living on dual territory within the borders of our kingdom, should enjoy one and the same liberty.²⁹

12. Nobles between the Drava and Sava Rivers and of the counties Pozsega as well as Valkó are required to pay our chamber's profit in the same way as other true nobles of our kingdom; they should not henceforth be disturbed by reason of the collection of the *mandarina*, called *bán-zsolozsmája*,³⁰ rather they should be held exempt from every exaction of any other tax customarily paid until now, just as the other nobles of our kingdom from other parts.

13. If deposits of gold, silver, copper, iron, or any other metal should be found on the estates of nobles, the deposits must not be confiscated without proper exchange; however, if it pleases the king, property of equal value should be conferred on the said nobles for those properties yielding gold. Otherwise, if the royal majesty does not wish to acquire the estates rich in minerals by exchange, then he should

cause the royal dues or the royal portions of the *urbaria* to be collected in his name, but leave the estates with all their other easements, revenues, and rights in the hands of the same nobles, just as the lord king Charles, our most dear father, approved for his gentlemen of the realm by force of his charter.³¹

14. He, on whom we have conferred any estate or estates, must occupy the estate or estates conferred on him in his own name and conduct litigation in his own name and not in ours against anyone disputing his right to the said possession, so that our name will not be mixed in any legally contested matter, nor may they acquire or receive letters of advocacy from us to conduct such cases.³²

15. Nobles cannot be compelled to pass by places of toll-collection, but they may cross at any ford they wish free from hindrance.

16. Tenant peasants of any of our gentlemen of the realm or belonging to the king's or queen's majesty or to prelates of churches or magnates of our kingdom may not be removed by force without the voluntary permission of the lords of these same tenant peasants.³³

17. Finally, we wish to declare null and void that custom by which one mark is exacted at bridges and tolls from nobles on their way to marry their wives and returning home with their wives.

18. Tenant peasants of our gentlemen of the realm cannot in any way be taken, seized, or arrested in their goods or persons in cities and free villages of the king or the queen, on holdings and estates of prelates, barons, or other nobles for previous misdeeds,³⁴ but if they have manifestly committed assault, injury, murder, arson, and other similar crimes, then justice and judgment should be meted out on their account, and any plaintiffs should seek justice and appropriate sentence from their lords.³⁵

19. Furthermore, a son should not be condemned in person, property, or chattels for the crimes of his father.³⁶

20. Bishops, chapters, abbots, convents, provosts, and other propertied ecclesiastics with three letters of inquiry may not acquire or hold property unless the royal majesty receives, concerning the properties to be acquired, proof on inquiry by trusted men selected by the royal majesty from the nobles and clergy, and unless letters of privilege from the king or queen or judges acting on behalf of the royal majesty are granted.³⁷

21. The men of chapters or convents who are called upon as witnesses by royal order may not be other than those who hold offices in that same church. If a witness goes forth from his chapter or convent on his own horse, then he should be given two groats per day; if he is

taken on the horse of a noble, then he should receive from that noble one groat per day.³⁸

22. The royal bailiff, who is called to summon or to make an inquest, cannot be from anywhere other than the same county or district where that man lives who is summoned or against whom the inquest is conducted; evidence from chapters must be sought from the nearest chapter for a summons or to an inquest.³⁹

23. And inquests cannot be conducted in any other way except by means of a letter of the king or of the palatine or of the judge royal, and the nobles of that county or district must be gathered together and the inquest must be publicly conducted among them.

24. When litigants in any major and difficult case wish to settle, the judge cannot prevent them, and he may in no way exact from them more than three marks as the fine of peace.⁴⁰

25. All suits that have been brought and will be brought in matters of property must be completed at the third term without any delay or prorogation.⁴¹

And in order that the contents of our present confirmation, renewal, ordinance, and magnanimous grant and permission of these liberties should acquire the force of everlasting validity and that no part of it should ever be rescinded by us or our successors, we have issued this charter of privilege of ours validated by our authentic, pendant double seal.

Given by the hand of the reverend father in Christ, lord Nicholas, by His grace and that of the apostolic see bishop of Zagreb, vice-chancellor of our court, our beloved and faithful subject, in the year of the Lord one thousand three hundred and fifty-one, three days before the Ides of December, the tenth year of our reign, when the reverend fathers in Christ and lords Nicholas, archbishop of Esztergom and perpetual ispán of the same place, Dominic, archbishop of Spalato, friar Dennis, archbishop-elect of Kalocsa, the bishops Nicholas of Zagreb, Demetrius of Várad, Andrew of Transylvania, Coloman of Győr, Nicholas of Pécs, Michael of Vác, John of Veszprém, Thomas of Csanád, friar Thomas of Szerém, friar Peregrinus of Bosnia, friar Stephen of Nyitra, and Blaise of Knin were felicitously governing the churches of God, and when the honorable barons Nicholas, palatine and judge of the Cumans, Nicholas, son of Lawrence, voivode of Transylvania, Oliver, our Master of the Treasury and judge of the court of our beloved mother the lady queen, count⁴² Thomas, the judge royal, Stephen, ban of all Slavonia and Croatia, Dominic, ban of Macsó, Nicholas, ban of Severin, Paul, Master of the queen's Treasury, Bartholomev, our butler, Lőkös our steward, Dennis our Master of the Horse, Töttös, Master of our Doorkeepers, John, son of the said Oliver, steward of the queen, Simon, son of Maurice, ispán of Pozsony, and many others held counties and other offices in our realm.⁴³

DECRETVM

oder

TRIPARTITVM OPVS

Der LandeRichten und Ge-
werheiten des Hochlöblichen Königs
Jungern /

Durch

STEPHANVM DE WERBEITZ

In Lateinischer Sprach beschriben.

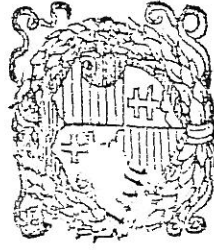
An Jeshaber der Hochberühmten Teutschen Na-
tion zu gutem auß dem Latein ins Teusch newlich
vertit vnd gebracht:

Durch

VGVSTINVM VVAGNERVM

Villicencf. I. V. Candidat. & inlyta

Reip, Pofon. Hung. cauf, Durch, &c.



Cum Gratia & Privilegio octo ann.

Gedruckt zu Wien in der
Verhart Formica.

ANNO MDLX.

While about to describe the laws and approved customs of the renowned kingdom of Hungary I thought to preface it with some important subjects regarding the present matter.¹¹ First, about justice. Secondly, about *ius*¹² and its division. Thirdly, about law and the kinds of laws. Fourthly, about custom and its conditions. Fifthly and finally, about the characteristics of the good judge and other matters pertaining to a just judgment, adding the question: whether a judge ought to adjudicate as best he knows on the basis of what has been asserted and proven, or according to what he knows. Having briefly dealt with these things, I will begin my project with the help of the God of glory and treat in sequence the local laws and approved customs of the same kingdom of Hungary which we commonly apply in the courts (as far as my memory and limited ability allow).

[CHAPTER ONE]

Justice: its definition and division

*Justice is an unswerving and perpetual determination to acknowledge all men's rights.*¹³ And this always not only as to deeds but also as regards intentions.¹⁴ Because justice is a state of the soul and an intention of the mind, by which someone is regarded as just; that is when someone wishes, as far as he is able, to render everyone his due, without preference or distinction of persons.

[1] Then, justice is that condition of goodness which grants everyone their deserts: devotion to God; obedience to parents; deference to superiors; friendship to peers; discipline to inferiors; purity to the self; and compassionate works to the poor and the downtrodden.

[2] Then, in other words, justice is a spiritual quality which (for the service of the commonweal) grants to each his dignity, and so it is a congruent disposition of the soul which judges every case correctly.¹⁵ For, according to the blessed Gregory's testimony,¹⁶ the highest good in human affairs is to cherish justice and serve to each his rights. For where there is justice, there is also the harmony of all other virtues. As Jerome said, every kind of virtue is included in the single name of justice. It is also proved by this little epigram of Hesiod: "justice contains all the virtues in itself."¹⁷ This most glorious virtue makes the eyes of mortals outshine, as Aristotle says, both the evening and the morning stars.

[3] And justice is of two kinds: namely natural and legal. The natural one is that steady and enduring will that (as mentioned before) renders unto everyone his right. And without it no one can partake in the kingdom of God. The legal one is called

¹¹ Cf. *Die Summa Legum bevis, levis et utilis des sogenannten Doctor Reppmunden von Wiener Neustadt*, (ed.) Alexander Call, 2 vols., Weimar, Hermann Böhlaus Nachfolger, 1926 [Henceforth, *SL*], I, 2, human *Insolentia* 11. The phrase *utrum cuique tribuendo* ultimately derives from Cicero, *De legibus*, 1.5.

¹² Cf. Azo, *Summa Almaina super Codice et Institutis*, (Lyon: Fradin, 1557) [reprinted Frankfurt/NA: Minerva, 1968], *De iustitia et iure*, no 1.

¹³ Accursius, *Glossa Ordinaria ad Digestum Vetus*, (Venice: Iussius, 1478) I.1.10 *Insistit*.

¹⁴ The remainder of this title borrows extensively from the sermon *luctatus* of Pelbartus of Tennesen, see his *Sermones huiusmodi*, Paris: Estrenis, no 91 (IAGEN, 1500, and many other editions).

law which changes frequently and without which neither peoples, nor kingdoms can exist for long.¹⁸ Therefore, the justness of something is to be understood in two ways: in one sense, by the nature of the thing itself, called natural law; in another sense, by some convention among people, called positive law.

[CHAPTER TWO]

Ius and its divisions

Ius as far as it concerns our purpose, is the good and the just that follows from justice.¹⁹ And for our purpose, this applies to our customs, whether written or unwritten.

[1] Hence, *ius* is the general name and a law is an aspect of *ius*. For every *ius* consists of laws and customs, that is, the written and unwritten law.²⁰ For in terms of Cicero's definition, the law is the art or knowledge of goodness and fairness,²¹ and because of this we [jurists] are deservedly called priests, that is those who administer the sacred laws and to each his rights.

In other words, *ius* is called the collection of legitimate commands that incline us to observe what is good and fair, and which is useful and equitable or true, namely justice.

[3] The law is, thus, of two kinds: the one is public law, the other private. Public is the one which refers primarily to the rule and government of kingdoms, as well as the commonweal, matters sacred, the clergy and the magistrates.²² Therefore, whoever causes harm to the clergy, to things sacred or to magistrates—that is, to the governors of the people—can be accused by anyone of a public crime. The private is separate law, which pertains to the benefit of particular persons. And this latter is of three kinds: namely, natural law, the law of nations, and civil law.²³

[4] Natural law is common to all peoples, because it exists everywhere by virtue of natural instincts and not by any establishment, and as nature has taught to all animals. And it belongs not only to humankind, but also to every animal. From this come the union of man and woman, the begetting and upbringing of children, the same liberty for all and the capacity to acquire what is in the sky, on the land and in the sea. Then: to return things from safe-keeping or money lent, and to repel with force a neighbor's violence. Because these or similar acts, are never regarded as unjust, but natural and fair.²⁴

[5] Then, by natural law we mean what is contained in the law of Moses and in the Gospels which command that one should do to others what one wishes done to oneself and which forbid doing to others what one would not like done to oneself.²⁵ Hence the verse: "What you wish to happen to you, do to me; what not, avoid! Thus you shall live on earth by the law of the poets."²⁶

¹⁸ Cf. *SL*, I, 5, Gratian, D.1 can.

¹⁹ Cf. Azo, *Summa in primis librum Institutionum*, *De iustitia et iure*, no 12, *SL*, I, 3.

²⁰ Cf. *SL*, I, 5, Gratian, D.1 c.7.

²¹ Cf. Gratian, D.1 ante c.1.

²² Distinguent in the original.

according to natural law everything is common, but by the law of nations or by civil law what is mine and what is yours is yours.⁴⁹

[1] Further, all people who use and are governed by laws and rules use partly their own law, partly the law which is common to every human.⁵⁰ For those who do not have a general law, only their own, created for themselves, they call civil law. And the law which all people have in common is called the law of nations.

[CHAPTER FOUR] About military law and jurisprudence

Military law means the formal declaration of war, of making alliances and, on a given sign, of engaging the enemy. Then, keeping military discipline (that is the punishment of those who break it). Then, the mode of payment, the system of ranks, the honoring with decorations such as the grant of a wreath or torque. Then, the decision over the booty and its just division, according to the quality and achievement of each man, and the share belonging to the prince.⁵¹

[1] Jurisprudence entails knowledge of God and man, and mastery of the difference between justice and injustice; namely, knowledge of the just in order to do it, and of the unjust in order to avoid it.⁵²

[2] It is insufficient to know what is just or unjust, unless one also recognizes matters contrary and actual; in consideration of which, laws should be established in a diverse fashion, in accordance with the diversity of situations.

[CHAPTER FIVE]

There are differences between justice, law, and jurisprudence

There are differences between justice, law and jurisprudence.

[1] For justice is a virtue, namely a moral one. Law is what implements this virtue. Jurisprudence is the knowledge of this law.

[2] Then, justice is the highest good among virtues, the law is the middling, and jurisprudence is the least. Then, justice renders everyone his right; law promotes this; and jurisprudence instructs how to do this.⁵³

[CHAPTER SIX]

About the definitions of law and its characteristics

As was said above, all *ius* consists of either laws or customs, that is, of the written or unwritten law; it must be known in short about the written law, namely the human law, that it can be described in a number of ways.

⁴⁹ Cf. *SL*, I.2; Accursius, *Gl. ad Dig.*, I.1.10, Noster.

⁵⁰ Cf. Gratian, D.2 c.1.

[6] Thus, natural law can be considered in two ways. In one way, man has a rational nature, which he shares with the divine; and thus, the natural law that belongs to man is called divine law. In another way, if one considers the sensual nature of man which he shares with other animals in regard to the senses, motion and instinct, then, in this respect, the law that belongs to man is called natural law.

[7] The law of nations is of two kinds, namely, primeval and secondary. The primeval law of nations is what all peoples have applied since the beginning of time and what was created by natural wisdom, without any establishment by the people, such as not to hurt anyone, and so on. And that is no different from natural law, except in the way it is perceived. For it is called both natural law and the law of nations, but from different perspectives: natural, insofar as it emanates from natural reason; and of the law of nations, because the peoples have applied it without any specific establishment since the beginning of the world. And by this law, a slave has a free status, because according to natural law all men are born free.⁴⁶

[8] The secondary law of nations is the law that peoples have introduced not by natural reason but by reason of the public good and for common use. And it is often times different from natural law. For by natural law everything was common and everyone free; but by the law of nations the division of land and the separation of property was invented which brought about war, captivity, slavery and other such things, contrary to natural law. This law of the nations brought about almost all contracts, such as buying, selling, lease and similar things.⁴⁷

[9] Civil law is what each people or city created for itself for divine or human purposes. And it is called civil law, as if it were the specific law of the city,⁴⁸ which may be understood in three ways. First, in general, as it is universally observed in every city. Secondly, in particular, because it is created by each people or city for itself, and for divine and human purposes. Thirdly, and especially, as the special law of the Romans, which is also called imperial law. Because, when the name of this or that city is not mentioned, the law of the Romans is especially meant, just as among the Greeks the word "poet" implied Homer and among the Romans Virgil. And if Holy Scripture mentions an apostle without any other name, it is understood to be Saint Paul.

[CHAPTER THREE]

The differences between natural law, the law of nations and civil law

It has to be known that natural law differs from other laws in three respects. First by origin: since it originated at the start of nature's creation. Secondly by its eminence: since natural law is observed equally by all peoples; established alone by God, it is fixed and unchanged, while other laws, enacted by a people or a city, frequently change, either because opposite customs emerge or other, better and contrasting laws, are enacted and introduced. Thirdly, in its extent: because

⁴⁶ Cf. *SL*, I.3; Gratian, D.1 c.3.

- [11] The sixth characteristic is that law must be the banisher of crime. According to the Blessed Thomas Aquinas, human laws were made to restrain people from vices and to encourage them to virtues. For humans, by nature, possess a certain longing for virtue, but to fulfill the virtues it is necessary to impose on them some discipline, which is best done by the enforcement of the law. This is why the same Thomas also said that law is an ordinance of reason for the common good, enacted by those who have the care for the community; and the rule or measure of these actions is what should be done or shunned.⁶²
- [12] Hence, a law must be just, honest, appropriate according to nature and according to the custom of the country, suitable to the times, necessary, and useful, and also clear, so that it should not include anything that could be resisted to an unforeseen purpose because of its obscurity (that is, that no one should be able to interpret it falsely. For if something is doubtful or obscure, it must be interpreted by whoever established it, so as not to ensnare anyone); it must be enacted for the common benefit of the citizens and not for someone's private advantage.⁶³
- [13] And all of these things must be considered, because once laws have been established, one cannot later depart in judgment from them but should judge according to them.⁶⁴

[CHAPTER SEVEN]

Why laws are made; and on the four functions of law

Because all laws are either divine or human, and the divine ones are from nature, while human ones originate in usages and customs, they differ therefore from one another because other people prefer other laws.⁶⁵

- [1] *Lex* is divine law, *ius* is human law. For it is allowed by *fit* to walk through someone's land, because the land and the fullness thereof are the Lord's; but it is not a *ius*, because it is forbidden by statute or custom.⁶⁶
- [2] Hence a question arises: why are human laws made? The answer is, because fear of them restrains human recklessness and makes innocence safe among evildoers, and that dread of punishment tames the recklessness of these evildoers and their capacity to do harm.⁶⁷
- [3] And the functions of law are of four kinds: for every law either permits or forbids or punishes or commands.⁶⁸ It permits that the brave and virtuous receive reward. It forbids anyone from asking holy virgins to marry. It punishes murderers by beheading. But sometimes it commands that "You should love thy Lord, thy God."⁶⁹ [Hence the] verse: The virtues of law are contained in these four words: permits, punishes, commands, and forbids.⁷⁰

⁶² Cf. *SL*, 1.6; Gratian, D.4 c.1.

⁶³ Cf. *SL*, 1.6; Gratian, D.3 c.4.

⁶⁴ Cf. Gratian, D.3 c.4.

⁶⁵ Cf. Heslerensis, *Summa aurea*, (Lyon: Marchant, 1518), lib. ii, tit. de constitutionibus, no. 11; *Digest*, 1.1.7.

- [1] First, it is the establishment of the people, something decided together by the greater horn and the common people.⁷¹ But this definition does not suit our purpose, because all powers of jurisdiction and lawmaking, which rested once in the people, now belong to our prince, as will be stated more clearly below.
- [2] In other words, law is the sanction that commands honest and forbids dishonest and contrary things.⁷²
- [3] Or otherwise: it is right reason following from equity which orders the honest and stands against the dishonest.⁷³
- [4] Then, according to Papinian and Demosthenes: law is an invention of men, a gift of God, a teaching of the sages, a corrector of violent misdeeds, the common agreement of the polis, and the banisher of crime. From this definition it is clear that law was a human invention.⁷⁴
- [5] Because once mankind had multiplied and sins had spread, kingdoms were turned into tyranny, and it became necessary to found laws. You will find explained above who first created laws.⁷⁵
- [6] It has been said in the definition that law is a gift of God. For according to John Chrysostom, the law of God is the only lawful way that bends neither right nor left. Therefore, people without laws who defy the words of God and the lessons of the laws are heading to the pit of damnation on diverse roads of error. However severe the laws, they are lame unless they bear the impression of divine law; because human laws have power only for as long as they do not deviate from the divine ones, as was proven by the sage who said: "By me kings reign and rulers decree what is right."⁷⁶
- [7] Therefore human laws must emanate from divine law. Because only that polity is well ordered which, while ruled by laws, is governed by divine law. No law can be valid which goes against divine law either by the assent of the people, or a long standing custom.
- [8] The third characteristic of law, according to the aforesaid definition, is that it is the teaching of the sages. Whence it must be known that, just as princes should not punish the innocent, so they must not absolve the sinner and the criminal from punishment and chastisement; especially when someone commits a crime against the polity, because he who condones the godless and condemns the just is equally loathsome to God.
- [9] The fourth characteristic of the law is that it be the chastiser of violent offenses. For laws are made to restrain human recklessness by fear and to protect the innocent among the evil.⁷⁷ For men would not be encouraged to keep the law if they did not dread the legal punishment imposed upon them by a public person.
- [10] The fifth characteristic of the law is that it should be the orderer of the city. The city's name actually derives from the unity of its citizens.⁷⁸ Therefore, the judges in this kingdom of ours should also apply every law for the commonweal of the polity. Now, just as one hopes from medicine what is good for the body, because that is why it is prescribed, so we cannot expect anything from the laws except what is beneficial for the community of the entire polity, because that is why they were established.

⁷¹ Cf. *SL*, 1.6; Gratian, D.4 c.1.

⁷² Cf. *SL*, 1.55.

matter whether it is based on writing or on reason, since reason also supports laws. Moreover, if law is built upon reason, then everything that is built on reason is law; providing it agrees with religion, comports with order, and serves salvation. It is called custom, for it is, as it were, common practice and human use because it is in common use.⁷¹

[1] But to be more clear: custom may (for our purpose) be defined thus: it is that certain *ius*, introduced through the practices of whomsoever can by public authority enact laws. Therefore custom also falls within the name of *ius*, and if a prince orders that one should judge according to *ius*, then a judge can pass judgment according to custom and the statutes of the place. Contrariwise, a common law falls within the name of custom. Thus, if someone makes mention of custom in his plaint, then a common law may be seen as meant.

[2] Any people can introduce a local custom. In order that custom be effective and hold force, a few things are necessary.

[3] First, it must be reasonable. It is reasonable when it aims and advances the goal of law. The goal of canon and divine law is the beatitude of the soul. The goal of civil law is the common weal. Therefore, if a custom aims at the beatitude of the soul, it is reasonable by canon and divine law, and if it opposes an eternal goal, it is unreasonable. According to civil law, a custom is reasonable if it aims at the common weal. And since in this regard there are no specific rules, say that a custom may be regarded as reasonable if it does not contradict natural law, the law of nations, or positive law.

[4] But since law is founded on reason it seems that no custom can be reasonable that contradicts law. Considering the different kinds of reason, it must be said that a custom may be reasonable even if it contradicts a reasonable law. Depending upon their different purposes, two opposites may be true at the same time, for example, to marry or not to marry.

[5] Secondly, custom must be prescriptive, i.e., it must last for an appropriate time and must receive force in the course of that time required for prescription. But this holds only for canon law and is not required even by that law unless it contradicts positive law. According to civil law, a decade, that is the passage of ten years, is sufficient for the introduction of a custom, even if it contradicts civil law. If, however, a custom contradicts canon law, then the space of forty years is required. Yet, if a custom is introduced in the absence of law, then, even in respect of canon law, a decade seems to be sufficient. The passage of ten years begins from the time the first act is performed by the people.

[6] What I have said concerning civil law, that ten years is sufficient overall, is limited to cases where custom is invoked in matters that are not reserved to the prince as the mark of his supreme power. For then a custom cannot be introduced except after so long a time that no one can recall when the custom started.

[7] Thirdly, according to the common opinion of the doctors, repetition of the act is needed. Say, however, that a repeated act is not in itself necessary for the establishment of a custom. But because the consent of the people cannot be deduced from one single act, the repetition of the act can be seen as the cause and custom as the effect. And it is necessary to have so many and such well known

[CHAPTER EIGHT]

On statutes and municipal law

I Having presented the concept and the varieties of law, it is time to discuss statute.

[1] The statute, which we commonly call a *decretum*, is a certain law common to a kingdom, having legal force. And we call it a "statute," because it is stable and it is firmly ordered, that is, it defines the public state. Statutes often fall into the purview of civil law.

[2] Whereby it must be considered that civil law is of two kinds. One is common, that is contained in the books of civil law and this one cannot be established except by the emperor or any other supreme ruler. The other is private law, which is also called municipal or by-law. And that law can be enacted at any time by any region, province or city.

[3] Municipal law is the positive law of a certain place. It is so called precisely because it is observed in that municipality (that is, town) and in that place. It is also called (as said above) a by-law.

[CHAPTER NINE]

Whether a statute that contradicts canon, natural or divine law has effect

But it seems necessary to ask whether a statute prevails over canon, natural or divine law. Reply that in regard to canon law, if the statute contradicts the ancient liberty of churches or the privileges granted them, it has no effect. The same is to be said of statutes pertaining to the salvation of the soul. In earthly matters, however, civil statutes put aside canon laws and overturn them.

[1] Regarding natural or divine law, statutes cannot overturn them altogether, but they can make distinctions; as, for example, divine law says without distinction, "thou shalt not kill", but human law and statute permit killing in many cases. The same must be said about the tribe, which, according to divine law must be paid, but the pope exempts many people from rendering.

[2] We may, therefore, conclude that statute or law or ordinance cannot overturn natural or divine law entirely, since neither the pope, nor any one else may order that the Old or New Testament be not observed or children not be raised by their parents; but in some particular cases, a deed contrary to natural or divine law, such as killing a robber or the thief who comes in the night, can be done with just cause.

[CHAPTER TEN]

What custom is and what is necessary to affirm custom

Now custom has to be discussed. Whence it should be known that custom is a certain law, arising from practise, taken for law where law is deficient. It does not

acts that it becomes in all likelihood known to most of the people, for it is not the act but the tacit consent of the people that establishes custom.⁷² Thus, when the tacit consent of the people can be deduced, then the great recurrence of acts is unimportant. What is more, a custom can occasionally be introduced by a single act with a repeated cause lasting for as long as it takes to establish a custom; for example, a custom can be introduced if someone has a bridge on the public road or something of this kind.

[CHAPTER ELEVEN] How law differs from custom; and on the threefold value of custom

And law differs from custom in three ways. First, as tacit and express.

[1] Second: as written and unwritten, though this is not an essential difference. For the law of the prince, even if unwritten, does not fail to be law. And if custom is put in writing, it still remains custom; for example: the Customs of Fiefs⁷³ which are written down.⁷⁴

[2] Third: as momentary and continual; because custom cannot be introduced in an instant. What is tacit progresses at a slower pace than what is expressly stated. Nor is that which emerges from inference as certain as that which is expressed. Therefore, custom cannot be introduced by the people at once, but only gradually.

[3] Custom has a threefold value. Namely, explanatory, as it is the best interpreter of the law; so when law is doubtful, we have to refer to the custom of the place, and if it is clear from that there is no need to deviate from the meaning given by custom.⁷⁵

[4] Secondly, it has abrogatory value, because it supercedes law when it contradicts custom.

[5] Thirdly, it has substitutive value, because it replaces law where this is deficient.⁷⁶

[CHAPTER TWELVE] What is to be held of contradictory law, statute and custom

Here the question arises: where a law, constitution or custom appear to contradict one another, which of them should be observed? Say this: if a law precedes a contrary custom that followed later, then the custom, if it is general, overrules the law in general and totally. If a custom is only local, it does not overrule a law in general, but only in that place where the custom is in force.⁷⁷ If, however, a custom precedes a contrary law that came after it, then the custom does not overrule the law; in fact, the later law abolishes that custom.

[1] Canonists, however, hold the opposite, asserting that papal law, if it does not make mention of it, does not abolish the contrary custom of a certain place.

⁷⁶ Cf. Hostiensis, *Summa aurea*, lib. 1, Tit. de consuetudine, no. 11.

⁷⁷ Cf. Bartolus, *Reperitio ad Dig. Vet.*, 1.3.9, no. 5 in Bartolus, *Commentaria*, 3 vols. (Basel: Froben, 1562), Accursius, *Cl. ad Dig. Vet.*, 1.3.12.

because the pope is not presumed to know contrary customs. From this, one can with reverse reasoning infer that, if a city or any community enacts a statute contrary to its own custom, then the custom is overruled, even if it makes no mention of it, because a city or a people is presumed to know its own custom.

[2] Let me then establish two rules. The first is when custom precedes and a general law contrary to it follows, then it overrules the previous custom.⁷⁸ The second rule is: when law precedes and then a contrary custom follows, it overrules the previous law. And understand this (as I said above) only if the custom is general and introduced by a people who are able to introduce both laws and general customs. Because, if it is the particular custom of some place, it overrules the law only in that place.

[3] Where a case emerges that may be determined neither by written law nor by custom, but resembles partly written law, partly custom, many are in doubt as to which resemblance shall be followed and which shall be preferred. Considering all cases, say this: when a case seems to resemble custom only, then that shall be applied; if however it resembles law only, then that will be applied. If, however, it is found to resemble both law and custom, then first one ought to examine which one it resembles more, and secondly, which one is more reasonable and more equitable. If there is equality in every respect, then, if we are in matters customary, the similarity to custom has to be applied. If we are in matters of written law, then the similarity to written law must be applied.

[CHAPTER THIRTEEN] What a judge is, what a judgment, what a law-suit, what a plaintiff and an accused

But since judges, who by virtue of the jurisdiction belonging to them decide individual matters with the proper scrutiny of judgment, preside over the application of the law, it is not inappropriate to explain something about them.

[1] Whence it should be known that a judge is called *iudex* meaning *ius dicere*, or meaning he who declares what *ius* is, that is: administers justice to the people.

[2] *Ius* is the object of justice; therefore the judgment is, by its name, the determination of what is just and right in a law-suit that is brought before a judge.⁷⁹

[3] The term *causa* (lawsuit) comes from the word *causare* (case). For this is the issue and the origin of the matter set out before the inquiry of the trial, which, by the submissions joined, becomes a legal case; during the trial it is considered adjudication, and in its conclusion, justice. And here what is called justice means law. For law is said to be the state of *ius*; because a judgment does not make law by itself, but declares the state of the *ius*.

[4] However, all cases, which come to trial, require these persons: judge, plaintiff and accused. In business which is unclear, witnesses are necessarily also required.

[5] The plaintiff acts as accuser, because he summons to the lawsuit. The accused (*res*) is named after the thing (*res*) at issue, even if he does not regard himself as guilty.

⁷⁹ Cf. *St.*, II-II, 66.1.

CHAPTER FOURTEEN Cases that bring about the taint of infidelity

¹These are therefore the cases in which the royal majesty has the capacity lawfully and freely to give to whomsoever he wishes of any persons' goods, even in their own lifetime, and they are called taints of infidelity.

[1] The first case is lèse-majesté: namely, when someone lays impious hands on the person of our prince, or plots against his life by sword or poison, or violently invades the walls or house wherein the prince himself is staying.

[2] The second case is when someone openly rises against or oppresses the public order of the king and the crown. However, if the attack is carried out in justifiable self-defense, it is not understood as bringing about the taint.

[3] Then, he who forges documents or uses false documents openly in court; or, who cuts or uses forged seals.

[4] Then, those who mint counterfeit coins, or who knowingly and publicly use these in great quantity.

[5] Then, those who kill or wound their kinsmen or blood relatives within the fourth degree. Similarly, parricides, uxoricides, and killers of their husbands. However, reckon only those killings of wives and husbands that are committed unjustly and outside the legal process.¹²³

[6] Then, those who seduce female relatives to the fourth degree inclusive. Or who violate a stepmother or commit incest, once they have been publicly condemned and outlawed.

[7] Then, public arsonists of villages and estates.

[8] Then, those who invite foreign bandits or mercenaries to disturb the internal order of the realm.

[9] Then, those who violate a letter of public trust or safe conduct, once they have been publicly condemned.

[10] Then, those who betray their lord's castles. Similarly, those who capture, take or subvert the castles, fortified houses, or other strongholds of any gentlemen of the realm, once they have been publicly condemned.

[11] Then, those who kill, keep captive, beat, or injure the justices ordinary of the realm or their deputies in court.

[12] Then, those who kill litigants or parties to a lawsuit who are traveling to the royal majesty, or to the octave courts or courts of short summons or any county court or any other court of justice in pursuit of their case, or those going or proceeding to a diet and general assembly called by royal proclamation.

[13] Then, those who kill, wound, or beat royal bailiffs or the witnesses of chapters or convents when they are engaged in any way in some legal business.

[14] Then, public heretics, namely, those adhering to one of the condemned heresies.

[15] Then, those who mutilate someone or gouge out his eyes, except the bans, vovodes, and others holding honors on the borders of the realm.

[16] Then, those who surrender the kingdom's border fortifications.

[17] Then, those who supply arms or victuals to the Turks and other infidels who are enemies and are bent on seizing the realm.

[18] Then, those who aggrrieve, detain, or rob those people who, having renounced their cursed sect, flee from Turkey into this kingdom in order to stay here.¹²⁴

CHAPTER FIFTEEN That the goods of robbers, thieves, and homicides are not subject to royal donation

It follows, therefore, from the cases above that the goods and property rights of thieves, robbers, bandits and other such plunderers, as well as those of homicides, and those who otherwise wound or beat nobles (apart from the aforementioned exceptions) or invade their houses, or despoil or seize the estates, property rights, or the lands of others, do not devolve to the royal fisc and are not subject to grant by the royal majesty. Such persons shall be condemned and punished with capital sentence; namely, thieves shall be hanged, robbers impaled or broken on the wheel, and the rest beheaded, according to their deserts.

[1] However, their goods and property rights (if and when they are sentenced to death) pass to their sons, or, if these are lacking, to their other kinsmen by blood or their lawful successors.

[2] Should the king pardon them, and the sentence be carried out, then the sons, kinsmen, or other lawful successors can redeem their property rights by way of common estimation from the hands of the judge and the opposing party; that is of the party that asked for the sentence, as will be explained in more detail in the discussion of sentences in the second part.¹²⁴

CHAPTER SIXTEEN That the difference between the taint of infidelity and capital sentence is twofold

The difference between the taint of infidelity and capital sentence is twofold. First, because by the taint of infidelity, both the head and the inheritance, namely, the perpetuation of all the goods and property rights of the faithless man, are lost, and none of his sons or kinsmen can ever recover their share of the inheritance or the property rights belonging to this faithless man, blemished, dishonored, and condemned for the stain of infidelity (even if he is beheaded).

[1] Moreover, to make infidelity infamous and loathsome and to extol the sovereign virtue of flawless faith, his entire lineage and the descendants of his kindred will be for ever alien to him as far as the inheritance of his goods is concerned. By sons

Society in Late Medieval and Early Modern Hungary, (Brooklyn, NY: Brooklyn College Press, 1989) (War and Society in Eastern Central Europe 3) pp. 14–38.

¹²⁴ See below II 60.

CHAPTER ONE

Second part of the laws and customs of the realm, in general

Now that (with God's help) the principal matters have been concisely discussed, namely donations of property rights, and their types; the division of goods, sales, pledges, the definition of borders, the payment of dowers and filial quarters; and other matters related and connected to these—which provide the foundation and support of the lordship of all lords prelate, barons, magnates, and nobles: in the second part of this work it remains to discuss the procedures of actions and suits, executions, and the order of verdicts to be passed regarding these.

[1] But before I turn to the explanation of the subject matter of this part, I will briefly discuss in general how a constitution, or a general decree of the prince and the kingdom¹⁰⁹ should be interpreted, because the term 'constitution of this kingdom' will often need to be mentioned; moreover, what is the beginning and origin of our custom, that is, the unwritten law which we commonly use at this time.

CHAPTER TWO

In how many ways 'general decree' is to be understood

The constitutions of princes, or the decrees of the kingdom, can be grouped in four kinds, as it comes to mind:

[1] Some constitutions have been abrogated *in toto* by subsequent ones, and simply revoked.

[2] Others have been partly abolished and partly approved.

[3] Some have been passed over in silence.

[4] Some have been introduced.

[5] In regard to constitutions deleted *in toto* (such as the court of the palatine, the extraordinary county assembly, trial by combat, and the summons at three fairs), the time of abolition must be considered, since it is clear that they legally regulate future and not past actions and matters, inasmuch as palatinal courts and judicial comitats no longer take place, nor are extraordinary county assemblies and the summons at three fairs any longer performed.

[6] However, in cases which were initiated during the validity of the former, the old procedure has to be observed in which these cases are recognized as having been initiated, not inasmuch as they are reinstituted but in order to keep the procedural order.

[7] It would be otherwise if such laws and constitutions also applied to past matters through the wording incorporated and written in the same constitution. For, to put it simply, constitutions (as noted just above) are binding not in respect of the past but of the future.

[8] Secondly—where constitutions have been partly approved and partly abolished—careful attention must be paid to the form of the wording included in these constitutions and decrees, in order that what has been approved is retained and what has been abolished is rejected and not observed.

[9] Thirdly, where earlier laws or constitutions have been passed over in silence, so that no reference is made to the earlier laws in later ones respecting any variation or alteration in the same, then the earlier laws are [only] recognized as having force when contrary use by the people has not prejudiced them. For real and continuous use often invalidates a law.

[10] Fourthly, when new laws have been introduced, then these laws have to be followed in passing judgment, whether they be stronger or milder than the earlier ones. For it is not possible to judge whether they have been well or badly enacted, but one should pass judgment in accordance with them.

CHAPTER THREE

Who can establish laws and statutes

However, the question arises for consideration, whether the prince can establish laws and statutes of his own accord, or whether the consent of the people is also necessary.

[1] Concerning which it should be noted that although formerly, when this Hungarian people were still living as pagans and had as their rulers not a king but a duke and captains, all power to establish law and constitution resided in them.

[2] Yet, once they were converted to the catholic faith and of their own accord chose for themselves a king, then the right to found law as well as to grant any property and all judicial power were transferred to the jurisdiction of the Holy Crown of this realm with which all kings of Hungary are usually crowned, and hence to our lawfully constituted prince and king, along with the supreme command and governance. And thus thereafter, the kings themselves began to make constitutions after calling together and consulting the people, as is also customary in our times.

[3] And yet the prince cannot make constitutions *proprio motu* and by himself, particularly in matters where divine and natural law are prejudiced, or which diminish the ancient liberty of the Hungarian people as a whole. But once the people are summoned and asked whether such laws are acceptable to them or not, and they approve the laws, then such bills are henceforth to be observed as laws (keeping always divine and natural law).

[4] However the people themselves often unanimously decide upon measures that they deem conducive to the public good, and present them in writing to the prince, begging that laws be enacted for them on these matters. And if the ruler himself approves and accepts them, then they acquire the force of law in the same way and indeed are regarded as laws.

[5] Yet all such statutes are specifically called the ruler's statutes, and not the people's, inasmuch as without the ruler's consent and ratification the constitution may in neither case be regarded as having any force. But as a general term these constitutions are often called decrees of the kingdom.

CHAPTER FOUR

Who are included under the terms 'the people' (*populus*) and 'the common people' (*plebs*)

The term 'people' is here to be understood as referring only to the lords, prelates, barons, and other magnates, as well as nobles, but not to non-nobles.

[1] Albeit the term people includes all alike, noble and non-noble, nevertheless the non-noble (to whom the term *plebs* applies) will not be considered in the present section.

[2] For people differs from *plebs* as species from kind. For the term people refers to all nobles, both the magnates and the lower nobility, as well as the non-noble, whereas the term *plebs* refers only to the non-noble.¹⁹⁰

CHAPTER FIVE

Who are bound by constitutions and statutes

Regarding the further question of who are bound by constitutions and decrees, it should be noted that in the first instance they bind the prince himself who issued them at the people's request, in accordance with the principle: Submit to the law which you yourself introduced. It is to be understood differently of the supreme pontiff and the Roman emperor, about whom no mention will be made here.

[1] Therefore, the laws are binding on all those subject to the prince's jurisdiction

[2] And not only on them, but also on any foreigners staying in this kingdom.

[3] However, if a general constitution includes a punishment or penalty, then foreigners are given three months' grace; this time is set for making known the statutes to them. For example, supposing it is decreed and ordained that no person from Vienna or Wrocław or any other foreigner, on pain of death and the confiscation of all his goods, should presume to come with his wives to a fair customarily held in this kingdom of Hungary or to drive and lead away herds of sheep, cattle, or horses from the kingdom; then such a foreigner even if apprehended cannot be legally bound or stripped of his goods within the space of three months, as he is excused by his ignorance of the statutes and the fact that they were not made known.

[4] But if no punishment or damage is involved but the redress of someone's right or of a judgment, or the means of pursuing a case, then foreigners are granted only one month.

[5] But for inlanders, of whatever status, dignity or condition, the time of the promulgation of the statutes is binding; and neither natives nor foreigners are excused in this way, for, 'When in Rome, live as the Romans do.'

CHAPTER SIX

Whence our custom that is to be observed in court originates

Be it known, secondly, that although almost all the rigour of this kingdom originally evolved from sources in pontifical and imperial law, nevertheless this municipal custom of ours, which we now commonly use in court, is based on three foundations: [1] First, on constitutions and public decrees

[2] Secondly, on the privileges of princes.

[3] Thirdly, on the verdicts of justices ordinary of the kingdom

[4] First, then, on public constitutions. To explore the origin of this matter more deeply, it should be noted first of all that the glorious king and our apostle, the blessed Stephen (who offered the first fruits of the kings of Hungary, and who converted the Hungarian nation to the light of holy faith), issued splendid constitutions, which however bear and promulgate the rudiments of faith rather than the rules of law suits.

[5] Then the most holy king and our confessor Ladislas, who with his sword subjugated Dalmatia and the coastal regions to the kingdom of Hungary and who in open warfare crushed many times the Tartar nation, which had been accustomed to invade the borders of the Hungarians in repeated incursions, and moved them far from the bounds of this kingdom and forced them to withdraw a great distance, laid down excellent laws.

[6] Afterwards the most invincible King Andrew,¹⁹¹ son of King Béla III,¹⁹² and father of the blessed widow Elizabeth,¹⁹³ he whom we style 'of Jerusalem', after his felicitous return from the expedition to Jerusalem, in defence of the holy catholic faith, established excellent decisions and splendid decrees, particularly concerning the immunity and prerogatives of liberty of the nobility: these the Hungarian people to the present day exalt to the stars as if they were holy decrees.¹⁹⁴

[7] Finally, the most illustrious princes the lords Louis, Sigismund, Allectus¹⁹⁵ and Matthias, kings of Hungary, made in their times some constitutions in the same manner.

[8] Most recently too, and no less than the others, our most serene lord, the present King Wladislas, laid down outstanding laws; his praiseworthy memory will be considered forever blessed by the Hungarians.

[9] And albeit such constitutions and laws, especially those of the holy kings Stephen and Ladislas, who worthily deserve to be enrolled among the catalogue of saints, have by now been almost entirely effaced due to their extreme age, although they are recognized as being more concerned with divine than human law; and the decrees of other later kings are held to be changed and altered in certain clauses and articles; it is, nevertheless, acknowledged that through long use some element of law has flowed down from the constitutions of almost all

¹⁹¹ Werbőczy refers here to the Golden Bull of 1222 (DOKM I 12-13)

¹⁹² Albert I Habsburg, king of Hungary 1437-49.

[1] Although people say many different things and have different opinions, and various arguments can be adduced on both sides, nevertheless, in general we hold that all privileges, and the privileges of all persons, are annulled and invalidated by common law, that is, by decree. In these cases they will be expressly referred to in a general constitution.

[2] As is contained in a decree of our present lord the king: the abolition of the freedom of the city of Visegrád; the collection of ninth from free cities, and other such cases.¹⁷⁷

[3] For although they have long had privileges drawn up on their liberty as well as their exemption from and non-payment of the ninth, nevertheless it is not the privilege but the decree and the general constitution which is observed in this case.

[4] But a privilege not expressly rescinded by a contrary law or general decree remains in effect, as you may see more fully explained above, on the way a decree should be evaluated and understood.¹⁷⁸

CHAPTER NINE

A privilege is regarded and can emanate in two ways. And first, lawfully

A privilege can be understood in two ways: namely, insofar as it proceeds by due course and lawfully from the prince's authority alone, and insofar as it does not, but tends to cause damage to others or else appears to detract from a common constitution.

[1] Therefore, insofar as a privilege proceeds from the prince's authority alone—as the donation of property rights; exemption from payment of tolls, and the thirtieth; or granting the right of free markets, general fairs, fairs, and levying tolls, which belong solely to the king—the privilege should always be observed, as long as it does not manifestly prejudice the rights of others.

[2] And for this reason the following clause is always attached and inserted at the foot of privileges of this sort: *ad hoc iure alieno* (keeping the rights of others).

[3] For if the prince himself exempts and frees as of now some countynum or a city from the payment of tolls, but has justly conceded the collection of tolls on one of his faithful men before, then he cannot by this later privilege, i.e. of exemption, invalidate the former and abolish this collection of toll, since it clearly prejudices the previous privilege drawn up concerning these tolls.

[4] But in regard to the goods and tolls belonging to the prince who granted the privilege, the exemption will stand and remain.

CHAPTER TEN

A privilege is understood to prejudice the rights of others in two ways

Then, concerning the grant of markets, fairs, and forages, the same position is to be held: that privileges issued on these matters are always to be upheld, providing they were not conferred in a way prejudicial to the rights of others. And privileges can prejudice the rights of others in two ways.

these sandy kings, and for over a hundred years been carried over into and been approved by our custom.

[10] Secondly, the privileges of princes are a source of our custom. Since these are often produced and read in court when matters so demand, and are accepted as having been made and issued worthily and justly (as reason dictates), so a certain part of our custom has evolved from long judicial practice of this sort.

[11] Thirdly and finally: custom has emanated from the verdicts of the justices ordinary of the kingdom and from repeated letters of adjudication passed and delivered and composed in one and the same order, manner and procedure on many occasions, and confirmed by judicial execution.

[12] Nevertheless this judicial procedure and procedural practice which we observe in initiating, pursuing, deciding and concluding cases, is recorded as having been introduced into this kingdom in the reign of the lord King Charles,¹⁷⁹ father of the said King Louis, by him from the land of the Gauls. It has always been observed without violation down to the present time (with only the alteration of certain terms through public constitutions) and must continue to be observed forever henceforth.

[13] For otherwise the rights of the whole nobility of the kingdom of Hungary would necessarily be reduced to nothing by the introduction of new laws (even though these be learned and brought into common use).

CHAPTER SEVEN

What is the definition of privilege. And how many kinds of privileges there are

Then, since a certain part of our custom is, as aforesaid, taken from the privileges of the princes, I have decided that some things should be said here about a privilege.

[1] Whence it is to be known that a privilege can, as it were, be considered as a private and singular law which pertains to one or a few.

[2] In another sense, though, a privilege is a prerogative or singular honour, being a boon of the prince, often conferred against common law.

[3] Moreover, a privilege may be of two kinds: general and special. It is general when it is conceded to a corporation or community, such as a city or a chapter or a convent; in these cases it is permanent.

[4] On the other hand, it is special when it is conferred on just one person. And it is distinguished with the person, unless perchance an exception is made therein that the virtue of the privilege should also flow on to the heirs and successors of the person who receives the privilege. For, it is thus accepted as being enjoyed by his heirs and successors as well.

CHAPTER EIGHT

Whether a decree is annulled by a privilege, and vice versa

But it may be asked (as I myself have often heard it asked) whether a decree or a common law is annulled by a privilege; and, contrariwise, whether a privilege is annulled by a decree.

maintenance of their property rights and the pursuit of all cases emerging therefrom (as has been noted in the first part).¹⁰⁰

CHAPTER TWENTY

In how many ways a privilege can lose its force

Now further that there are many ways in which a privilege can lose its force:

[1] In the first place, the privilege is lost and becomes invalid when anyone acts against the privilege granted to him or exploits it in an improper way, since he who abuses the power granted to him deserves to lose his privilege. For example, a man who has a privilege from the prince in respect of the punishment of malefactors, seized in his territory, abuses this privilege if, when a thief or brigand is captured, instead of hanging or impaling him, he comes to an understanding with him and releases him after extracting a sum of money; for the prince conferred authority to smite and punish malefactors according to their deserts, not to let them off.

[2] Secondly, a privilege is lost when a person does not in due time exercise the privilege given and granted to him. For instance, if the royal majesty bestows on someone a castle or some other property right, and the grantee fails within the course of a year to request that his letters of donation be executed by a royal or palatinal bailiff and with the men of some place of authentication, then, after a full year has elapsed, a grant of this sort becomes completely invalid. Nor is it possible to restore it with letters of institution composed under the prerogative (as I have just explained); instead, the grant will have to be made and composed afresh, assuming that no second person has in the meantime obtained that property right for himself.

[3] In the case of weekly markets, fairs, and foidages, the same must be done. For example, if the prince grants a person a market, a fair, or foidages, he should use and begin using such a grant and privilege within the space of a year; for otherwise its validity will expire once the year is passed.

[4] However, it should at this point be noted that if the institution is carried out within the aforementioned year, but then some mistake is found to have been made either in the letters of report or in the manner of the institution, whether by the fault and negligence of the royal bailiff or the witness or even of the chapter or convent, then in such cases the grant will remain in effect, and the execution of the same can and must be rectified according to the circumstances of the case.

[5] However, if the institution is simply not carried out, or if in some other respect an error is made by the grantee, then it cannot be rectified, and (as previously discussed) the castle or other property right will have to be obtained afresh.

[6] Thirdly, a privilege is lost in the event of a person being charged with lèse-majesté or incurring the taint of infidelity; in such cases, he forfeits not only his privilege but his life and all his goods as well.

[7] Fourthly, as has been previously explained, when a privilege causes excessive loss to another person, since it is not at all likely that the prince in granting it would seriously wish to infringe another person's right either now or later.

[1] First, in respect of time, as has just been discussed: since the other person's privilege was given earlier, it cannot be abolished by a later one, not even through a derogatory clause.

[2] Secondly, in respect of place: because river-tolls, that is foidages, cannot rightly be granted unless the places for which they are granted are at a distance of at least one mile from other persons' places (for which they were granted earlier).

[3] Albeit, they can also be granted more closely, provided the grant does not cause the ruin of the previous ones, or occasion them significant loss.

[4] Weekly markets and general fairs should and may be granted at a similar distance, and at closer places too, provided the newly granted fairs are not held on one and the same day or at the same time as the previous fairs, and that the new ones do not otherwise obviously ruin the earlier ones.

CHAPTER ELEVEN

A second way in which a privilege is unlawfully issued

A privilege can be considered in another way, inasmuch as it may not proceed from the prince's authority alone—that is, because the prince does not have just and lawful power to grant such a privilege, since it aims at the prejudice of others, or because it is clearly prejudicial to a common law and a general constitution.

[1] And such a privilege has no force. For example, should it be contained in a common decree that no credence be given in court when transcribed letters are drawn up outside an octave courts. Now, if the prince simply caused a person's privilege to be transcribed with a derogatory clause, to the effect: "notwithstanding the law or the decree of our kingdom, we wish that credence be given to this type of transcript"; or were he to concede letters of institution under the prerogative: namely that: "a certain donation should, notwithstanding the passage of a year, be carried out", since this is considered to detract from the law and custom of this realm, it is not observed, nor is it considered worthy of observation.

[2] The same should be held concerning those privileges which may have been conceded or are conceded at any future time, to the effect that [a person] is not bound to respond on anyone's instance at the judicial seats of the counties before the county *ispán*, and lawsuits can only be started [against him] before the royal majesty or his personal presence and not before other justices ordinary of the kingdom.

[3] Moreover, if a judgment is handed down that an oath is to be sworn by some lord or noble, and a privilege is thereupon presented to the effect that the defendant is not required to provide the oath in his person but can entrust his official to deliver it, and so on, then, since such a privilege is prejudicial to the general constitution of the whole kingdom which has long been approved, it should never be upheld.

[4] For all lords and nobles, spiritual as well as temporal, and all other men of property of either line who hold goods and property rights in this kingdom of Hungary must observe one and the same law and the same custom in the

Second Part

[8] Fifthly, if the prince or another justice ordinary of the realm, seeing and recognizing from certain knowledge⁴⁰ that a privilege lacks validity, repeatedly passes judgment against the privilege. This, however, is not the same as when a judgment is passed in error against a privilege; in such a case the mistake can be rectified and the tenor of the privilege be upheld by revising the judgment, providing all legal formalities are respected.

[9] Sixthly, by the express or tacit waiving of the privilege: expressly, when a person has publicly waived or waives his privilege; and tacitly, when a contravention of the privilege has occurred in public with his knowledge and without his contradiction but with his total silence; this silence being prejudicial to him implies a kind of waiver.

[10] Seventhly, because a later one modifies the earlier privilege: thus when two privileges are composed or issued in relation to one and the same person or community, the first will be rendered invalid and the second will be observed.

[11] Eighthly, and finally, a privilege is lost when it is expressly revoked by the prince who grants it, on reasonable grounds, which are to be clearly stated in such a revocation. For if the revocation is not justified on reasonable grounds but is simply stated as taking place in the revocatory letter, then the revocation will not stand; for otherwise numerous problems would arise, and a person might live in daily uncertainty as to his privilege. Let this discussion suffice on the subject of privileges.

CHAPTER THIRTEEN

What is the description of a seal. The two types of seals

However, since all privileges are confirmed and ratified with seals, it is appropriate to include some discussion of seals in this section.

[1] Wherein it is to be noted that a seal is an identifiable sign impressed upon gold or some other metal, or into wax, confirming all that has been done.

[2] There are two types of seal, authentic and inauthentic. The term *authenticum* can be analyzed as *authoritatem tenens*, i.e. 'having authority' from the person whose authority it represents. Properly, it belongs to princes and justices ordinary of the realm, as well as to chapters and convents. When affixed to a letter, an authentic seal of this kind confirms all matters stated and expressed in the letter.

[3] In addition, cities and towns have authentic seals which kings and princes have granted them, and which confirm facts and matters which are moved and come to pass before them and in their midst.

[4] Inauthentic seals are those of private persons. Such seals have no quality of permanence.

[5] Of these there are many types: the seals of lords prelate, as well as those of perpetual *abbeys* and other barons holding baronial honors; the descendants of the same barons; and those of nobles and notables of the kingdom, with the true and special insignia of their arms engraved and drawn on them.

Matthias, by the grace of God king of Hungary, Bohemia, Dalmatia, Croatia, Rama, Serbia, Galicia, Lodomeria, Cumania, and Bulgaria, Duke of Silesia and Luxemburg and Margrave of Moravia and Lusatia, for the everlasting memory of the matter.

It is fitting that kings and princes who by heavenly decree are placed at the summit of the highest office, be adorned not only by arms but also by laws and that the people subjected to them, as well as the reins of authority, are restrained by the strength of good and stable institutions rather than by the harshness of absolute power and reprehensible abuse.

Therefore, we wish to make known to all, that after God's greatest and most unexpected gift and His ineffable and incomprehensible providence raised us (though unmerited) to this pinnacle of royal dignity, we have always kept in mind, always considered, and always had as our heart's concern, how we could abolish and eradicate those disorders and wretched abuses, especially in the administration of justice, which have occurred in this kingdom in the time of the most serene lord kings, our predecessors, and even up to our own time, and how we could establish statutes and decrees of a salutary and firm nature, which would be recognized as manifestly established, in the first instance, for the greater glory and praise of our Redeemer and, secondly, for the honor, salvation, benefit and peace of ourselves and our entire kingdom and which are to be acknowledged as statute and written law, binding forever; and no one should be allowed to change them at his own discretion or pass new statutes and laws contrary to them, as is known to have happened to this day each time a new king has ascended the throne; and we would have fulfilled satisfactorily this sacred purpose and desire of ours, had we not been detained by the most urgent needs of this kingdom of ours, above all in the restoration of its borders and frontiers as well as the destruction of the most cruel enemies whom we found to have overrun it.

For the borderlands of our kingdom were, by the invasions partly of Czechs, partly of Germans, partly by the constant incursions of Turks and other neighboring nations, so devastated and occupied by all these enemies, that nothing was left except the heartland of the country and even that was invaded by various enemies, as mentioned above; and because of those circumstances we were forced to postpone this beneficial and altogether necessary intention of ours to another time. Mainly because we hoped that once we had conquered the aforementioned enemies who were for many years destroying the kingdom by fire and sword and who had begun to trust that

case with the sworn statements of a greater or lesser number of oath-helpers depending on the nature and seriousness of the matter and the judge's decision. Namely, if the lawsuit is about damages, then in accordance with the customs of the realm, according to the nature, quantity and quality of the damages, the judge shall order the plaintiff to swear an oath. And if the plaintiff can present testimonies in his favor and wins the lawsuit, the defendant must not be arrested afterwards for violent trespass but instead should be sentenced to an immediate payment of a fine of 25 marks or 100 gold florins²³ which is to be divided evenly between the plaintiff and the judge, and in addition, restitution must be made to the person harmed to full satisfaction. If in such a lawsuit about damages the testimonies of witnesses differ from each other, it is the judge's duty to determine whether the plaintiff should swear about the damages caused or the defendant should clear himself.²⁴

15. Furthermore, it was decided that in matters of violent trespass, no one may be convicted on the basis of his own confession whether at the court of law or elsewhere, except in the following cases, namely for attacking the homes of nobles, then for seizing their estates, benefits and appurtenances, for detaining nobles without just cause, further for wounding, beating or killing any nobleman. In these cases the judge must precede in the following manner: if the plaintiff can produce evidence in the manner and order described above, then, for better proof of the matter he should submit the case to common inquest if the parties so desire. If the defendant is reluctant to accept the inquest, then the plaintiff should swear upon the head of his adversary in order better to prove his action according to the custom of the realm in this matter. If by the will of both parties, the lawsuit can be decided by means of common inquest and that common inquest ends clearly and simply in favor of the plaintiff, then the judgment should be awarded to the plaintiff. But if the testimonies do not agree, then the judges must decide on the basis of the testimonies of the witnesses whether the plaintiff or the defendant should be made to swear the oath. And if in the above described cases which pertain to violent trespass, castellans, officials or other retainers of the lords or of any other gentleman of the realm were the culprits and offended someone, then the lords should not be condemned for violent trespass, but must clear their names as to their innocence, namely, that the crime was not committed in accord with their will as it appears suitable to the law and the judge. Nevertheless, if such persons remain with their lords, the lords must administer pure justice on their behalf according to the equity of the law. In other cases, however, such as those regarding damage, injury and the like, the manner and order prescribed above is to be observed.

16. Furthermore, since hitherto at times of rendering testimony, common inquests, inspections, *seisins* and renewed *seisins* as well as at evaluations of possessory rights the losing party frequently resisted in contempt of the court

DECLARATION OF INDEPENDENCE BY THE HUNGARIAN NATION.

We, the legally-constituted representatives of the Hungarian nation assembled in Diet, do by these presents solemnly proclaim, in maintenance of the inalienable natural rights of Hungary, with all its appurtenances and dependencies, to occupy the position of an independent European state; that the house of Lorraine-Hapsburg, as perjured in the sight of God and man, has forfeited its right to the Hungarian throne. At the same time, we feel ourselves bound in duty to make known the motives and reasons which have impelled us to this decision, that the civilized world may learn we have not taken this step out of overreaching confidence in our own wisdom, or out of revolutionary excitement, but that it is an act of the last necessity, adopted to preserve from utter destruction a nation persecuted to the limit of the most enduring patience.

Three hundred years have passed since the Hungarian nation, by free election, placed the house of Austria upon its throne, in accordance with stipulations made on both sides, and ratified by treaty. These three hundred years have been, for the country, a period of uninterrupted suffering.

The Creator has blessed this country with all the elements of wealth and happiness. Its area of one hundred and ten thousand square miles presents, in varied profusion, innumerable sources of prosperity. Its population, numbering nearly fifteen millions, feels the glow of youthful strength within its veins and has shown temper and docility which warrant its proving at once the main organ of civilization in Eastern Europe, and the guardian of that civilization when attacked. Never was a more grateful task appointed to a reigning dynasty by the dispensation of Providence than that which devolved upon the house of Lorraine-Hapsburg. It would have sufficed, to do nothing to impede the development of the country. Had this been the rule observed, Hungary would now rank among the most prosperous nations. It was only necessary that it should not envy the Hungarians the moderate share of constitutional liberty which they finally maintained during the difficulties of a thousand years with rare fidelity to their sovereigns, and the house of Hapsburg might long have counted this nation among the most faithful adherents of the throne.

This dynasty however, which can at no epoch point to a ruler who based his power on the freedom of the people, adopted a course towards this nation, from father to son, which deserves the appellation of perjury.

The house of Austria has publicly used every effort to deprive the country of its legitimate Independence and Constitution, designing to reduce it to a level with the other provinces long since deprived of all freedom, and to unite all in a common sink of slavery. Foiled in this effort by the untiring vigilance of the nation, it directed its endeavour to leave the power, to check the progress of Hungary, causing it to minister to the ignominy of the provinces of Austria, but only to the extent which enabled those provinces to bear the load of taxation with which the prodigality of the imperial house weighed them down; having first deprived those pro-

vinces of all constitutional means of remonstrating against a policy which was not based upon the welfare of the subject, but solely tended to maintain despotism and crush liberty in every country of Europe.

It has frequently happened that the Hungarian nation, in despite of this systematized tyranny, has been obliged to take up arms in self-defence. Although constantly victorious in these constitutional struggles, yet so moderate has the nation ever been in its use of the victory, so strongly has it confided in the king's pledged word, that it has ever laid down arms as soon as the king, by new compacts and fresh oaths, has guaranteed the duration of its rights and liberty. But every new compact was as futile as those which preceded it; each oath which fell from the royal lips was but a renewal of previous perjuries. The policy of the house of Austria, which aimed at destroying the independence of Hungary as a state, has been pursued unaltered for three hundred years.

It was in vain that the Hungarian nation shed its blood for the defence of Austria whenever it was in danger; vain were all the sacrifices which it made to save the interests of the reigning house; in vain did it, on the renewal of the royal promises, forget the wounds which the past had inflicted; vain was the fidelity cherished by the Hungarians for their king, and which, in moments of danger, assumed a character of devotion; they were in vain, since the history of the government of that dynasty in Hungary presents but an unbroken series of perjured deeds from generation to generation.

In spite of such treatment, the Hungarian nation has all along respected the tie by which it was united to this dynasty; and in now decreasing its expulsion from the throne, it acts under the natural law of self-preservation, being driven to pronounce this sentence by the full conviction that the house of Lorraine-Hapsburg is compassing the destruction of Hungary as an independent State; so that this dynasty has been the first to tear the hands by which it was united to the Hungarian nation, and to confess that it had torn them in the face of Europe. For many causes a nation is justified, before God and man, in expelling a reigning dynasty. Among such are the following:

1. When the dynasty forms alliances with the enemies of the country, with robbers, or partisan chieftains to oppress the nation;
2. When it attempts to annihilate the Independence of the country and its Constitution, supported on oaths, by attacking with an armed force the people who have committed no act of revolt;
3. When the integrity of a country, which the sovereign has sworn to maintain, is violated, and its resources cut away;
4. When foreign armies are employed to murder the people, and to oppress their liberties.

Each of the grounds here enumerated would justify the exclusion of a dynasty from the throne. But the House of Lorraine-Hapsburg is unexampled in the compass of its perjuries, and has committed every one of these crimes against the nation. * * *

But soon afterward the inhabitants of South Hungary, of Serbian race, were excited to rebellion by precisely the same means.

These were also declared by the king to be rebels, but were nevertheless, like the others, supplied with money, arms, and ammunition. The king's commissioned officers and civil servants enlisted bands of robbers in the principality of Servia to strengthen the rebels, and aid them in unassessing the peaceable Hungarian and German inhabitants of the Banat. The command of these rebellious bodies was further entrusted to the rebel leaders of the Croats.

During this rebellion of the Hungarian Serbians, scenes of cruelty were witnessed at which the heart shudders; the peaceable inhabitants were tortured with a cruelty which makes the hair stand on end. Whole towns and villages, once flourishing, were laid waste. Hungarians fleeing before these murderers were reduced to the condition of vagrants and beggars in their own country; the most lovely districts were converted into a wilderness. * * *

The greater part of the Hungarian regiments were, according to the old system of government, scattered through the other provinces of the empire. In Hungary itself, the troops quartered were mostly Austrian; and they afforded more protection to the rebels than to the laws, or to the internal peace of the country. The withdrawal of these troops, and the return of the national militia, was demanded of the government, but was either refused, or its fulfilment delayed; and when our brave comrades, on hearing the distress of the country, returned in masses, they were persecuted, and such as were obliged to yield to superior force were disarmed, and sentenced to death for having defended their country against rebels.

The Hungarian ministry begged the king earnestly to issue orders to all troops and commanders of fortresses in Hungary, enjoining fidelity to the Constitution, and obedience to the ministers of Hungary. Such a proclamation was sent to the Palatine, the viceroy of Hungary, Archduke Stephen, at Buda. The necessary letters were written and sent to the post-office. But this nephew of the king, the Archduke Palatine, shamelessly caused these letters to be smuggled back from the post-office, although they had been countersigned by the responsible ministers; and they were afterward found among the papers when he treacherously departed from the country.

The rebel Ban menaced the Hungarian coast with an attack, and the government, with the king's consent, ordered an armed corps to march into Styria for the defence of Fiume; but this whole force received orders to march into Italy. * * *

The rebel force occupied Fiume, and disarmed it from the kingdom of Hungary, and this infamous deception was disavowed by the Vienna cabinet as having been a *misunderstanding*; the furnishing of arms, ammunition, and money to the rebels of Croatia was also declared to have been a misunderstanding. Finally, instructions were issued to the effect that, until special orders were given, the army and the commanders of fortresses were not to follow the orders of the Hungarian ministers, but were to execute those of the Austrian cabinet. * * *

The king from that moment began to address the man whom he himself had branded as a rebel, as "dear and loyal" (lieber liehrer); he praised him for having revolted, and

encouraged him to proceed in the path he had entered upon. He expressed a like sympathy for the Serbian rebels, whose hands yet reeked from the massacres they had perpetrated.

It was under this command that the Ban of Croatia, after being proclaimed as a rebel, assembled an army, and announced his commission from the king to carry fire and sword into Hungary, upon which the Austrian troops stationed in the country united with him. * * *

Even then the Diet did not give up all confidence in the power of the royal oath, and the king was once more requested to order the rebels to quit the country. The answer given was a reference to a manifesto of the Austrian ministry, declaring it to be their determination to deprive the Hungarian nation of the independent management of their financial, commercial, and war affairs. The king at the same time refused his assent to the bills submitted for approval respecting troops and the subsidy for covering the expenditure.

Upon this the Hungarian ministers resigned, but the names submitted by the president of the council, at the demand of the king, were not approved of for successors. The Diet then, bound by its duty to secure the safety of the country, voted the supplies, and ordered the troops to be levied. The nation obeyed the summons with readiness.

The representatives of the people then summoned the nephew of the emperor to join the camp, and as Palatine* to lead the troops against the rebels. He not only obeyed the summons, but made public professions of his devotion to the cause. As soon, however, as an engagement threatened, he fled secretly from the camp and the country, like a coward traitor. Among his papers a plan, framed by him some time previously, was found, according to which Hungary was to be simultaneously attacked on nine sides at once—from Styria, Austria, Moravia, Silesia, Galicia, and Transylvania.

From a correspondence with the Minister of War, seized at the same time, it was discovered that the commanding generals in the military frontier and the Austrian provinces adjoining Hungary had received orders to enter Hungary, and to support the rebels with their united forces.

This attack from nine points at once really began. The most painful aggression took place in Transylvania; for the traitorous commander in that district did not content himself with the practices considered lawful in war by disciplined troops. He stirred up the Wallachian peasants to take up arms against their own constitutional rights, and, aided by the rebellious Serbian hordes, commenced a course of vandalism and extinction, sparing neither women, children, nor aged men; murdering and torturing the defenceless Hungarian inhabitants; burning the most flourishing villages and towns, among which, Nagy-Igmand, the seat of learning for Transylvania, was reduced to a heap of ruins.

But the Hungarian nation, although taken by surprise, unarmed and unprepared, did not abandon its future prospects in any agony of despair.

Measures were immediately taken to increase the small standing army by volunteers and the levy of the people. These troops, supplying the want of experience by the en-

* The Palatine was a high officer elected by the Diet, as its organ, and the defender of its Constitution. In fact, they always elected a prince of the blood royal. He was violently a Viennese.

thusiasm arising from the feeling that they had right on their side, defeated the Croatian armaments, and drove them out of the country. * * *

The defeated army fled in the direction of Vienna, where the emperor continued his demoralizing policy, and nominated the beaten and flying rebel as his plenipotentiary and subordinate in Hungary, suspending by this act the constitution and institutions of the country, all its authorities, courts of justice, and tribunals, laying the kingdom under martial law, and placing in the hand of, and under the unlimited authority of, a rebel, the honor, the property, and the lives of the people; in the hand of a man who, with armed hands, had braved the laws, and attacked the Constitution of the country. But the house of Austria was not content with the unjustifiable violation of oaths taken by its head.

The rebellious Ban was taken under the protection of the troops stationed near Vienna, and commanded by Prince Windischgratz. These troops, after taking Vienna by storm, were led as an imperial Austrian army to conquer Hungary. But the Hungarian nation, persisting in its loyalty, sent an envoy to the advancing enemy. This envoy, coming under a flag of truce, was treated as a prisoner, and thrown into prison. No local war was to be waged under the demands of the Hungarian nation for justice. The threat of the goliaths was, on the contrary, flung against all who had taken arms in defence of a violated and oppressed country. But before the army had time to enter Hungary, a family revolution in the tyrannical reigning house was perpetrated at Chindiz. Ferdinand V. was forced to resign a throne which had been polluted with so much blood and perjury, and the son of Francis Charles, (who also dedicated his claim to the inheritance,) the youthful Archduke Francis Joseph, ensnared himself to be proclaimed Emperor of Austria and King of Hungary. But to one can by any family compact dispose of the constitutional throne without the Hungarian nation.

At this critical moment the Hungarian nation demanded nothing more than the maintenance of its laws and institutions, and peace guaranteed by their integrity. Had the assent of the nation to this change in the occupant of the throne been asked in a legal manner, and the young prince offered to take the customary oath that he would preserve the Constitution, the Hungarian nation would not have refused to elect him king in accordance with the treaties extant, and to crown him with St. Stephen's crown, before he had dripped his hand in the blood of the people.

He however, refusing to perform an act so sacred in the eyes of God and man, and in strange contrast to the innocence natural to youthful breasts, declared in his first words his intention of conquering Hungary, (which he dared to call a rebellious country, whereas it was he himself that raised rebellion there,) and of depriving it of that independence which it had maintained for a thousand years, to incorporate it into the Austrian monarchy. * * *

But even then an attempt was made to bring about a peaceful arrangement, and a deputation was sent to the generals of the perjured dynasty. This house in its blind self-confidence, refused to enter into any negotiation, and started to demand an unconditional submission from the nation. The deputation was further detained, and one of the number,

the former President of the Ministry, was even thrown into prison. Our deserted capital was occupied, and was turned into a place of execution; a part of the prisoners of war were there consigned to the axe, another part were thrown into dungeons, while the remainder were exposed to fearful sufferings from hunger, and were thus forced to enter the ranks of the army in Italy.

† Finally, to reap the fruit of so much perfidy, the Emperor Francis Joseph dared to call himself King of Hungary, in the manifesto of the 9th of March (1849), wherein he openly declares that he erases the Hungarian nation from the list of the independent nations of Europe, and that he divides its territory into five parts, cutting off Transylvania, Croatia, Slavonia, and Vienne from Hungary, creating at the same time a principality (vezvodstvo) for the Serbian rebels, and, having paralyzed the political existence of the country, declares it incorporated into the Austrian monarchy.

The measure of the crimes of the Austrian house was, however, filled up, when, after its defeat, it applied for help to the Emperor of Russia; and, in spite of the remonstrances and protestations of the Porte, and of the censures of the European powers at Bucharest, in defiance of international rights, and to the endangering of the balance of power in Europe, caused the Russian troops, stationed at Wallachia, to be led into Transylvania, for the destruction of the Hungarian nation.

Three months ago we were driven back upon the Theiss; our just arms, have already recovered all Transylvania; Klausenburg, Hermannstadt, and Kronstadt are taken; one portion of the troops of Austria is driven into Bukowina; another, together with the Russian force sent to aid them, is totally defeated, and to the last man obliged to evacuate Transylvania, and to flee into Wallachia. Upper Hungary is cleared of foes.

The Serbian rebellion is further suppressed; the forts of St. Thomas and the Roman intervention have been taken by storm, and the whole country between the Danube and the Theiss, including the county of Bacs, has been recovered for the nation.

The commander-in-chief of the perjured house of Austria has himself been defeated in five consecutive battles, and has with his whole army been driven back upon and even over the Danube.

Founding a line of conduct upon all these occurrences, and confiding in the justice of an eternal God, we, in the face of the civilized world, in reliance upon the natural rights of the Hungarian nation, and upon the power it has developed to maintain them, further impelled by that sense of duty which urges every nation to defend its existence, do hereby declare and proclaim, in the name of the nation legally represented by us, the following:—

1st. Hungary, with Transylvania, as legally united with it, and the possessions and dependencies, are hereby declared to constitute a free, independent sovereign state. The territorial

‡ Louis Batthyányi. See Note to p. 6.

† This paragraph, omitted above, is inserted here, where the reader will better understand it.

‡ The Russian army entered Transylvania on January 3d, 1849; this is the army which was driven out again. But the main Russian troops were only on the move in April, and took two months longer to enter Hungary. These were applied for late in March.

unity of this state is declared to be inviolable, and its territory to be indivisible.

2d. The house of Hapsburg-Lorraine—having by treachery, perjury, and levying of war against the Hungarian nation, as well as by its outrageous violation of all compacts, in breaking up the integral territory of the kingdom, in the separation of Transylvania, Croatia, Slavonia, Vienne, and its districts, from Hungary—further, by compassing the destruction of the independence of the country by arms, and by calling in the disciplined army of a foreign power, for the purpose of annihilating its nationality, by violation both of the Pragmatic Sanction and of treaties concluded between Austria and Hungary, on which the alliance between the two countries depended—is, as treacherous and perjured, for ever excluded from the throne of the united states of Hungary and Transylvania, and all their possessions and dependencies, and are hereby deprived of the style and title, as well as of the immorial heritages belonging to the crown of Hungary, and declared to be banished for ever from the united countries and their dependencies and possessions. They are therefore declared to be deposed, degraded, and banished for ever from the Hungarian territory.

3d. The Hungarian nation, in the exercise of its rights and sovereign will, being determined to assume the position of a free and independent state among the nations of Europe, declares it to be its intention to establish and maintain friendly and neighbourly relations with those states with which it was formerly united under the same sovereign, as well as to contract alliances with all other nations.

4th. The form of government to be adopted for the future will be fixed by the Diet of the nation.

But until this point shall be decided, on the basis of the foregoing and received principles which have been recognized for ages, the government of the united countries, their possessions and dependencies, shall be conducted on personal responsibility, and under the obligation to render an account of all acts, by Louis Kossuth, who has by acclamation, and with the unanimous approbation of the Diet of the nation, been named Governing President (Gubernator), and the ministers whom he shall appoint.

And this resolution of ours we proclaim for the knowledge of all nations of the civilized world, with the conviction that the Hungarian nation will be received by them among the free and independent nations of the world, with the same friendship and free acknowledgment of its rights which the Hungarians profess to other countries.

We also hereby proclaim and make known to all the inhabitants of the united states of Hungary and Transylvania, their possessions and dependencies, that all authorities, communes, towns, and the civil officers, both in the counties and cities, are completely set free and released from all the obligations under which they stood, by oath or otherwise, to the said house of Hapsburg; and that any individual daring to contravene this decree, and by word or deed in any way to aid or abet any one violating it, shall be treated and punished as guilty of high treason. And by the publication of this decree, we hereby bind and oblige all the inhabitants of these countries to obedience to the government, now instituted formally, and endowed with all necessary legal powers.

Decree in April 11, 1849.