

Ulrike Müßig

University of Passau, Germany

Ulrike.Muessig@Uni-Passau.De

ORCID: 0000-0002-4778-6691

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Emerging Parliaments between Corporative Representation and Interaction with the Royal Courts: Parliamentary History in Late Medieval and Early Modern Central Eastern Europe

I. Introduction: Rethinking Proto-Parliamentarian Representation in Interrelation with the Consolidation of Royal Rule

In late medieval Europe from the twelfth to the fifteenth centuries, the expansion of court advisory bodies (*curiae extraordinariae, plenae, generales*) into representative bodies of the estates accompanied the consolidation of royal rule. This innovative focus of parliamentary history onto a 'royal counterpart' godfathers the essay's approach to a 'mirrored choreography', and it starts from the following considerations: there are common patterns of the consolidation of monarchical rule typically manifested as the institutionalised differentiation of the princely ruling organisation (*curia regis*) from the court as royal household: the formation of a royal chancellery, the struggle for supreme jurisdiction, and the establishment of a financial administration.

All these lordly traces onto the 'foundation of the modern state' ('*De vestiging van de moderne Staat*'),¹ to borrow a phrase from Raoul C. van Caenegem, are characterised by a rationalisation of rule in the Weberian sense;² this necessitated the expansion of the royal circle of advisors for political matters through the appointment of a specialised chancery, legal and financial experts, whose legal (or clerical) expertise often carried on learned legal thought; the less the rulers' decisions were based on traditional customary law, the more they required the approving consent of professional subjects, in order to act in accordance with the customs and 'old laws' of the land. Such advisory bodies (*curiae extraordinariae, plenae, generales*), if amplified as court or lords' assemblies (*Hof-* or *Herrentage*), seem to be the nucleus, the seed for the emergence

¹ R.C. van Caenegem, *Over Koningen en Bureaucraten, Oorsprong en ontwikkeling van de hedendaagse staatsinstellingen*, Amsterdam–Brussels 1957, pp. 7, 53 ff.

² J. Winckelmann, M. Weber, *Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie*, 5. Auf., Tübingen 1972, pp. 124 ff., 815 ff., 822; W. Reinhard, *Geschichte der Staatsgewalt: Eine vergleichende Verfassungsgeschichte Europas von den Anfängen bis zur Gegenwart*, München 1999, pp. 125, 141 ff. The country reports on Poland and Hungary are also inspired by his account (p. 142 ff.).

of the estates' representative bodies. From the innermost circle of the closest advisors a Privy Council could emerge as the central governing body, which in the context of an elective kingship (such as in Scandinavia or East-Central Europe) could become an independent centre of power in the hands of the high nobility. Such a court-related genesis sheds new light on the advisory bodies' often misleadingly abbreviated description as prototypes of today's parliaments.³ It is the aim of this article to discuss them as a *forum*, a communicative arena to negotiate the nobility's claim to political leadership throughout Europe, to their customary right to co-decision, and to their rights to be consulted in certain national matters.

Their origin in the *curia* not only marks the ambivalence of aristocratic rule through political predominance due to royal reference, on the one hand, and competition with the crown for rule, on the other,⁴ but, above all, the consensus-based nature of pre-modern rule.⁵ 'What concerns all must be approved by all' (Codex 5.59.5.2: *Quod omnes tangit ab omnibus comprobetur*).⁶ This came close to Aristotelian thinking about the mixed constitution, the favourable interaction of monarchical majesty (*maiestas*), aristocratic authority (*auctoritas*), and democratic freedom (*libertas*).⁷ Kingdoms thus amounted to entities (*universitates*), and estates were legitimised within them, as is still expressed today in the English triad of the 'King-in-Parliament' (denominating the King in both Houses of Parliament).

³ Early German constitutionalism (Art. 13 DBA, Art. 20 WSA) is eager to avoid the 'revolutionary' term parliament and uses estates instead (*landständische Verfassungen*). The pre-modern assemblies of the estates, however, represented the sum of individual interests (Rousseau's *volonté de tous*), never the overall interests of the people (Rousseau's *volonté générale*). This often seems to have been the reason for the failure of the formation of the estates as representative bodies.

⁴ R. Scheyhing, *Recht* [in:] *Handwörterbuch zur deutschen Rechtsgeschichte* (hereinafter: HRG), eds. A. Erler et al., 1st ed., Berlin 1995, col. 46 ff.; W. Reinhard (*Geschichte der Staatsgewalt...*, Fn. 2, p. 218) cites the right of convocation as an example of the ambivalence between competition and closeness: even if the self-organisation of the estates (town federations, Aragonese conjurations) laid at the core the estates' assemblies, their coming together remained depended on the monarchical initiative. Thus, for Reinhard, 'the estates system was a monarchical organisation'.

⁵ I. Reiter, *Repräsentation* [in:] HRG, vol. 4, col. 906.

⁶ VI 5.12.29, Liber sextus Lib. 5, Tit. XII *De Regulis Iuris*, Regula XXIX: *Quod omnes tangit debet ad omnibus approbari*, cited Friedberg, p. 1122. Cf. B. Tierney, *Religion, Law, and the Growth of Constitutional thought 1150–1650*, Cambridge 1982, pp. 59, 80, 84; *idem*, *Foundations of the Conciliar Theory, the Contribution of the Medieval Canonists from Gratian to the Great Schism*, Leiden 1998, p. 43; W. Reinhard, *Geschichte der Staatsgewalt...*, Fn. 2, p. 217; Y. Shang, *A Historical and Legal Comparison between Tianxia Wei Gong and Quod Omnes Tangit*, series: *Ius Gentium: Comparative Perspectives on Law and Justice*, vol. 10, Cham 2023. For basic principles of representation, see H. Hofmann, *Repräsentation. Studien zur Wort- und Begriffsgeschichte von der Antike bis ins 19. Jahrhundert*, 4. Aufl. mit einer neuen Einleitung, Berlin 2003.

⁷ This aligns with the classification introduced by G. Barudio (*Das Zeitalter des Absolutismus und der Aufklärung*, Frankfurt am Main 1981, p. 14 ff.) according to the Scandinavian tripartite model of King/Privy Council/Diet, which seeks to overcome the dualistic constitutional thinking of King/Estates (e.g., D. Willoweit, S. Schlinker, *Deutsche Verfassungsgeschichte. Vom Frankenreich bis zur Wiedervereinigung Deutschlands*, 8th ed., München 2019, § 11 II, Rn. 7, p. 83). For this argumentation in analysis of Barudio, see W. Reinhard, *Geschichte der Staatsgewalt...*, Fn. 2, p. 223 ff.

Thereby, the thinking and organising of a nation-wide corporative representation has a decisive constitutionalising effect, irrespective of structural differences between two-chamber or three-curia systems.⁸ The latter resulted from different social conditions or varying influences of the clergy, nobility, and cities,⁹ or of a kind of 'political geography' (Kazimierz Orzechowski).¹⁰ The approach to negotiating spheres of influence corresponds with the ReConFort-focus on the communicative dependency of rule: conflicts have a constitution-building power.¹¹ Recent historiography has underlined this formative impact of the dynamic communicative effects of bargaining for power.¹² From this, the essay's second point of interest is drawn: it was the emergence of the estates' assembly that had a formative impact on constituting the kingdom.¹³ This will be explained on the basis of parliamentary formation processes

⁸ T. Ertmann, *Birth of the Leviathan: Building States and Regimes in Medieval and Early Modern Europe*, Cambridge 1997, pp. 19–25; O. Hintze, *Typologie der ständischen Verfassungen des Abendlandes* (1930) [in:] *Staat und Verfassung. Gesammelte Abhandlungen zur Allgemeinen Verfassungsgeschichte*, eds. *idem*, G. Oestreich, 3., durchges. u. erw. Aufl., Göttingen 1970, pp. 120–139, 124 ff. No typological alternative (bicameral type/parliamentary monarchy of the English type or tricursal type/absolute monarchy) can be proven. See fundamentally, W. Reinhard, *Geschichte der Staatsgewalt...*, Fn. 2, p. 223 ff. Cf. also G. Günter, *Das Zeitalter...*, pp. 14, 37, 83, 90, 365, 385.

⁹ Cf. the argumentation of U. Seif (= Müßig), *Der mißverständene Montesquieu: Gewaltenbalance, nicht Gewaltentrennung*, "Zeitschrift für Neuere Rechtsgeschichte" 2000, no. 22, pp. 149–166.

¹⁰ K. Orzechowski, *Les systèmes des assemblées d'états. Origines, évolution, typologie*, „Parliaments, Estates and Representation" 1986, vol. 6, no. 2, pp. 105–111, 107.

¹¹ U. Müßig, *Konflikt und Verfassung* [in:] *Konstitutionalismus und Verfassungskonflikt*, ed. *eadem*, Tübingen 2006, p. 1, ReConFort I (<https://link.springer.com/book/10.1007/978-3-319-42405-7> [accessed: 2024.06.11]) and ReConFort II (<https://link.springer.com/book/10.1007/978-3-319-73037-0> [accessed: 2024.06.11]).

¹² See instead of many other reference cf. H. Carl, *Herrschaft* [in:] *Enzyklopädie der Neuzeit*, vol. 5, ed. F. Jaeger, Stuttgart 2007, col. 399–416, 401; W. Reinhard, *Geschichte der Staatsgewalt...*, Fn. 2, p. 18 ff.; D. Freist, *Absolutismus*, Darmstadt 2008 (Kontroversen um die Geschichte), p. 20 ff.; *eadem*, *Einleitung: Staatsbildung, lokale Herrschaftsprozesse und kultureller Wandel in der Frühen Neuzeit* [in:] *Staatsbildung als kultureller Prozess. Strukturwandel und Legitimation von Herrschaft in der Frühen Neuzeit*, eds. R.G. Asch, D. Freist, Köln–Weimar–Wien 2005, pp. 1–47, esp. p. 40 for the meaning of 'bargaining, negotiating'; W. Braddick, *State formation and political culture in Elizabethan and Stuart England. Micro-histories and macro-historical change* [in:] *Staatsbildung als kultureller Prozess...*, pp. 69–90, 74, 77, 81 ff., 88. Cf. also in regard to cultural history of politics L. Schorn-Schütte, *Historische Politikforschung: Eine Einführung*, München 2006, p. 84 ff.; *eadem*, *Einleitung* [in:] *Aspekte der politischen Kommunikation im Europa des 16. und 17. Jahrhunderts: Politische Theologie – Res Publica-Verständnis – konsensgestützte Herrschaft*, ed. *eadem*, Historische Zeitschrift, Beiheft 39, München–Oldenburg 2004, pp. 1–4, 7 ff., 9 ff. Cf. also the publications by B. Stollberg-Rilinger (e.g. *The Impact of Communication Theory on the Analysis of the Early Modern Statebuilding Processes* [in:] *Empowering Interactions. Political Cultures and the Emergence of the State in Europe, 1300–1900*, eds. W. Blockmans et al., Farnham, UK–Burlington, VT 2009, pp. 313–318).

¹³ If one follows the pointed differentiation of C. Sarti, *Deposing Monarchs, Domestic Conflict and State Formation, 1500–1700*, New York 2021, p. 28, Fn. 109, it becomes clear that contrary to J. Habermas, *Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft*, Frankfurt am Main repr. of the 1962 – edition 2013, p. 61 there is no 'bourgeois public sphere' in its dialectic to public violence (*idem*, *Strukturwandel der Öffentlichkeit...*, pp. 55, 72–76), but rather a 'political public sphere as in principle accessible to all [...], even if partly only in a receiving manner' [paraphrasing translations by the author], if one expands the concept of the (constitutional) public

in Central and Eastern Europe (II–V). The formative impact of estates' assemblies on constituting kingdoms coincides in two common aspects: the legal idea of identity representation and the practical interaction with the crown's financial needs. These are to be explained in the subsequent introductory sections of this article, before a comparative sketch of the Crown and Estates' interrelatedness in medieval Poland, Hungary, and Bohemia is offered (II). There follow some remarks on Polish-Lithuanian aristocratic republicanism (III), considerations of the specific Hungarian Balance of Power between Crown and Nobility (IV), and discussion of the Bohemian estates' specific striving for representation, in the face of the Duke of Bohemia's special position as an Imperial Prince (V). A short conclusion provides more stimuli for further research (VI).

To establish the basis for the mirrored choreography approach and for investigating estates' assemblies' formative impact on constituting kingdoms, it is necessary to understand how the councillors' votes counted for the whole kingdom and how voluntary corporative self-organization was bolstered in the emerging monetary economy.¹⁴

1. Basics of Identity Representation

Based on the aristocratic *viritim* self-awareness that each individual represents himself, estates assemblies developed the common curiatic vote of sub-sections as well as the majority principle, in order to legally identify single votes with the whole. These legal constructions, the collegial character constituted by the majority principle as well as the associated notion of a singled-out part, both characterize the emergence of collective bodies at European courts.¹⁵ In addition, they laid the ground for thinking about identity representation,¹⁶ without which no parliamentary representation would have been possible later. First of all, a kingdom as a whole (*universitas*) is not in itself capable of acting (*per se agere*). According to the medieval canonical *tempus repraesentationis*-formula (still valid by Bartolus in the fourteenth century),¹⁷ action

sphere with C. Sarti and ReConFort to an understanding 'as the sum of communications with the aim of enabling the rulers and the ruled to communicate about political processes', the public sphere is also decisively involved in the negotiation process of rule (Cf. also J. Arndt, *Herrschaftskontrolle durch Öffentlichkeit. Die publizistische Darstellung politischer Konflikte im Heiligen Römischen Reich 1648–1750*, Göttingen 2013, p. 505. Concerning the development of a 'political public' D. Freist, *Einleitung: Staatsbildung...*, pp. 1–47, 34, Fn. 15).

¹⁴ This is why assemblies of estates rarely appear in Central, Northern, and Eastern Europe before the fifteenth century, whereas in Western and Southern Europe they have been documented since the thirteenth/fourteenth centuries. On this, see W. Reinhard, *Geschichte der Staatsgewalt...*, Fn. 2, p. 218, in particular *León 1188* as oldest documented representation.

¹⁵ H. Hofmann, *Repräsentation...*, Fn. 6, § 14 V, p. 215.

¹⁶ *Ibid.*, Fn. 6, § 14 V, p. 216: 'this question of all legal questions'.

¹⁷ Bartolus de Saxoferrato, *Tractatus de ordine iudiciorum*, ed. G.A. Martin, Jena 1826, p. 16: 'Tertium est tempus repraesentationis'. Cf. the *ordines iudicarii* and their significance for court constitution, U. Müßig, *Reason and Fairness Constituting Justice in Europe, from Medieval Canon Law to ECHR*, series: Legal History Library, vol. 27, Leiden 2019, p. 45 ff.

could be attributed to others only as a legal fiction. Such a reasoning could not explain representation in the decision-making process.¹⁸

Therefore, the institutional consolidation of estates' councils as decision-making bodies¹⁹ in charge of a kingdom, increasingly understood as a polity, triggered a will-based *pars pro toto*-way of thinking.²⁰ From there, it took only one step in argumentation to establish the corporation's ability to act and make decisions through its legally competent members, provided that they all had come together for the whole (*omnes ut universi*); then, their act of will had to be visibly binding on the entire kingdom. This was especially true for the election of a king. The electoral right to choose the (next) king has never been an aristocratic prerogative of individual electors. On the contrary, it was only attributable to the corporate union of an electoral council. Therefore, constituting the Prince-electors' majority vote in the Imperial Law *Licet iuris* of 1338²¹ or the corporative overall vote of the Polish *szlachta* in the Confederation of Warsaw in 1573 marked breakthroughs in corporate identity representation.

In fact, the impact of late medieval and early modern estate assemblies on later parliamentary history depended less on a democratic mandate than on the collegial character constituted by the majority principle and the associated idea of being able to make decisions for the entire community as a prominent part of it. '*Esse maiorem partem et representare universitatem*'²² can be read in the *consilia* of Laurentius Calcanus, and Johannes Bertachinus specified only sixty years later: '*due partes representant totam universitatem*.'²³ These prominent voices lead back to the late medieval Marsilius of Padua and his work *Defensor pacis* (Defender of Peace) (1324), in which the majority of citizens is considered to be the whole (even though the Marsilian argumentative line more likely traces back to the Aristotelian notion of primacy of the whole over the parts).²⁴

¹⁸ Especially since classical Roman law did not recognise substitution in the will (M. Kaser, R. Knütel, S. Lohsse, *Römisches Privatrecht*, 22. Aufl., München 2021, p. 261, § 45, Rn. 6). Cf. also Dig. 50, 17, 73, 4 (*Corpus iuris civilis. Volumen primum*, eds. T. Mommsen, P. Krueger, Dublin–Zürich 1973, p. 922, col. 961) und Dig. 45, 1, 38, 17, Ulp. 49 (*Corpus iuris civilis...*, p. 774, col. 659).

¹⁹ H. Hofmann, *Repräsentation...*, Fn. 6, § 14 VII, p. 224.

²⁰ Cf. A. Esmein, *L'Unanimité et la Majorité dans les Élections Canoniques* [in:] *Mélanges Hermann Fitting*, vol. 1, eds. H. Fitting, E. Meynial, Montpellier 1907, repr. Aalen–Frankfurt am Main 1969, pp. 355–382, 372, 376 with reference to Panormitanus' explanation of the *senior pars* as the *communis opinio*.

²¹ Based on the Weistum von Rhense, Weinrich II No. 89, D. Willoweit, S. Schlinker, *Deutsche Verfassungsgeschichte...*, Fn. 7, § 11 II, p. 83.

²² Laurentius Calcanus (Philosopher, jurist in Brescia, Italy, died 1479), *consilium* 75, p. 309^r, Brixen – Edition 1504, <https://www.digitale-sammlungen.de/en/view/bsb11200607?page=308,309> [accessed: 2024.08.23].

²³ Joannes Bertachinus Firmanus, *Repertorium Utriusque Iuris*, Quarta Pars, Lugduni 1562, fol. 220^v.

²⁴ *Der Verteidiger des Friedens*, Part I, Chapter XIII, § 2, transl. W. Kunzmann, ed. H. Kusch, Stuttgart 1971, p. 60; Aristototele, Pol. 1253a (18–29).

2. Interacting with the Crown on its Financial Needs

With the rise of cash flows (instead of trading products tied to land and soil), royal financial needs could no longer be met solely through the income from the crown domain, especially during military crises; this resulted in the estates' involvement in authorising taxes. Centuries earlier than the 'No taxation without representation' slogan of the American colonists, fiefs materialised into property titles were the cornerstone of the 'dual power [of prince and estates] in the European world of states'.²⁵

It was the estates' right to grant taxes that solidified the consensual nature of pre-modern rule. In 1267, for example, a papal letter from Clement IV to King Charles I d'Anjou of Naples²⁶ made the estates' consensus mandatory for the levying of taxes and for any defence measures.²⁷ Similarly, in the Patriarchate of Aquileia, the estates' participation in the creation of new statutes was described as 'customary' as early as 1282.²⁸

The right to approve taxes led to a joint responsibility for legislation: 'In return for the approval of taxes, the estates used to submit complaints, so-called *gravamina*, from which legislation could emerge, either on co-operation of the estates, as in Poland and Hungary, or initiated by the crown, as in sixteenth-century France'.²⁹ As this integration of sovereignty progressed, the nobility and especially the wealthy knighthood insisted that no new laws or rights be created without their consent. The ecclesiastical lords of the manor and the towns were also able to claim a say through their financial power. In ecclesiastical principalities, cathedral chapters gained significant influence through

²⁵ H. Schulze, *Staat und Nation in der europäischen Geschichte*, 2nd ed., München 2004, p. 38: The weaker the crown ties of the nobility became due to the materialisation of fiefs into territorial possessions, the more the financial power of the crown domain was weakened. The ruler was all the more dependent on the support of the most powerful and solvent landowners (paraphrase translation).

²⁶ Letter, dated 6 February 1267 from Clemens IV to König Karl I of Sicily against the taxation of the clergy in Naples and Sicily, even in cases of necessity for defense (*Die Briefe Papst Clemens IV. (1265–1268)*, ed. M. Thumser, MGH-Edition, Nr. 305, 2015, p. 209, http://webserver1.mgh.de/fileadmin/Downloads/pdf/clemens_2015.pdf [accessed: 2023.12.19]): 'Numquam enim consensimus nec prestitimus conniventiam, sed tunc diximus, quod et nunc scribimus, te videlicet prelati et baronibus et locorum communitatibus convocatis tue necessitatis instantiam et utilitatem defensionis eorum debere patenter exponere et de ipsorum ordinare consensu, quale tibi a tuis impenderetur auxilium, quo contentus et aliis tuis iuribus eos in sua dimitteres libertate'.

²⁷ P.-S. Leicht, *La posizione giuridica dei parlamenti medievali italiani* [in:] *L'organisation corporative du Moyen Age à la fin de l'Ancien Régime (études présentées à la Commission internationale pour l'histoire des assemblées d'États II)*, Louvain 1937, pp. 91–109, 98 ff., 99. Cf. letter, also dated 1267, from Clemens IV to König Karl I of Sicily giving advice concerning the organisation of his court and the governance of his kingdom (*Die Briefe Papst Clemens IV. (1265–1268)*..., p. 244): 'Collectas ab ecclesiis vel monasteriis vel domibus aliis religiosis aut a quibuscumque personis ecclesiasticis secularibus aut regularibus aut de bonis aut rebus earum numquam exigas, an vero ab ecclesiarum hominibus seu vassallis, in quibus habent irredictionem ordinariam et tu merum imperium, mediante iustitia vel interveniente concordia decidetur'.

²⁸ P.-S. Leicht, *La posizione giuridica*..., supra n. 27, p. 99.

²⁹ W. Reinhard, *Geschichte der Staatsgewalt*..., Fn. 2, p. 222 (paraphrase translation).

their right to elect bishops (as established by the Fourth Lateran Council in 1215). This seems to have correlated with a property-like understanding of princely rule.³⁰

The increasing institutionalisation of estates assemblies is reflected in an emerging regularity of their meetings.³¹ In the beginning, the convening of estates assemblies was fundamentally dependent on the financial needs of princes and, thus, on their sole initiative to convene. If no one raised an objection, a tax could be recognised under 'customary law' (the so-called concealment of the estates).³² The estates' right to authorise taxes could only be circumvented by virtue of princely prerogative in the case of necessity (*necessitas*), often at the cost of fierce conflict with the estates. Thus, the English constitutional struggles of the seventeenth century stemmed from the Stuarts' fiscal 'ingenuity' in labelling customs, duties and forced loans as 'ship money', lying within royal prerogative in foreign affairs and to levy them bypassing Parliament (Bate's Case, Darnel's Case, and Hampden's Case).³³

These introductory observations on the councillors' votes counting for the whole kingdom and on their will-based corporative self-organisation interacting with the crown's financial needs also apply to medieval Central Eastern Europe (Poland, Hungary, and Bohemia). Their first processes of consolidating royal power show both notable similarities and significant differences: they all corresponded in the institutionalisation of court structures, though the ways in which the establishment of central authorities unfolded varied greatly.

II. Constitutional Relations between Crown and Estates in Medieval Poland, Hungary, and Bohemia

While in Poland the Piast kings managed to establish a common royal administration, thereby consolidating its unifying force, the Hungarian magnates' power and the symbolic significance of a Christian crown provided the crucial factors in shaping proto-national coherence along the Pannonian Basin. In Bohemia, royal power could only be solidified by tackling vast allodial areas of power. Given these differences, a mirrored

³⁰ D. Willoweit, *Rechtsgrundlagen der Territorialgewalt, Landesobrigkeit, Herrschaftsrechte und Territorium in der Rechtswissenschaft der Neuzeit*, Köln–Wien 1975, pp. 11 ff., 34 ff., 216 ff.

³¹ For the establishment of a regularly meeting committee of estates, see E. Schubert, *Steuer, Streit und Stände, Die Ausbildung ständischer Repräsentation in niedersächsischen Territorien des 16. Jahrhunderts*, "Niedersächsisches Jahrbuch für Landesgeschichte" 1991, vol. 63, pp. 1–58, 51 ff. In the monarchical system, the estates assembly could only be convened by the prince. A right of self-assembly was rather unusual in the European context. Annual meetings were considered to be quite a lot. For this, see W. Reinhard, *Geschichte der Staatsgewalt...*, Fn. 2, p. 218. For institutional tendencies by means of summons (for representing the common people), see E. Schubert, *Die Landstände des Hochstifts Würzburg*, Veröffentlichungen der Gesellschaft für fränkische Geschichte, Reihe IX, Darstellungen aus der fränkischen Geschichte 23. Band, Würzburg 1967, p. 104.

³² This meant that the tax was recognised under customary law.

³³ U. Müßig, *Constitutional conflicts in seventeenth-century England*, "Tijdschrift voor Rechtsgeschiedenis/The Legal History Review" 2008, no. 76, pp. 27–47.

choreography focus on the constitutionalization of the crown-estates relationship might be an apt *tertium comparationis* to come closer to the article's goal of setting out the emergence of the estates' assemblies' formative impact on 'constituting' the kingdom.

1. The Consolidated Polish Crown of the Piast Dynasty

The fragmentation of the Polish dominion³⁴ among the Margraviate of Brandenburg,³⁵ the Teutonic Order,³⁶ and the Bohemian Přemysls³⁷ was overcome with the coronation of Duke Władysław I Ellenlang (*Łokietek*)³⁸ as King of Poland (*rex Poloniae*)

³⁴ From 1138 to the formation of the Piast duchies (N. Davies, *Im Herzen Europas. Geschichte Polens*, 2nd ed., München 2001, p. 259 ff.; A. Gieysztor, *Polen* [in:] *Lexikon des Mittelalters*, vol. 7, 2nd ed., München 2003, col. 53). The name Polonia only stood for Greater Poland. The Polish Church and the family connections of the Piast ruling houses were the unifying factor. This was also the reason for their weakness against the Mongols (defeat at Wahlstatt near Liegnitz in 1241). The fragmentation was also due to the inheritance system based on the seniority principle: new principalities, which were fundamentally divided, were not permanently granted to the sons of the deceased ruler, but only for a limited period. If a holder of a princely title died, the other heirs succeeded to the title. As a rule, there was a particularly prominent and powerful principality, which usually fell to the eldest son. This son then also held at least *pro forma* sovereignty over the territories of his brothers, so that the imperial union was preserved.

³⁵ As the nucleus of the later Prussian state, the Margraviate of Brandenburg was created during German eastward expansion in the twelfth and thirteenth centuries as an imperial territory along the middle Elbe to the areas bordering the Oder. The Lebus Land fell to Brandenburg. Pomerania became an independent duchy.

³⁶ After the failure of the Polish crusades against the Prussians in 1221–22, the subjugation of the Prussian lands by the Teutonic Knights marked the birth of the Teutonic Order. The enfeoffment of the Teutonic Order with the Kulmer Land (1226 Golden Bull of Rimini; the establishment in 1309 of the Marienburg headquarters of the Order instead of Venice under Grand Master Hermann von Salza) by the Kuyavian-Mazovian Duke Konrad I (from the House of Piast) in 1230, together with a guarantee of ownership of all future conquered heathland for the Knights of the Order. In the same year, the first Knights of the Order arrived on the Vistula and built Thorn Castle, named after the crusader castle of Toron in the Holy Land. The Order's occupation of Pomerelia and Gdańsk in violation of the treaty remained a constant source of struggle for the Polish crown against the Knights of the Order until 1525.

³⁷ Firstly, the reintegration of Poland occurred as Przemysł II of Poznań succeeded in uniting several partial principalities in his hands (Poznań, Gniezno-Kalisz, and Kraków) and at the insistence of the nobility and the high clergy was crowned King of Poland in Gniezno in 1295. However, his attempt to restore his kingship ultimately led to his assassination. Between 1300 and 1305, Poland entered a personal union with Bohemia under King Wenceslas (Wacław). Subsequently, a process of disintegration began. The Bohemian kings John and his son, the German Emperor Charles IV, separated Silesia from the Polish state union in 1339–53. Finally, Silesia became an indirect part of the Empire as part of Bohemia in 1348.

³⁸ Since 1306: *dux Regni Poloniae* (for this title, see A. Świeżawski, *Dux regni Poloniae i haeres regni Poloniae. Ze studiów nad tytulaturą władców polskich na przełomie XIII i XIV wieku*, "Przegląd Historyczny" 1989, vol. 80, no. 3, pp. 429–438, 435). For the reunification of the Polish Kingdom by Władysław I Łokietek from the Kuyavian line of the Piasts, relying on the cultural community, the tradition of Piast rule, and the Church, see M. Biskup, G. Labuda, *Die Geschichte des Deutschen Ordens in Preußen*, Osnabrück 2000, p. 373; J. Strzelczyk, *Piasten* [in:] *Lexikon des Mittelalters*, vol. 6, München 2003, col. 2125–2126. During the division of the lands into small Piast principalities, the mechanisms

in 1320. The name '*Corona Regni Poloniae*' appeared for the first time,³⁹ and a *curia Regis* was established. The Piast king assembled the dignitaries (initially only from Lesser Poland, but by the beginning of the fifteenth century also from Greater Poland) at court (*in curia*) to discuss decisions and to have important legal acts approved. Gradually, the Kraków (Lesser Poland) court established itself as an 'all-Polish' royal court (*Curia Regni Poloniae*).⁴⁰ In addition to ecclesiastical and secular dignitaries, gatherings of royal advisors were regularly convened (*curia generalia*) to participate in the royal jurisdiction, to issue documents, or to help the administration 'with advice and consent';⁴¹ without any evidence of their own competences restricting the crown. The institutionalisation of the extended circle of advisors drawn from the clerical, political, and financial elite into a powerful *consilium supremum* (Polish: *rada*)⁴² alongside a narrower court council (*consilium secretum*), travelling with the monarch,⁴³ coincided with the consolidation of the crown under Łokietek and Casimir the Great⁴⁴

to ensure unity, such as the principles of primogeniture and seniority, had not proven to be effective. Additionally, during the period of fragmentation, the Polish lands were threatened by foreign powers – especially by the Teutonic Order, Brandenburg, and the Kingdom of Bohemia (S. Gawlas, *Władysław I. Łokietek* [in:] *Lexikon des Mittelalters*, vol. 9, München 2003, col. 286; F. Seibt, § 17 *Polen von der Jahrtausendwende bis 1444* [in:] *Handbuch der Europäischen Geschichte*, vol. 2, ed. T. Schieder, Stuttgart 1987, pp. 1046–1079, 1068 ff.).

³⁹ And documents the overarching unity of the Polish lands and feudal principalities.

⁴⁰ The word 'court' seems to be the correct term for the royal council. But one must be careful with the terminology, a council of unspecified composition and character as part of the court, is an advisory and judicial body. It was Władysław I Ellenlang who, after fierce battles, supported by the clergy and several lesser princes, succeeded in uniting Lesser Poland, Central Poland with the main castles of Sieradz and Łęczyca, Kujawy and Dobrin and annexing Greater Poland, and in 1320 in permanently elevating Poland to a kingdom. With Ellenlang's coronation in 1320, Kraków became the capital and also the 'heartland' of Poland. (G. Labuda, *Klempolen* [in:] *Lexikon des Mittelalters*, vol. 5 (*Hiera-Mittel bis Lukanien*), München 2003, col. 1204). The most important principalities for Ellenlang were Kraków, Kuyavia, and Greater Poland (W. Drelicharz, *Dux Cracoviae oder künftiger rex Poloniae? Die Legitimation von monarchischer Herrschaft in der Krauer Geschichtsschreibung des 13.–14. Jahrhunderts* [in:] *Legitimation von Fürstendynastien, Identitätsbildung im Spiegel schriftlicher Quellen (12.–15. Jahrhundert)*, eds. G. Vercamer, E. Wólkiewicz, Wiesbaden 2016, pp. 277–304, 295).

⁴¹ In the Slavic dominions of Central and Eastern Europe, too, written sources provide evidence of tendencies towards centralisation (C. Ehlers, *Um 1012. Wie sich ambulante zu residenter Herrschaft entwickelt hat* [in:] *Die Macht des Königs. Herrschaft in Europa vom Frühmittelalter bis in die Neuzeit*, ed. B. von Jussen, München 2005, pp. 106–124, 124).

⁴² It included the highest dignitaries of the land, who were also magnates belonging to the leading noble families, as well as the highest local officials (*palatini, castellani*). The court was solely composed of its main officials (i.e. free noblemen); marshalls etc. were not formally part of the royal ct., except for the ones sitting as judges over the members of the court. In this regard, the Polish *curia regis* differed from similar European institutions.

⁴³ There is such a thing as a secret or clandestine council, but only exceptionally, during times of war. Note that this secret council is not a permanent but rather a rare solution when important decisions have to be made in a close circle and in confidential matters, such as the presence of spies.

⁴⁴ Under Kazimierz, the classic council – bishops, ministers and dignitaries, voivodes and castellans, was called the *consilium domini regis*. In the middle of the fifteenth century the appointment of so-called *Iuniores* to the Council is witnessed, that is, noble lower officials, chamberlains and others, thus creating the *council supremum* as a counterweight to the magnates in favour of the latter group.

in the fourteenth century. In the form of the General Assembly (*Consilium totius regni in conventioni*), the Council asserted the rights of aristocratic co-government and was the nucleus of the later upper house of the Sejm (Senate).

The Polish crown was not truly consolidated before the reign of Kazimierz III Wielki (Casimir the Great, 1333–70).⁴⁵ He achieved this strengthening through the expansion of direct royal administration,⁴⁶ the centralisation of the chancellery, the recourse to Roman law, the recording of customary law (*ius terrestre*)⁴⁷ as well as through the effectiveness of financial administration in the hands of his royal treasurer (including an increase in royal income from salt and mines, customs duties and new levies).⁴⁸ This expansion of the *dominium* occurred to a large extent by means of newly founded villages and towns, be it with the help of Flemish or German immigrants,⁴⁹ be it through the 'rededication' of settlements that had customarily been established under Polish law as places under German law. However, the German legal patterns of the Saxon-Magdeburg and Lübeck law for the economic organisation of rural and urban settlements should not obscure the fact that the Polish population was the driving force behind internal migration: the impetus for the eastward migration of tens of thousands of peasants and craftsmen did not come from the Empire or its constituent territories, but from the Polish princes themselves. In 1364, the royal capital Kraków became the seat of the first Polish university, the second university in Central Europe after Prague in 1348. In need of trained lawyers, Casimir the Great modelled Kraków university largely on that of Bologna. As a result, an intellectual and cultural upswing reached one of its high points under this last Piast king. Accordingly, the transpersonal concept of an abstract Polish crown, the *Corona Regni Poloniae*, was established.

⁴⁵ Kazimierz Wielki (the Great, 1333–1370), son of King Władysław I Ellenlang. Louis the Great of Anjou then ruled in personal union with Hungary, followed by the Jagiellons from 1386–1572 until the elective kingdom from 1576 onwards. Despite his policy of alliance with the Hungarian Angevins, the Luxembourgs, the Wittelsbachs, and the Knights, which was aimed at achieving a balance, Kasimierz failed to regain Pomerelia, and Silesia was finally given to Bohemia in 1348.

⁴⁶ He, therefore, endeavoured to give the Kraków officials nationwide powers and gradually took away the powers of the former local district authorities, which were based on the *starosty* (elders) with their administrative and judicial powers. The *starosty* were officials who represented the king. The office of Starost was created at the end of the thirteenth century with the unification of Poland. The general *starosty* were *brachium regale* ('arms of the king') in the main provinces, lacking only the authority to grant privileges. In the fourteenth and fifteenth centuries, the *starosty* exercised administrative and judicial powers; in the latter case they were responsible for prosecution and judicial investigation without estates and for the execution of judgements and for prosecution of the most serious crimes, the so-called four articles, regardless of the status of the offender (arson, rape, robbery in the street and attack on a nobleman's house) (S. Russocki, *Starosta* [in:] *Lexikon des Mittelalters*, vol. 8, 2nd ed., München 2003).

⁴⁷ Separate for Lesser and Greater Poland.

⁴⁸ Kazimierz Wielki introduced the penny as the national currency.

⁴⁹ In addition, generosity towards the Jews also encouraged immigration; in contrast, Jews were subjected to numerous pogroms in Western Europe.

2. Princely Consolidation under the influence of the Hungarian Magnates and the Holy St Stephen's Crown

In Hungary, the magnates held the most important offices and were part of the royal court as advisors and judges from the eleventh century onwards. The Golden Bull of 1222 issued by Andrew II (1205–1235) already mentions the Council of the Kingdom.⁵⁰ The annual assembly of the nobility in Stuhlweißenburg ordered by this letter of freedom amounted to the Hungarian Imperial Diet, at which the magnates and prelates formed their own prominent group.⁵¹ The institutionalisation of the chancellery only began with the admission of petitions to the royal court at the end of the twelfth century,⁵² at the same time as the introduction of Gregorian chant in the Hungarian church.⁵³ Initially, the typically Hungarian legal institution of the so-called credible places (*loca credibilia*) prevented the emergence of scholarly writing. The jurisdiction of the court judge (*curialis comes*, *iudex curiae regiae*), which had been documented since the twelfth century, extended to the entire kingdom from the thirteenth century onwards (hence the translation *Landesrichter* as *iudex curiae*). Just like chancellor and court judge, the other highest offices in Royal Hungary (palatine,⁵⁴ governor, provincial governor, and *banus*⁵⁵ of Croatia) were in the hands of the nobility.⁵⁶ The Hungarian narrative of the Holy Crown of St Stephen appears to be a special instrument of the

⁵⁰ According to Art. 11, foreigners could only be elevated to rank and dignity with the authorisation of the Council (*Europäische Verfassungsgeschichte*, eds. D. Willoweit, U. Seif (= Müßig), München 2003, p. 29). The Letter of Freedom of 1222 was the basis of Hungarian constitutional law until 1848.

⁵¹ 'Magnates and prelates' only evolved into the upper house from 1608 (after which the bicameral system remained, apart from shorter periods, until 1945). This first or upper chamber (*Excelsi Proceres*) of the 'magnates and prelates' actually developed from the King's Council (*Curia Regia*). This group of people had been meeting in the castle of Pressburg (where the Imperial Diet sessions were held during the Habsburg period) since 1526 (following Mohacs, the catastrophic defeat against Sulejman). In short, magnates and prelates were always where the king was, as was the case everywhere in Europe in the Middle Ages.

⁵² Of Béla III (ruled 1172–1196).

⁵³ With reforms in the Gregorian sense, the Hungarian church under Archbishop Lukas of Gran (Esztergom, ruled 1158–81) was able to establish itself as an independent power factor, and at the same time the royal chancellery was established.

⁵⁴ Due to the court's constant changes of location, the organisation of catering was a separate logistics office (of the palatine). Due to his position, the palatine also assumed other duties of the king; in particular he sat in court instead of the king (cf. also Art. 8 Golden Bull 1222). From the fourteenth century, there is evidence of the palatine court outside the royal court in Buda and Vizsoly. From 1485, the Palatine convened the Council of the Estates to elect the king, where he was also the first to cast the vote and the guardian of the minor king.

⁵⁵ The title *Banus* (Hungarian *bán*) is a Central and Southeast European term of Avar or Illyrian origin for a dignitary, corresponding to a margrave (G. Herm, *The Balkans: das Pulverfass Europas*, Düsseldorf–Vienna–New York 1993, p. 146). The territory over which a ban ruled was called a 'Banschaft' or 'Banat' (Hungarian *bánság*, Croatian, Bosnian, Serbian *banovina*). The Croatian ban was a viceroy after the Hungarian King Koloman was crowned King of Croatia. The title of the ruler of the historical region of Slavonia (in the east of present-day Croatia on the border with southern Hungary) is 'the ban'.

⁵⁶ Cf., for example, G. Pálffy, *The kingdom of Hungary and the Habsburg monarchy in the sixteenth century*, Hungary Studies Series, vol. 18, Boulder 2009, p. 21 ff. Cf. also the later centralised chancellery/offices in Vienna, *ibid.*, p. 54 ff.

assertion of royal supremacy over a geographically distinct territory, especially as 'the subjects [...] owed allegiance first and foremost to the Holy Crown'.⁵⁷

3. Central Authority and Feudal Dependencies in Bohemia

The recognition of a Bohemian hereditary kingship in 1198–1212⁵⁸ did not disrupt the feudal dependence of the Přemyslid lands as an imperial principality (*regnum Boemia*).⁵⁹ The dispute over the imperial integration of the Bohemian possessions with the corresponding interventions of the German king and Roman emperor had hindered the development of a centralised administration in Prague, but central court offices (chamberlain, marshal, truchsess, and bailiff) were also evident there. Even before the reign of Přemysl Otakar II (1253–1278), who succeeded in anchoring Bohemia in the Electoral College,⁶⁰ a chancellery (*cancellaria*) was added, in which notaries, protonotaries, magistrates, and scribes issued and authenticated lordly documents (*landesherrliche Urkunden*).⁶¹ This became even more important with the expansion of the Bohemian claim to power into Moravia, Austria, and Styria (aiming for legal integration through written acts of rule).

Long-distance trade (for example, the Golden Path from Passau) with sovereign trading centres (for example, in Pilsen) were a further important factor in strengthening the crown and, thus, the unity of Bohemian ducal and royal power; the economic attractiveness of the sovereign trading centres was not only based on fortified road crossings and fords, and the protection provided by castles, but also on the privileges of legal and royal protection for foreign merchants. In addition, the Přemyslid King and later the Luxembourgers (at the instigation of Emperor Henry VII) had a rich source of income for the crown thanks to gold, silver, and ore deposits. 'The sub-treasurer in charge of collecting municipal taxes was the prince's personal financial administrator. The royal *dominium's* supervision [...] was exercised by the burgraves [...]', whose dependence on the Bohemian king was reflected in their seats' relocation away from castles into the royal towns.⁶²

However, large parts of the agriculturally valuable land were allodial property (freeholds), empowering the landowning noble families to lay claim to political rights

⁵⁷ L. Rácz, *Die Repräsentanten der ungarischen Staatstheorie* [in:] *Die Entwicklung der Verfassung und des Rechts in Ungarn*, ed. G. Máthé, Budapest 2017, pp. 35–91, 67.

⁵⁸ The Sicilian Golden Bull of Frederick II from 1212 (M. Wihoda, *Die sizilianischen Goldenen Bullen von 1212: Kaiser Friedrichs II. Privilegien für die Přemysliden im Erinnerungsdiskurs*, series: *Forschungen zur Kaiser- und Papstgeschichte des Mittelalters* (Beihefte zu J.F. Böhmer, *Regesta Imperii*), no. 33, Wien–Köln–Weimar 2012, p. 261 ff.).

⁵⁹ J.K. Hoensch, *Geschichte Böhmens: Von der slavischen Landnahme bis zur Gegenwart*, 3rd ed., München 1997, p. 79.

⁶⁰ The Bohemian king was also otherwise regarded as 'the most powerful and richest imperial prince [...] [who] had given his lands an "unexpected and favourable peace" (*inopinatam et optimam pacem*) through the unification of Bohemia, Moravia and Austria' (*ibid.*, supra Fn. 59, p. 87).

⁶¹ *Ibid.*, supra Fn. 59, p. 93. From 1225 the chancellor was the provost of the Vyšehrad.

⁶² *Ibid.*, supra n. 59, p. 95.

of co-determination, which amounted to particular corporate structures before 1620. Even at the first court meetings (*colloquia*), which the Bohemian duke-king could convene at will, the nobles' (legal) affairs were separated from those of the subject peasants. It was the court judge's office to represent the duke-king *vis-à-vis* the nobility; otherwise, the chamberlain (*Kämmerer*) presided over the regional court (*soud zemský, Landgericht*), which developed out of the court sessions (*Hoftagen*).⁶³

Comparing the initial consolidation movements by the three crowns, the communicative correspondance with competing noble power claims becomes clear. The Polish, the Hungarian, and the Bohemian institutionalization story of the different crowns coincides with the need to come to terms with the other power players, notably the noble magnates. Legalization of these ambivalences had a twin face: providing a legitimizing tool for integration under royal power as the authority to provide a chancellery and the learnt personnel to issue written acts of rule, but, at the same, time allowing for a kind of professionalized independence beyond the control of mere lordly categories.

III. On the Road to Polish-Lithuanian Aristocratic Republicanism under the Jagiellonian Kings

Further developments in the Polish-Lithuanian Commonwealth were dominated by increasing aristocratic influences. These contributed to the gradual transformation of the former Piast Kingdom into an aristocratic *res publica* (*Rzeczpospolita*, in the literal sense of the abovementioned notion *Quod omnes tangit ab omnibus comprobetur*, which denominated the political nation).⁶⁴ The basic features of this *res publica* may have been due to a peculiarly Polish noble corporatism beyond timely tax and judicial immunities. All noblemen from the richest baron to the poorest knight derived their power (that is, claims on taxes and services from the population, on income from market, customs, and judicial rights) from their loyalty shown to the royal prince in military and court service, without any personal vassalage or feudal relationship. This was the basis of the levelling between high nobility magnates and low nobility knights (*włodyki*)⁶⁵ among the numerous Polish '*nobiles*,'⁶⁶ whose common Latin name was

⁶³ *Ibid.*, supra n. 59, p. 94.

⁶⁴ In the Jagiellonian period, the term 'republic' did not imply the absence of a monarchical head or its insignificance. Like the Holy Roman Empire, Jagiellonian Poland was a corporate monarchy (*ständische Monarchie*) in which only the nobility, along with the king, was involved in the exercise of power, while the other estates (especially the bourgeoisie) were largely excluded from the political process. The Polish clergy did not amount to a separate estate, as the nobility had monopolised access to the higher clergy.

⁶⁵ The marginal group of dependent knights disappeared in the Middle Ages. What remains is a unified knighthood as part of the nobility. They are referred to as '*nobiles*' from Latin, and that is probably the most accurate term to use in a synthetic study.

⁶⁶ Polish Library Paris, J. Lelewel, *Légitimité de la Nation Polonoise*, Rouen [s.a.], pp. 5, 12.

meant to praise their fraternal unity (*braterstwo*) and equality (*równość*), irrespective of any differences in possession and wealth.⁶⁷

Left without a male heir, the last Piast king, Kazimierz Wielki, formed a hereditary alliance with the House of Anjou, which ruled in Hungary, to secure the succession for his nephew Ludwik. Since Ludwik I the Hungarian (ruled 1370–82) remained without sons, he had to 'buy' the consent of the Polish *szlachta*, corporatively addressed as '*communitas nobilium*', to the succession of his (younger) daughter Jadwiga with far-reaching concessions. The 1374 Privilege of Koszyce stipulated an almost complete tax immunity for the nobility and their privileged appointability as crown officials or bishops. This Koszyce-guarantee, that new taxes (new here meant beyond the customary two groschen per cultivated peasant field) could only be levied with the nobility's consent, is held to be the nucleus of the Sejm's later tax-competence.

After Ludwik's death, his (younger) daughter Jadwiga was elevated to King (*rex*) of Poland in 1384. A year later, the nobles compelled her to marry in the Union Treaty of Krewa (near Vilnius) the Lithuanian Grand Duke Jagiello, who had been baptised⁶⁸ Władysław II Jagiello in 1386.⁶⁹ From the Lithuanian point of view, this Polish-Lithuanian (personal) Union was preferable to a union with Russia, especially as it annulled the arch-enemy's, the Teutonic Order's, 'right to pagan crusades'.⁷⁰ Lithuania remained a hereditary grand principality, while the Polish crown gradually became elective; even though the nobility's corporative right⁷¹ to elect the king started only with the *vivente rege* election of Zygmunt August in 1530, Jagiello's son Władysław III was the first in

⁶⁷ The so-called 'private' towns are an impressive addition to the wealth of the nobility.

⁶⁸ The Lithuanians were probably the last non-Christian people in East-Central Europe; this was due to their peripheral location: unlike the Vistula or the Dūna, the Memel was not a transport route for long-distance trade.

⁶⁹ This marked the beginning of the Jagiellonian rule over Poland from 1386 to 1572. The newly founded Latin bishopric of Vilnius was subordinated to Gniezno. The Union's increase in power was enormous: Mazovia and Moldavia made the feudal oath in order to escape Hungarian influence. With the subjugation of Moldavia, Poland gained access to the Black Sea, which enabled more trade, and Lithuania profited from the recovery of the Smolensk region on the Dnieper (1404; conquered by the Grand Duchy of Moscow in 1514). For Władysław's reign as Grand Duke of Lithuania, both the Christianisation of Lithuania and his role as progenitor of the Jagiellonian dynasty were decisive.

⁷⁰ For the Teutonic Order, the union meant that there was no longer any need to wage war against the pagans. In 1404, the Pope withdrew the war order against the Lithuanians, thereby paving the way for the Polish-Lithuanian victory over the Teutonic Order at the Battle of Tannenberg (Grunwald) in 1410, and enabling a policy of actively shaping Lithuanian interests in Central Europe *vis-à-vis* Moscow. [Following the Peace of Thorn in 1411, the conflict with the Teutonic Order led to further wars (1419–22, 1431–35, 1454–66)]. In the Second Peace of Thorn (1466), the militarily and financially exhausted Order had to renounce Pomerelia with Danzig, the Kulmer and Michellauer Land, Elbing and Marienburg ('Royal Prussia'). Eastern Prussia with Königsberg remained with the Teutonic Order as a Polish fiefdom. After renewed fighting, the Order's High Master Albrecht von Brandenburg-Ansbach took the secularised 'Prussian ducal share', which had been seized by the Reformation, as a fief in 1525. The challenges by the Teutonic Order also lie at the heart of the so-called Polish tolerance, as articulated at the Reform Council of Constance 1414–18; it was the prominent theologian and Rector of Kraków University Paweł Włodkowic who took at stand for the pagans, banning the Teutonic Knights' violent conversion policy.

⁷¹ Without having been previously appointed by the local *sejmiki*.

1434 to receive the (confirming) consent of the assembled nobility as king-elect (by the council). It was the Polish-Lithuanian Union that made any king's election a matter of negotiations and an occasion for concessions, despite the nobility's loyalty to the Jagiellonian dynasty. This resulted in the privileging of all nobles with the inviolability of their property (Privilege of Czerwińsk 1422)⁷² and with the inviolability of their person (Jedlno/Kraków Privilege 1430–33, a Polish habeas corpus-prototype).⁷³

The transformation into a real union in Lublin 1569⁷⁴ also relied on the common state-bearing function of the nobility; since the renewal of the Union Treaty of Horodło in 1413, the Lithuanian nobility, insofar as they were Catholic, became included in the heraldic associations of the Polish nobility. The Lithuanian nobility was well aware that their freedoms and liberties depended on the union, all the more so as they had it designed *aeque principaliter* in order to bar Polish visions of an accessory union. The core *fora* of aristocratic self-administration and jurisdiction were the regional assemblies (for a voivodeship or district) or provincial representation for Greater Poland or Lesser Poland, the *sejmiki ziemskie* and *prowinjonalne*. Originating from the local assemblies of the ruling class, civil servants, and the free population (mainly knights), and competent for the promulgation of princely legal acts and as regional courts for the nobility, their roots dated back to the period of fragmentation before 1320. Their involvement in legislation, tax collection, and land requisitioning (*pospolite ruszenie*) was confirmed by the 1454 Statute of Nieszawa by the Jagiellonian King Casimir IV Andrew. It was not until this time that a representative idea about the land messengers (*nuntii terrarum*) emerged, and the Thirteen Years' War against the Teutonic Order (1454–1466) was the decisive catalyst for convening them nationwide.⁷⁵ From 1493 onwards, the general assembly of the Sejm (*Conventum Generale, Sejm Walny*) is documented. This historic precursor of the Polish parliament (still under the same name) consisted of the Senate (staffed with dignitaries of the Royal Council)⁷⁶ as the

⁷² The inviolability of aristocratic property prohibited confiscation as well as contributions, quartering, judicial interference, etc.

⁷³ *Neminem captivabimus nisi iure victum* prohibited the imprisonment and punishment of a settled nobleman without a court judgement (unless he was caught stealing or committing a public crime or was unwilling to post adequate bail). Together with the Czerwińsk Privilege of 1422, this Jedlno/Kraków Privilege 1430–33 amounted to the core 'constitutionalization' of noble freedom.

⁷⁴ Sigismund II August, King of Poland and Grand Principal of Lithuania, was the last (and childless) Jagiellonian; he voluntarily relinquished his hereditary title to Lithuania, to bring the both countries of the personal union on the same constitutional level of 'dependency' on the nobility and to waive the Lithuanian magnates' fear of losing political influence through assimilation into the Polish *szlachta*. It is remarkable that the Polish/Lithuanian duality of dignities for the Polish and Lithuanian 'nations' remained until 1791, while the real union established the Polish-Lithuanian Commonwealth with a common ruler and parliament, as well as a common currency (<https://cbhist.pan.pl/wp-content/uploads/union-von-lublin.pdf> [accessed: 2024.09.15]).

⁷⁵ Fundamental to this is W. Uruszczak, *Historia państwa i prawa polskiego*, t. 1: 966–1795, an excerpt of which is available in English in "Czasopismo Prawno-Historyczne" 2020, vol. 72, no. 2, pp. 93–113.

⁷⁶ What distinguishes the senators is their elevation to a senatorial office for life (as bishop, minister, voivode, or castellan). Of course, this honour could usually only be bestowed on a rich and influential person who had rendered outstanding services to the crown and was important for its politics.

upper house and the so-called *Landbotenstube*/Chamber of Messengers (envoys of the ordinary voivodeship and districts),⁷⁷ representing the entire population of all the provinces, as the lower house.⁷⁸

With the constitution of the Sejm of Radom, the Privilege *Nihil Novi* of 1505,⁷⁹ the Chamber of Messengers was formally recognised as having the right to legislate. Its institutionalized equality with the Senate and, thus, the Sejm's formation as a bicameral assembly was intended to demonstrate the fraternal legal equality (*braterstwo, równość*) of the Polish *szlachta*, regardless of actual differences in land ownership and influence. The *szlachta's* insistence on the fraternal equality of all its members corresponds with the further upgrading of corporative representation to ensure the continued existence of the Polish-Lithuanian Commonwealth. Only a confederation of the gentry throughout both countries and the *viritim* entitlement to take part in the king's election could hinder the Union of Lublin, still in its infancy and only three years old at the time of the sudden childless death of Zygmunt II August in 1572, to fall into the hands of its shattering centrifugal political elements. It was this union-supporting effect of an aristocratic political representation that fueled the path to aristocratic supremacy (1569–1795) with the election of the king by the plenary assembly of the entire nobility,⁸⁰ and the *pacta conventa* on the conditions under which the crown was to function for the 'noble citizens of the republic' (*Rzeczpospolita szlachecka*).⁸¹

⁷⁷ And not representatives of the provincial assemblies (*sejmikis*), which increasingly disappeared, whereas the council (as precursor of the senate) has always existed.

⁷⁸ Giacomo Lauro's engraving of the Great Sejm 1622 (under Sigismund III Wasa; <https://polona.pl/item-view/b9a514be-c661-48d8-87b3-0b574d5c0d8e?page=14> [accessed: 2024.09.15]) documents the gathering of the spiritual (Roman Catholic archbishops and bishops) and secular (voivodes and castellans) senators sitting to the king's 'right' or 'left'. At their backs stand the noble members of the Sejm. The chairs facing the throne (presenting their backs to the viewer) were occupied by the ten most important ministers of the Polish-Lithuanian *Rzeczpospolita*: the Marshal of the Sejm, the Chancellor and the Treasurer of the Crown sit on the right, with the Lithuanian ministers on the left. This staging represents exemplarily the mirrored choreography approach of this article.

⁷⁹ See G. Rhode, *Polen-Litauen vom Ende der Verbindung mit Ungarn bis zum Ende der Vasas (1444–1669)* [in:] *Die Entstehung des neuzeitlichen Europa*, ed. J. Engel, Stuttgart 1971 (= Handbuch der europäischen Geschichte, Bd. 3), pp. 1003–1060, 1018: *Nihil novi constitui debeat per Nos et successores Nostros sine communi Consiliariorum et Nuntiorum Terrestrium consensu*. The above-mentioned *Nihil Novi* Act enshrined the constitutional principle that 'nothing new' may be introduced without the consent of the entire nobility. The king had withdrawn concessions previously made to the Senate (the upper house) and accepted the demands of the Chamber of Messengers (Lower House). Cf. also N. Davies, *God's Playground. A History of Poland*, vol. 1: *The Origins to 1795*, Oxford 1982, p. 321 ff.

⁸⁰ Like Copernicus and Kochanowski, Jan Zamoyski (1542–1605), who was the godfather of aristocratic republicanism, had studied in Kraków and Padua. In the negotiations following the death of Zygmunt II August in 1572, he insisted on *viritim* election and the *Pacta Conventa* between the crown candidate and the Sejm. Polish literature refers to 1454 or 1505 for the beginning of the aristocratic republic, cf. supra Fn. 34, 38, 48.

⁸¹ The *pacta* formulated the conditions/promises to ascend the throne in order for the Sejm to approve the king's coronation. Accordingly, the *summa potestas* has been attributed to the Sejm since the sixteenth century.

The Henrician Articles obliged the King⁸² to convoke the Sejm every two years, and in the periods between sessions he was to be advised by a group of senators. Any failure to observe any one of these articles absolved the nation of its allegiance. These articles were not a straightforward rise of parliamentary co-determination: even though the bulk of consultations and Sejm deliberations were transferred from the Senate to the Chamber of Messengers,⁸³ the political weight of the messengers/deputies initially remained low. According to the *Nic o nas bez nas* formulation of the 1505 constitution,⁸⁴ the Diet could refuse to pay taxes, but it could not make laws without the king's consent.

The Senate's influence must be considered in a different way, even if the monarch was not formally bound by its advice until 1609.⁸⁵ In the sixteenth century in particular, it was perceived in its two roles, as the upper house of parliament and as a mediating constitutional figure for the entire *Rzeczpospolita Obojga Narodów*, in the sense of a Montesquieu *pouvoir intermédiaire*.⁸⁶ During the sessions of the Sejm, the senators, under the chairmanship of the king, took part in decisions on matters of state. Between Sejm sessions, however, a group of senators elected by the Sejm (the so-called senator-residents) were to be permanently present at the king's court in accordance with the Henrician Articles of 1573 in order to monitor his behaviour and decisions.⁸⁷ When the senator-residents had to be appointed regularly from 1609 onwards, the nobility tried to ensure that their advice (that is, opinions, minutes of meetings with the king) had to be submitted to the Sejm on paper and that a unanimous opinion of the senator-residents should bind the king.

Such a transition into a republic with a kind of 'elective chief magistrate' sat uncomfortably within the contemporary rise of absolutist tendencies elsewhere in Europe, after Poland's golden age of the Renaissance (*Złoty Wiek*) had had

⁸² After Henry's flight from Poland to become Henry III of France in 1574, an interregnum was declared, after the country had waited in vain for his return. To prevent any imperial candidature (Maximilian II had been suggested as a applicant), the *szlachta* was guided by Jan Zamoyski to elect the Transylvanian prince Stephen Báthory, who then also married the last surviving Jagiellonian princess Anna.

⁸³ *Nihil Novi* replaces the Mielnik Privilege of 1501, which granted the Senate the right to revoke obedience in the event of any breach of duty by the monarch.

⁸⁴ Nothing about us without us is, therefore, not a precursor to 1688 (England) or 1776 (America).

⁸⁵ In addition, it was the monarch himself who appointed the senators and, thus, determined their career in the hierarchy of offices, as well as entrusting the senators with the administration of parts of the crown domain.

⁸⁶ The Senate was the aristocratic element in Aristotle's idea of a mixed constitution. However, the appointment to offices or public estates needed royal grace. For details on the intermediary powers according to Montesquieu, see: U. Müßig, *Montesquieu's mixed monarchy model and the indecisiveness of the 19th century Constitutionalism between monarchical and popular sovereignty*, "Historia et ius" 2013, no. 3, paper 5, http://www.historiaetius.eu/uploads/5/9/4/8/5948821/mussig_finale.pdf [accessed: 2024.09.16].

⁸⁷ The kings did not want these supervisors around them. So the rule of electing the inhabitants was not implemented. Only the civil war (Rokosz Sandomierski 1606–1609, and the Sejm sessions of 1607 and 1609) forced King Zygmunt III to accept the senator-residents permanently at court.

a Europeanwide impact because of Nicolaus Copernicus⁸⁸ or Jan Kochanowski.⁸⁹ Monarchical absolutism's drive for concentration and efficiency amounted to a European frame of reference for the 'anarchic disintegration of the elective monarchy' (*Polska nierządem stoi*: Poland exists through its 'ungovernment'). The *liberum veto* as the guarantee of the *szlachta's* fraternal equality degenerated into the epitome of destructive procedural tactics, especially in the later period of the mid-seventeenth century with its defeats against Sweden, Russia, and the Cossacks).⁹⁰

IV. The Balance of Power between the Hungarian Crown and the Nobility

The Magyar magnates' narrative of freedom differed essentially from the Polish *szlachta's* fraternal equality, though they coincided in the mirrored choreography with the crown and the varying strength of the Árpád kings. Whereas Poland's geographical challenges required a cautious distance from the Holy Roman Empire and the papacy, as Roman Catholic universalism was instrumentalized for the Teutonic Order's conquests, the Hungarian aristocracy borrowed successfully from the crown's Latin affinity and Christian legitimization.

With the settlement of the equestrian Magyar people, Saint Stephen I (Hungarian: *Szent István*, where *Szent* is derived from the Latin *Sanctus*) marked the beginning of a Latinity characterised by the leading role of the Church (the Archbishopric of Esztergom was founded in 1001), which is quite unique among other European countries (and nowadays member states of the European Union). Until 1840, Latin was the official language of debate in the Hungarian parliament. It is possible that the adherence to Latin as an administrative and chancery language was intended to demonstrate 'Magyar independence' *vis-à-vis* its imperial Habsburg neighbour even before the Austro-Hungarian Empire.⁹¹ The Hungarian nobility was (nearly) as numerous as the Polish nobility, and the differences in rank between the high and low nobility disappeared from the thirteenth century onwards.⁹² Steppe-derived nomadic

⁸⁸ On his European significance, see also: U. Müßig, *Kopernik and ReConFort: A Copernican Turn in Comparative Constitutional History?*, "Giornale di Storia Costituzionale/Journal of Constitutional History" 2019, no. 37 (Giustiziabilità del potere/Justiciability of Power), pp. 5–24.

⁸⁹ 1530–1584, his vernacular translation of the Psalter to Slavic literature is what the Lutheran translation of the Bible is to High German literature.

⁹⁰ In 1652, the veto of a messenger, who was merely a magnate's front man, caused the first Sejm to fail.

⁹¹ Maria Theresa's request for assistance after the Prussian invasion of Silesia was answered by the Preßburg Diet with the Latin '*Vitam nostram et sanguinem consecramus*' (We consecrate our life and blood), G. Kolinovics, *Nova Ungariae Periodus*, ed. M.G. Kovachich, Buda 1790, p. 492, <https://www.digitale-sammlungen.de/de/view/bsb10010213?page=524,525&q=sanguinem> [accessed: 2025.05.17], only abbreviated '*vitam & sanguinem*'. Cf. also R.J. Evans, *Maria Theresa and Hungary* [in:] *Enlightened Absolutism, Reform and Reformers in Later Eighteenth-Century Europe*, ed. H.M. Scott, Basingstoke 1990, p. 189 ff.

⁹² Cf. P. Engel, *The Realm of St Stephen, A History of Medieval Hungary, 895–1526*, series: International Library of Historical Studies, issue 19, New York 2001, p. 84. Cf. also B. Kálmán, *Habsburg Absolutism and*

traditions had prevented the formation of feudal ties to the crown and established the Magyar magnates' narrative of freedom.⁹³

The first concentration of monarchical rule through legislation,⁹⁴ administration,⁹⁵ and ecclesiastical constitution⁹⁶ is associated with the holy founding king Stephen I. This continued under the subsequent Árpád kings,⁹⁷ particularly in defence against foreign interference in the succession to the throne (seniority or primogeniture),⁹⁸ until the expansion into Croatia and Dalmatia⁹⁹ exhausted the financial power of the crown and its military resources.¹⁰⁰ Subsequently (more precisely, 100 years later), Hungarian magnates supported by the royal freemen (*servientes regis*)¹⁰¹ forced the

the Resistance of the Hungarian Estates in the Sixteenth and Seventeenth Centuries [in:] *Crowns, Church and Estates: Central European Politics in the Sixteenth and Seventeenth Centuries*, eds. R.J.W. Evans, T.V. Thomas, New York 1991, p. 123 ff.

⁹³ J.M. Bak, *Hungary* [in:] *Lexikon des Mittelalters*, vol. 8, 2nd ed., München 2003, col. 1227. Initially, the royal freemen were indeed royal servants (*servientes regis*), whose participation in administration and jurisdiction, documented in 1276 against the background of a comprehensive concept of nobilis, established the lower noble class of *iobagie* (*jobbágy*). Cf. for *iobagie* E. Balogh, *The Hungarian Golden Bull and its place among European legal sources* [in:] *Golden Bulls and Chartas: European Medieval Documents of Liberties*, ed. *idem*, Budapest–Miskolc 2023, pp. 43–84, 66 ff. W. Reinhard (*Geschichte der Staatsgewalt...*, Fn. 2, p. 76) cites the assumption 'that the feudal system hardly played a role in Poland and Hungary' (author's translation). In medieval Hungary no feudal system comparable to the German '*Heerschildordnung*' developed. Rather, the Hungarian system resembled the English system following the Salisbury Oath in 1086, which established a centralised structure according to which all nobles were directly bound to the king: all nobles belonged directly to the king. Werbőczy formulated this relationship brilliantly: 'To the nobility the king can only do what the nobility can do to the king', *Opus Tripartitum iuris Consuetudinarii*, Pars I, Titulus 3, § 7 ('Quales caufe de curia regia rurfus in praeferentiam comitum parochialium remitti debeant'), https://repertorium.at/qu/1517_opus_tripartitum_transkription.html [accessed: 2025.05.17]. Cf. fundamentally on this, E. Balogh, *The Hungarian Golden Bull...*, pp. 62, 66 ff.

⁹⁴ With Bavarian elements S.W. Römmelt, catalogue text on Stephan the Saint, in: *Bayern – Ungarn: Tausend Jahre*, eds. W. Jahn, Ch. Lankes, W. Petz, E. Brockhoff, Augsburg 2001.

⁹⁵ In addition, he formed a centralized administrative system consisting of royal castle districts and border counties with dependent officials who could be removed at any time.

⁹⁶ Numerous archbishoprics, bishoprics, and abbeys were created under his ecclesiastical sovereignty.

⁹⁷ Under King Ladislaus I (1077–1095) and his nephew Koloman (1095–1116), the strength of the crown was expressed in royal legislation introducing private property and the Christian way of life (*Unganr* [in:] *Lexikon des Mittelalters*, vol. 8, 2nd ed., München 2003, col. 1227).

⁹⁸ Especially Emperor Henry III (ruled 1046–1056).

⁹⁹ Despite Byzantine and Venetian interventions, the Hungarian presence on the Adriatic continued until the early fifteenth century.

¹⁰⁰ In 1123, Stephen II supported an internal Russian opposition through a campaign together with Polish and Bohemian troops. The magnates were able to force King Stephen II to return home by threatening to elect another king if he did not end the campaign; this is the first documented case of a successful alliance of Hungarian magnates against the king. Under King Géza II, two to three thousand Rhineland and Walloon immigrants arrived as part of the colonisation of the undeveloped border areas and were given a privileged position in the royal domains in eastern Hungary, in Transylvania. The crown never recovered from the 'sell-out' of the crown estate through the extensive donations made by the sons of Béla III to their partisans in their succession disputes.

¹⁰¹ The royal freemen (*servientes regis*) achieved the securing of their participation in administration and jurisdiction, as well as their privileges based on the model of the high nobility. This gave rise to

restoration of their freedoms granted by Andreas II in the Golden Bull of 1222¹⁰² (*libertas [...] nobilium regni nostri, instituta a sancto Stephano rege*).¹⁰³ The extensive privileges, especially in tax and military matters, laid the foundations for autonomous noble counties. In addition, the lesser nobility was able to emancipate itself from the native nobility and thus join the unified noble class of equal freedom (*una et eadem libertate*) in the 1351 confirmation of the Golden Bull. The annual assembly of the nobility in Stuhlweißenburg became the Hungarian Imperial Diet, which Hungarian legal historians classify as not yet structured until 1608.¹⁰⁴ This was followed in 1223 by a corresponding codification of freedoms for the clergy, and in 1224 by the *Privilegium Andreanum* for the Transylvanian Saxons. The renewal of the Charter of Liberty in 1231–1232¹⁰⁵ under pressure from the Church replaced the right of resistance (of the bishops, magnates, and royal freemen collectively known as ‘*nobiles*’ in accordance with Art. 30 of the 1222 Bull)¹⁰⁶ with the ecclesiastical sanction of excommunication.¹⁰⁷ Even after the death of King Matthias Corvinus in 1490, Hungarian church princes and barons invoked their old privileges in order to roll back all other ‘innovations’ of the Renaissance king, especially with regard to new taxes.

After the devastating Tartar invasion and the defeat at the Battle of Mohi in 1241,¹⁰⁸ King Béla IV (ruled 1235–1270) succeeded in consolidating his rule, known as ‘*reformatio regis*’, only by making concessions for the building of castles¹⁰⁹ and by strengthening

the lower noble class of the *iobagie* (*jobbágy*), which is also reflected in the extension of the term *nobilis* to the lower nobility. With the confirmation of the Golden Bull by King Louis I in the Privilege of 1351, they disappeared within the totality of the nobility (*universi nobiles*). For the Hungarian nobility, equality of rights (*una et eadem libertate*) applied between the high and low nobility. This is a purely legal proposition, not a political one, of course. Nevertheless, it is very important, because the equality of the Hungarian nobility before the law, that is, in various court proceedings, was actually ensured until around 1848, E. Balogh, *The Hungarian Golden Bull...*, p. 74 ff. Cf. also H. Göckenjan, *Ungarn* [in:] *Lexikon des Mittelalters*, vol. 1, München 2003, cols 140 f.

¹⁰² Golden Bull of Andrew II, in: *Europäische Verfassungsgeschichte...*, Fn. 50, p. 26 ff.

¹⁰³ For example, judicial immunity and unrestricted succession to their estates: *Die Entwicklung der Verfassung und des Rechts in Ungarn...*

¹⁰⁴ Art. 1 Golden Bull 1222 (*Europäische Verfassungsgeschichte...*, Fn. 50, p. 27). The bicameral system (with the magnates and bishops as the upper house) was only established with a law of 1608, which functioned, apart from shorter periods, until 1945.

¹⁰⁵ The decree itself (*Andreae II Regnis Decretum II*) shows the date 1231 in its text; the edition (*Rerum Hungaricarum monumenta Arpadiana*, eds. S.L. Endlicher, A.G. Kästner, K. Mächler, St. Gallen 1849, p. 428 ff.) dates the renewal to 1232 and, thus, corresponds to the information in the literature (Th. v. Bogay, *Golden Bull of Kg. Andreas II of Hungary* [in:] *Lexikon des Mittelalters*, vol. 4, 2nd ed., München 2003, p. 1540).

¹⁰⁶ *Europäische Verfassungsgeschichte...*, Fn. 50, p. 33.

¹⁰⁷ Provision XXXV of the decree, (p. 433 in the quoted text edition): ‘Spontaneae consencientes, ut siue nos, siue filii nostri et successores nostri hanc a nobis concessam libertatem confingere uoluerint, archiepiscopus Strigoniensis, premissa legitima admonicione, nos uinculo excommunicationis et eos innodandi habeat postestatem’.

¹⁰⁸ The Mongol invasion (having burned the city of Pest and seized control of the Hungarian plain) weakened the Hungarian central power to such an extent that the local oligarchs expanded their positions of power into feudal anarchy.

¹⁰⁹ From then on, the magnates were able to resist the king from the stone castles on their lands.

the cities through privileges and fortifications. The towns became a political counterbalance to the landowning nobility, reinforced by the rise of mining towns. Upper Hungarian mining towns in particular, in the founding of which German and Italian settlers (*hospites*) played a significant role, became so rich through the mining of silver, gold, and copper that they achieved a high degree of self-government.¹¹⁰ Transylvania (while remaining part of the Hungarian kingdom), therefore, evolved into a flourishing economic region and grew to be a distinctive autonomous unit, with its special *vaivode* (governor) and its own constitution, while the cities characterised the intellectual and cultural climate. Central Europe stretched as far as the Carpathian Mountains and beyond, especially as the cultural and ecclesiastical pan-European context had a formative influence.

For the House of Anjou, on the other hand, the strengthening of royal power on a centralized scale, especially in the personal union with Poland (from 1370 onwards), became essential. Louis I the Great (Hungarian: *Lajos I Nagy* 1342–1382 HU; 1370–1382 PL) ruled almost without diets,¹¹¹ reflecting the shift in power away from the old oligarchy towards a nobility more loyal to the king. The Hungarian diet had, in fact, been a permanent institution (*Parlamentum Publicum*, *Parlamentum Generale*), even though it was not until the first act after the coronation of 1608 that the (entitled) estates were defined: bishops, barons/high nobility, *nobiles*, and the citizens of the free royal cities.¹¹² Even though the confirmation of the Golden Bull in 1351 reaffirmed equal liberty (*una et eadem libertate*) for the high and low nobility,¹¹³ and the Diet was organically unified until 1608, the magnates kept meeting separately with the bishops on some occasions.¹¹⁴ The corporate equalisation of the lower and higher nobility was part of the reforms that consolidated Hungary's political power and allowed it to flourish economically.¹¹⁵

During various brief interregna¹¹⁶ the barons took over the government 'in the name of the sacred crown'. This collective responsibility for a 'transpersonal state subject' was

¹¹⁰ Trade routes led from the west of Upper Hungary via Dalmatia to Italy and from Kaschau via Poland to the eastern Slavic region. As part of this international network, the towns had an impact on the intellectual and cultural climate, and the mining industry (silver, gold, salt), in particular, attracted internationally active trading houses and Upper German patrician families.

¹¹¹ The brief personal union (Louis Casimir III inherited the throne in 1370) resulted in the adaptation of Polish aristocratic privileges to Hungarian models.

¹¹² Dissenting W. Reinhard (*Geschichte der Staatsgewalt...*, Fn. 2, p. 77), who wants to recognise a bicameral structure even before this, which even claimed the authorisation of new taxes and participation in legislation.

¹¹³ The Law of 1351, originally only for the tributary lands, generalised this in the interpretation as legal equality. In 1351, the aristocratic liberties of Hungary were extended to the ducal territories (Croatia, Slovenia, Dalmatia, and perhaps also Transylvania). For this, see: M. Borgolte, *Mittelalter in der grösseren Welt: Essays zur Geschichtsschreibung und Beiträge zur Forschung*, München 2014, p. 209.

¹¹⁴ Notwithstanding the royally constituted totality of the nobles (*universi nobiles*), the lower nobility continued to serve as *familiares* in the troops and courts of the magnates.

¹¹⁵ The 'equalisation' of high and low nobility is specific to Hungary and Poland; in Bohemia, as in Austria, the separation of barons and knights emerged.

¹¹⁶ Emperor Siegmund or Sigismund was captured on 28 April 1401 during a meeting of rebellious

reinforced during the transition to an elective kingship.¹¹⁷ Under Matthias I Corvinus (1458–1490), a balance of power among the county nobility,¹¹⁸ cities, and landowning magnates was once again briefly achieved. After this Renaissance king, conflicts of interest among the high nobility made cooperation impossible. The magnates refused to elect King Matthias' son Johannes Corvinus as his successor and stipulated that any new king should 'spend most of his time in Hungary, make only Hungarians his officials and not give the country's property into foreign hands'.¹¹⁹

Under these conditions, Hungary did not have much to bring against the Ottoman advance. In the Battle of Mohács in 1526, the country not only lost its King Louis II (1516–1526), almost all ecclesiastical and secular dignitaries, and a large part of its army, but also its political independence.¹²⁰ At Mohács, the medieval kingdom of Hungary fell with its united army, despite the double election of Ferdinand I of Habsburg (1526–1564) and János Zápolya (1526–1540). When the Sultan occupied Ofen in 1541, turning central Hungary into an Ottoman province and Transylvania into a feudal principality, subject to Turkish suzerainty,¹²¹ the Habsburgs were left with only the western part of Hungary, today's Slovakia, and the neighbouring country of Croatia.

Hungary had a long history regarding a right of resistance, known as *ius resistendi*, which was established as early as 1222.¹²² Even an armed association of nobles against the king (*rokosz*, known from Polish history) was legitimised by law when the king

Hungarian magnates and released at the beginning of September 1401 (J.K. Hoensch, S. Kaiser, *Herrscher an der Schwelle zur Neuzeit 1368–1437*, München 1996, p. 103 ff.).

¹¹⁷ Since 1387, when the Hungarian Queen Maria was imprisoned by rebels, the oath of electoral surrender had been part of the Hungarian elective kingship. The coronation as a 'right of the Regnum' is documented in the *decretum* of 1447 (issued by Ladislavs Postumus), which declared the election of the king to be a right of the estates.

¹¹⁸ This is probably a linguistic reminder of the founding of the state by St Stephen, who actually adopted the Frankish model, the county system, as an example for structuring the country. However, since Latin was the official language until 1844, it was not the German variant of the word 'Grafschaft', but its Latin variant *comitas/Komitat* that was widely used.

¹¹⁹ A. Kubinyi, *Die Wahlkapitulationen Wladislavs II. in Ungarn (1490)* [in:] *Herrschaftsverträge, Wahlkapitulationen, Fundamentalgesetze*, ed. R. Vierhaus, Göttingen 1977, pp. 140–162, 147 ff. (paraphrase translation by the author). Cf. W. Blockmans, *Wie der Römische König in Flandern zum Gefangenen seiner Untertanen wurde: um 1488* [in:] *Die Macht des Königs...*, Fn. 41, pp. 275–298, 282.

¹²⁰ There was a kind of tripartite division into a western part under Habsburg rule, a central part under Ottoman rule, and Transylvania (today located in Romania), which was obliged to pay tribute to the Sultan, but retained a certain autonomy through its policy of striking a balance between Istanbul and Vienna.

¹²¹ That is, the part east of the Tisza (Transylvania and the Partium, that is, some eastern Hungarian counties, which were subsequently Protestant in character) that was granted to Szapolyai's son but was subject to tribute. See R.T. Göllner, *Grundzüge der ungarischen Geschichte, "Ost-West-Europäische Perspektiven"* 2007, vol. 8, issue 2, pp. 88–99, https://epub.uni-regensburg.de/32216/1/goellner_owep_2007_88-99.pdf [accessed: 2024.08.19].

¹²² Art. XXX of the Golden Bull of 1222 formulated it thus: '*Statuimus etiam quod si nos vel aliquis successorum nostrorum aliquo unquam tempore huic dispositioni contraire voluerint, liberam habeant, harum auctoritate, sine nota alicuius infidelitatis [...] presentes et posteri, resistendi et contradicendi nobis et nostris successoribus in perpetuum facultatem*'. (W. Näf, *Herrschaftsverträge des Spätmittelalters, Quellen zur neueren Geschichte*, 2nd ed., Bern 1975, p. 10).

could not 'afford' a criminal court to suppress a Calvinist revolt of the nobility in 1607.¹²³ The suppression of the aristocratic right of resistance in the Habsburg remnant of Hungary is emblematic of the incipient absolutist centralisation of later Habsburg rule. In 1687, the Hungarian nobility even formally renounced their *ius resistendi* in favour of the Habsburgs, which is symptomatic of the smooth reconciliation of the interests of the Hungarian nobles with those of the Habsburg monarchs: Leopold I declared to the National Assembly of 1687 that he could introduce an absolute monarchy as in Bohemia by virtue of his right of conquest, but that he did not wish to do so out of 'innate leniency', but would 'respect the Hungarian order' if the Hungarians renounced their right to vote and resist in return.¹²⁴ The Leopoldine Diploma (1690) also preserved Transylvania's princely and corporative autonomy. Croatia-Slavonia, including the military border with the Ottoman Empire, became subordinate to Vienna, when the Habsburgs managed to establish themselves as sovereigns over Hungary and Transylvania 1699. Given this territorial separation, the nobility amounted to the 'aristocratic national' representation of the Hungarian nation ('*natio Hungarica*'), especially as noble tax exemption and the county constitution were preserved. As a result, it was the aristocracy that resisted the enlightened Theresian absolutism and its endeavours at economic reform. It was the national identification ('*natio Hungarica*'), that provided the Hungarian nobility with a framework beyond the ethical-cultural divisions of the Hungarian kingdom, in which they could assert its collective privileges and made them the 'natural bearers' of any resistance against external interferences, such as the Theresian reforms (as they were seen). Joseph II's political talent realized with an infallible power instinct that he had to abolish the counties' autonomy and to replace estates (elected) officials with imperial-royal civil servants.

¹²³ W. Reinhard, *Geschichte der Staatsgewalt...*, Fn. 2, p. 231; U. Augustyniak, *History of the Polish-Lithuanian Commonwealth. State – Society – Culture*, series: Polish Studies Transdisciplinary Perspectives, vol. 13, eds. K. Zajas, J. Fazan, Frankfurt am Main 2015, p. 109 ff.; *Zebrzydowski Rebellion* [in:] *Britannica*, 1998, <https://www.britannica.com/event/Zebrzydowski-Rebellion> [accessed: 2024.08.28]. However, this premise needs to be qualified in light of the following considerations: The Diet of Hungary, also known as '*Rokosz*', never intended an 'armed rally against the king'. In the Middle Ages the Imperial Diet, which was generally held abroad, was referred to as '*Rokosz*' in Slavic countries and particularly in Poland. Incidentally, the word comes from the name of a meadow (*Rákos*) near Buda, where there was enough space for the assembled delegates of the counties, free districts etc. to meet, because, as emphasised, until 1608 so-called mass, that is, unstructured imperial diets, were held. For the Hungarian nobles in question that meant the right to bear arms (similar to the U.S. equivalent granted in the Bill of Rights) and they were therefore 'armed' at all times.

¹²⁴ The so-called *Explanatio Leopoldina* was issued in 1690 as a royal decree, P. Okolicsanyi, *Historia diplomatica de statu religionis evangelicae in Hungaria*, [s.l.] 1710, p. 135 ff., <https://www.digitale-sammlungen.de/de/view/bsb10328891?page=7> [accessed: 2024.08.28]. Cf. L. Rácz, *Das Beziehungssystem Staat und Kirche im historischen Ungarn* [in:] *Die Entwicklung der Verfassung und des Rechts in Ungarn...*, pp. 321–358, 347, 349.

V. The Special Position of the Duke of Bohemia as an Imperial Prince and the Identificatory Impact of the Estates' Struggle for Representation

The Bohemian mirrored choreography is displaced by the Imperial function of the Duke of Bohemia as Electoral Prince within the Holy Roman Empire and, vice versa, by the special position of the Bohemian duke among the imperial princes by virtue of his royal title,¹²⁵ which was established in 1198–1212. The veneration of the martyr duke Wenceslas (Václav, †929–935), who, like the Hungarian king Stephen, became a holy founder king and personified the legendary centralisation of the Bohemian tribes under the Czech Přemyslids, was decisive for the Bohemian nobility's self-identification.¹²⁶ Although the unity of Bohemian ducal and royal power was unquestioned,¹²⁷ the landowning nobility (the Hrabschitze, the Markwarde, the Witigonen, etc.) organised themselves at the *Landtage* (*sněmy*). Via *Landgericht* (*soud zemský*)¹²⁸ and *Landtafel* (*desky zemské*), the Bohemian nobility 'constitutionalized' its noble community (*obec*),¹²⁹ and claimed a speaking role for Bohemia from the thirteenth century onwards. These (recorded) claims of the Bohemian nobility to

¹²⁵ This made the Bohemian kings hereditary electors of the empire; the special status of the Wenceslas crown also included the use of their own national language, and election and enthronement at Prague Castle.

¹²⁶ In 845, the baptism of fourteen Bohemian 'duces' (tribal rulers) in Regensburg by King Louis II ('the German') is documented (*Annales Fuldenses, Die Jahrbücher von Fulda* in: *Quellen zur karolingischen Reichsgeschichte*, Dritter Teil, ed. R. Rau, Darmstadt 1975, p. 33; P. Mai, *Bemerkungen zur Taufe der 14 böhmischen duces im Jahr 845* [in:] *Beiträge zur Geschichte des Bistums Regensburg*, vol. 29, ed. G. Schwaiger, Regensburg 1995, pp. 11–18, 11 ff.), and, thus, the beginnings of Christianity in Bohemia before the middle of the ninth century. In the tenth century, the Bohemian Church, which had previously belonged to the Regensburg diocese, became independent with the foundation of the diocese of Prague, which is documented as a suffragan diocese of Mainz from around 973. See also the Libussa legend associated with the *Vyšehrad* as a founding myth for the city of Prague and the Přemyslid rule over Bohemia. Charles IV (ruled 1346; 1347; 1355–1378) issued the order that the future king had to walk up the *Vyšehrad* and that this route had to be taken at the beginning of the coronation ceremony in order to express the bond with the Přemyslid rule.

¹²⁷ In the chronicles of Cosmas of Prague (†1125), the land of Bohemia is already a fixed, institutionalised term (*Böhme, Politik und Regierung* [in:] *Lexikon des Mittelalters*, vol. 2, München 2003, col. 337).

¹²⁸ Still the Golden Bull 1365 confirms the juridical exemption of Bohemia from any imperial jurisdiction: no subject of the Bohemian king had the right to appeal to a 'foreign' court or to the emperor, nor could he be summoned before a non-Bohemian court.

¹²⁹ The *Landtafel* gathered official documents in which the judgements of the *Landgericht*, and the rights and privileges of both the nobility and the country as a whole were recorded from the thirteenth century. According to its function, the *Landtafelamt* was the archive of the kingdom and the margraviate (privileges of the estates, freeholds, the registry (chancellery) of the district court with its own jurisdiction). The *Landtafel* was also always regarded as an archive of the estates, as the privileges granted by the king to individual nobles and to the whole country and the resolutions of the Diet were entered in the *Landtafel*. After the defeat at the Battle of the White Mountain (*Bitva na Bílé hoře*) 1620, the *Landtafel* was subordinated to the king and the sovereign authorities. The estates had lost their archive.

power could not be pushed back by territorial expansion,¹³⁰ by the amplification of the city network (with the multiple adoption of German city rights), or by the resources of the newly exploitable mines.¹³¹ Correspondingly, the distinction of the high nobility barons (*páni*) from the low nobility knights developed in Bohemia from the fourteenth century onwards.

They took over the country's administration after the extinction of the Bohemian Přemyslids (with the assassination of Wenceslas III in 1306). Their competition with the German-speaking patriciate of Prague and Kuttenberg (Kútina Hora) further strengthened the Bohemian nobility's self-awareness of being the (true) bearers of Bohemian unity. Even the actual 'architect' of the Bohemian crown, Emperor Charles IV (1347–78), was unable to stop this development; under his reign, Prague was expanded as the capital,¹³² Prague New Town and Charles University were founded,¹³³ and the bishopric of Prague was elevated to an archbishopric. Nevertheless, Charles's Golden Bull of 1356 had to confirm the free election of the Bohemian king by the estates in the event of the extinction of the ruling family (through absence of heirs), leaving the Emperor only with the role of recognising and confirming the elected Bohemian king.¹³⁴ In addition, his codificatory drafts for a Bohemian Land Law, the *Maiestas Carolina* 1348 has never come into force,¹³⁵ as the Emperor Charles IV shied away from confrontation with the Bohemian nobility out of fear for his reputation in the Empire. The rejection of the Bohemian nobles was fuelled by the expansion of royal judicial power envisaged in the draft Land Law, the intended restrictions on their ability to

¹³⁰ Through the acquisition of ownership in Moravia, Upper and Lower Lusatia, and Silesia the Polish dukes of Silesia became feudal subjects of the Crown of Bohemia.

¹³¹ The Golden Bull of 1356 granted the right to the Bohemian king to mint gold and silver coins.

¹³² After Prague had become an archbishopric, Charles began the construction of St Vitus Cathedral and Karlštejn Castle. Under his building projects, Prague became the *de facto* capital and residential city of the Holy Roman Empire. (An inscription on the Old Town Hall reads *Praga Caput Regni*). Cf. also the Charles Bridge, Karlův most, for which Charles IV commissioned the famous architect Peter Parler from Schwäbisch Gmünd; the longest Gothic bridge in Europe was opened to traffic in 1383, but was finally completed only in 1403. The statue of Saint John of Nepomuk was the first to be placed on Charles Bridge in 1683. Around 1556, when the Jesuits arrived in Prague, there were hardly any Catholics left and, therefore, the bridge became decorated as a penitential walkway of horror, and the stone saints were used as propaganda for a 'Bohemian Reconquista'. In addition to Wenceslaus and Ludmila, there was also the hermit Ivan, followed by Veit, Ivo, Kajetan, Prokop, Kosmas, and Damian. People were to see that their homeland had originally been Catholic before the Protestant rebels set the country ablaze. By the way, Albert Einstein, who spent a year as a guest lecturer at Charles University in Prague in 1911, even speculated that 'The way to the moon is via Charles Bridge, then turn left at the Lesser Town Bridge Tower'.

¹³³ It was modelled on the Staufer foundation in Naples on the one hand and on the *Studium Generale* at the University of Paris on the other.

¹³⁴ However, the emperor could not grant Bohemia as a fief and could not even appoint the Bohemian king. Only the office of imperial archbishop and electoral prince was transferred to him as a fief.

¹³⁵ 1352 – Text edition of the land law draft by B.-U. Hergemöller, *Maiestas Carolina. Charles IV's draft codification for the Kingdom of Bohemia of 1355*, München 1995.

enrich themselves from pledged crown estates, the tightening of the deductibility of officials, and the ban on noble alliances and private feuds.¹³⁶

Furthermore, the Hussite movement of the fifteenth century, and, thus, the antagonism between Hussite Bohemia and its Catholic neighbours, weakened the Bohemian crown¹³⁷ and led to the estate-based rule of the high nobility (Vladislav's Land Order of 1500).¹³⁸ After the burning of John Hus as a heretic in Constance in 1415, the crown had been discredited to pacify the religious reform movement, and anti-curial Wyclifism¹³⁹ under the symbol of the lay chalice became enriched with national and social aspirations. The imperial territory's reorganisation under the common penny Act (*gemeiner Pfennig*) in 1495 provoked a *de facto* spin-off of the Bohemian crown, which was thereby relinquished to the electoral claims of the Bohemian Diet. Further attempts to strengthen the position of the king through personal union with other countries also failed. The reign of the Jagiellonian Vladislav II, elected in 1471, who had also been King of Hungary since 1490, remained a mere formality.

From 1526, the Bohemian estates clashed with the centralising tendencies of the Catholic Habsburgs. In 1526, the Habsburg Ferdinand I succeeded his brother-in-law Louis II,¹⁴⁰ King of Bohemia, Croatia, and Hungary, who had fallen at Mohács. While he was accepted by all neighbouring countries, the Bohemian nobility insisted on their right to vote on his candidature. Of course, this Bohemian position was combined with religious resentments against the monarchical centralism of the Catholic Habsburgs, thus sparking off the Thirty Years' War in an interplay between monarchical reaction and

¹³⁶ E. Werunsky, *Die Maiestas Carolina*, "Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung" 1887, no. 9, pp. 64 ff., 101 ff.

¹³⁷ In 1457, the Bohemian Diet elected the representative of the Utraquists and the high nobility, George of Poděbrad, as king.

¹³⁸ The last redaction of the Land Order 1564 before the monarchical revision in 1627 is available at: <https://www.bibliotekacyfrowa.pl/dlibra/publication/65275/edition/65226/content?ref=L3B1Ym xpY2F0aW9uLzY1ODh4L2VkaXRpb24vNjYwNDM> [accessed: 2025.05.17]. Only after the Hussite Wars historiography speaks of the 'Estates' State, K. Bosl, *Böhmen als Paradenfeld ständischer Repräsentation vom 14. bis zum 17. Jahrhundert* [in:] *Aktuelle Forschungsprobleme um die Erste Tschechoslowakische Republik*, ed. *idem*, München 1969, pp. 9–21.

¹³⁹ According to Wycliffe's doctrine of 'power by grace alone', only God himself directly grants all authority, and therefore no papal power claims can be laid. The Bohemian Wycliffe movement, formed by Jan Hus, demanded the serving of communion in both forms (*sub utraque specie*), free preaching, including the Czech mass, and the poverty of priests. After Hus's death in 1415, the names 'Hussites', 'Utraquists', or 'Calixtines' (*Kelchner*) were used interchangeably for all reform groups that followed Hus's teachings.

¹⁴⁰ After Vladislav II, the second and last king of Bohemia, Hungary, and Croatia, from the originally Lithuanian Jagiellonian dynasty.

estates' counter-reaction.¹⁴¹ After the failure of the corporative regiment in Bohemia¹⁴² and its military at the Battle of the White Mountain (Czech: *Bitva na Bílé hoře*, 1620),¹⁴³ Emperor Ferdinand ruthlessly enforced the restoration of his royal power and the re-establishment of religious unity in the Bohemian lands. The aristocratic barons (*páni*) involved in the uprising were arrested and executed.¹⁴⁴ On 9 April 1624, the Habsburg Emperor Ferdinand II issued a patent by which he allowed only the Catholic faith in Bohemia. A few days later, a further legal act followed, forbidding the royal cities from accepting non-Catholics as citizens and allowing only Catholics to pursue trades in the cities. Re-Catholicisation was carried out in different ways: on the one hand, with the uncompromising enforcement of the Roman Catholic faith, including the use of violence, and, on the other hand, with the attempt to evoke an interest in Catholicism through persistence. However, any kind of rebellion was suppressed. Subsequently, Bohemia and Moravia gradually became almost entirely Catholic. However, some

¹⁴¹ In 1609, the Habsburg Emperor Rudolf II issued a letter of majesty in gratitude for the support of the Bohemian estates in the intra-Habsburg rivalry, granting religious freedom, prohibiting religious coercion by sovereigns and setting up a defensor college to protect the non-Catholic faithful, consisting of ten commoners, ten knights, and ten representatives of the nobility. In 1583 he moved his court from Vienna to Prague, and as a patron of the arts and sciences invited the alchemist Edward Kelly and the astronomers Johannes Kepler and Tycho Brahe to his court. When his Habsburg rival Matthias, Emperor and King of Bohemia from 1612, moved his residence back to Vienna, his governors strengthened Catholic forces in Bohemia. On 6 June 1617, Ferdinand I (later emperor, ruled 1556–1564) was elected King of Bohemia and immediately set about enforcing extensive re-Catholicisation measures in Bohemia, restricting the rights of the Estates, as guaranteed by his predecessor. When the Catholic League closed a Protestant church in Braunau and a non-Catholic church was demolished on the archbishop's lands in Klostergrab, the tensions turned into open hostility, and the Bohemian nobles protested to Matthias by a letter. The (responding) imperial ban on further noble gatherings resulted in the continued disobedience of the Protestant Bohemian estates. On 21 May 1618, they met (without representatives of the royal cities) in Prague's Karolinum. Two days later, some of noble participants (including Matthias Thurn, Albrecht Smiřický, Count Andreas Schlick, Wenceslas of Ruppá, the Řičan brothers, the Kinsky brothers, a brother of William of Slavata, Colonna of Fels, and William of Lobkowitz) went to Prague Castle to dispute with the governors Ladislaus of Sternberg, Diepold of Lobkowitz, Jaroslav Borsita of Martinic, and Wilhelm Slavata; the Bohemian representatives held an improvised court and threw the imperial governors Slavata and Martinic and the chancellery secretary Philipp Fabricius out of the castle windows. The Defenestration of Prague on 23 May 1618 marked the beginning of the Thirty Years' War.

¹⁴² After the defenestration, on 24 May 1618 the rebels elected a thirty-member directorate from their ranks, made up of ten representatives from each of the estates. The formation of the Estates Regiment and the associated final break with the rulers in Vienna arose from the Bohemian desire for religious freedom and was supported neither by the bourgeoisie nor by the people at large. The resulting internal weakness of the uprising could not be compensated for by alliances with the Protestant Union, the Netherlands, and the Calvinists in England. Only Moravia joined the resistance on 2 May 1619.

¹⁴³ Cf. the conference volume: *Městské právo ve střední Evropě/Stadtrechtsgeschichte in Böhmen und Europa*, eds. K. Malý, J. Šouša, Prague 2013.

¹⁴⁴ Ferdinand had all those involved in the uprising arrested and in some cases executed, and their money and goods were confiscated (M. Alexander, *Kleine Geschichte der böhmischen Länder*, Stuttgart 2008, p. 231 ff.).

smaller Protestant groups remained in the Aš Corner (Lutherans) and in the Central Bohemian and Moravian Uplands (Moravian Brethren).

The New Land Ordinance (*Verneuerte Landesordnung*) of 1627 abolished the estate right to elect a king and declared Bohemia to be a hereditary Habsburg kingdom. In the course of this 'monarchical revision', legislation and the appointment of offices became royal prerogatives. Only the right to levy taxes remained with the Estates,¹⁴⁵ but only in return for their 'indefinite obligation' to render military service or to support mercenaries.¹⁴⁶ The old elites were dispossessed and new aristocratic families from abroad were favoured by the ruling Habsburgs. 'The formerly rich corporative state with its self-confident nobility had been reduced to an impoverished province of the Habsburg Empire',¹⁴⁷ and it remained under Habsburg 'foreign' rule until 1918.

Like the Habsburgian 'secondary' lands of Moravia and Silesia, the Kingdom of Bohemia was declared hereditary after the 1627 abolition of the estates-based constitution, as was the Hungarian fate according to the Pragmatic Sanction in 1713. This regionalisation could not eliminate the local particularities of the hereditary lands; even after the crushing defeat of the Bohemian and Moravian estates at the White Mountain in 1621, any governmental standardisation of the vast Habsburg dominions under a tight central authority was unattainable, as the Bohemian and Hungarian Court Chancellery demonstrate. Only the Austrian monarchy itself¹⁴⁸ provided the unity of the Habsburg conglomerate of lands.¹⁴⁹

¹⁴⁵ The representatives of the Catholic Church were appointed as the first estate, followed by the titular nobility, and only then by the old Bohemian noble families. The towns lost their former position and had together only one vote in the Diet.

¹⁴⁶ M. Alexander, *Kleine Geschichte...*, Fn. 144, pp. 233, 234: 'Thus the Kingdom of Bohemia had become a different country. The formerly rich corporative state with its self-confident nobility had been relegated to an impoverished province of the Habsburg Empire' (paraphrased translation by the author).

¹⁴⁷ *Ibid.*, Fn. 144, p. 234.

¹⁴⁸ At a time that historians mark as the beginning of the Habsburg position as a great power, the Habsburgs would have achieved a higher rank through non-German royal crowns, like the House of Wettin in Poland in 1697, the House of Hohenzollern in Prussia in 1701, and the House of Welf in England in 1714, if they had not held the imperial title in the empire uninterruptedly since 1438. Leopold's reign was extensive (emperor of the Holy Roman Empire from 1658 to 1705, king of Hungary from 1655, king of Bohemia from 1656, and king of Croatia and Slavonia from 1657). It was also significant that during his reign, Tyrol and the forelands fell to the emperor in 1665. This further strengthened his position in imperial politics.

¹⁴⁹ Provincial diets (*Generallandtage*) got stuck in their beginnings, whereas the position of the traditional provincial diets (*überkommene Landstände*) remained comparatively strong. Well until the eighteenth century, the provincial diets (*Landstände*) retained the right of tax concession, the collection of taxes (*contributionale*), and the introduction of new tolls and indirect consumption taxes. At the head of each of the Habsburg lands was a governor (*Landeshauptmann*), who, himself a member of the local nobility, was appointed by the sovereign on the recommendation of the provincial diets and, as the highest representative of the state, was answerable to the emperor and the landed nobility.

VI. New Horizons: Comparative Findings

1. As any centralized consolidation was out of reach for the Holy Roman Empire (HRE), imperial affiliation resulted from Emperor-related legal titles or the episcopal structure of bishoprics. On the basis of the Augustinian coincidence of worldly and celestial rule, it was a 'celestial orientation' towards the *civitas Dei* that laid the very worldly claim to subordinate the class hierarchy¹⁵⁰ to the Frankish emperorship; further backing emerged from the medieval canon of *ut non conturbaretur ordo*.¹⁵¹ The intermingling of the Platonic primordial idea with Christian creation narratives was not just philosophical theorising; rather philosophical universality linked hands with an all-encompassing catholicism (etymologically, *katholikós* combines *katá* 'according' and *hólos* 'total, complete'), whereby the Empire's irrevocability and eternity mattered. Within this imperial environment, the Christianization of the Bohemian princes and leading social classes took place (around 894),¹⁵² as did that of the Sorbs, the Elbe and Baltic Sea Slavs, and the Slovenes in the south.¹⁵³ Their baptized 'entrance' into the European world meant that the Latin episcopal structure was the organizational power tool to bring ducal central authority in dependency from the emperor and/or the pope. It was not by chance that Emperor Otto I made the Bishopric of Prague, the ecclesiastical organisation of the feudal Duchy of Bohemia, subordinate to Mainz,¹⁵⁴ the seat of his chancellor and later one of the most influential prince-

¹⁵⁰ According to Bishop Adalbero of Laon (d. 988), the three estates *oratores* (orators), *pugnatores* (warriors), *laboratores* (workers) are God-given (R. Lesaffer, *European Legal History, A Cultural and Political Perspective*, Cambridge 2009, p. 168).

¹⁵¹ With regard to *ordo* and *ordinabiliter habitum* see: U. Müßig, *Reason and Fairness...*, supra n. 17, pp. 41 ff., 502 ff.

¹⁵² N.H. Trunte, *Slavia Latina: An Introduction to the History of the Slavic Languages and Cultures of Eastern Europe*, Munich–Berlin 2012, p. 195 ff. For details see Trunte, pp. 69 ff., 76 ff., in particular table p. 79 ff., *ibid.* p. 81 on the 'border' between *Slavia Latina* and *Slavia Orthodoxa*. The earliest vocabulary of the word 'border' was not used by the Imperial Chancellery, but in 1315 at the French royal court in regard to the chain of castles marking the northern '*frontière*' against the County of Flanders.

¹⁵³ *Ibid.*, Fn. 153, pp. 243, 301 ff., 320. After Otto I's victory on the Lechfeld in 955, Carantania was incorporated into the empire in 962, with the margravates of Carinthia, Pettau, Carniola, Istria and Verona. Colonisation with peasants from Franconia and Swabia and thus a bulwark against Magyars and Croats.

¹⁵⁴ The Christianisation of the Slavs in Bohemia is anachronistically dated to 894 according to the *Chronica Boemorum* by Cosmas of Prague, written between 1119–1125. All other sources, especially the Church Slavonic legend of Wenceslas, are hagiographical in nature (*ibid.*, Fn. 153, pp. 69 ff., 139 ff.). Under pressure from the foundation of the archbishopric of Magdeburg, the Bohemian prince Boleslav II (rul. 972–999) the Pious from the Přemyslid dynasty endeavoured to establish his own Bohemian bishopric. In 1158, the Hohenstaufen emperor crowned the ruler of Bohemia as king (*rex Boemorum*) at the Regensburg Court Diet. Bohemia was elevated to kingship in exchange for the promise of Bohemian participation in the Second Italian Campaign against the Lombard cities. Without the Pope's consent, the elevation to the rank (on the part of the Curia) was only to apply to the person actually crowned. It was not until 1212 that Frederick II formally recognised the Bohemian hereditary kingship. The right of investiture of the Bohemian king was also confirmed and direct incorporation into the imperial church was ruled out.

electors. Therefore, the Bohemian case is characterized by the imperial framing of the ducal-royal power's consolidation. It was the feudal relationship to the emperor and any legally constituted community of the Bohemian nobility that grounded the representative claim for the existence of a Bohemian entity. The more cultural (than politically defined) narratives of Bohemian self-definition may be anchored in this; at any rate, it is remarkable how Masaryk's¹⁵⁵ humanitarianism¹⁵⁶ is said to be based on a 'natural' continuation of the Bohemian Brethren's ideals, thereby blending Christian salvatory individualism,¹⁵⁷ Hussite social criticism, and 'natural' folk romanticism (cf. the contemporary prominence of the Shepherds' Mass (*Rybovka*)¹⁵⁸ or Smetana's Moldau (*Vltava*) symphonic poems). With regard to this article's mirror-focus, the Bohemian crown's hierarchical degradation within an imperial frame of reference left only an asymmetric space for the estates' corporative representation, resulting in a kind of superiority-subordination thinking that overrode the *omnes tangit*-responsibility between crown and estate. It is remarkable how the constitutional and confessional rupture in 1618–27 erased any intermediary tones and nuances: the traditional understanding of a 'final' and definite end of a 'nationally glorified' corporative past with its confessional tolerance and social awareness leads to the pejorative summation of Habsburg domination as 'foreign lordly rule' and of the years 1620–1918 as the 'dark period' (*doba temna*).¹⁵⁹ Such an approach (in black and white) leaves only nature or culture as sources of rights. Ján Kollár's words 'Even if called serf, it is the human being that answers'¹⁶⁰ do not imitate the cosmopolitan humanism of the Western European Enlightenment or the human rights-cry of the French Revolution (the Declaration of the Rights of Man of 1789); rather, it is a romanticising, emancipatory approach to the rural *Grundholde* or the *Rybovka*'s shepherds. This seems even more plausible, as the folkloric reasoning in Masaryk's explanations of the rights of nationality and language, the importance of social and economic living standards, the rights of women and children allowed an immunised (and, thus, politically unobjectionable) manoeuvring through nineteenth-century Slavic cosmopolitanism (Karel Havlicek) and twentieth-century socialism's yearning to merge the individual into the masses through class moralisation.

¹⁵⁵ Main architect of the Czechoslovakian state (1918) and its long-standing president (1918, 1920, 1927 and 1934).

¹⁵⁶ <https://www.gleichsatz.de/b-u-t/archiv/kriko/masaryk1human.html> [accessed: 2024.09.17].

¹⁵⁷ In the late medieval universal controversy, this was a strong nominalist argument: God does not love man, i.e. the genus, but Peter or Paul, i.e. individuals. Therefore, the individuals, not the genera must be primarily real. Cf. also the See Genezareth narrative of the calling of the disciples: if you want to follow me, you shall not say goodbye at home.

¹⁵⁸ Cf. the Passau performance in December 2022 with the author at the traverse flute (<https://deggendorf.niederbayern.tv/de/mediathek/video/boehmische-hirtenmesse-von-jakub-jan-ryba-pa> [accessed: 2024.09.17]) from minute 6:30 onwards, within the research programme 'Constitutional Communication via Music'.

¹⁵⁹ Named after a novel by Alois Jirásek.

¹⁶⁰ One of the founders of Pan-Slavism, *O literární vzájemnosti mezi kmeny a nářečími slávskými* (*Über die literarischen Gemeinsamkeiten zwischen slawischen Stämmen und Dialekten*), published in 1836.

2. In contrast, a mirrored choreography focus on Polish and Hungarian corporate and proto-national representations could start from the autonomy of Poland and Hungary *vis-à-vis* the East Frankish and later the Holy Roman Empire; their Christianisation is part of the imperial narrative to be so powerful as to manage the spread of Christianity 'beyond the traditional imperial borders'. Under Otto III, the 'Servant of the Apostles' (*Servus apostolorum*), the spread of Ottonian rule structures through Christianisation extended beyond the borders of the empire to Poland and Hungary. It was the end-time logic¹⁶¹ of the Christian imperial rule that made the subjugation of the pagans an imperial affair.¹⁶² The imperial pilgrimage to Gniezno (1000)¹⁶³ was meant to deliberately indicate that imperial power was unsurmountable, as it reached even beyond the traditional imperial 'borders'. Defining the Polish ecclesiastical province as the Archbishopric of Gniezno resulted in Poland's having its own ecclesiastical organisation, independent of the imperial federation. The appointment of the Polish Duke Boleslaus¹⁶⁴ as 'brother and collaborator in the empire' (*socius et amicus*)¹⁶⁵

¹⁶¹ Cf. the doctrine of the four kingdoms, which the church father Jerome related to the four empires of Babylon, Persia, Greece, and Rome. According to this doctrine, one empire replaces the other and the Last Judgement comes at the end.

¹⁶² Supported by his teacher and advisor Gerbert of Aurillac, later Pope Sylvester II (from 999). San Bartolomeo all'Isola (on the Tiber Island in Rome), Otto III's only church foundation in Rome, was dedicated to St Adalbert of Prague (Adalbert Vojtech), and the Adalbert Monastery (consecrated in 1001 in the presence of Otto III), which was to serve as a home for the monks of the Slavic mission, provided a suitable spiritual bracket: the Bishop of Prague had set off on a missionary journey to the Prussians from Mainz via Gniezno and Gdańsk in December 996 and was slain by Prussian pagans on an island near Elbing in April 997. The body of the saint was said to have been guarded by an eagle for thirty days until the pagans threw Adalbert into the sea. The spot was then marked by a shining pillar so that the body and head of the dead man could later be recovered and brought to Gniezno (cf. the bronze doors of Gniezno Cathedral from 1170–80).

¹⁶³ The significance of the 'Act of Gniezno' associated with Otto III's pilgrimage to Adalbert's tomb in Gniezno (1000) is disputed; the majority of Polish historical writing assumes that the Polish prince Bolesław was proclaimed king. In any case, Bolesław I was granted the right to independently appoint bishops, which, according to a papal decree of the time, was reserved exclusively for kings. The establishment of the archbishopric of Gniezno with the suffragan subordination of the bishops of Kolberg, Kraków, and Wrocław is equally undisputed. The missionary bishopric of Poznań was not subordinated to Gniezno.

¹⁶⁴ Bolesław I (called Chrobry, 'the Brave').

¹⁶⁵ Quoted from J. Strzelczyk, *Das Treffen in Gnesen und die Gründung des Erzbistums Gnesen* [in:] *Europas Mitte um 1000: Beiträge zur Geschichte und Archäologie*, eds. A. Wiczorek, H.M. Hinz, Darmstadt 2000, p. 496. The copy of the Holy Lance of St Mauritius brought by the emperor, in which a cross relic was integrated, served as a counter-gift for the arm relic of St Adalbert to the emperor. With close, but not always conflict-free ties to the Roman-German Empire, Bolesław I Chrobry (the Brave) (ruled 992–1025) won Lesser Poland (Polonia Minor, around Kraków), Pomerania, Silesia, Moravia, western Slovakia, and Lusatia. The good understanding with Emperor Otto III, who had visited Gniezno in the year 1000 and agreed to the establishment of an archdiocese directly subordinate to Rome, was superseded under Emperor Henry II by struggles over the Margraviate of Meissen and Lusatia, which were not settled until 1018 in the Peace of Bautzen. Bolesław I acquired the royal dignity in 1025 with papal approval. Bolesław II Śmiały (the Bold) (1058–79) was able to regain the kingship lost under the successors of Bolesław I in 1076. Despite the temporary reconquest of Pomerania (1102–22) and the renewed attempt to utilise the weakness of Kievan Rus to gain territory in the east, only Greater

described a royal elevation to a higher rank. Christianisation opened up the Latin language and culture to Poland,¹⁶⁶ and made the Piasts appear as natural lords (*domini naturales*).¹⁶⁷ The Piasts were the largest landowners between the Oder and Warta rivers,¹⁶⁸ and their military and fiscal organisation was supported by an aristocratic elite. It was not by coincidence that this early Piast period saw the first mention of a Polish commonwealth (*salus Poloniae*) in the sources.¹⁶⁹

3. Slightly different from the establishment of the archbishopric of Gniezno with the bishops of Kolberg, Kraków, and Wrocław as suffragans was the foundation of the archbishopric of Gran (1001, today, Esztergom-Budapest).¹⁷⁰ Duke Vajk, who was baptised Stephen, was crowned king (1001–38) with the crown of St Stephen sent to

and Lesser Poland, Mazovia, and Silesia were permanently part of Polish territory in the early and high Middle Ages. For this, see, H. Ludat, *Bolesław I Chrobry, König von Polen* [in:] *Lexikon des Mittelalters*, vol. 2, München 2003, cols 359–364.

¹⁶⁶ Initially, Latin remained limited to the liturgy and to use as a chancery language, with the required liturgical codices coming not only from Bohemia but also from Cologne via Regensburg, and later also from Lorraine. Until the end of the eighteenth century, Latin fulfilled the role of a general written language in Europe and offered the advantage over Church Slavonic of opening up access to the classical educational heritage.

¹⁶⁷ The term 'Piast dynasty' was first coined by the Polish historian Adam Naruszewicz in the eighteenth century. Neither the Latin nor the Polish version of this family name is recorded in the sources between 1000 and 1400. According to N. Davies (*Im Herzen Europas...*, Fn. 34 p. 259), Piast rule began in 965 with Prince Mieszko I (†992), who was baptised Catholic and married a Czech princess. His son Bolesław I Chrobry ('the Brave') was Duke from 992 and later became the first King of Poland. He died in 1025. Until the thirteenth century, the Polish church was an imperial church closely linked to Piast princely power.

¹⁶⁸ Starting from the tribal territory of the Polans (*pole* means field in Polish) on the middle Warta, Duke Mieszko I (around 960–992) from the Piast dynasty was able after adopting Latin Christianity in 966–967 to elevate Poland with the core territory of Greater Poland (*Polonia Maior*) to the north-easternmost outpost of the Western community of states, and he received an independent missionary bishopric in Poznań in 968. Greater Poland was bordered to the south-west by Silesia and to the south-east by Lesser Poland. To the north and east of Greater Poland were the regions of Kujawy and Mazovia, which, together with Greater Poland, belonged to the dominion of the first Piast prince Mieszko I (around 966). The Vistula River also runs through this area. Around 1000, Mieszko's son Bolesław I was able to expand his territory to include Silesia, Lesser Poland, and Pomerania.

¹⁶⁹ The term '*salus Poloniae*' is documented by the chronicler Gallus Anonymus, a Benedictine monk from southern France who came to Poland via Hungary after 1100 and wrote the '*Cronica et gesta ducum sive principum Polonorum*' (which is divided into three books). Cf. G. Labuda, Gallus Anonymus [in:] *Lexikon des Mittelalters*, vol. 4, 2nd ed., München 2003. The name 'Polani' is documented for the year 1015 in the Hildesheim Annals (*Annales Hildesheimenses*, ed. G. Waitz, Hannover 1878, repr. 1947, p. 31). It speaks of the '*dux*' Bolizlav, the Pole ('*Bolizlavum Polianorum*'), who came to Merseburg in 1015. According to M. Alexander, *Kleine Geschichte Polens*, Stuttgart 2008, p. 17, this is the first evidence of the name 'Polani'.

¹⁷⁰ In April 1001, the emperor and pope authorised the establishment of an archbishopric in Gran at a synod in Ravenna. Like Poland, Hungary received a copy of the Holy Lance, the most important imperial insignia at the turn of the millennium, and relics of St Adalbert of Prague, whose mortal remains were to hold the empire and its eastern neighbours together like a spiritual bond. Until the conquest by the Turks in 1526, Hungary was a military bulwark (against Islam).

him by Pope Sylvester II.¹⁷¹ The fact that the pope sent the crown to the Hungarian duke and that the latter did not receive it from the emperor's hands, made the Hungarian royal crown a symbol of Hungary's sovereignty.¹⁷² Hungary was not under the patronage of the German Emperor. At the same time, this completed the Hungarian turn towards Latin instead of Orthodox Christianity, which had already been initiated by Stephen's father Prince Geisa (Geza), great-grandson of Arpad.¹⁷³ The myth of the Holy Crown of Hungary still has political significance today.¹⁷⁴

4. My historical comparison indicates that the formative impact of corporative representation depended on the existence of a collective identity and, as such, of a 'perceived' counterpart to the crown. Furthermore, there is no simple crown-estate dualism, and especially no adversarial confrontation. Of course, more research needs to be done to understand the proceeding-like nature of the sessions of early corporate assemblies. The 'dual authority' of prince and estates for the politics of the realm seems to be a common pattern because of the similar processes of the estates' assemblies through the expansion of the *Curia Regis* along a common basic pattern: no right of self-assembly, tax authorisation, and partial political participation. From the comparative point of view, the different compositions or stratifications are hardly significant, of just as little significance as deviating social preconditions.

5. Contemporary discourses did not hesitate to regard corporate assemblies in the hands of the nobility to be democratic. In regard to vast entities like Poland-Lithuania or the Habsburg Empire, it becomes obvious that, depending on their degree of integration, there could be horizontal assemblies with parallel, coequal, but quite

¹⁷¹ Due to the harmonious co-operation between the emperor and the pope in *Ostpolitik* with the participation of Otto III.

¹⁷² Cf. for further details on the crown, *Bayern – Ungarn, Tausend Jahre...*, p. 43 ff. The Hungarian kingdom never belonged to Slavic dominions. The Kingdom of Dalmatia, Croatia, and Slavonia had been in personal union with Hungary since the end of the eleventh century (until 1918), but Dalmatia, in particular, remained a regular theatre of war involving Byzantium, Venice, and Hungary.

¹⁷³ At the beginning of 1001, Stephen the Saint (969–1038, canonised on 20 August 1083) was crowned Hungary's first king in Gran/Esztergom. The Magyar people had only settled in the Carpathian Basin a little over a hundred years earlier under their leader, the Grand Duke Árpád (845–907). Both Byzantine and Roman Christianity sought to Christianise the newly arrived steppe people. Prince Geisa (Geza), the great-grandson of Árpád and father of Stephen, had already made the historically significant decision to join the Roman Church by being baptised. He asked the German emperor to send missionaries and wooed the Bavarian princess Gisela for his son Waik, who had been baptised in the name of the Passau diocesan saint Stephen. (For detailed information on Gisela's tomb in the Maria-Parz chapel in Niedernburg, Passau, see K. Szántó, *Das Leben der seligen Gisela, Die erste Königin von Ungarn*, Thaur 1988, p. 132 ff.; J.-P. Niemeier, *Die Erhebung der Gebeine der seligen Gisela* [in:] *Bayern-Ungarn Tausend Jahre...*, pp. 91–98. On the authenticity of the tomb in Niedernburg Abbey W.M. Schmid, *Das Grab der Königin Gisela von Ungarn, Gemahlin Stephans I. des Heiligen*, München 1912, p. 22.)

¹⁷⁴ J. Deér, *Die heilige Krone Ungarns*, Graz–Wien–Köln 1966, p. 11; A. Horn, *Die Wandlungen des ungarischen Staatswappens: politische und ideologische Hintergründe* [in:] *Supplement to: Symbole im Dienste der Darstellung von Identität*, ed. P. Michel, Bern 2000, p. 1 ff.

unbalanced assemblies; central assemblies (such as the Polish *Sejm*) in a vertical relation between regional and central assemblies were secondary, emerging later than the local ones, but able to mediate the primary local assemblies (as the *sejmikis* disappeared). Vertical systems allow the integration of an extended royal council as a first chamber (for example, the Polish Senate).

6. Without vassalage, the Polish and Hungarian nobilities' narrative of freedom became legally guaranteed; aristocratic resistance was fuelled by the Hussite Reformation, but Bohemian noble liberties have never been legally rationalised, as was the case in the Polish Czerwińsk Privilege of 1422, the Jedlno/Kraków Privilege 1430–33, the Henrician *Articles* in 1573, or the Hungarian Golden Bull of Andrew II in 1222.¹⁷⁵ The Polish crown remained prevented from making any absolutist moves, whereas in Hungary royal centralization managed to prevail under Habsburg supremacy after 1526. As in Bohemia, constitutional and religious resistance were linked in Hungary, and the uprisings against the Habsburgian Roman Catholic centralisation efforts found support in the semi-independent principality of Transylvania, where five religions were tolerated. It was only in 1687 (Leopold I's triumphed over the Ottomans in 1683) that the Hungarian parliament agreed to the heredity of the crown and the abolition of the right to resist. Still at the beginning of the eighteenth century, when excessive taxation met Hungarian resistance, the privileges of the Hungarian nobility, including its 'internal' rule over Hungary, were not touched by Vienna, and Protestants were tolerated. This 'corporative success' had a pacifying effect, until the monarchical 'monopoly on the use of force' within the centralisation efforts of Joseph II has finally undermined the Hungarian corporative system.

7. Finally, this paper demonstrates that the European context itself needs explanation when comparing constitutional processes. Particularly within Central Eastern Europe, the diversity of levels of constitution-building processes is obvious and bears witness to European distinctiveness from its Byzantine, Mongolian, Ottoman or Great Russian neighbours, as '[e]verything colossal and uniform is clearly un-European' (Oskar Halecki).¹⁷⁶ The pluralistic rivalry of powers has always been the motor of constitution formation, and Central Eastern European settings make it clear that in Europe any aspiration to hegemony was precluded or, at least, not permanent because of aristocratic and other competitors, be it the Swedish aggression, the Habsburg empire's expansion, or the later French revolutionary and Napoleonic armies.

The mirrored choreography focus on organizing corporate representation in late medieval Poland, Hungary, and Bohemia has revealed how much the European

¹⁷⁵ *Europäische Verfassungsgeschichte...*, Fn. 50, p. 26 ff.

¹⁷⁶ O. Halecki, *Europa – Grenzen und Gliederung seiner Geschichte*, Darmstadt 1957, p. 6. The quotation continues: 'and this is the secret of all the refinement and peculiarity of European civilisation. At the same time, it is the deepest reason for the development of local autonomies and for the importance of small countries, even city-states, in European history and especially in the comparative history of individual cultural contributions to a common legacy' (English paraphrase, translation by the author).

rationales of past constitutionalization need an etymological reconsideration of context in the original Latin sense of *contexere*: to weave together, to link, to connect. Taking such an integral¹⁷⁷ approach (*contexere*) towards the disparate historical geneses of the estates' representation within (Bohemia) and beyond the HRE's 'borders' corresponds to the overall response structures of law and constitutional formation. Domination and its constituted regulation never arise or exist in themselves. Rather, they cannot be rendered ontologically absolute¹⁷⁸ because of the immanent relatedness of human beings (to other human beings, to materials, to the natural environment, and to transcendental levels).¹⁷⁹ Supplementing my earlier research on the functionality of justice¹⁸⁰ or on the broad understanding of constitution formation beyond norm-related textuality, this article incorporates recent sociological research.¹⁸¹ Law creation starts from subjective entitlements, asserted or disputed in the case of conflict;¹⁸² and the most successful arguments amount to a web of legal customs according to historical contemporaries' conceptual world. Such an interest in the formative power of historical sources' wording does not amount to any relativistic Foucauldian scepticism towards the institutionalized consistency of expressions, nor to any phenomenological subjectivism as within the early *Annales* of Marc Bloch. Organising corporative representation as mirrored choreography opens up the protective rationales of noble assemblies for conflict situations within the consolidation processes of the crowns. The mirror-metaphor serves as an expression of this communicative interest in the determination of meanings, the contextualisation and semantic networks of relationships. Without native-speaker access to either Polish, Hungarian, or Czech, all results put forward remain approximate. Hopefully, they open up a truly comparative stage as does the new journal edited by Anna Tarnowska and Michał Gałędek.

¹⁷⁷ Cf. 'integral conceptions of European history' (B. von Jussen, *Einleitung* [in:] *Die Macht des Königs*..., Fn. 41, p. XII).

¹⁷⁸ This, however, would be the inherent consequence of the concepts by Hobbes, Bodin, and Schmitt, (still followed today: see H. Bredekamp, *Bild Recht Zeit: Ein Plädoyer für die Neugewinnung von Distanz*, ed. H. Meier, München 2021, p. 14 ff.). Against such an absolutized approach cf. the research programme of the Advanced Grant ReConFort, infra note 11, and ERC-AG-SH6 – Advanced Grant No. 339529.

¹⁷⁹ Cf. the *nostri*-Anapher by Manetti (U. Müßig, *Drafting Dignity*, "Giornale di Storia Costituzionale/ Journal of Constitutional History" 2022, no. 44, pp. 157 ff., 159).

¹⁸⁰ U. Müßig, *Reason and Fairness*..., supra n. 17, p. 27 ff.; eadem, *Recht und Justizhoheit, Der gesetzliche Richter im historischen Vergleich von der Kanonistik bis zur Europäischen Menschenrechtskonvention, unter besonderer Berücksichtigung der Rechtsentwicklung in Deutschland, England und Frankreich*, series: Schriften zur Europäischen Rechts- und Verfassungsgeschichte, vol. 44, 2nd, corrected and supplemented ed., Berlin 2009, pp. 36–38.

¹⁸¹ Cf. H. Rosa, *Resonanz. Eine Soziologie der Weltbeziehung*, 4th ed., Berlin 2020, pp. 52 ff., 144 ff., 365, 381 ff., 435 ff., 747 ff.

¹⁸² D. Willoweit, S. Schlinker, *Deutsche Verfassungsgeschichte*..., Fn. 7 § 1 II 2, Rn. 6. Fundamentally also D. Willoweit, *Gerechtigkeit und Recht, Zur Unterscheidung zweier Grundbegriffe der Jurisprudenz*, München 2018; also: <https://publikationen.badw.de/de/044876905/pdf/CC%20BY> [accessed: 2023.07.25]; *idem*, *Recht* [in:] HRG, 2nd ed., col. 1079–1084.

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Summary

Ulrike Müßig

Emerging Parliaments between Corporative Representation and Interaction with the Royal Courts: Parliamentary History in Late Medieval and Early Modern Central Eastern Europe

Parliamentary History in late medieval Central Eastern Europe emerges between a collective (proto-national) identity and a contemporarily 'perceived' royal counterpart. While in Poland the Piast kings managed to establish a common royal administration, it was the Hungarian magnates' power and the symbolic significance of St. Stephen's crown that provided identificatory factors for a proto-national coherence within the Pannonian Basin. In Bohemia, royal power could only be solidified by tackling with vast allodial areas of power and the special position of the Duke of Bohemia as Electoral Prince. Though all case studies corresponded in court struc-

tures' institutionalisation, their manners to consolidate central authorities' varied greatly. The mirrored choreography-focus on the constitutionalization of the crown estates-relation serves as *tertium comparationis* in accordance with the functional comparative research interest in noble assemblies' conflicts with the crowns' strive for consolidation. The Bohemian mirrored choreography seems somehow displaced by the Bohemian duke's imperial function, whereas the Magyar magnates' freedom narrative differed essentially from the Polish *szlachta's* claims. Whereas Poland's geographical challenges required a cautious distance from the Holy Roman Empire and the papacy, as catholic universalism was the Teutonic Order's instrument, the Hungarian aristocracy borrowed successfully from the crown's Latin affinity and Christian legitimization. The Polish-Lithuanian aristocratic *Rzeczpospolita* (*Res Publica*, denominating the political nation on a *Quod omnes tangit* – share between nobility and crown) relied on a legally confirmed corporatism (1422, 1430/33, and 1573); both electoral crowns remained the decisive counterpart for the representative assemblies, and the proto-national representation needed this kind of mirrored choreography: still, the Polish May Constitution of 1791 referred to a constitutional 'contract' between king Stanislas August and the *szlachta* on behalf of the political nation.

Keywords: Comparative Constitutional History, corporative representation, parliament, royal administration.

Streszczenie

Ulrike Müßig

Parlamenty w fazie kształtowania – między reprezentacją stanowo-korporacyjną a interakcją z dworami królewskimi. Parlamentaryzm w Europie Środkowo-Wschodniej późnego średniowiecza i wczesnej epoki nowożytnej

Historia parlamentarna w późnośredniowiecznej Europie Środkowo-Wschodniej wyłania się pomiędzy zbiorową (proto-narodową) tożsamością a współcześnie „postrzeganym” królewskim odpowiednikiem. Podczas gdy w Polsce królowie piastowscy zdołali ustanowić powszechną administrację królewską, to władza węgierskich magnatów i symboliczne znaczenie Korony św. Stefana dostarczyły czynników identyfikacyjnych dla proto-narodowej spójności w Kotlinie Panońskiej. W Czechach władzę królewską można było umocnić jedynie poprzez zajęcie się rozległymi alodialnymi obszarami władzy i szczególną pozycję monarchy czeskiego jako księcia elektora. Chociaż wszystkie powyższe studia przypadków polegały na instytucjonalizacji struktur dworskich, to sposoby konsolidacji władz centralnych w tych krajach były bardzo różne. Choreografia lustrzanego odbicia – skupiająca się na konstytucjonalizacji relacji między koroną a stanami – służy jako *tertium comparationis* zgodnie z funkcjonalnym badaniem porównawczym, interesując się konfliktami między zgromadzeniami szlacheckimi a dążeniem koron do konsolidacji. Choreografia lustrzanego odbicia w Czechach wydaje się w jakiś sposób wyparta przez cesarską funkcję czeskiego władcy, podczas gdy narracja o wolności magnatów węgierskich zasadniczo różniła się od roszczeń polskiej szlachty. W czasie, w którym wyzwania geograficzne Polski wymagały zachowania ostrożnego dystansu do Świętego Cesarstwa Rzymskiego i papieżstwa, ponieważ katolicki uniwersalizm był instrumentem zakonu krzyżackiego, węgierska arystokracja z powodzeniem zapożyczyła od korony łacińskie powinowactwo i chrześcijańską legitymizację. Polsko-litewska arystokratyczna Rzeczpospolita (*Res Publica*, określająca naród polityczny

na zasadzie *Quod omnes tangit* – dzielonej między szlachtą a koroną) opierała się na prawnie usankcjonowanym korporatyzmie (1422, 1430/33 i 1573); obie elekcyjne korony pozostały decydującym odpowiednikiem dla zgromadzeń przedstawicielskich, a proto-narodowa reprezentacja potrzebowała tego rodzaju choreografii lustrzanego odbicia: mimo to polska Konstytucja 3 maja z 1791 r. odnosiła się do konstytucyjnej „umowy” między królem Stanisławem Augustem a szlachtą w imieniu narodu politycznego.

Słowa kluczowe: porównawcza historia konstytucyjna, korporacyjna reprezentacja, parlament, administracja królewska.