

János M. Bak

Sigismund the Legislator: A Preliminary Sketch*

*In memory of those who had attended the 1987 conference
and are no more with us: Pál Engel -- András Kubinyi --
Josef Macek -- Elemér Mályusz -- Pál Zsigmond Pach --
Ferdinand Seibt -- Ferenc Szakály -- Jenő Szűcs*

At the 1987 conference, which was something like a first attempts at a “partial rehabilitation” of King-Emperor Sigismund, I had the task of summarizing our re-assessment of the Luxemburgian age in Central Europe. I wrote that we agreed that the tasks Sigismund would have had to master—opposing the largest military force of the time, the Ottoman Empire, and facing the most important intellectual and religious challenges of the medieval church and state, the Great Schism and the Hussites—would have demanded a person larger than life. That he was not. But he was an often realist, though sometimes illusions-chasing and sometimes successful “statesman in Central Europe who managed, under the given—as far as one can judge, rather constrained—conditions to halt the decline of his countries for decades and in certain respects was able to lay foundations for steps forward.”¹ The following, rather impromptu, impressions about the king-emperor’s contributions to the legal development of the kingdom of Hungary, may be one of these “foundations.”

While working with my colleagues on volume four of our *Medieval Laws of Hungary/Decreta Regni Mediaevalis Hungariae*,² I was struck by the fact that the laws of Sigismund are frequently mentioned in the *decreta* of Jagiellonian Hungary—a century or so after their issue. It is well known that medieval laws were subject to the paradoxical view that while only old law is good law, law needed to be new, i.e. renewed by the ruler in power.³ Even Werbőczy, in the early sixteenth century perceived *lex* as being but the

* I submit these very sketchy thoughts for discussion merely as a token of gratitude to the organizers for the invitation, the hospitality, and the chance to listen to young scholars’ research results in Oradea. I apologize for their “unready” character.

¹ *Sigismund von Luxemburg. Kaiser und König in Mitteleuropa, 1387-1437: Beiträge zur Herrschaft Kaiser Sigismunds und der europäischen Geschichte um 1400*. Ed. Josef Macek, Ernő Marosi, Ferdinand Seibt (Warendorf: Fahlbusch, 1994), p. 354.

² The *Medieval Laws of Hungary/Decreta Regni Mediaevalis Hungariae* [henceforth DRMH] 4, covering the period 1490-1526; to be edited and translated together with Péter Banyó, Martyn Rady in cooperation with the late András Kubinyi, is planned to be published in 2009 [published finally in 2012].

³ See, e.g. H. Krause, “Dauer und Vergänglichkeit im mittelalterlichen Recht,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 75, Germ. Abt. (1958): 206-51; see also Susanna Teke, “Begriff des Dekrets und seine gesellschaftliche Rolle zur Zeit von König Matthias,” in: Georgius Bónis, Franciscus Döry, Geisa Érszegi, Susanna Teke, ed., *Decreta regni Hungariae. Gesetze und Verordnungen Ungarns 1458-1490* (Budapest: Akadémiai K., 1989) pp. 11-40 44 (originally in *Történelmi Szemle* 29 [1986] pp. 197-218.)

acceptance of custom over a time, while statute law may or may not override it.⁴ Thus, it is remarkable that Sigismund's *decreta* were more than once expressly referred to and quoted verbatim in the decrees of Wladislas II and Louis II in the late 1490s and early 1500s.⁵ Actually, this fact raises the question of the preservation of the text of royal laws, about which we know little, only that the need for their collection and edition comes up repeatedly at the sixteenth-century diets.

It is, of course, not surprising when the estates refer to the laws of the "kings Sigismund, Albert and Ladislas Posthumus": by this they only wish to point out their resentment against the "innovations" (as they call them)⁶ of Matthias Corvinus. These are mere political statements. Similarly, calling upon the liberties granted by "the holy kings" or specifically by Andrew II (that is, the Golden Bull of 1222), are traditional and rhetorical pieces. It is not these I was surprised by but the citing of particular measures from *decreta* of the first half of the fourteenth century.

Comparing the law-making under Sigismund with that of other rulers in "statistical" terms, it is not particularly impressive: his *decreta* cover merely 58 printed pages in our bi-lingual edition (in Latin alone, of course), without the fragmentary and lost ones (those, which Bónis *et al.* included in their DRH⁷). In contrast, those of Matthias fill a whole volume of 70-odd pages⁸ and those of Wladislas some 150 pages in small print in the millennial edition of the CJH.⁹ Thus it is not its volume that is particularly impressive, even if we compare it with his predecessors, who issued very few *decreta*, Louis I in fact only one, Mary, if one wants to be generous, two.¹⁰

But that is not the main point. Rather, while re-reading the legislation of the 1400s, the first thing I found remarkable is the tone (especially of the preambles) of the Sigismundian statutes. Ever since the earliest documents that can be called *decreta* (and I

⁴ *The Customary Law of the Renowned Kingdom of Hungary: A Work in Three Parts Rendered by Stephen Werbőczy (The "Tripartitum") &c.*, J. M. Bak, P. Banyó, M. Rady, eds. (Idyllwild CA/Budapest: Charles Schlacks/Dept. of Medieval Studies CEU, 2005)[=DRMH 5], Prologue [Seven] pp. 29-31.

⁵ Some of them were included already in Matthias's *Decretum Maius* of 1486, but if I see it right, they are quoted here from the Sigismundian text and, express references to Matthias were, understandably, rare.

⁶ So as early as in the election conditions at Farkashida (now Vlčkovce in Slovakia, earlier Farkašin; German: Farkaschin, Wolfsbruck); repr. in J. M. Bak, *Königtum und Stände in Ungarn im 14.-16. Jh.* (Wiesbaden: Steiner, 1973) pp. 152-4, here: *nullas prorsus novitates ... introducamus*, p. 152.

⁷ Franciscus Döry, Georgius Bónis, Vera Bácskai, *Decreta regni Hungariae. Gesetze und Verordnungen Ungarns 1301-1457* (Budapest: Akadémiai K., 1976) contains some 23 Sigismundian *decreta* (or references to lost ones) and two *propositiones* on 82 and 33 printed pages, respectively.

⁸ *The Laws of the Medieval Kingdom of Hungary/Decreta Regni Mediaevalis Hungariae* Vol. 3 (1458-1490), J. M. Bak, L. S. Domonkos, P. B. Harvey, eds. (Los Angeles: Schlacks, 1996)[=DRMH 3]

⁹ *Magyar Törvénytár: Corpus Juris Hungarici*. D. Márkus *et al.* eds. Bp.: Franklin, 1896 ff. [Millennial edition] pp. 472-740 incl. translation.

¹⁰ *The Laws of the Medieval Kingdom of Hungary/Decreta Regni Mediaevalis Hungariae* Vol. 2 (1308-1457), J. M. Bak, P. Engel, J. R. Sweeney, eds. (Salt Lake City: Schlacks, 1992) [=DRMH 2] pp. 8-20.

am not thinking of the “law books” of the eleventh-twelfth century, the original format of which is difficult to establish), down to the late medieval ones, the typical “frame” of most royal decrees is that the king called the *regnicolae* for a consultation regarding the affairs of the realm, whereupon they submitted him a number of requests and suggestions, which then the ruler found “useful and suitable for the welfare of the kingdom” and, therefore, issued them under his seal etc. etc.¹¹ In a way, one may say—somewhat anachronistically—that this form predated the later, modern procedure of *dietalis tractatus*, the presentation of the gravamina by the nobility vs royal proposal and so forth.

Sigismund’s *decreta*—except the ca. 1397 Timișoara one—are not framed in this format. Of course, they, too, imply the participation of the *prelati, barones et nobles regni*, and frequently mention that they complained about some abuse, but the royal will, often in true imperial formulation (even before his election to the German-Roman empire), is prevailing. A few passages may indicate, what I mean:

In the so-called *placetum regium* of 6 April 1404, Sigismund wrote:

Nos itaque, qui cunctorum et precipue nobis subiectorum incomodis subvenire et calamitates, quibus gravantur, reprimere tenemur [...] oppressiones nichilominus et huiusmodi tribulationes [...] iam ulterius tollerare non v[a]lentes [...] presertium series auctoritate eiusdem sacre corone et de plenitudine regie potestatis volumus, pronuntiamus, [etc. etc.]¹²

The decree about the cities (15 April 1405) opens, among others with these words:

Neque enim princeps esse potest inglorious, qui de subiectorum pace et securitate semper cogitat, neque non ignavus, qui futuris malis et periculis non previdet, quando potest. Hinc est quod convocatis ex omnibus regni nostri comitatibus [...] etc. [...] quasdam consuetudines, que potius abusiones videbantur, abolendas, quasdam moderandas, quasdam in melius reformandas, quedam etiam de novo statuendas decrevimus, sanximus et ordinavimus, prout infra.¹³

¹¹ This format is visible as early as in the problematic *decretum* of 1298; see DRMH 1²: 46-51, esp. p. 51.

¹² Hence we, who are obliged to assist everyone, above all our aggrieved subjects, to confront and obviate the annoyances by which they are beleaguered with all our might and ability [...] no longer intend to tolerate these injuries and insults [...] by the authority of the aforesaid Holy Crown and by the fullness of our royal power, pronounce, establish, [and so on], DRMH 2: 29-30

¹³ For no prince can be inglorious who constantly contemplates the peace and safety of his subjects, and none worthy who does not forestall future dangers and disasters when he can. That is why, after having called together [...] of our realm, [...] we have decided, ordered and commanded [...] that certain customs, which appear rather to be abuses, be abolished, others changed, others improved, and some newly established. DRMH 2: 35.

Note the intention of the legislator to abolish and change custom, a matter rarely expressed in medieval law, where custom tended to prevail above all other kinds of “law.” The problem about custom is also adumbrated in the *decretum* of 31 August 1405, where it is said that harm and disadvantage may occur *ex diversis consuetudinis et sepe contrariis* (by the different and frequently contradictory customs) to the people of the kingdom, when the army moved to campaign.¹⁴

Finally, a sub clause of true imperial (at that time, legitimately so) formulation in Article 17 of 8 March 1435, the *Decretum Maius: Porro equitatem et iuris observatiam, quam inter regnicolas nostras vigere peroptamus, a nostra regia maiestate exordium habere demonstrare volentes, presenti decreto stabilimus.. [etc.]*,¹⁵ which is nothing less than the enunciation of what has been summarized in the maxim about the prince as the source of law.

A similar tone can be observed occasionally in the laws issued by King Matthias (especially in his *Decretum Maius* of 1486),¹⁶ but even there, the king did not claim the right to alter the *consuetudo*, but felt obliged to emphasize the upholding of ancient custom.¹⁷ This kind of language vanished from the discourse of the Jagiellos¹⁸ and then, later, of the Habsburgs as well. I believe, it needs additional research into the legal personnel of Sigismund and their acquaintance with Roman Law (of which these formulations are reminiscent),¹⁹ before one can say more on this matter.

What seems to have survived the century after the issue of these laws in terms of contents? Reference (often verbatim quote) was made to a number of very different kinds of measures codified for the first time under Sigismund. By this, I do not wish to imply that they were not based on the oft-quoted “ancient custom,” but they received their first formulation in a legally precise way by Sigismund’s lawyers. Many of these, cited in the Jagiellonian laws, found their way into the *Tripartitum* of Werbőczy, thus remaining relevant in the courts for centuries, more or less until the end of the ancien régime.

Earlier we thought that the permission of peasants to move—or to be moved—from one estate to another (or to the towns) was first codified in what used to be called

¹⁴ DRM 2: 46

¹⁵ Furthermore, as we greatly desire that justice and observance of the law flourish among the gentlemen of our realm and because we want to prove that these qualities have their origin in our majesty, we establish by our present decree... DRMH 2: 73.

¹⁶ DRMH 3: 41–70.

¹⁷ This was pointed out by Teke, “Das Dekret” (as above), p. 38-9.

¹⁸ Even if in the preamble of the decree of 1498 legal commonplaces about “law and arms” (from Gratian) are quoted, they all remain within the frame of articles presented by the estates and then approved by the king.

¹⁹ This aspect was not discussed by György Bónis, *Die Einflüsse des römischen Rechts in Ungarn* (Milan: Giuffrè, 1964).

the “*Compilatio* of c. 1300.” Now, since Pál Engel has convincingly demonstrated that this text cannot be earlier than the early fifteenth century,²⁰ we have to recognize that it became law under Sigismund. I do not doubt that the practice may have had its origins in the fourteenth century and had something to do with labor shortages following the Black Death, but it was written down in so many words only in 1397.²¹ This matter was referred to for a century, until—at least legally and theoretically—suspended in the wake of the peasant war of 1514. The implications of this permission and later its restriction cannot be discussed here now.²²

It is usual to quote Werbőczy for the arrangements of the filial quarter for noble girls,²³ especially the clause that it has to be given out in land, if they marry a commoner (a *non-possessionatus*). In fact, it is first spelled out in so many words in Sigismund’s *Decretum Maius*, in connection with the entire issue of female inheritance. Here, too, the custom was certainly much older and we know now from recent studies by, inter alia, Péter Banyó, and Martyn Rady²⁴ that this distinction was not as strictly drawn as the law suggests. Still, the explicit statement goes back to Sigismund’s legislation and was to have a long life.

Then, a rather technical matter, which served as the basis of legal proceedings for a long time: the detailed list of fees and expenses for letters and executions in 8 March 1435: 9–11, was also often quoted in later times, sometimes in order to be changed in one item or another.²⁵ It has been seen as an attempt—probably successful—at assuring uniform procedures at the places of authentication all across the country. Similarly, the oath of office, prescribed by Sigismund for the noble magistrates of the counties in the first article of the same decree²⁶ became the model of the oath demanded from all major

²⁰ See DRMH 1²: 71-5, here 74-5, but now: Pál Engel “Az ‘1300 körüli’ tanácsi határozat keletkezéséhez” [On the origin of the decision in council of ‘c. 1300’] in Idem, *Honor, vár, ispánság: Válogatott tanulmányok*, ed. Enikő Csukovics (Budapest: Osiris, 2003), pp. 638-48. [This decree is now to be dated “ante 1440”]

²¹ (October 1397) 68, DRMH 2: 27; actually, a decision in council of 3 August 1397 already regulated this matter which was then repeated in 31 August 1405: 14-16; *ibid.* p. 50.

²² On this, see now J. M. Bak, “Servitude in the Medieval Kingdom of Hungary: A Sketchy Outline” in *Forms of Servitude in Northern and Central Europe: Decline, Resistance, and Expansion*, ed. Paul Friedmann and Monique Boruin, (Turnhout: Brepols, 2005). 387–400

²³ *Tripartitum* I: 88–9 and elsewhere, see DRMH 5:171–3. Of course, in essence the regulation went back to at least the thirteenth century, see 1222: 4, DRMH 1²: 32.

²⁴ See e.g., Péter Banyó, “Birtoköröklés és leánynegyed. Kísérlet egy középkori jogintézmény értelmezésére.” [Inheritance of land and the filial quarter: An attempt on the interpretation of a medieval legal concept] *Aetas* 18:3 (2000): 76–92 and Martyn Rady *Nobility, Land and Service in Medieval Hungary* (Houndmill, Basingstoke: Palgrave, 2000), 103-7

²⁵ For example 1492: 95–99; DRMH 4: 43–5.

²⁶ 8 March 1435:1, DRMH 2: 64.

and minor officeholders, decreed in 1492: 33—and then repeatedly referred to as the “Rákos oath,” as if it had been “invented” at that diet.

Finally (though there may have been many more), Sigismund’s military reforms remained the basis of the mobilization of the Hungarian army—however often changed and amended—until the end of the medieval kingdom.²⁷ I am not thinking only of the *militia portalis*, introduced at the Timișora diet (particularly, because we know too little about its implementation in the century before Mohács)²⁸, but rather the elaborate rules on the army’s behavior during campaigns²⁹ and, above all, the list of *banderia*, which are contained in Sigismund’s propositions, sent to Hungary from Siena.³⁰ While some changes—not unimportant for the structure of the nobility!—were introduced in the Jagellonian age, the reference to “campaigning according to the register of Sigismund” was a recurrent phrase. In a certain respect, this is not surprising, considering that the baronial rule of those decades had some similarities with that of Sigismund’s times. The differences would need a more elaborate discussion.

All in all, it seems that a good part of the legal arrangements of the king-emperor was at least as long lasting an achievement of his reign as was the establishment of the southern frontier defense system by his barons.³¹ And in terms of social, military, and administrative norms, they were indeed preparing “steps forward.”

²⁷ On these, see the still seminal work of József Deér, “Zsigmond király honvédelmi politikája” [Military policy of King Sigismund] *Hadtörténelmi Közlemények* 37 (1936): 1-57, 169-202 (also separately published) and briefly: Josef Held, “Military Reform in Early Fifteenth Century Hungary,” *East European Quarterly* 11/2 (1977): 129-39.

²⁸ See András Borosy “The *militia portalis* in Hungary before 1526,” in: J. M. Bak and B. K. Király, ed., *From Hunyadi to Rákóczi : War and Society in Medieval and Early Modern Hungary* (New York: Social Science Monographs, 1982) pp. 63- 80

²⁹ 17 March 1427 (a), DRMH 2, 56–9, repeated several times later.

³⁰ Propositions c. 1432/33; DRMH 2: 141–54.

³¹ See Ferenc Szakály, “The Hungarian-Croatian Border Defense System and its Collapse,” in Bak-Király, *From Hunyadi*, pp. 141-58 and my “Sigismund and the Ottoman Advance,” in Michel Pauly and François Reiner, ed. *Sigismund von Luxemburg: Ein Kaiser in Europa* (Mainz: Zabern, 2006) pp. 89-94