

Influences and Mutations of the *Iuramento fidelitatis* during the First Half of the 14th Century in the Medieval Kingdom of Hungary*

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According to the customary investiture formula used in the mid-11th century, as the monarch handed over the symbols to the future bishop, he said simply, “receive the church”. Since the reign of Otto the Great, emperors had richly endowed their bishoprics with lands, rights, and jurisdictional powers¹. This formula of investiture, long rooted in the medieval monarch mind has strong ties with the idea of property, regarding the crown’s domain and everything pertaining to it, as it “undoubtedly embraced the church’s lands as well as the church building itself”². Indeed 11th-century Germany regarded the investiture in the terms of a bestowal of the episcopal office, without any attempt to separate the two powers and of course the temporal and secular powers associated with that office. When it was said that the prince had granted the *regimen pastorale* or *cura patoralis* or *episcopatus* to a newly invested bishop, it must have been seen as a grant including the purely ecclesiastical function³.

The nullification of an oath of fealty – or indeed, of any oath – was an ecclesiastical prerogative (*Set hic nihil aliud fuit deponere, nisi subditos a iuramento fidelitatis absolvere, quod ius spiritual est sicut et ligare*). From Gregory VII’s famous letter to Herman of Metz in 1081, Gratian excerpted an historical justification of the papal right to absolve subjects from oaths of fealty taken to kings or bishops. Commenting on this passage, Rufinus explained that such oaths are taken “sometimes with regard to persons. at other time with regard to offices.” An oath of fealty by one layman to another is personal, and can be terminated only by the lord’s excommunication. An oath of fealty to a prelate, however, is sworn because of the secular office which the prelate has received from a lay prince, and such an oath is binding precisely so long as the prelate holds this office. Later *decretalists* did not

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¹ Robert L. Benson, *The bishop Elect, A Study in Medieval Ecclesiastical Office*. Princeton, New Jersey 1998), p. 204.

² *Ibidem*.

³ Of course only when the reformers began to attack the custom of investiture with ring and staff did efforts to explain and justify it had started.

unanimously accept Rufinus's views on this problem, though they usually accepted his general approach, as well as his distinction between "office" and "person"⁴. Therefore the main problem should be if a person holds a fief granted by a church do they have to serve the prelate also? This principle accepted by the court of Frederick Barbarossa, demonstrated when two imperial bishops who have been deprived of their regalia, "the regalia was confiscated only from the persons, since regalia are granted not to persons but perpetually to churches"⁵ Imperial law clearly explains: the bishop's *beneficium* is given not only to the person but to the church. If he loses it through judicial sentence but manages to retain his *officium*, the *beneficium* reverts to the crown until till his death and appointment of a successor.

About the feudal oath to "office" or "person", Huguccio states:

"Therefore, when a king or bishop is deposed all of his vassals by virtue of kingship or episcopate (*episcopium*)...are immediately released with regard to him, but not with regard to the kingship or the episcopate or the successor. For they are always bound to the kingship and the episcopate, and as soon as the successor is installed, they are immediately bound to him with the original obligation"⁶.

The investiture regarding a fief followed a strict set of rules. It implied the succession of three acts in succession: the deposition of the one alienating or *devest*, the creation of the personal tie consisting of a faithful vow and homage, and "*la mise en possession de l'acquerneur*" or *vest*⁷.

Devest: it begins by having the seller of the fief "*devestir entre le mains de son suzerain*", receiving transfer, the buyer presents him as his new vassal. This procedure of the *devest* called also *déshéritance*, issue, *exfectucation*, was made a frank right, by the throwing of the *festuca* (a small vestal, or a twig). He would settle also the right of quint (the 5% of the value of the fief sold paid to the sovereign)⁸.

Homage and fealty: if the sovereign accepted the new vassal he would have to establish the personal contract consisting of the two main obligation homage and faith. Confusion of these terms and their use as synonyms is done frequently. Indeed they are professed in the same ceremony, but they must not be confused. They

⁴ R. L. Benson, *op. cit.*, p. 360.

⁵ *Ibidem*, p. 361.

⁶ "[...] *set distingue: cum quis iurat alicui fidelitatem, aut iurat ei intuit dignitatis aut intuit persone. Si intuit dignitatis, quam cito ille remouetur a dignitate illa statim et ille desinit ei teneri. Si intuit persone, puta propter patrimonium luitur. Cum ergo rex uel episcopus deponitur, statim omnes uasalli eius intuit regni uel episcopii ipso iure aboluntur quod ad illum, set non quo ad regnum uel episcopium uel successorem. Regno et episcopio semper tenentur, et quam cito successor, substituitur, statim ei tenentur pristina obligatione. Exigitur tame et fit noua obligation condition obligationis...*" in R. L. Benson, *op. cit.*, p. 362.

⁷ *Ibidem*, p. 208.

⁸ This procedure of the *devest* called also *déshéritance*, issue, *exfectucation*, was made an a frank right, by the throwing of the *festuca* (a small vestal, or a twig). He would settle also the right of quint (the 5% of the value of the fief sold paid to the sovereign).

represent two distinct actions. The fealty (*fides, fidelitas*) summarizes the devotion the vassal must offer through it. Homage (*homagium, hominium*), represents the action by which the vassal is now the man of the sovereign, this obliges him to all the services that may or may not derive from the possession of the fief, or to active services in war or court councils. One could well swear fealty without involving the process of homage. An example be that of officers and bishops (having fiefs given to them only while being in office). After the new changes of the 12th century we distinguish two types of homage: the *homage ordinaire*⁹, simple or *planum*, and the homage liege or *ligium*. Without many distinctions they formed a private contract between the sovereign and the vassal and like most contracts of the time it had a formalist nature following the *fides manualis* or *corporalis*, the *immixtio manuum*, characterizing the *commendatio*, from whom the homage derived directly. During the ceremony we can distinguish the profession of faith and the reception of faith and homage. The vassal must then say, kneeling before his sovereign: “*Sire, je vous requiers comme à mon seigneur, que vous me mettiez en votre foi et en votre hommage, de telle chose assise en votre fief, et que j’ai achetée de tel homme*”¹⁰. If the offer was accepted, the new vassal placed his hands in-between his sovereigns hands and pronounced either of the following oaths¹¹: “*Sire, je deviens votre home et vous promets fidélité contre tout personne pouvant vivre ou mourir, et je vous promets aussi telle redevance comme le fief la comporte*” (in reference to the quint). In this case fealty was not offered alongside homage¹². The sovereign then lifts him up, declares that he receives him in his faith and as his own man, and gives him the *osculum*.

Vest. Once homage was done, the sovereign having no more reasons to hold the fief in his hands relinquished it to the new vassal. In a large sense it might be called investiture, *mis en possession*. This *mise en possession* was made exactly in the same manner as in Frankish law¹³. This symbolic investiture will last until the end of the 13th century. Something close to a verbal process called *lettres de fief*¹⁴ that remained with the vassal as proof was starting to be used from the 14th century, abandoning the **vest**, if the investiture did not take place, a fine of 60 livres would be applied or even exercise the right of *retrait féodal*. “*Retrait féodal, est le droit que la coutume donne au seigneur de retirer & retenir par puissance de fief, le fief mouvant de lui, lorsqu’il a été vendu par son vassal, en remboursant à l’acquéreur le prix de son acquisition, & les loyaux coûts. On l’appelle aussi retenue féodale dans quelques – uns des pays de droit écrit; il est compris sous le terme de prélation. Ce droit a été introduit lorsque les fiefs commencèrent à devenir héréditaires, & qu’il fut permis au vassal d’en disposer par aliénation sans le consentement du seigneur, & sans peine*

⁹ R. L. Benson, *op. cit.*, p. 209-211.

¹⁰ *Ibidem*, p. 211.

¹¹ Fealty and homage could be offered simultaneously or separate, usually in succession but of course one could be done without the other.

¹² In this case usually the ceremony is augmented by an oath of faith sward on the Scripture or reliquaries.

¹³ A symbolic object was used to grant the property, a batch of land or grass, a tree branch, etc.

¹⁴ R. L. Benson, *op. cit.*, p. 215.

de commise. Il en est parlé dans les assises de Jérusalem, qui sont les lois que les François donnèrent au peuple de Syrie & de Jérusalem l'an 1099; ainsi cet usage était déjà plus ancien en France, il en est fait mention dans la charte de Thibaut, comte de Champagne, de l'an 1198, & dans les établissements de S. Louis en 1270, & autres lois postérieures. Il a lieu dans tout le royaume, tant en pays de droit écrit, que dans les pays coutumiers; la coutume de la Salle, bailliage & châtellenie de Lille en Flandres, est la seule qui la rejette. L'objet du retrait féodal est de donner au seigneur la faculté de réunir le fief errant au fief dominant, de profiter du bon marché de la vente, & empêcher que le fief ne soit vendu à vil prix en fraude du seigneur, enfin que le seigneur ne soit point exposé à avoir malgré lui un vassal qui ne lui serait pas agréable. Le seigneur peut céder à un autre son droit de retrait féodal. Ce droit n'a lieu qu'en cas de vente ou autre contrat équipollent à vente; tels que le bail à rente rachetable, la dation en paiement, l'adjudication par décret. Il n'a point lieu dans les mutations par échange ou par succession, soit directe ou collatérale, par donation ou legs. Le seigneur ne peut pas non plus user de retrait en cas de partage ou licitation, pourvu que celui qui demeure propriétaire du tout ou de partie de l'héritage fût l'un des copropriétaires à titre commun; mais il en suroit autrement s'il n'était devenu copropriétaire que par un titre singulier. Au reste, le retrait lignager est préféré au féodal, & le conventionnel est préféré à tous deux. Le seigneur a quarante jours, à compter de l'exhibition du contrat, pour opter s'il exercera le retrait, ou s'il recevra les droits dû pour la vente. Quand une fois il a fait son option, il ne peut plus varier. Tout ce qui est tenu en fief est sujet au retrait féodal en cas de vente."¹⁵

Aveu et dénombrement. "Dénombrement, (Jurisp.) Appelé par Dumoulin rénovation feudal, est une déclaration par écrit que le vassal donne à son seigneur, du fief & de toutes ses dépendances, qu'il tient de lui en foi & hommage. On l'appelle aussi aveu, & quelquefois aveu & dénombrement, comme si ces termes étaient absolument synonymes; cependant le terme de dénombrement ajoute quelque chose à celui d'aveu, lequel semble se rapporter principalement à la reconnaissance générale qui est au commencement de l'acte: au lieu que le terme de dénombrement se rapporte singulièrement au détail qui est fait ensuite des dépendances du fief." After all the obligation above are fulfilled then the fief-holder must provide a list with everything being held in the fief. A "Catalogus" usually very detailed with all the goods mobile or immobile belonging to the fief. "L'aveu & le dénombrement est dû au seigneur dominant à toutes les mutations de vassal. Il n'en est pas dû aux mutations de seigneur; si le nouveau seigneur en veut avoir un, il le peut demander: mais en ce cas l'acte est à ses dépens. La foi & hommage doit toujours précéder le dénombrement; mais l'acte de la foi & hommage peut contenir aussi le dénombrement. Le vassal n'a que quarante jours pour le fournir, à compter du jour qu'il a été reçu en foi & hommage. Le seigneur dominant peut saisir le fief servant, faute de dénombrement: mais cette saisie n'emporte pas perte de fruits. Quand le vassal n'a point connaissance de ce qui compose son fief, il peut obliger le seigneur

¹⁵ http://portail.atilf.fr/cgi-bin/getobject_?a.105:313:16./var/artfla/encyclopedie/textdata/image/, accessed on May 3, 2013.

de l'aider de ses titres, & de lui donner copie des anciens dénombrements: le tout néanmoins aux frais du vassal."¹⁶

Homage is a personal act, imposed on the vassal, but not on the minor, who is incapable of service. In this case it is his guardian or bailiff who will advocate for him. Fealty is impossible to advocate and so he must profess it himself when he comes of age (20 for boys and 15 for girls)¹⁷. The woman is capable to profess fealty but if she is married then her fiefs become the duties of her husband or those (that) of the community. Homage however must be done personally by each

The Angevin Colonization. At the beginning of his reign Charles Robert started by importing a new fief-based property in order to protect the conquered lands. Action viewed odious and unacceptable by the locals¹⁸. This structure we believe was almost identical with the one present in the Kingdom of Naples, under the rule of Charles Robert, the Wise. The feud was granted by Charles in *capite de domino Rege*¹⁹. After the fealty oath and homage the *neo-feudatario* had to pay the *relevio* and the *ius tapeti*, first of French origin representing half *della rendita annuale del feudo*²⁰. The later "*imposta consisteva nel versamento di un oncia di oro ai camerari*"²¹. "*Il neo-feudatario in capite de domino Rege poteva ricevere l'assecuratio da parte dei suoi valvassori, dopo il giustiziere competente aveva fatto prestare a costoro il giuramento di fedeltà al re.*"²² Military service was proportional to the fief²³. The jurisprudence is aware of the Lombardian law²⁴: "*Si accetto la distinzione tra i viventes iure Francorum ed i viventes iure Langobardum; nel*

¹⁶ "*Voyez les commentateurs de la coutume de Paris sur l'article 8 & suivant; le traité des fiefs de M. Guyot, tit. de l'aveu & dénombrement; le traité des fiefs de Bille coq, liv. VII. (A)*", cf. http://portail.atilf.fr/cgi-bin/getobject_?a.105:313:16:/var/artfla/encyclopedie/textdata/image/, accessed on May 3, 2013.

¹⁷ R. L. Benson, *op. cit.*, p. 75.

¹⁸ Edouard Jourdan, *Histoire du Moyen Age*, Paris 1939, p. 397.

¹⁹ "*L'investitura del titolare di un feudo in capite era sancita dall'invio di un privilegio, esemplato sulla bulla creata di epoca normanna.*" (Istituto Storico Italiano per il Medio Evo, *L'État angevin. Pouvoir, culture et société entre XIIIe et XIVe siècle*, Rome-Naples 1998, p. 529).

²⁰ R. L. Benson, *op. cit.*, 1998, p. 529.

²¹ *Ibidem*.

²² *Ibidem*, p. 530.

²³ "*Tale consistenza era calcolata sulla base dell'unità di misura del feudum militis, fissate in epoca normanna, e che consisteva nell'assicurare la permanenza annuale presso l'esercito del re, per quaranta giorni di un cavaliere e de suo seguito. La spesa necessaria per tale servizio fu quantificata da Federico II in 20 once, allorché i feudatari regnicoli preferirono sempre più sostituire all'invio dei cavalieri e degli armati all'esercito del re (servitium personarum), la possibilità di versare una contribuzione in denaro (servitium pecuniarum). Carlo fissò la durata del servizio in tre mesi se le operazioni si svolgevano nel Regno, ad un mese se esse avvenivano fuori del Regno; et quicumque habuerit terram valentem annuas uncias auti XX, in quo valore unius militis et servitium trium mensium consistebat. Carlo II concesse ai barones, comites et alii feuda tenentes il diritto libere matrimonia contrahere*"; the only objection was to be *inter fideles*. *Ibidem*, p. 531.

²⁴ "*Omni populo iurisdictionem, habenti ius proprium statuere permittitur, quod ius civile vocatur, [...] facere statuta est iurisdictione in genere sumpta.*", as states Bartolus. (Giuseppe Ermini, *Scritti Storico-Giuridici*, Spoleto 1997, p. 849).

secondo caso il feudo non era divisibile e spettava al solo discendente diretto e legittimo; la formula sveva *pro se et heredibus fu modificata in pro te et ex tuo corpore legitime descendentibus*.²⁵ The status of an infeofed “*in capite*” offered among others, the right to choose one’s own vassals, immunity in the commerce of cereals outside of the kingdom, trial by peers²⁶. It was also imperative to belong to the “*ordo militum*”²⁷. Knights without fiefs could serve in the royal army as stipendiarii. “*Ogni cavaliere, che doveva disporre di quattro cavalli tra cui un destriero, era accompagnato da un armiger nobilis (lo scudiero) e de due garziones*.”²⁸ In a document from 1317 king Robert confers the meaning of general to Commune, and sanctions the fact that the ecclesiastics “*non debbano godere di abusive esezioni dagli oneri fiscali, ma essere soggetti alla regole a precetti del diritto Comune, dove ovviamente Comune non puo valere Romano e neanche Romano e Longobardo insieme*.”²⁹

In the Kingdom of Hungary the *servitium personarum* transformed into the *servitium pecuniarum*.³⁰ The military service was comuted “*nel vesamento di una somma di denaro proporzionata alla grandezza del bene feudale*.”³¹

²⁵ Cf. Istituto Storico Italiano per il Medio Evo, *op. cit.*, p. 531.

²⁶ “*Il diritto di esigere dai propri vassalli un moderato adiutorium straordinario. L’immunita dal dazio regio per il commercio di cereali fuori del Regno. Il giudizio del tribunale dei pari, gia vigente nel regno dal tempo di re Guglielmo I d’Altavilla*.”, cf. *Ibidem*, p. 532.

²⁷ “*Condizione indispensabile per diventare titolare di un feudo e prestare il fiuramento di fedelta vassallatica era quella di appartenere all’ ordo militum. Si trattava di un ceto, la cui chiusura era stata sancita da re Ruggiero II d’Altavilla nella Assisa de nova militia emanata ad adriano nel 1140, e che era stata scrupolosamente osservata da Federico II. Potevano diventare cavalieri soltanto i figli di cavalieri; gli estranei potevano accedere all’ ordo soltanto con il concesso regio. I primi sovrani angioni sancirono questa prassi fino a definire le trasgressioni abusiones tam infames et enormes*.”, cf. *Ibidem*, p. 532-533.

²⁸ *Ibidem*, p. 533.

²⁹ “*Si vevo pheudatatii ab illo tempore exiverit ad prestandum juramentum secundum jura comunia sufficientes habiles reputentur. Item statuimus quod ecclesie in toto Regno Sicilie gaudeant privilegio eis per jura communia indulto; scilicet, quod rei qui ad ecclesias confugiunt, abinde non extrahantur inviti, nisi in casibus a jure permissis. Si vero pheudatarii ex illo tempore exiverint, ad prestandum juramentum secundum jura communia sufficientes et habiles reputentur. Item caveant, Justitiiarii et Judices, ne contra aliquem ad tormenta procedant, nisi secundum ordinationem et formam constitutionum Regni et juris communis. Si quis autem, suis tenimentis et iuribus non contentus, huiusmodi designatos fines transire presumpserit et extra tenimentum suum... animalia vel res alia ceperit, preter penam iure communi contentam, in quam ex huiusmodi violentia sive cum armis sive sine armis fuerit, incidet, per Justitiarium regionis absque mandato aliquo puniendus. Cum donatio inter virum et uxorem sit de jure communi prohibita in liberos existentes in potestate parentum [...] concessionones nostras [...] manere volumus donec [...] iudicium libera decernat. In accusatis de crimine lese maiestatis et heresis, publicis latronibus, disrobatoribus viarum, captis in flagranti crimine, aut in fuga, in teste cavillante et in eo qui deliquit, a Iudice sedente pro tribunali jus romanum et commune sevir, ut preter dormam et modum presentis edicti subdantur, sicut Iudici de Jure videbitur, questioni*.”, cf. *Studi di Storia e Diritto in onore di Enrico Besta*, Milano 1939, p. 289.

³⁰ “*Lentamente mut anche il concetto della pena, che perde l’antico carattere vendicativo, che era stato proprio della faida, ma che persisteva anche nel sistema della composizione in denaro, nella*

Regarding the administration of justice, partiality of the “*curia ducis*”³², was a must in his reformation: “*Justiciam ministrando neminem gravando rancore vel odio seu relevando iniuste prece vel precio gracia vel amore prout in Curia nostra corporale prestitisti exinde ad sancta Dei evangelia iuramentum quod de laudabili eiusdem officij administraione in qua utique iura communia constitutiones Regni et capitula pro eius status reformatione composita sine transgressione servabis te processus lucidi conprobent et opera laudanda commendent*”³³.

The honor system, we believe was indeed functional in medieval Hungary and was stressed in Zoltan Kordé study³⁴, where he mentions the discovery and the role that Pal Engel had attributed to honor:

*“Un autre changement important concernant la dignité est en relation avec la réforme gouvernementale de Charles Ier. Dans l'historiographie hongroise moderne, Pal Engel a révélé un aspect important de ces réformes, le système de l'honor. Le mot honor désigne à la fois l'office et les domaines avec leurs revenus, c'est-à-dire que le dignitaire, pour le temps au cours duquel il exerce ses fonctions, jouit des revenus des domaines appartenant à la dignité. Après quelques étapes antérieures, c'est Charles Ier qui introduit ce système en Hongrie. Sous son règne, le comté des Sicules devint aussi un honoré avec des châteaux et des revenus permanents”*³⁵.

During the succession wars, the power of the aristocratic families increased and the kingdom was de facto divided in smaller parts governed by members of the high aristocracy assuming titles of major officers of the realm, but actually playing

quale aveva sempre parte l'offeso o la sua parentela.” (Giulio Vismara, *Scritti di Storia Giuridica*, Milano 1987, p. 493).

³¹ Istituto Storico Italiano per il Medio Evo, *op. cit.*, p. 534.

³² “*Per i territori di Napoli e Gaeta, competente era la curia ducis giudicante con la partecipazione di elementi locali. In questa varietà v'era un criterio comune ed era questo: contro l'azione del publicus minister il ricorso doveva essere portato alla pubblica autorità suprema da identificarsi nel duca o nel principe dei ducati campani o dei principati longobardi premonarchici. Fused le varie circoscrizioni nell'unità del regno, la carte indicano nel tribunale regio il supremo organo di ricorso e controllo; alla curia regia confluivano perciò le varie querimonie pro defectu iustitiae; e questa giustizia seguiva di pari passo le interne vicende del regno e la fortuna dei comuni ordinamenti giudiziari normanni.”* (Sergio Mochi Onory, *Studi sulle origini storiche dei diritti essenziali della persona*, Bologna 1937, p. 321).

³³ *Studi di Storia e Diritto in onore di Enrico Besta cit.*, p. 278.

³⁴ Published in *La noblesse dans les territoires angevins à la fin du Moyen Âge*. Actes du colloque international organisé par l'Université d'Angers, Angers-Saumur. 3-6 juin 1998 (ed. by Noël Coulet & Jean-Michel Matz). Rome 2000.

³⁵ “*Un autre changement important concernant la dignité est en relation avec la réforme gouvernementale de Charles Ier. Dans l'historiographie hongroise moderne, Pal Engel a révélé un aspect important de ces réformes, le système de l'honor. Le mot honor désigne à la fois l'office et les domaines avec leurs revenus, c'est-à-dire que le dignitaire, pour le temps au cours duquel il exerce ses fonctions, jouit des revenus des domaines appartenant à la dignité. Après quelques étapes antérieures, c'est Charles Ier qui introduit ce système en Hongrie. Sous son règne, le comté des Sicules devint aussi un honoré avec des châteaux et des revenus permanents.”* (*La Noblesse dans les territoires Angevins cit.*, p. 452).

their own policy without regard to royal authority. Charles Robert needed almost ten years 1311-1321 to establish fully his own authority over the aristocracy in most of the kingdom (including Hungary, Transylvania and Slavonia).

The main features of the system of *familiaritas* were seen as follows: less powerful and poorer nobles entered in the service of magnates and performed for them as their lords (*domini*) different administrative and military tasks as their retainers (*servientes / familiares*). For that they received a salary usually paid in cash³⁶. Grant of land was given to the retainers only exceptionally, and that was usually a reward for former service and not a precondition. Retainers were subjects to their lords only in matters of service but retained all their noble privileges and their legal immediacy to the crown. Compared to western feudalism these arrangements were less personal, more directly connected with a particular service, and almost never hereditary.

Influences and Mutations of the *Iuramento fidelitatis* during the First Half of the 14th Century in the Medieval Kingdom of Hungary

(abstract)

The article presents the development of the concepts of vassalage and homage and also the setting up of obtaining property. The institutionalization of the late 13th century is the starting point of this research. Following these concepts specific to Western Europe, they have translated into the Kingdom of Hungary, *via* the Anjou dynasty starting with the oath of loyalty and the kings' *fideles* and familiars. We bring arguments to support the 'Anjou Colonization' assumption and present the recoil on property.

³⁶ *Ibidem*, p. 135.