Tomáš Gábriš

MAINTAINING PEACE AND JUSTICE IN ÁRPÁDIAN HUNGARY: PUNISHMENT AND SETTLEMENT OF DISPUTES

MA Thesis in Medieval Studies

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by

Tomáš Gábriš

(Slovakia)

Thesis submitted to the Department of Medieval Studies,

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Accepted in conformance with the standards of the CEU

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Thesis Supervisor

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I, the undersigned, **Tomáš Gábriš**, candidate for the MA degree in Medieval Studies declare herewith that the present thesis is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person's or institution's copyright. I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Budapest, 6 June 2007

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Signature

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INTRODUCTION

This thesis is to a great extent influenced by the numerous literature on conflict studies. However, its scope is not limited only to a narrow study of conflict resolution. This aspect is only one of the numerous other aspects, leading altogether to a research of the relationship of norm and practice in Árpádian Hungary. The basic material on which this research is undertaken is reports on different punishments in statutory law and in practice imposed by both official judges and other persons (such as arbitrators and mediators) who intervened in the process. Studying punishment and especially when finding out a certain pattern (as it is in this thesis), one inevitably gets into a question of the goal of punishment. This problem is also treated here.

Conflict studies

Conflict studies have been popular since the 1970s, when Frederic Cheyette published his article on the reconceptualization of institutional legal history.[1] In 2003, Warren C. Brown and Piotr Górecki offered a general overview of conflict studies.[2] They understand conflict as:

> several kinds of interpersonal or intergroup tension, and several modes of managing that tension. One type of such tension is dispute–which may be specified as the phase of conflict which is articulated as a claim, between two or more parties, concerning some specific subject matter.[3]

However, their focus extends:

> beyond disputing, to encompass threats, promises, negotiation, ritual, use of force, and the associated range of emotions, all of which may precede, accompany, follow, or indeed take the place of, disputing. The modes of managing social tension include, on the one hand, the law, institutions, and norms in (what we would consider) a formal, autonomous sense, and, on the

[1] Frederic Cheyette, "Suum cuique tribuere," *French Historical Studies* 6 (1970): 287-99, where he noted that the disputes he knew from his sources did not seem to have been resolved by the application of abstract, general, supra-personal rules to particular circumstances or by judgment, that is, a formal pronouncement by a neutral third party with the power to impose a resolution by virtue of his office. In contrast, the patterns that he found consisted of negotiation, mediation, and compromise.

[2] Warren C. Brown and Piotr Górecki, "What Conflict Means: The Making of Medieval Conflict Studies in the United States," *Conflict in Medieval Europe: Changing Perspectives on Society and Culture*, ed. W. C. Brown and P. Górecki (Aldershot: Ashgate Publishing, 2003), 1-35. (Hereafter: Warren C. Brown, Piotr Górecki, "What Conflict Means.")

[3] Ibidem, 1.

> other, those practices by parties to conflict, and by a wide variety of other people and groups, that affect the reality of the law, institutions, and norms as aspects of lived social experience.[4]

The whole idea of modern conflict studies was, according to Brown and Górecki, based on a:

> shift of attention by those scholars who were skeptical about 'the law', but interested in the social phenomena to which the word refers, toward behavior (or, in more updated language, practice)–that is, an inquiry into specific, concrete interpersonal activities that occur in the course of transactions which an earlier generation would have called 'legal'.[5]

Conflict resolution is also studied intensively in international law and international relations,[6] as well as among anthropologists.[7] It is in fact connected to a much wider context: studying violence and anger,[8] crime,[9] and medieval law in general.[10] Some anthropological attempts to compare medieval conflict resolution with twentieth

[4] Ibidem, 1-2.
[5] Ibidem, 5.
[6] John Burton, *Conflict: Resolution and Prevention* (New York: St. Martin's Press, 1990); C. R. Mitchell, *The Structure of International Conflict* (Houndmills: The Macmillan Press Ltd, 1981); Michael Nicholson, *Rationality and the Analysis of International Conflict.* (Cambridge: CUP, 1992); Saadia Touval and I. William Zartman, ed., *International Mediation in Theory and Practice* (Boulder, CO: Westview Press, 1985); Oliver P. Richmond, *Maintaining Order, Making Peace* (Houndmills: Palgrave, 2002).
[7] E.g. Jonathan Skinner, "Anthropology and Conflict Resolution," *Anthropology Today* 10, No. 5 (1994): 22-23; Joseph Westermeyer, "Assassination and Conflict Resolution in Laos," *American Anthropologist* 75, 1 (1973): 123-131; Laura Nader and Duane Metzger, "Conflict Resolution in Two Mexican Communities," *American Anthropologist*, 65, 3 (1963): 584-592; Clayton A. Robarchek, "Conflict, Emotion, and Abreaction: Resolution of Conflict among the Semai Senoi," *Ethos* 7, No. 2 (1979): 104-123; Lawrence C. Watson and Maria-Barbara Watson-Franke, "Spirits, Dreams, and the Resolution of Conflict among Urban Guajiro Women," *Ethos* 5, No. 4 (1977): 388-408; Ruth S. Freed and Stanley A. Freed, "Unity in Diversity in the Celebration of Cattle-Curing Rites in a North Indian Village: A Study in the Resolution of Conflict," *American Anthropologist* 68, No. 3 (1966): 673-692.
[8] Viljanaa Toivo, Asko Timonen, and Christian Krötzl, ed. *Crudelitas: The Politics of Cruelty in the Ancient and Medieval World.* (Krems: Medium Aevum Quotidianum, 1992); Guy Halsall, "An Introductory Survey," in *Violence and Society in the Early Medieval West* (Woodbridge: The Boydell Press, 1998); Richard E. Barton, "Zealous Anger and the Renegotiation of Aristocratic Relationships in Eleventh- and Twelfth-Century France," in *Anger's Past*, ed. B. Rosenwein (Ithaca: Cornell University Press, 1998).
[9] Trevor Dean, *Crime in Medieval Europe* (Harlow: Pearson Education Ltd., 2001) (hereafter: Trevor Dean, *Crime in Medieval Europe*); D. J. Kagay, L. J. A. Villalon, ed., *The Final Argument* (Woodbridge: The Boydell Press, 1998); Barbara A. Hannawalt and David Wallace, ed., *Medieval Crime and Social Control* (Minneapolis: University of Minnesota Press, 1999).
[10] Kern's book on medieval law is still of value–Fritz Kern, *Kingship and Law in the Middle Ages: Studies*, tr. S. B. Chrimes (New York: Harper & Row, 1970); from modern scholarship it is mainly Alan Harding, *Medieval Law and the Foundations of the State* (Oxford: Oxford University Press, 2002) and Anthony Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasant's Revolt* (Manchester: Manchester University Press, 2001).

century "primitive" societies are also conflict-oriented,[11] as studied, for instance, the work of Bronislav Malinowski.[12] They try to explain the king's interest in part (or whole) of the compensation paid by the culprit by comparing the situation in tribes like the Zulu, where every man belonged to the king, who therefore had an interest in compensation payment.[13] Of course, the situation in Hungary from the eleventh until the early fourteenth century can not be compared with traditional societies lacking any official governmental institutions. However, certain observations are of general validity for human society in any stage of the development of the state and society. Thus, realizing the role of the supernatural as a legal force used in bringing into effect the rules of tribal law[14] can help in understanding the role of the church and Christian religion in similar processes in medieval Europe. True, in Hungary in the period that I am dealing with, the position of the church was only in the process of construction, but it was the main arbiter of supernatural power. The rarity of the vendetta in comparison with the financial settlement in tribal societies[15] has a direct counterpart in Árpádian Hungary, where almost no feuds are mentioned in the extant sources (which might be, of course, based only on the lack of surviving evidence). Also, an interest in cattle shown in the royal regulations as a means of financial compensation is an important similarity,[16] as society in Árpádian Hungary was essentially agricultural (initially mainly cattle-breeding), recognizing cattle as an item of value. Similarity can be detected in some common well-established and well-known codes

[11] For example, Max Gluckman, *The Ideas in Barotse Jurisprudence* (New Haven: Yale University Press, 1965). Idem, *Custom and Conflict in Africa* (Oxford: Basil Blackwell, 1973). (Hereafter: Gluckman, *Custom and Conflict*.)
[12] Bronislav Malinowski, *Crime and Custom in Savage Society* (London: Routledge & Kegan Paul, 1926). (Hereafter: Malinowski, *Crime and Custom.*)
[13] Ibidem, 212.
[14] Malinowski, *Crime and Custom*, 86.
[15] Ibidem, 115.
[16] E. E. Evans-Pritchard, *The Nuer: A Description of the Modes of Livelihood and Political Institutions of a Nilotic People* (Oxford: Clarendon Press, reprint, 1967), 16, 153, and mainly 167. (Hereafter: Evans-Pritchard, *The Nuer*.)

of morals and law, which in the case of traditional societies prevent a drift into lawlessness.[17] In Árpádian Hungary this allowed a dispute to be settled in a peaceful manner without the participation of an officially appointed judge. The same compromises and mutually satisfactory resolutions could be reached in both private settlement and judicial decision. Finally, the famous anthropologist Evans-Pritchard, studying the Nuer people, recognized five important elements in the settlement of disputes, which seem to be general enough to be applied to any human society, not excluding Árpádian Hungary. These are: (1.) the desire of the disputants to settle the dispute, (2.) the role of the chief (a politically powerful person) as a mediator, (3.) full and free discussion leading to a high measure of agreement among all present, (4.) the feeling of not losing dignity when one gives way to the mediator instead of one's direct opponent, and (5.) recognition by the losing party of the justice of the other side's case.[18]

Methodology and research question:

In the restricted scope of this thesis I am not able to deal with all the aspects of conflict in Árpádian Hungary. That is why I decided to concentrate mainly on the result of the settlement of conflicts (resolved conflict more than the resolution of conficts) and especially on the punishment imposed in judgment itself to see how justice was restored. Therefore, conflict resolution is only one part of my research. Besides that, I will also try to analyze the relationship between the written law and the actual practice of punishment together with the goals that punishment in this period probably followed. Moreover, I will also look at the relationship of the victim and offenders.[19] Due to the general lack of primary sources for the early history of

[17] Gluckman, *Custom and Conflict*, 2-3. On the other hand Evans-Pritchard (151) mentions the widespread solution of disputes by feuds and fighting among the Nuer.
[18] Evans-Pritchard, *The Nuer*, 164.
[19] An axample of such research is contained in Trevor Dean's *Crime in Medieval Europe*.

medieval Hungary, I will consider as conflict every case of dispute and violence. However, I will use only those sources on legal practice which report some form of resolution of the conflict. I will also omit the question of justice connected to the restoration of damages caused by, for example, Mongols; I will not deal with *repressalia* (violence in general) against foreigners or *iudicia exercitualia* (fines for not following the king's call to arms). Penance according to ecclesiastical norms will play only a marginal role in my study.

Why limit research to the period of Árpádian Hungary and not take into consideration later development? The first reason is the limited scope of an MA thesis. The second reason is the fact that the years 1000-1301 represent the founding period of the legal system of medieval Hungary. In this period, "law" (if one is willing to accept its existence in the modern sense for this period) as it appears in the sources of legal practice mirrors ideas of justice of that layer of society which plays a role in most of the records. These ideas are not based on any theoretical legal approach, but on actual experience. Of course, in other levels of society, namely among the clergy, there was already a strong influence of foreign, scholarly ideas of law and justice–for example in the form of transplanted patterns in the laws of the first kings. Foreign patterns could have been and certainly were brought by new settlers and foreign monks who established their monasteries in Hungary. True, foreign settlers were granted royal privileges which sometimes may testify to different norms in conflict resolution (e.g., bans on duels or other forms of ordeal), however, I will omit these groups as they are not of primary importance for my research and are connected more with the problem of conflict resolution in emerging privileged towns.

The third reason for the limits of my thesis is the nature of the current study of contemporary legal history in our region, where statutory law is still considered to be

the main source of knowledge of medieval law. I will try to compare the conflict resolution (including punishment in what could be called a "criminal" case) as regulated by statutory law with the actual practice to find out and show how much the practice in Árpádian Hungary differed from statutory laws. My main research questions will therefore be: How were disputes settled in Árpádian Hungary–by judgment (formal process under auspices of royal judges) or private settlement? Is it possible to say which way prevailed? Was statutory law used in the practice of conflict resolution–either in judicial (where one could expect that) or extrajudicial processes? Who intervened in the extrajudicial process? What were the most common punishments or means of settling a dispute? Why is there a dearth of reports on corporal punishment? What were the goals followed by the parties and the authorities deciding the dispute? And finally: What was the relationship between the offender and the victim after the conflict was settled? The goals that I follow here are thus not limited to the conflicted resolution, but fall into broader context of research of character of medieval law and of relationship between the norm and the practice.

To answer my research questions, I will first analyze the character and reliability of the selected primary sources and briefly summarize the secondary literature that I am using to see whether certain methods used by other scholars or their conclusions can be applied to my work. Then I will analyze the system of punishment in statutory law and in practice, looking for similarities and differences. I infer that comparing actual and prescribed punishments (which represent the basis of statutory law) one can reveal the relationship between the statutory law and actual practice. It is a widespread idea that medieval punishment was cruel and based on mutilation. That is the idea which is offered by the statutory laws of the period. It has also been spread by philosophers like Michel Foucault, who, in his book *Discipline*

and Punish,[20] saw a strict opposition between the "medieval" system of punishment and the modern system, born in the eighteenth century, when the body of criminal is no longer made to suffer various corporal and capital punishment, but the criminal's mind, character or soul became the object of punishment. Allegedly based on Marxist ideology,[21] Foucault's theory claims that corporal punishments in a feudal economy increased due to the early stage of the development of money and production where the body was the only property accessible. That is why, according to his view, the major form of punishment in the centuries before the eighteenth was physical, the infliction of pain on the body. A similar idea of cruelty was presented earlier by Jan Huizinga in his *Waning of the Middle Ages.*[22] However, as some authors have already pointed out, in practice, no evidence of such treatment[23] is known, "while the repertoire of prescribed punishments was fairly extensive and quite severe, in practice the usual punishment seems to have been confiscation of the lands of the culprit…"[24] Similarly, as in Western Europe and in the chronicles and legends of Central Europe, mutilations and corporal punishments were reserved for those who challenged royal or princely authority.[25] This leads to the question of the true nature and importance of

[20] Michel Foucault, *Discipline and Punish: The Birth of the Prison*, tr. Alan Sheridan (New York: Vintage Books, 1979), 8, 11, 109.
[21] Dean, *Crime in Medieval Europe*, 119.
[22] Ibidem, 119–120.
[23] Emily Zack Tabuteau, "Punishments in Eleventh-Century Normandy," *Conflict in Medieval Europe*, ed. W. C. Brown and P. Górecki, 131-149 (esp. 138). (Hereafter: Tabuteau: "Punishments.") She compared Norman statutory law–*Consuetudines et Iusticie*–with practice and came to the conclusion from the three known examples of the use of execution or mutilation in eleventh-century Normandy that those punished were rebels against ducal authority and each act of corporal punishment occurred while the man who ordered the mutilation or execution was in the throes of uncontrollable anger..
[24] Ibidem, 147-148.
[25] For example, in the Czech Chronicle of Cosmas (Bertold Bretholz and W. Weinberger, ed., *Die Chronik der Böhmen des Cosmas von Prag*. Monumenta Germaniae Historica – Scriptores rerum Germanicarum, nova series 2, (München: Monumenta Germaniae Historica, 1980).),, where Duke Boleslaus is reported to having been blinded (*dux Bolezlaus capitur atque oculis privatur*, 61), Bretislav and his companions were blinded, their noses, legs, and arms were cut off (*aliorum erutis oculis et naribus abscisis, aliorum manibus et pedibus truncatis*, 75), a certain *comes* fled in order not to be deprived of his eyes and leg (*oculos et pedem suum… amisisset*, 111), Neusa, a *familiaris* of *comes* Mutina was blinded and castrated (*oculis et mentula est privatus*, 191), spies were deprived of noses and eyes (*naso privaverat et visu*, 194), and finally, in a fight between princes, a certain Iohannes was deprived of his eyes and nose (*visu privatus est et naso*, 203). In a Polish chronicle, *Gesta*

the statutory law. Why did it contain mutilating punishments which were apparently not applied in practice? Esther Cohen has claimed that the codes represented only a literary genre of self-determination of society. She also claims that "as long as the authoritative knowledge of the law remained in the hands of a largely illiterate group of people, the writing of the law was both useless and counterproductive."[26] Medieval law was perceived in the same manner by medieval lawyers themselves–for example, Ivo of Chartres claimed that the authority of the *decreta* should not be taken absolutely. Each case should be interpreted individually, knowing when to apply a rule rigorously, when in moderation, and when with mercy. He also argued by analogy that there can be no contradiction in the word of God, whose psalms praise both mercy and judgment.[27] In our modern understanding it is relatively easy to draw a line between a system of penitence for a wrong deed (a sin) and a judicial system of secular punishment. In the former, penitence is conducted by the free will of the penitent whereas the judicial punishment in the latter is based on accusation in the courts, where the accused fights to prove his innocence. In the medieval world these categories overlapped.[28] The Church's law and view of punishment blurred the boundaries between crime and sin. G. R. Evans calls attention to Isidore's *Etymologies*, where he moves from talk of crime to using the word sin. He writes

principium Polonorum (Paul W. Knoll and Frank Schaer, tr. and ed. *Gesta Principium Polonorum: The Deeds of the Princes of Poles.* Budapest: CEU Press, 2003), King Boleslaus blinded a certain duke (*eorum ducem… excecaverat*, 74-75), he had Bishop Stanislas mutilated (*pontificem truncacioni membrorum adhibuit*, 96-97), and when a rebel, Zbigniew, fled to the fortress, he contemplated whether his life or some limb would be forfeit (*utrum vitam perdat an membrorum aliquid est incertus*, 128-129). "Chronici Hungarici Compositio saeculi XIV," in *Scriptores Rerum Hungaricarum*, vol. 1, ed. Emericus Szentpétery (Budapest: Academy of Sciences, 1937), 217-505 (hereafter: Chronici Hungarici Compositio saeculi XIV) mention the quartering of Koppány (*ipsum vero Cupan Beatus Stephanus in quatuor partes fecit mactari*, 313) for the region of Hungary and the blinding and pouring lead into the ears of Vazul (*effodit oculos et concavitates aurium eius plumbo obturavit et recessit in Bohemiam*, 320).

[26] Esther Cohen, *The Crossroads of Justice: Law and Culture in Late Medieval France* (Leiden: E. J. Brill, 1993), 5, 9. (Hereafter: Cohen, *The Crossroads of Justice.*)

[27] Geoffrey Koziol, *Begging Pardon and Favor* (Ithaca: Cornell University Press, 1992), 215. (Hereafter: Koziol, *Begging Pardon and Favor*.)

about *peccata*, *crimina*, and *malum* and offers a long list of different punishments.[29] Baldus de Ubaldis in the fourteenth century viewed sin as breaking the law, the legal and moral obligation that man owes to his Creator.[30] However, these ideas are highly theological and theoretical and were probably not known and shared by the secular royal judges of Árpádian Hungary. Still, they could have shared the basic concept of punishment as following the purpose of making good a wrong, which is a general idea of reparation for fault. This was widespread all over Europe as early as the times of Roman law and also later in the barbarian laws and penitential codes. In the ecclesiastical and theological view of crime as sin, the crime was understood to be mainly directed against God, and the main purpose of the punishment was to have the culprit repent and thus reconcile the sinner with God. In the secular understanding, punishment must also have been perceived as doing some good–at least altering the position of the culprit and thus making it possible for him to be restored to the community as a forgiven man.[31]

In search of common elements and differences in the system of remedies I will also compare the system of the judicial decision of conflicts with arbitration and mediation in the process of the private settlement of disputes without an official judicial authority. Finally, in the last chapter, I will offer a glimpse into the relationship between offender and victim as revealed by the modest evidence in my sources.

As far as the choice of sources is concerned, there is no great problem with the statutory law. The laws of the Kingdom of Hungary have been published in an English translation and their corpus and wording are more or less the same in every

[28] G. R. Evans, *Law and Theology in the Middle Ages* (London: Routledge, 2002), 19. (Hereafter: Evans, *Law and Theology.*)
[29] Ibidem, 13.
[30] Ibidem, 14.

edition. The *Regestrum Varadinense* is a unique source on ordeals in Hungary in the first half of the thirteenth century, also offering some brief information on conflict resolution in both judicial and extrajudicial contexts. The choice of relevant charters is more difficult. As there are a large number of them for this period, mostly from the thirteenth century, I used the possibility offered by a recent publication in electronic form of a collection of charters published by Gusztáv Wenzel at the end of the nineteenth century in thirteen volumes.[32] Using a number of keywords[33] from the secondary literature and some known sources (charters) on conflict resolution I was able to prepare a list of ninety-two charters (given in the appendix) reporting a "final" resolution of a conflict (however, whether this was really final can never be claimed for sure) relating to the core territory of the Hungarian Kingdom. I did not use charters relating to the territory of Dalmatia or Transylvania, where the situation may have been culturally different from the practice in central Hungary. However, even if I included those charters in my list, the total number of reported conflict resolutions would not increase significantly, as the actual resolution of a conflict is only rarely reported. I am well aware that my sample is restricted because of the limited number of charters that are extant from this period and also because of the use of only one edition from among other editions (e. g., by Georgius Fejér) and even this is limited to a sample of approximately one hundred charters. However, I infer that the main trends in punishment and conflict resolution can be discovered even from this limited

[31] Ibidem, 172-173.

[32] Gusztáv Wenzel,ed. *Codex diplomaticus arpadianus continuatus*, vol. 1-13. Árpádkori Új Okmánytár 1-13. (Facsimile reprint. Pápa: Jókai Mór Városi Könyvtár, 2001-2003). (Hereafter: Wenzel).

[33] In different grammatical forms and spellings: occidere, appellare, invadente, perjuri, ligaverit, oculis, falsi, verberaverit, injuste, aboculetur, rapuerit, violaverit, incendium, calumpnie, inclusus, ergastuli, custodie, privatione, evagnatione, iuguletur, nasum, discordiis, controversiis, flagellatus, combussi, destruxi, damnum, restitutio, satisfactio, effusio, mutilatio, striga, sentenciae, iuvencis, adulatione, aures, fraudem, excommunicet, anathematzetur, degradetur, obcecatione, detruncatione, lingua, suspendatur, depilentur, tonsura, citavit, gladio, necantes, ultio, vindex, repressalia, recuperationes, inquisitio, armata, homicidio, adiudicare, interfeci, poena, duellum, birsagium, homagium, compositio.

number of cases, especially when compared with the results of other scholars' research. It is necessary to note here that this is only a first step in the research of these problems in the territory of medieval Hungary and that the field requires further and deeper examination.

As far as the specific terminology of the Hungarian medieval period is concerned, the terms which could be unfamiliar to a reader who is not an expert in Hungarian history are explained in the glossary. These often could not have been translated to English without losing their meaning or making a false impression of being comparable to contemporary English realia.

1 SOURCES AND LITERATURE

Primary Sources

The primary sources consulted are the royal statutory laws, a selection of extant charters, and the *Regestrum Varadinense*. As the chronicles and legends do not contain any information on punishment or conflict resolution on the level other than challenging the princely or royal authority, I will not include any of them.

The statutory laws of the period have been published several times.[34] Many scholars have tried to analyze these laws, considering them to contain the actual valid law used in Árpádian Hungary. However, no contemporary sources affirm the use of these laws in practice. Moreover, the versions that are extant are not the originals, but only later transcripts (only the first book of the laws of Saint Stephen is extant in a version from the twelfth century, thus relatively close to the date of issue), moreover with certain differences in content.[35] I will be using the latest bilingual Latin-English edition by János M. Bak et al.[36] According to these editors, the laws of King Stephen in two books can be dated to approximately the first years of his reign (the first book, after 1000 A.D.) and to the last decade of his reign (the second book, 1030-1038

[34] An overview of previous editions is to be found in János M. Bak, György Bónis, James Ross Sweeney, ed. and tr., *The Laws of the Medieval Kingdom of Hungary* Vol. 1, 1000-1301. *Decreta Regni Mediaevalis Hungariae.* Tom. 1 1000-1301. The Laws of Hungary Series I: 1000-1526. Vol. 1: 1000-1301. *The Laws of East Central Europe.* 2nd rev. ed. (Idyllwild, CA: Charles Schlacks, Jr., 1999). (Hereafter: DRMH 1.) One can mention for example an edition by Závodszky: Levente Závodsky, *A szent István, szent László és Kálmán korabeli törvények és zsinati határozatok forrásai* (The sources of laws of saint Stephen, saint Ladislas and Coloman and of the synodal decisions) (Budapest: Szent-István-Társulat Tud. És Irod. Osztálya, 1904). Also available on the internet: http://jmvk.compunet.hu/szoveg/kiadvany_new/szentistvan.htm.

[35] This was analyzed by Monika Jánosi, *Törvényalkotás Magyarországon a korai Árpád-korban* (Legislature in Hungary in Árpádian period) (Szeged: Szegedi Középkorász Műhely, 1996), 67-96. (Hereafter: Monika Jánosi, *Törvényalkotás.*)

[36] DRMH 1. Moreover, editions of later laws and customs will be used as well - János M. Bak, Péter Banyó, Martyn Rady, *The Customary Law of the Renowned Kingdom of Hungary: A Work in Three Parts, the "Tripartitum."* Tripartitum opus iuris consuetudinarii inclyti regni Hungariae (Idyllwild, CA: Charles Schlacks, Jr., Budapest: Department of Medieval Studies, Central European University, 2005), 69. (Hereafter: *Tripartitum.*) And János M. Bak, Pál Engel, James Ross Sweeney, ed. and tr., *The Laws of the Medieval Kingdom of Hungary*, vol. 2 1301-1457 (Salt Lake City: Charles Schlacks, Jr., 1992). (Hereafter: DRMH 2.)

A.D.).[37] Saint Ladislas' laws, consisting of three books, are dated as follows: the first book, consisting of the canons of the Synod of Szabolcs, certainly to the year 1092, but the other two are probably to be judged as collections of decrees of different times (the third book may be dated to the reign of King Géza I or of Salomon), with the final redaction perhaps as late as King Béla III's reign.[38] Coloman's laws again lack certain dating, but as Archbishop Seraphin, to whom the extant text is dedicated, died in 1104, the laws were probably written before this date.[39] The character of these texts, mainly from the point of view of their practical use, will be one of the research questions I am posing in this thesis.

The *Regestrum Varadinense* is a collection of reports on the outcome of ordeals from the years 1208 to 1230.[40] However, it would not be important for my thesis if these reports did not sometimes contain also a note on the final (?) outcome of the dispute–whether it was settled by the parties to the dispute themselves alone or with the help of mediators or determined by the selected arbitrators. Sometimes even judge's decisions are reported here. All in all, the *Regestrum* contains reports on 389 cases, of which 369 are cases of a conflict. According to Van Caenegem's calculations, from among those, seventy-five cases ended in an agreement and

[37] DRMH 1 77.
[38] Ibidem, 83.
[39] Ibidem, 88.
[40] It was published several times in the past – an overview of the editions is in the edition published in 1903 by Joannis Karácsonyi and Samuelis Borovszky, ed., *Regestrum Varadinense examinum ferri candentis ordine chronologico digestum descripta effigie editionis A. 1550 illustratum sumptibusque capituli Varadinensis Lat. rit.* (Budapest: Hornyánszky, 1903) (hereafter: *Regestrum Varadinense*), which is the version I am quoting from in this thesis. The content of the *Regestrum* was also examined in detail by scholars such as Robert Bartlett (Robert Bartlett, *Trial by Fire: The Medieval Judicial Ordeal,* (Oxford: Clarendon Press, 1999.) (hereafter: Bartlett, *Trial*), who tried to draw certain trends from the number of ordeals performed in individual years for which there are reports (63, 128-129). Besides Zajtay (I. Zajtay, "Le registre de Várad: Un document judiciaire du XIIIe siècle," *Revue d'histoire du droit* 4, No. 32, (1954): 527-562.) he also quotes Brown's *Society and the Supernatural*, Caenegem's *La Preuve*, and Hyams' *Trial by Ordeal*. From among other authors James Ross Sweeney pays attention to the *Regestrum* – James Ross Sweeney, "Innocent III, Canon Law and Papal Judges Delegate in Hungary," in *Popes, Teachers and Canon Law in the Middle Ages*, ed. J. R. Sweeney and Stanley Chodorow (Ithaca, London: Cornell University Press, 1989), 51.

twenty-five cases in the withdrawal of the complaint.[41] The remaining 269 cases either concluded with an ordeal or one of the parties did not appear and then sometimes the party who was present won the case for contumation. This source thus offers a valuable picture of the actual practice of conflict resolution in thirteenth-century Árpádian Hungary. The same holds for the extant charters published by Wenzel. This is a collection of 3,858 charters of official provenience (issued mainly by kings, palatines, chapters, bishops, and sometimes even ispáns). It was published between 1860 and 1874. It contains several mistakes, but it is still more reliable than the collection of György/Georgius Fejér from 1829-1844.[42] Although Wenzel published only 3,858 charters while Szentpétery and Borsa listed no less than 4,410 royal charters for this period[43] and there are 14,718 surviving charters for this period altogether, I believe this collection that contains about one-quarter of the Árpádian-age charters represents the best possible source option for my research. However, it is necessary to mention the character of these sources. As there are no extant judicial records for this period of Hungarian history, the only information on conflict resolution we have is comprised in donations, privileges and records of settlements reached in cases of disputes where an economic interest was present. The economic factor was the reason why all these documents were written down and preserved with care. Their brief content, concerned more with the property aspects than with the conflict itself, made my work even more difficult.

[41] R. C. Van Caenegem, *Legal History: A European Perspective*, 76.
[42] Georgius Fejér, ed., *Codex diplomaticus Hungariae ecclesiasticus ac civilis*, vol. 1-11 (Buda: Typis typogr. Regiae universitatis ungaricae, 1829-1844). Latin quotations used in the footnotes follow Wenzel's reading. Placenames are given in Hungarian and/or in the language of the successor country of the medieval Kingdom of Hungary.
[43] Imre Szentpétery, *Az Árpád-házi királyok okleveleinek kritikai jegyzéke* (Critical list of the charters of Árpádian kings), vol. 1 (Budapest: Magyar Tudományos Akadémia, 1923); vol. 2.1-2 (Budapest: Magyar Tudományos Akadémia, 1943); Imre Szentpétery, Iván Borsa, *Az Árpád-házi királyok okleveleinek kritikai jegyzéke* (Critical edition of the charters of Árpádian kings), vol. 2.3 (Budapest: Akadémiai Kiadó, 1961); vol. 2.4 (Budapest: Akadémiai Kiadó, 1987).

Secondary Literature

As far as the secondary literature is concerned, according to an overview on conflict studies offered by Brown and Górecki (another overview is offered by Diane Wolfthal[44]), the model for conflict studies was Stephen White's article published in 1978.[45] Simon Roberts' and John Comaroff's studies of the significance of norms as an aspect of behavior represent another important contribution.[46] They claim that norms matter in conflict above all not because they govern (or fail to govern) behavior, but because they are invoked as a frame of reference or a strategic resource within a broader, pragmatically coherent, cycle of behavior, and not as, in essence, a command to be applied to particular situations and then obeyed or implemented or ignored.[47] Roberts even disavowed the term "law" and replaced it with the notion of "order."[48] Further contributions to conflict studies, although indirect, are connected with the names of Thomas Bisson and Susan Reynolds. Bisson dealt mainly with questions of power[49] and Reynolds described a transitional period in the development of law in the twelfth century. In this century, law became increasingly specialized, thanks to a new type of activity–studying and the pragmatic application of law.[50] I

[44] Diane Wolfthal, "Introduction," *Peace and Negotiation: Strategies for Coexistence in the Middle Ages and the Renaissance* (Turnhout: Brepols, 2000), xi-xxviii.
[45] Stephen D. White, "Pactum… Legem Vincit et Amor Iudicium: The Settlement of Disputes by Compromise in Eleventh-Century Western France," *American Journal of Legal History* 22 (1978): 281-301.
[46] John L. Comaroff and Simon Roberts, "The Invocation of Norms in Dispute Settlement: The Tswana Case," in *Social Anthropology and Law*, ed. Ian Hamnett (London: Academic Press, 1977), 77-112; Simon Roberts, *Order and Dispute: An Introduction to Legal Anthropology* (Harmondsworth: Penguin, 1979); John L. Comaroff and Simon Roberts, *Rules and Processes: The Cultural Logic of Dispute in an African Context* (Chicago: The University of Chicago Press, 1981); Simon Roberts, "The Study of Dispute: Anthropological Perspectives," in *Disputes and Settlements: Law and Human Relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), 1-24.
[47] Warren C. Brown, Piotr Górecki: What Conflict Means, 6-7.
[48] Ibidem, 7.
[49] Thomas Bisson, *Conservation of Coinage: Monetary Exploitation and Its Restraint in France, Catalonia and Aragon, c. A.D. 1000–c. 1225* (Oxford: Clarendon Press, 1979); Thomas Bisson, *Fiscal Accounts of Catalonia under the Early Count-Kings (1151–1213)*, 2 vols. (Berkeley: University of California Press, 1984).
[50] Susan Reynolds, *Kingdoms and Communities in Western Europe, 900–1300*, 2nd ed. (Oxford: Clarendon Press, 1997); Susan Reynolds, "The Emergence of Professional Law in the Long Twelfth Century," in *Law and History Review* 21 (2003): 347-366.

will try in this thesis to connect both the approaches studying the invocation of norms (and their application in practice) and the ideas on learned law and the actual "pragmatic" application of law.

Patrick Geary's 1986 article on a typology of mechanisms of dispute settlement has, in contrast with the previously mentioned authors, a direct connection to conflict studies.[51] In the same year, Wendy Davies and Paul Fouracre edited another publication on the settlement of disputes.[52] From among other authors in 1980s, Paul Hyams studied the development of the formal law of proof in the central Middle Ages, namely the abandonment of the ordeal,[53] and Peter Stein was interested in settlement of disputes in "stateless" societies, which he portrayed in terms of behavior, but did not elaborate on whether this was conceived as strategy, routine, or power.[54] In 1988, Stephen D. White and Emily Zack Tabuteau each published a book on the transfer of property;[55] thus, according to Brown and Górecki, they moved the study of dispute towards dispute prevention and back to the "normative" framework..

In the 1990s, discussion on the transformations of the year 1000 led to Barthélemy's challenge of drawing decisive conclusions from particular words. He claimed that contemporary authors did not use them to refer to the same phenomena as today and that they may have been no more than a conventional element of the

[51] Patrick J. Geary, "Living with Conflicts in Stateless France: A Typology of Conflict Management Mechanisms, 1050-1200," *Living with the Dead in the Middle Ages* (Ithaca, NY: Cornell University Press, 1994), 125-160.
[52] Wendy Davies and Paul Fouracre, ed., *The Settlement of Disputes in Early Medieval Europe* (Cambridge: Cambridge University Press, 1986).
[53] Paul R. Hyams, "Trial by ordeal: The Key to Proof in Early Common Law," *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne*, ed. Morris S. Arnold, Thomas A. Green, Sally A. Scully, Stephen D. White (Chapel Hill: University of North Carolina Press, 1981), 90-126.
[54] Peter Stein, *Legal Institutions: The Development of Dispute Settlement* (London: Butterworths, 1984).
[55] Emily Zack Tabuteau, *Transfers of Property in Eleventh-Century Norman Law* (Chapel Hill: University of North Carolina Press, 1988); Stephen D. White, *Custom, Kinship, and Gifts to Saints: The Laudatio Parentum in Western France, 1050–1150* (Chapel Hill: University of North Carolina Press, 1988).

documents themselves.[56] I will lean on this theory when facing a question of distinguishing arbitrators, judges, and mediators – terms that were maybe used interchangeably, or in combination.

From the latest publications on conflict resolution, Paul Hyams has published his *Rancor and Reconciliation*[57] and Richard Fletcher a book on the bloodfeud in Anglo-Saxon England.[58] From Hyams, especially the question of reconciliation is interesting for me here, as I will try to approach also the matter of relationship between the offender and the victim.

Before this modern approach appeared, the general idea of medieval conflicts and their resolution was that of violent fights and bloody punishments as they are reported in the statutory laws. From the group of authors who took this position one can mention the famous legal historians Sir Frederick Pollock and Frederick William Maitland,[59] the Hungarian scholars Kálmán Kovács,[60] Gábor Béli,[61] and to some extent the Slovak, Florián Sivák.[62] True, violent feuds occurred in the Middle Ages (although for Hungary there are not many cases reported), but, as it will be demonstrated in this thesis, evidence is lacking for the use of the punishments catalogued in the statutory law.

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[56] Dominique Barthélemy, "La mutation féodale a-t-elle eu lieu? (Note critique)," *Annales Economie, Sociétés, Civilisations* 47 (1992): 767-75.

[57] Paul R. Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca, NY: Cornell University Press, 2003).

[58] Richard Fletcher, *Bloodfeud: Murder and Revenge in Anglo-Saxon England* (Oxford: Oxford University Press, 2003).

[59] Frederick Pollock and Frederick William Maitland, *The History of English Law*, vol. 2. 2nd ed. (Cambridge: Cambridge University Press, 1989), 452-453.

[60] Kálmán Kovács, *Zur Geschichte des Ungarischen Strafrechts und Strafprozessrechts 1000-1918* (Budapest: Lehrstuhl für Ungarische Staats- und Rechtsgeschichte der Eötvös Loránd-Universität, 1982), 14, 21.

[61] Gábor Béli, *Magyar jogtörténet: A tradicionális jog* (Hungarian history of law: Traditional law) (Budapest-Pécs: Dialóg Campus Kiadó, 2000), 169.

[62] Florián Sivák, *Dejiny štátu a práva na Slovensku do 1918* (The history of the state and law in the territory of Slovakia until 1918) (Bratislava: Vydavateľské oddelenie Právnickej fakulty Univerzity Komenského, 1992), 161-162. Sivák at first generally recognizes using corporal punishment as contained in statutory law, later in the text, however, he ascribes it only to the punishment of bondsmen.

To conclude, generally, there are two groups of authors dealing with medieval law–one traditional, trusting in the statutory law as a source of knowledge for medieval conflict resolution, and another, represented by the scholars mentioned above, challenging the widespread ideas by studying extant sources with regard to actual practice. These have come to the conclusion that conflict was resolved very often (albeit not always) by peaceful means, offering financial satisfaction for the victim (or relatives). I will try to compare their conclusions with the situation in Hungary as it is revealed in the *Regestrum Varadinense* and a limited sample of extant charters.

Except for the above mentioned authors and other literature quoted in the introduction I have also used other general literature on medieval law,[63] canon law,[64]

[63] Paul Brand, "Local custom in the early common law," *Law, Laity and Solidarities: Essays in Honour of Susan Reynolds*, ed. Pauline Stafford, Janet L. Nelson and Jane Martindale (Manchester: Manchester University Press, 2001), 150-159 (hereafter: Paul Brand, "Local custom"); R. C. Van Caenegem, *Legal History: A European Perspective* (London: The Humbledon Press, 1991); Barna Mezey, "Der Kerker in der ungarischen Rechtsgeschichte," in *A bonis bona discere: Festgabe für János Zlinszky zum 70. Geburtstag*, ed. Orsolya Marta Peter and Béla Szabó (Miskolc: Bibor Verlag, 1998), 385-420 (hereafter: Barna Mezey, "Der Kerker in der ungarischen Rechtsgeschichte"); Patrick Wormald, *Legal Culture in the Early Medieval West: Law as Text, Image and Experience* (London: The Humbledon Press, 1999); Ákos von Timon, *Ungarische Verfassungs- und Rechtsgeschichte mit Bezug auf die Rechtsentwicklung der westlichen Staaten*, tr. Felix Schiller (Berlin: Puttkammer und Mühlbrecht, 1904) (hereafter: Timon, *Ungarische Verfassungs- und Rechtsgeschichte*); Ferenc Eckhart,, *Magyar alkotmány és jogtörténet* (Hungarian constitutional and legal history), ed. Barna Mezey (Budapest: Osiris 2000, repr. of first ed., Budapest: Politzer, 1945) (hereafter: Eckhart, *Jogtörténet*); Zsolt Hunyadi, "Signs of Conversion in Early Medieval Charters," *Christianizing Peoples and Converting Individuals*, ed. Guyda Armstrong, Ian N. Wood (Turnhout: Brepols, 2000) (hereafter: Zsolt Hunyadi, "Signs of Conversion in Early Medieval Charters"); idem, "Administering the Law: Hungary's *Loca Credibilia*," *Custom and Law in Central Europe*, ed. Martyn Rady (Cambridge: Centre for European Legal Studies, Faculty of Law, University of Cambridge, 2003), 25-35 (hereafter: Zsolt Hunyadi, "Administering the Law"); János M. Bak, "Signs of Conversion in Central European Laws," *Christianizing Peoples and Converting Individuals*, ed. Guyda Armstrong and Ian N. Wood (Turnhout: Brepols, 2000) (hereafter: János M. Bak, "Signs of Conversion in Central European Laws"); Péter Banyó, "Birtoköröklés és leánynegyed. Kísérlet egy középkori jogintézmény értelmezésére" (The Inheritance of Land and the Filial Quarter: An Attempt for Interpretation of a Medieval Legal Concept), *Aetas* 3 (2000): 76-92 (hereafter: Péter Banyó, "Birtoköröklés"); Daniela Hrnčiarová, *Trestno-právne vzťahy v uhorskej spoločnosti v 11. storočí a na začiatku 12. storočia (na základe zákonníkov prvých uhorských kráľov*) (Criminal-law relations in Hungarian society in the eleventh and beginning of the twelfth century – on the basis of laws of the first Hungarian kings), PhD. dissertation, (Bratislava: Faculty of Philosophy, 2006) (hereafter: Daniela Hrnčiarová, *Trestno-právne vzťahy*); Ilona Bolla, *A jogilag egységes jobbágyosztály kialakulása Magyarországon* (The Development of a Legally Uniform Tenant-Peasant Class in Hungary). Budapest: Akadémiai Kiadó, 1983 (hereafter: Ilona Bolla, *A jogilag egységes jobbágyosztály kialakulása Magyarországon*); David Ibbetson, "Custom in the *Tripartitum*," *Custom and Law in Central Europe*, ed. Martyn Rady (Cambridge: Centre for European Legal Studies, Faculty of Law, University of Cambridge, 2003), 13-23 (hereafter:

and penance,[65] as well as further secondary literature on ordeals,[66] punishment,[67] anger and violence,[68] and pain.[69]

David Ibbetson, "Custom"); László Péter, "The Primacy of *Consuetudo* in Hungarian Law," ibid., 101-111. (Hereafter: László Péter, "The Primacy of *Consuetudo*.")

[64] James A. Brundage, *Medieval Canon Law* (London: Longman, 1995); Evans, *Law and Theology*.

[65] On the birth of penitentials, see Richard Price, "Informal Penance in Early Medieval Christendom," *Retribution, Repentance, and Reconciliation*, ed. Kate Cooper and Jeremy Gregory (Woodbridge: The Boydell Press), 29-38. On penance, see Sarah Hamilton: "Penance in the Age of Gregorian Reform," ibidem, 47-73. On repentance and reconciliation, see Christopher M. Scargill, "A token of Repentance and Reconciliation: Oswiu and the Murder of King Oswine," ibidem, 39-46 or William H. Campbell, "Theologies of Reconciliation in Thirteenth-Century England," ibidem, 84-94. On satisfaction in this context, see John Bossy, "Practices of Satisfaction, 1215-1700," ibidem, 106-118; the character of public supplication has been researched by Geoffrey Koziol, *Begging Pardon and Favor*, 177-213. Another literarature is represented by Sarah Hamilton, *The Practice of Penance, 900–1050* (Woodbridge: The Boydell Press, 2001) (hereafter: Sarah Hamilton, *The Practice of Penance, 900–1050*); Mary C. Mansfield, *The Humiliation of Sinners: Public Penance in Thirteenth-Century France* (Ithaca: Cornell University Press, 1995) (hereafter: Mary C. Mansfield, *The Humiliation of Sinners*); John McNeill and Helena M. Gamer, *Medieval Handbook of Penance* (New York: Columbia University Press, 1990). (Hereafter: John McNeill and Helena M. Gamer, *Medieval Handbook of Penance*.)

[66] Bartlett, *Trial*; Jane Martindale, "Between Law and Politics: The Judicial Duel under the Angevin Kings (Mid-twelfth century to 1204)," *Law, laity and solidarities: Essays in Honour of Susan Reynolds*, ed. Pauline Stafford, Janet L. Nelson and Jane Martindale (Manchester: Manchester University Press, 2001), 116-149. (Hereafter: Jane Martindale, "Between Law and Politics.") However, I will not pay any special attention to ordeals as a procedural matter of medieval conflict resolution.

[67] Laura Ikins Stern, *The Criminal Law System of Medieval and Renaissance Florence* (Baltimore: John Hopkins University Press, 1994) (hereafter: Stern, *The Criminal Law System*); Trevor Dean, *Crime in Medieval Europe*; Florike Egmond, "Execution, Dissection, Pain and Infamy – A Morphological Investigation," *Bodily Extremities: Preoccupations with the Human Body in Early Modern European Culture*, ed. Florike Egmond and Robert Zwijneberg (Aldershot: Ashgate, 2003), 92-127 (hereafter: Florike Egmond, *Execution*); Esther Cohen, *The Crossroads of Justice*; Genevieve Bührer-Thierry, "Just Anger or Vengeful Anger? The Punishment of Blinding in the Early Medieval West," *Anger's Past*, ed. Barbara Rosenwein, (Ithaca: Cornell University Press, 1998), 75-91 (hereafter Genevieve Bührer-Thierry, "Just Anger or Vengeful Anger?); Richard M. Fraher, "Preventing Crime in the High Middle Ages: The Medieval Lawyers' Search for Deterrence," in *Popes, Teachers and Canon Law in the Middle Ages*, ed. J. R. Sweeney and Stanley Chodorow (Ithaca: Cornell University Press, 1989), 212-213; Guy Geltner, "Medieval Prisons: Between Myth and Reality, Hell and Purgatory," *History Compass* 4, No.2 (2006): 261-274.

[68] Barbara Rosenwein, ed., *Anger's Past: The Social Uses of an Emotion in the Middle Ages* (Ithaca: Cornell University Press, 1998).

[69] Cohen, Esther. "The Expression of Pain in the Later Middle Ages: Deliverance, Acceptance and Infamy," *Bodily Extremities: Preoccupations with the Human Body in Early Modern European Culture*, ed. Florike Egmond and Robert Zwijneberg (Aldershot: Ashgate, 2003), 195-219; Florike Egmond, *Execution.*

2 PUNISHMENT IN STATUTORY LAW AND IN PRACTICE

Concerning the punishment, at the beginning of the twentieth century, Ákos Timon, trying to categorize different penalties in medieval Hungary, made a distinction between (1) capital punishment, (2) corporal punishment–either by mutilating or inflicted on hair and skin, (3) deprivation of liberty–in the sense of enslavement, imprisonment or banishment, and (4) pecuniary punishment–either compository ("*die compositionalen Vermögensstrafen*"), or as a fine (paid not to the victim or his family, but to the judge or other officials) or for redeeming a corporal punishment ("*die Straflösungssummen*") or loss of property (partial or general).[70] In his standard textbook on legal history, Ferenc Eckhart used five categories, more or less overlapping with the above: (1) the death penalty or capital punishment, (2) mutilating punishments, (3) deprivation of liberty, (4) material punishments, and (5) shaming punishments.[71]

Applying this scheme of punishments to the statutory law of Árpádian Hungary, one finds various problems with this categorization. First of all, it is difficult and sometimes impossible to distinguish between some compository payments and simple fines, as it is not specified in the statutory law whether the payment should be given to the victim (or his family) or to the "state" (judge, king, king's official). Furthermore, in many cases, the punishment consists of several parts, each belonging to a different category. Moreover, one can find penalties such as deprivation of office or privilege, deprivation of noble status, excommunication, or other penalties, which were not included in either of the categorizations quoted above. In every category, I will compare the text of statutory law with the practice as revealed in my sample of the surviving charters and in *Regestrum Varadinense.*

[70] Timon, *Ungarische Verfassungs- und Rechtsgeschichte*, 429-440.
[71] Eckhart, *Jogtörténet*, 154.

2.1 Capital punishment

Capital punishment (the death penalty) in the statutory laws was connected regularly with the loss of property in the sense of: "head or land." It was imposed in laws of King Stephen and Ladislas for treason against the king and kingdom[72] and for intrigues against ispáns.[73] In cases of private interest, killing with a sword[74] and the intention to do so[75] were punished by death. Similar situation is shown in cases connected with theft,[76] buying and selling stolen property[77] and attacks on persons while searching for stolen and lost property.[78] The importance of horses was underlined by the special treatment of the sale of these animals in frontier areas.[79] The death penalty was also connected with pecuniary compensation, which was imposed for the invasion of houses.[80]

According to extant charters, capital punishment was executed mainly in the form of hanging. There are some mentions in charters simply reporting that someone had been hanged, in conjunction with some other occasion. These occasions are mainly cases of forfeiture of certain properties (i.e., capital punishment connected with a loss of property) into the hands of the royal treasury in conjunction with a subsequent donation of the same property by the king to a new faithful royal servant.[81]

[72] Stephen II: 2.
[73] Stephen II: 12.
[74] Stephen II: 11.
[75] Stephen I: 16.
[76] Ladislas II: 1, Ladislas II: 2, Ladislas II: 12, Ladislas II: 14, Ladislas III: 8, Ladislas III: 10.
[77] Ladislas II: 7.
[78] Ladislas II: 5, Ladislas III: 13.
[79] Ladislas II: 16, Ladislas II: 17.
[80] Stephen I: 35.
[81] For example: "Terram etenim Racessan Petri filij Thatar, quem meritis suis exigentibus suspendio iudicauimus, predicte terre adiacentem, sicut sepe memorato Chepano dederamus, et ipse die qua obijt iuste ac pacifice possidebat, ita iam dictis fratribus Milicie Templi perpetuo concessimus possidendam" (Andrew II., 1210, Wenzel, vol. 11, 105-108), or "Jula Banus quondam de genere Kean, pro manifesto infidelitatis crimine per nostram, nec non karissimi fratris nostri Colomani Regis et Ducis tocius Sclauonie Illustris, hac omnium Baronum nostrorum sentenciam fuisset condempnatus, ac uniuersa ipsius bona ad nostram manum fuissent deuoluta, ipso suam uitam in nostris uinculis finiente" (Bela

A case of the death penalty by hanging, connected with the loss of property for theft, is mentioned in a charter from 1239.[82] What is interesting here is the mention of *sanguinis effusio* for the second of the offenders (the first was hanged). Hanging could have been meant under this expression as it is improbable that two criminals would be punished differently for the same crime: one hanged and the other executed by the sword. It is more probable that the term was used generally to denote capital punishment. A privilege for the monastery in Bélháromkút (Bélapátfalva) (*Conuentum monachorum Cystercyensis Ordinis de monasterio Triumpontium de Campanya in Hungariam*) mentions both means of execution, but again it is not certain whether these were meant as synonyms or two different means of execution.[83] The death penalty (again *sanguinis effusio*) for a murderer and the loss of property for his accomplices was imposed by the judge according to a charter from 1262.[84] There is no mention of the culprit's property at all–maybe it was confiscated as well. A certain Ladislas was also punished by death (without a specified way of execution)

IV., 1240, Wenzel, vol. 7, 100-102). Or some other donor to some other person: "…terram Gurbuse filij Miconis, existentem in Comitatu Zaladiensi vltra Dravam, que ad manus ipsius Stephani Bani fuerat deuoluta, eo quod idem Gurbuse culpis suis exigentibus finiuit in patibulo vitam suam, contulisset Sceme filio Pouche seruienti suo pro suis seruiciis" (in charter of Bela IV., 1258, Wenzel, vol. 7, 484-485). However, later customary law, written down by Werbőczy did not recognize devolution of culprit's property to the royal fisc, on the contrary, it secured its passing to the sons, with the exception of cases of infidelity. Cf. *Tripartitum* I: 15, 16; 69.

[82] Wenzel, vol. 7, 77-78: "Pousa et Laurencius contra Rekam et Bolosey in examine duelli pro furti crimine sunt conuicti, qui Pousa suspendio condempnatus, Laurencius vero fugiens ecclesiam introiuit, et sic sanguinis euasit effusionem, totaque eorum possessio tam ad manus partis aduerse, tam ad nostras (palatine Dionysius) fuit deuoluta". Another case of theft is mentioned in a charter from 1253, Wenzel, vol. 7, 351-352: "ob crimen furti suspendio patibuli uitam finiuit."

[83] "Omnes autem causas inter jobagiones Ecclesie emergentes Curialis Comes ipsius iudicet, et decidat; nisi forte pena sanguinis, vel suspensionis debeat exerceri, quia tunc exequucio sentencie ad Comitem Parrochyanum pertinebit…" (1237, Wenzel, vol. 7, 27-30).

[84] Wenzel, vol. 8, 48: "Sank interfecisset fratrem eorum nomine Zomoyn, cum adiutorio istorum quinque hominum, scilicet Pauli, Dees, Nicolai, Tyrvani et Romani. E conuerso autem respondit prefatus Sank, quod ipsum hominem ipse non interfecisset in culpa sua; responderunt eciam iidem quinque homines, quod immunes essent in morte illa, et adiutorium sibi non dedissent… Sank vero et ijdem quinque homines prenominati non comparuerunt, nec pugilem adduxerunt. Ideo autem decreuimus (palatine H.), quod idem Sank, vbicunque inuentus fuerit, impediatur, et ad judicem ducatur ad sanguinis effusionem, et apud quem inuentus fuerit, ille non audeat eum retinere; prenominatis autem quinque hominibus non decreuimus fieri effusionem sanguinis, sed quidquid habent, tam in possessionibus, quam in aliis totum amittant."

and the loss of his property for several unspecified crimes.[85] In these cases, the death penalty was linked to the loss of property, but not in the sense of "head or land" (which became the general practice in the later Middle Ages, preserving the property for sons of the culprit), but in the sense of "head and land." It was different in a case of pardon for the death penalty connected with the loss of property alone in a charter from 1270. Here, Nicolas, who committed murder, was not punished by the death penalty; only his property was confiscated.[86] In another case, in a charter from 1237, only the loss of property is mentioned for an act of lèse majesté (the murder of Queen Gertrudis),[87] but it is likely that the death penalty was imposed as well.

Capital punishment, considered by Western scholars to be less often used in comparison with monetary punishment and banishment,[88] is relatively widely represented in the sources that I have analyzed. Sixteen articles in the statutory law impose this sanction and the ninety-two charters analyzed mention the death penalty eleven times (including three cases of pardon). As far as the method of execution is concerned, in most of the cases hanging is mentioned. Of interest is here a mention of

[85] "…ipsum Ladizlaum iuxta continenciam ipsarum priorum patencium litterarum nostrarum contra eundem Rofoyn Banum racione dampnorum, iniuriarum, nocumentorum, interfeccionibus et uulneracionibus hominum in eisdem prioribus patentibus litteris nostris expressorum, sentencialiter decreuimus fore coniuctum, et in persona sua morte debita condempnandum, seu eciam puniendum sine strepitu judicij alicuius, et omnibus illis possessionibus, que ipsum Ladizlaum tangere dinoscuntur, denudandum et priuandum, et deductis factis principalibus de eisdem possessionibus, que facta principalia ipsi Rofoyn Bano debentur, residuitatem earundem possessionum in manus nostras tanquam Judicis deuoluendam" (charter from 1300, Wenzel, vol. 10, 379-380).

[86] Wenzel, vol. 12, 6-10: "Michaelem filium Aladar tunc Comitem Zaladiensem, propter eiusdem prouincie tuicionem ad Comitatum Zaladiensem dirigendo, idem Nicolaus filius Arnoldi et eius complices de castro eodem super eum irruentes, ipsum, et Mykem fratrem suum, non sine nostre Maiestatis iniuria miserabiliter occiderunt. Et licet idem Nicolaus propter tam manifestam infidelitatem suam et notorium nocumentum non tam possessionibus quam uita priuari debuisset; ad instanciam tamen venerabilis patris Ph. miseracione Diuina Sancte Strigoniensis Ecclesie Archiepiscopi, in cuius defensionis vmbraculum se postmodum transtulerat, vitam sibi ex misericordia reseruantes, omnes possessiones et castra sua ab ipso auferentes…"

[87] Wenzel, vol. 7, 27-30: "…de possessionibus hereditariis quondam Petri filij Gurwey, que sua infidelitate exigente, quia crimen lese Maiestatis matrem nostram occidendo commiserat, ad manus Regias fuerunt deuolute…"

[88] Trevor Dean, *Crime in Medieval Europe*, 130.

burning the culprit at the stake "according to the *statuta Regni.*"[89] Such a punishment, however, can not be found in extant statutory law. As for the circumstances of executions, no detailed information is available on whether they were public and had a defamatory, deterrent, and/or educational effect or not.

2.2 Corporal punishment

Corporal punishment in statutory law can be divided into punishments inflicted on skin and hair (also possibly labeled as a shaming punishment) or mutilating punishments. To the first group belong beating and cutting the hair of a person who remained at home on Sunday instead of going to church,[90] whipping and cutting the hair of an adulterer,[91] whipping a sorcerer,[92] shaving, binding and whipping an invader,[93] shaving (and selling) a person who did not come before the judge for the third time[94] or a rapist who did not pay composition,[95] beating a judge for not deciding a case within thirty days,[96] branding cheeks in form of a cross for false testimony,[97] marking a witch with a key between her shoulders,[98] the case when a cleric stole a goose or hen–the property had to be restored and cleric had to suffer a switching from his master[99]–and finally shaving half of a runaway slave's head.[100] In practice, a case of probably shaming character is reported in the form of a public request for forgiveness, walking without shoes with twelve companions with naked

[89] "iuxta statuta Regni in eorum personis igne cremandos et morte debita condempnandos eosdem sentencialiter decreuimus tanquam destruccionum et violencie perpetratores, prout superius sunt expressa, et possessiones eorum vniuersas, hereditarias et alio quoquo modo habitas et possessas, tam in terra Zurchuk, quam alias existentes, duabus partibus in manus nostras tanquam judicis, in tercia uero parte in manus domine Regine partis actricis et executricis huius cause seu negocii deuoluendas…" (1299, Wenzel, vol. 5, 236-237).
[90] Stephen I: 9.
[91] Stephen I: 28.
[92] Stephen I: 34.
[93] Ladislas II: 11.
[94] Ladislas III: 26.
[95] Syn. Strig., 52.
[96] Ladislas III: 24.
[97] Coloman 83.
[98] Stephen I: 33.
[99] Ladislas II: 13.

swords in hands.[101] To generalize, one may say that these were either penalties that had only a short temporal effect–binding, beating, switching, whipping, cutting the hair (shaving the head) or penalties with a long, perhaps permanent effect–as in the case of branding cheeks and shoulders. Shaving half of a stray slave's head may have also been a permanent matter–to mark a slave inclined to run away.

To the group of bodily punishments causing **mutilation** of the offender, belong cases of talionic (retaliatory) maiming of the body of the offender,[102] the loss of the tongue for intrigue,[103] the loss of a hand for absence from a confraternity,[104] the loss of the nose for theft committed by a bondsman[105] or a married woman,[106] blinding of a thief let out of the church's asylum,[107] blinding of a fugitive slave,[108] of a slave that returned home after having been sold abroad,[109] of a thieving widow[110] and other thieves.[111] Restoration and corporal punishment were combined when a freeman or bondsman stole a goose or a hen – the stolen property had to be restored and the thief lost one eye.[112]

However, in practice it seems that in some cases cutting the hair of a culprit was not a punishment, but only a marking of ecclesiastical serfs.[113] On the other hand, in many cases statutory law imposes cutting the hair in other situations where this has nothing to do with ecclesiastical serfs. In the charters that I analyzed only three cases

[100] Coloman 41.
[101] 1239, Wenzel, vol. 2, 99-100: "item idem E. cum duodecim hominibus consimilibus sui, nudis pedihus, gladijsque euaginatis in manibus eorum positis, debet supplicare pretaxato M. Magistro et excessus suos luere…"
[102] Stephen II: 3.
[103] Stephen II: 14.
[104] Ladislas I: 14.
[105] Ladislas II: 2, Ladislas II: 10.
[106] Ladislas III: 6.
[107] Ladislas II: 12.
[108] Ladislas II: 13.
[109] Ladislas III: 4.
[110] Ladislas III: 6.
[111] Ladislas III: 8, Coloman 53.
[112] Ladislas II: 12.

are reported–in a charter from 1092–from the time of King Ladislas, when certain families tried to change their status into *udvornicos* (i.e. somewhat privileged royal servants),[114] but by the decision of the judge appointed for the case by the king they were returned to their ecclesiastical lord and their hair was cut.[115] This case is of special interest as it is from the time of the king-legislator, although no provision for cutting the hair of ecclesiastical serfs is mentioned in his laws (at least in the extant version). From a later period, *udvornicos* of the monastery of Saint Mauritius claiming to be *iobagiones* were punished similarly–this time on the basis of their failed claim to a privilege from Saint Ladislas.[116] In this case the privilege represents written law, albeit only for the limited number of parties affected by the privilege, not as a general rule. In both of these cases, cutting of the hair did not have to mean punishment, but was only a sign of the status of ecclesiastical serf. It is possible that the same is true for a case mentioned in a charter from 1226–in a case of frivolous prosecution (*calumnia*).[117] Here, *udvornici Regii* sued an abbot in a property dispute, but the land was given to the abbot by the judge and the *udvornicos* were shorn, as if they would be punished by becoming ecclesiastical serfs. It is worth noting that, again, no provision in any extant statutory law imposes a penalty of cutting the hair or becoming an ecclesiastical serf in such a case.

Corporal punishment in the form of mutilation is not mentioned in any of Wenzel's charters. Only one charter mentions the possibility of talionic maiming of

[113] For more on ecclesiastical serfs (Hung. *torlók* or *dusnokok*) cf. Zsolt Hunyadi, "Signs of Conversion in Early Medieval Charters," 112.
[114] Wenzel, vol. 1, 38-39: "quidam diabolico instintu voluerunt precdictas familias a seruicio supradictae ecclesiae subtrahere, et in ministerio uduornicorum subiugare"
[115] "…seruorum Regis… capita tonsa sunt iussu Sar Comitis." Ibidem.
[116] "Philippus autem Prepositus memoratus inspiciens privilegium sepe dictum inuenit libertatem ipsorum condicionaliter conditam, sicut dominus Abbas affirmabat. Quos iuxta leccionem privilegii in officium pristinum una cum pena tonsi capitis, sicut in ipso priuilegio continetur, reddituros decreuimus (Dominicus, vice iudex aulae Regiae, added by T. G.) antedicte Ecclesie perpetualiter." (1246, Wenzel, vol. 2, 190-191)

the hands of the offenders, but it seems to have been used only as a way of pressuring the parties to settle the dispute[118] as the dispute was finally settled by a payment through the mediation of "discrete men." In general, maiming the body of an offender is mentioned only in chronicles, and that only in cases of uprisings against the legitimate ruler–as in the case of the quartering of Koppány, the blinding of Vazul, Álmos, and Béla, and other cases reported by Cosmas for the Bohemian kingdom.[119] Blinding especially was often used in these cases. As G. Bührer-Thierry has pointed out, blinding here represented a shift from the punishment applied to martyrs in the Late Roman period to the punishment for unfaithful members of the royal family (in fact making them unfit to rule) and others who committed treason.[120]

2.3 Pecuniary punishment

Pecuniary punishment in statutory law can also be divided into different categories: redemptive corporal punishment, i. e., cases when the offender could choose between suffering mutilation, or paying a certain amount of money; loss of property–either partial or general; a simple fine; and compository payment. In practice, however, these can not be easily distinguished. My aim here is not be to make a precise categorization, but only to call attention to this problem: the first group, i.e., the cases of redemption, are represented by the payment of fifty young oxen (in the case of commoners only ten) in the case of perjury committed by a free man;[121] in the case of

[117] Wenzel, vol. 1, 220: "Cumque manifestam calumpniam ipsorum uidissemus, dampnauimus eosdem, sicut decet, seruos tonsis videlicet dimidiis capitibus eorum crudeliter tractantes…"
[118] 1227, Wenzel, vol. 6, 446-448: "…frater ipsorum contra eum extendisset gladium, manum eius dextram detrvncando. Vbi iudicatum est: Si Mischa Comes cum fratribus suis Michaele et Absa coram Capitulo Wesprimiensi super hoc facerent sacramentum, in ulcionem unius dextere prefatorum uirorum quatuor manus truncarentur. Cumque deuentum ad hoc fuisset, et M. Comes cum fratribus suis probare iuxta formam iudicij illud promptus extitisset, presente pristaldo Regis Luca nomine filio Abbe de Sucorov; fratres nostri, ne sanguinis fieret effusio, cum alijs uiris discretis se interponentes in hunc modum composuerunt: Vt Villemirus prefatus et alij tres fratres eius prenominati traderent omnes terras suas et vineas, preter solam terram, quam Villemirus in uilla Kenese habuit, Misce Comiti possidendas."
[119] See the introduction.
[120] Genevieve Bührer-Thierry, "Just Anger or Vengeful Anger?"
[121] Stephen I: 17.

fornicating with a bondswoman when enslavement was the proper punishment;[122] in the case of theft committed by a freeman[123] or a married woman, who was supposed to be redeemed by her husband, (but only twice–on the third occasion she was sold into slavery for good).[124] Finally, from the time of King Ladislas onwards, a form of redemptive corporal punishment was to pay ten *pensae* in commutation for the tongues of peasants who committed perjury.[125]

Another group of pecuniary punishments is already distinguished as loss of property–either partial or general in Timon's book. A regulation in Stephen I: 8 represents an example of a partial loss (which could be considered as a fine, however, and not as a loss of property) for working on the Lord's day. The ox used for the work was supposed to be taken away from the worker and given to the men of the castle to eat; similarly in the case of working with a horse it was also to be confiscated or paid for with an ox. Confiscated tools and clothes could be redeemed by flogging. Selling a horse in the frontier area was punished by confiscation of the horse.[126] In the case of a lie about the nature of a thing as a gift, the lier was deprived of the thing,[127] similarly as when selling stolen property, the seller forfeited the thing and moreover had to pay its price.[128] For unjustly usurped possession the offender forfeited the same amount of his own land and had to pay ten *pensae*.[129] A captor of an innocent person unjustly accused of theft was to be deprived of as much property as the alleged thief was known to have had.[130] From later legislation, article 1298:15 imposed the loss of landed property on which money was illegally minted.

[122] Stephen I: 28.
[123] Stephen II: 7.
[124] Stephen I: 31.
[125] Ladislas III: 1.
[126] Ladislas II: 6.
[127] Stephen II: 11.
[128] Ladislas II: 7.
[129] Coloman 32.
[130] Coloman 53.

General loss of property was imposed according to Ladislas II: 4, where the property of a thief accused by a village was confiscated by the king (a quarter was given to the village). Similarly, when a thief was found guilty by ordeal all his property was to be forfeited to the royal fisc.[131] In contrast, a judge who would not cut off a bondsman's nose or would not hang a freeman should lose all he had except his children, and he himself was to be sold.[132]

Closely connected with the punishment by loss of property were regulations of article 1231:22-goods of the condemned person should be retained by the king or given to someone else, but not burnt; and of article 1290:27–confiscated property could be redeemed by relatives. From among the charters, some cases of the forfeiture of property were noted, when the death penalty was commuted. From among other cases, we can see the loss of property for murder in a charter from 1235,[133] or generally, loss of property for infidelity.[134]

Another form of pecuniary punishment was a fine. As in the previously mentioned regulations, loss of property (mainly partial loss) was often connected with another payment with the character of a fine. However, if this was not expressly adjudicated to the victim or to a royal official (or judge), it is impossible to distinguish between the character of this payment as fine or composition. The more or less certain character of a fine can be attributed to the penalty imposed by King Stephen, where a

[131] Ladislas III: 9.
[132] Ladislas II: 6.
[133] Wenzel, vol. 6, 569-570: "Demetrius pro interfeccione Pauli filij Mathens in presencia nostra et Dionisij tunc temporis Comitis Palatini omnes possessiones suas ordine iudiciario, ut cunctis nostris iobagionibus notum est, inrecuperabiliter amisisse deberet…" Similarly in a charter from 1279, Wenzel, vol. 9, 223-225: "…idem Petrus Parcrauius occidisset, ac demum idem pro huiusmodi suis excessibus manifestis et notorijs ordine iudicario conuictus per sentenciam Mathei Palatini Comitis Supruniensis, Symigiensis, et Judicis Cumanorum dilecti et fidelis nostri fuisset interemptus, et possessiones sue ad manus nostras Regias iuxta Regni nostri consuetudinem aprobatam extitissent deuolute…"
[134] "…de ipsa terra propter sue infidelitatis versuciam, et prodicionis perfidiam per nos, exigente justicia, est amotus…" (1267, Wenzel, vol. 8, 162-164); "…predium filiorum Henrici Modur vocatum, situm in Comitatu Posoniensi, cum suis pertinencijs, attinencijs et vtilitatibus vniuersis, propter infidelitates suas manifestas ab ipsis filijs Henrici auferendo…" (1287, Wenzel, vol. 12, 451-453).

person enslaving a freeman was to pay fifty or twelve young oxen, depending on the status of the person, and this fine was to be divided between the king and the ispáns.[135] For an appeal to the king against a just judgement by an ispán ten *pensae* had to be paid to the ispán,[136] which seems to have the character of a fine. From among other examples, according to Ladislas, a person taking anything from an adversary during the king's judicial proceedings had to pay double.[137] Showing contempt for the king's seal (meaning the disregard of a royal summons) was punished by a fine of five *pensae*; a hundred pence were to be paid for a contempt of a judge's seal.[138] Not handing over the detained servants of the other person to the king was fined by paying double their price or giving two servants and paying an additional fifty-five *pensae*.[139] A person who persuaded a thief to flee to a church forfeited not only his portion of the thief's property but in the case of a bondsman, had to pay two *pensae* to the church.[140] Ladislas[141] ordered a punishment for not presenting a thief before the judge with a fine of ten *pensae* and the violation of judgment with six *pensae*, where–if the thief was subsequently found innocent by ordeal–one of these six *pensae* was to be paid to the church. Holding a thief longer than three days before presenting him to a judge (in this case the king himself) after the king returned from a campaign was also fined with six *pensae*.[142] If anyone denied that a collector of stray things had given something away he would pay twelve times what he has denied.[143] The fine for bargaining with a thief was fifty five *pensae*[144] and

[135] Stephen I: 22.
[136] Stephen II: 9.
[137] Ladislas I: 41.
[138] Ladislas I: 42.
[139] Ladislas III: 2.
[140] Ladislas III: 4.
[141] Ladislas III: 9.
[142] Ladislas III: 10.
[143] Ladislas III: 13.
[144] Ladislas III: 18.

for not coming to court twice a payment of twice five *pensae* was prescribed.[145] King Coloman also used pecuniary punishments in his laws: an unspecified amount was to be paid for keeping an escaped man of the castle (*civis*),[146] ten *pensae* for not shaving half of a stray slave's head,[147] fifty *pensae* for selling fugitives cheaply or for selling a sack of grain for a price other than five pennies.[148] For not giving money to the king by a certain date the ispán had to pay double.[149] For leaving Hungary without a seal (a kind of passport) a guilty person had to pay fifty *pensae*.[150] In the later period, article 1298:6 imposed an unspecified military fine for not joining the army.

The character of compository payment is beyond doubt in the cases of killings that I will deal with in detail below. From among other cases, for liberation of someone else's bondsman, fifty or twelve young oxen (depending on the status of the culprit) had to be paid–forty to the king and ten to the master (ten to the king and two to the master respectively).[151] Compensation of an unspecific amount of money had to be paid if a bondswoman died pregnant after fornication.[152] According to Stephen I: 30, a wife was to receive all the property of a husband who tried to flee from her by leaving the country. In the case of lying (false testimony), double composition had to be paid, but the sum is not specified in the article, and the beneficiary of the payment is not given either.[153] Again, an unspecified sum was imposed by Ladislas if villagers destroyed traces of stolen objects (cattle)–they had to pay the price of the stolen

[145] Ladislas III: 26.
[146] Coloman 39.
[147] Coloman 41.
[148] Coloman 44.
[149] Coloman 79.
[150] Coloman 82.
[151] Does it mean that king had a special interest in the stability of bondsmanship? A similar case is in Stephen II: 5–to free the bondsman was punished by payment from which two-thirds belonged to the king and only one-third to the master.
[152] Stephen I: 28.
[153] Stephen II: 14.

object.[154] For invasion of a house, fifty-five bezants had to be paid.[155] In the latter two cases the payment can be considered as compository. A freeman-thief who stole property worth less than ten pennies had to repay the value twelve times and pay an ox.[156] If this was supposed to be paid to the damaged party, it could be considered as a compository payment. Otherwise it would have the character of a fine. A false judge had to refund twice the amount and pay ten *pensae* to the proper judge.[157] This can again be seen as both a fine and a compository payment. A case where the inhabitants of a village where horses were lost were responsible for the loss and had to pay the damage looks more like composition.[158] According to the canons of the synod of Esztergom,[159] a rapist had to pay an unspecified compensation (hundred and ten *pensae*?). Of special interest is the obligation to pay fifty *pensae* and redeem a slave who was taught to read without his master's consent.[160] The punishment of Jews who were not able to present Christian witnesses in case of a dispute is also interesting– they had to pay four times the compensation for theft. In a case where neither the original owner nor a charter about purchase could be found, twelve times the compensation for theft had to be paid.[161] Whether this was to be paid to an official as a fine or to a party to the dispute as a composition is unknown. From the later legislation, article 1279:7 obliged an offender to satisfy the offended person from his own goods and article 1298:1 secured damages to the person harmed. These cases are clearly aimed at satisfying the victim, not at punishing the offender by a fine. In contrast, the payment of ten young oxen for beating an agent sent to bring back a warrior or bondsman who had fled is in the group of pecuniary punishments, where

[154] Ladislas II: 5.
[155] Ladislas II: 11.
[156] Ladislas II: 14.
[157] Ladislas III: 23.
[158] Coloman 63.
[159] Article 52.

again it is not easy to differentiate between the nature of the punishment as a fine or a compository payment.[162] Similarly, if a thief fled, the man who let him flee had to pay the price of the theft[163]–but to whom? Again, if a thieving bondsman retreated to a church or a royal mansion, his keeper had to pay the price of the theft.[164] For the accusation of a judge who could acquit himself by two witnesses, the accuser had to pay fifty-five *pensae,*[165] just as for impeding a search for stolen goods[166] and in a case that a count palatine was judging whom he should not judge.[167] For beating a courier fifty-five *pensae* were to be paid; for detaining him by tying him up only ten *pensae*.[168] A collector selling or hiding found things had to remit their price threefold and pay a fine of ten *pensae*; if he was an ispán fifty-five *pensae.*[169] For receiving slaves of others an ispán had to remit twice their value and pay fifty-five *pensae,*[170] a minor official remit twice their value and pay twenty-five *pensae*, commoners remit twice their value and pay five *pensae.*[171] Five *pensae* were to be paid for a false accusation of a judge of an unjust judgment (but again without specifying the recipient); if the judge was proven guilty, he had to remit twice the amount in dispute and pay five *pensae*.[172] A payment is expressed both in animals and in coins in another regulation imposing a punishment of ten young oxen worth ten *pensae* for stopping or beating a searcher for a fugitive slave or anything lost.[173] In Coloman's laws fifty-five *pensae* were to be paid for keeping a fugitive and his master was

[160] Syn. Strig. 69.
[161] Jews 6, 7.
[162] Stephen I: 25.
[163] Ladislas II: 1.
[164] Ladislas II: 2.
[165] Ladislas II: 6.
[166] Ladislas II: 5.
[167] Ladislas III: 3.
[168] Ladislas III: 28.
[169] Ladislas III: 20.
[170] Not twice fifty-five as in DRMH 1:, 21.
[171] Ladislas III: 21.
[172] Ladislas III: 25.
[173] Ladislas III: 29.

required to pay the same amount as the person who held him.[174] Finally, ten *pensae* were to be paid for a false accusation of false testimony.[175] The loss of a portion of a thief's property from the person who persuaded the thief to flee to a church also has an uncertain character in the case already mentioned.[176]

It is interesting here that the king's share is not always mentioned. It does not seem to have been the rule in the legislation to divide the composition among the victim, the judge, and the king. In the *Regestrum Varadinense*, from among the four reported cases of specific punishment imposed by judicial decision,[177] a compository payment of eight marks and ten *pensae* was imposed in a case from 1234.[178] In charters, compository payments were imposed by the judges in a case from 1220 for burning the chapel of Saint James and other damages,[179] and in a case of blinding from 1226,[180] where the amount was later reduced through settlement by the bishop.

Cases of a combination of pecuniary punishment with the restoration of damage are quite common. A typical example is a case of restoration connected with fine or compository payment (depending on the recipient of the payment)–according to King Stephen[181]–in the case of the abduction of a girl. She had to be returned to her parents and the offender had to pay ten or five young oxen. Similarly in case of arson, the house had to be replaced and the offender was obliged to pay sixteen young oxen,

[174] Coloman 42.
[175] Coloman 83.
[176] Ladislas III: 4.
[177] All in all, there are twenty six judicial decisions explicitly reported, but mostly without the specific punishment being written down.
[178] 374/1234: "…secundum sententiam praedicti iudicis…condemnatus est…octo marcas et decem pensas, totaliter persoluit, nobis praesentibus…"
[179] Wenzel, vol. 1, 167-168: "…adiudicauimus secundum comparacionem terre Abbatis, de terra illorum assignari tantundem, si haberent; et si non haberent, pro illa terra et talionem et pro dampnis illatis in ipsa terra, de rebus uel de personis eorum redderentur XXX et V marce…"
[180] Wenzel, vol. 1, 219: "…habito jobagionum nostrorum consilio et assensu ad examen duelli iudicavimus exequendum. Et quia dictus Muterinus ad terminum predictum non venit nec misit, ipsum in CC marcis tam pro privacione oculorum, tam pro dampnis que sibi, intulerat, condempnavimus…"
[181] Stephen I: 27.

worth forty *solidi*.[182] If a judge hanged an innocent man he had to pay a hundred and ten *pensae* and restore the hanged man's goods.[183] A fine and restoration are combined in the case of an ispán cheating the king of his portion–restitution and a double payment were imposed as compensation.[184] Restoration and compository payment are connected when an ispán takes something unjustly from a warrior–restitution and the same amount as the penalty were supposed to be paid to the warrior.[185]

Punishments for murder can be analyzed separately from other cases to see whether they differ. The loss of property as a punishment for murder in a charter from 1235 was already mentioned.[186] In statutory regulations according to Saint Stephen, a payment of a hundred and ten *pensae* was required for homicide[187]–fifty were to be paid to royal treasury, fifty to the relatives of the victim, and ten to the arbitrators and mediators (it is worth noting that judges are not mentioned here). Composition, but now explicitly of the same amount as for homicide, was to be paid for wounds inflicted by the sword;[188] for drawing the sword without injury half of the composition for homicide had to be paid.[189] For accidental murders only twelve *pensae* were to be paid and for killing a slave another slave had to be given to the owner who had suffered the damage. In the case of killing one's wife, fifty, ten or five (depending on social status) young oxen were to be given to the kindred of the

[182] Stephen I: 32.
[183] Ladislas II: 6.
[184] Stephen II: 8.
[185] Stephen II: 10.
[186] Wenzel, vol. 6, 569: "Demetrius pro interfeccione Pauli filij Mathens in presencia nostra et Dionisij tunc temporis Comitis Palatini omnes possessiones suas ordine iudiciario, ut cunctis nostris iobagionibus notum est, inrecuperabiliter amisisse deberet…" Similarly in a charter from 1279, Wenzel, vol. 9, 223-225: "…idem Petrus Parcrauius occidisset, ac demum idem pro huiusmodi suis excessibus manifestis et notorijs ordine iudicario conuictus per sentenciam Mathei Palatini Comitis Supruniensis, Symigiensis, et Judicis Cumanorum dilecti et fidelis nostri fuisset interemptus, et possessiones sue ad manus nostras Regias iuxta Regni nostri consuetudinem aprobatam extitissent deuolute…"
[187] Stephen I: 14.
[188] Stephen II: 16.

woman.[190] Similarly, the price of a slave was paid if a slave killed another person's slave.[191] If a slave killed a freeman, his master had to pay a hundred and ten young oxen or hand over the guilty slave.[192] According to Ladislas, a killer with a drawn sword was sent to prison and his property divided into three parts: two-thirds went to the kinsmen of the victim (representing the composition), and the remaining third to the sons and wife of the killer.[193] Generally, one may say that the composition was in essence a replacement of the blood feud (as "wergeld," *homagium*), the first, most important concern of royal legislation.

Judging both from the statutory law and from the extant charters, pecuniary punishment was among the most often used.[194] As many as eighty articles of 445[195] of the statutory law deal with pecuniary penalties. From the evidence on actual judicial practice, nineteen cases are reported in my sample of ninety-two charters. From among these nineteen cases, thirteen are cases of the loss of property and the remaining six cases represent other forms–compository payment or fines.

In comparison with other judicial decisions reported in my sample of charters these numbers are the highest from among all the other punishments. Only capital punishment is reported a similar number of times–eleven. It seems that pecuniary punishment was the most convenient way of solving disputes–both for the offender and for the victim, and also maybe the only possible way of reaching a compromise in a situation with parties of equal standing in disputes when an immediately and constantly present legal authority was lacking. To make this way of conflict resolution more effective and practical, sometimes installments were set for the payment. One

[189] Stephen II: 17.
[190] Stephen I: 15.
[191] Stephen II: 3.
[192] Stephen II: 4.
[193] Ladislas II: 8.
[194] Cf. Trevor Dean, *Crime in Medieval Europe*, 130.

can find examples of payments divided into installments that were to be paid on certain feasts–for example, in 1277, a payment of fifty-eight marks was divided into an installment of twenty marks due on *dominica Iudica* (March 13), another twenty due on Pentecost (May 16), and the remaining eighteen marks on the octave of Saint Lawrence (August 10).[196] Similarly in the *Regestrum Varadinense*– the feasts of Mary Magdalene (July 22), the Nativity of Saint Mary (September 8), and All Saints (November 1) are used to mark the due dates.[197] Risks associated with this way of conflict resolution were delay in payment[198] or even later refusal to pay the money (as in a charter from 1233[199]) or denial of having received any money–that is why proofs of payment were required and special records were issued by the places of authentication (*loca credibilia*).[200] It could also happen that the parties did not respect the settlement of the dispute and resumed the conflict.[201] In general, payment of a fine

[195] As published in DRMH 1, including repetitions and excluding so called "Compilation from 1300."
[196] "…soluerent sexaginta marcas minus duabus marcis in terminis assumptis coram nobis; viginti marcas scilicet soluerent in dominica Judica partim in denarijs dando decem pensas Viennenses pro qualibet marca, aut quinque pensas denariorum Banalium, partim uero in estimacione condigna; item viginti marcas soluerent in octauis Pentecostes modo supradicto; residuas uero decem et octo marcas soluerent in octauis Sancti Laurencij martiris modo superius annotato, ita tamen quod medietatem solucionis denariorum deberent facere in denarijs Banalibus, medietatem uero in Viennensibus, sicut superius est expressum. Tali pena interposita, quod si primum terminum obmiseriut in soluendo, incurrent dupli penam; si uero secundum, amittent pecuniam prius persolutam; et si terciam solucionem facere non curauerint, pecunia in prioribus duobus terminis persoluta amittetur eo ipso." (1277, Wenzel, vol. 9, 187-188)
[197] *Regestrum Varadinense*, 232, case 213/1219.
[198] 1226, Wenzel, vol. 1, 219: "Et quia dictam pecuniam usque predictum terminum secundum condicionem factam, ab ipso vero ulterius dilacione facta usque Pascha noluit eciam persolvere…"
[199] Wenzel, vol. 6, 529-530 "…ad nos fecimus citari iterato, nec aliqatenus uoluit comparere. Ipsum ergo pro conuicto in omnibus supradictis, Poth uero iterato iustificatum secundum tenorem iudicij habemus. Petrus eciam in ducentis marcis prius in sua lite remanserat, ad quas soluendas terminum quadruplicem assignauimus, in quibus neutiquam satisfecit."
[200] 1300, Wenzel, vol. 12, 359: "Nos Capitulum Quinqueecclesiense memorie commendamus, quod Demetrius filius Comitis Ladizlai filij Clethy coram nobis personaliter constitutus confessus est oraculo viue uocis, ordinacionem seu composionem super facto diuisionis vniuersalis possessionis ipsorum inter Magistrum Johannem fratrem ipsorum ab vna parte, et inter Philippum et Ladizlaum Magistrum Concanonicum nostrum ab altera mediantibus litteris nostris composicionalibus factam per omnia accepisse…" For more on *loca credibilia* in Hungary cf. Zsolt Hunyadi, "Administering the Law."
[201] 1237, Wenzel, vol. 7, 36-37: "…dixisset, quod Haholdus Comes composicionem per ipsum Comitem Arnoldum factam et ordinatam transgrediens, metas terre sue Gostolia, prout in litteris suis Regalibus contineretur, per fidelem capellanum suum Paulum sacerdotem ipso Comite Arnoldo presente assignatas, destruxisset…"

or other pecuniary punishment could take a long time–there are cases when the fine was only paid by the sons of the offender.[202]

In statutory law, the fines and other payments were expressed in money or young oxen; in later practice it was in money, animals, and land. The sums determined in statutory law, following different numeric patterns analyzed by Bálint Hóman at the beginning of the twentieth century,[203] were apparently not used in later practice. There the system of pecuniary penalties and damages was not bound to any numeric system, offering victims completely different amounts of damages in similar cases. From the point of view of terminology the term wergeld is not present in any of the charters published by Wenzel. *Homicidium* is a term that is used in a charter from 1294 to designate a "man-price" for a killed man which was supposed to be paid by the murderer.[204] Another term, *homagium*, is not mentioned in any of Wenzel's charters either; it was used, e.g., in a later charter, from 1366, with the meaning of financial payment but without further details.[205] Werbőczy in *Tripartitum* III: 5 ascribes the meaning man-price to the term *homagium*, paid to avoid eye-for-an-eye punishment. *Birsagium* is mentioned only in a charter from 1243, again without further details on what kind of payment was understood under this term.[206] According to Werbőczy's *Tripartitum* I: 134 a judicial fine was usually called *birsagium*. The term itself points to this meaning, as *bírság* means "fine" in Hungarian. Indeed, in a charter from 1279, fines collected by the judges are probably meant under *duas partes*

[202] 1260, Wenzel, vol. 7, 539-540: "…Mark comes confessus et uiua uoce, quod cum ipse mouisset causam contra Endre et Stephanum predictos, requirendo ab eisdem, ordine judiciario, duo judicia, super quibus pater eorum dictus Ledegerus contra eundem Markum Comitem fuerat conuictus…".
[203] Bálint Hóman, *Magyar Pénztörténet* (Budapest: Magyar Tudományos Akadémia, 1916), 157-158. He identified the system of pecuniary penalties as based on the numbers 5, 10, 50, 100 (this hundred-system was used also in Hindu, Arab, and Greek culture – ibidem, 162) with 10 % added as a reward for the judge, leading to numbers 6, 12, 55 and 110.
[204] Wenzel, vol. 10, 162–165.
[205] 261/1366 (Sept. 11). Imre Nagy, Farkas Deák, Gyula Nagy, *Hazai Oklevéltár 1234-1536* (National Archive 1234-1536) (Budapest: Knoll Károly, 1879).
[206] Wenzel, vol. 7, 146-147.

birsagiorum.[207] To denote judicial fines, *iudicium* (a term used for the ordeal as well) was also used in royal privileges,[208] but in general, in all the cases where a special term is mentioned for financial payment (especially in cases of extrajudicial settlement), only the term *compositio* is used.

2.4 Loss of liberty

In statutory law, there were two types of punishment regarding liberty: imprisonment and enslavement. However, although the sources speak about slavery, not much is known about its nature in Árpádian Hungary.[209] Imprisonment for a week was imposed in Stephen's laws for not observing Ember days and for eating meat on Friday[210] and in Ladislas' laws in the case of a nobleman stealing from his kindred.[211] Enslavement, on the other hand, was applied in far more cases: a freeman fornicating with a bondswoman could be enslaved with his wife, just like a bondsman fornicating with a bondswoman.[212] Marrying a bondswoman of another without the master's consent meant enslavement as well.[213] Unless a thieving freeman could redeem himself he was sold.[214] A thieving woman had to be redeemed by her husband, but only twice and in the case of a third theft she lost her liberty for good.[215] A commoner stealing within his kindred was sold as well,[216] just like an unmarried girl-thief.[217] A thieving freeman who fled to a church became a bondsman of the church, but if later

[207] Wenzel, vol. 12, 280–288.
[208] In 1257, Wenzel, vol. 2, 282-283: "…due partes iudicii cedent iudici, tercia uero pars villico ipsorum pro tempore constituto…" And in 1273, Wenzel, vol. 4, 32-33: "…duasque partes judicij nobis exigendo, terciam vero villico relinquendo…"
[209] On this debated question cf. Ilona Bolla, *A jogilag egységes jobbágyosztály kialakulása Magyarországon.*
[210] Stephen I: 10; Stephen I: 11.
[211] Ladislas II: 9 . "Ergastulo carceris" does not mean any forced labor, it is simple prison.
[212] Both Stephen I: 28.
[213] Stephen I: 29.
[214] Stephen II: 7.
[215] Stephen I: 31.
[216] Ladislas II: 9.
[217] Ladislas III: 7.

manumitted, he was to be sold abroad.[218] In Coloman's laws the wife of a thief and his children older than fifteen were reduced to the same servitude as the thief.[219] Invaders of houses without property were sold,[220] just like poor guardians of the border.[221] A third case of non-appearance before a judge was punished in the same manner.[222] A man who did not have the money to pay a fine for keeping a fugitive[223] was sold. The synod of Esztergom punished a number of offences by enslavement: a wife who fled from her husband was to be sold,[224] as were adulteresses and rapists,[225] just like a person who incurred debts and fled.[226]

A special case is enslavement connected to the loss of property. According to King Ladislas, if a thief fled from the hands of a guarantor, both were to be sold and the property was to be appropriated by the royal treasury.[227] Similarly, if a thief fled to a church, he was to be led out and blinded, and his children older than ten years were put into servitude and lost their property.[228]

In the *Regestrum Varadinense*, a case of false accusation of theft from 1235[229] is reported as being punished by the enslavement of the offender, together with his wife and son. In another case, although the judge is not mentioned at all, a person convicted of theft was also punished by being sold, together with his family, for ten marks.[230] As far as the charters are concerned, loss of liberty is rarely mentioned. The only interesting report from my sample is the case of the imprisonment of Queen

[218] Ladislas III: 4.
[219] Coloman 56.
[220] Ladislas II: 11.
[221] Ladislas II: 17.
[222] Ladislas II: 26.
[223] Coloman 42.
[224] Syn. Strig. 50.
[225] Syn. Strig. 51, 52.
[226] Syn. Strig. 54.
[227] Ladislas II: 1.
[228] Ladislas II: 12.
[229] 388/1235.
[230] 54/1213; the same holds for case 257/1220.

Elisabeth from 1289,[231] mentioning *ergastulum carceris* to denote the queen's imprisonment. This term (or *ergastulum custodie*) is interpreted as forced labor. [232] However, in the case of the queen, I consider this to be a simple deprivation of freedom by imprisonment.

The question of imprisonment in the early medieval period has not yet been answered satisfactorily.[233] It has often been claimed that imprisonment was used in the Middle Ages only as means of securing the presence of a person before the judge, i. e., as a kind of pre-trial custody. However, as Trevor Dean pointed out, monasteries had had prisons for the correction of monks from an early date and in the twelfth century bishops did, too.[234] In Hungarian legal history, imprisonment was also first considered as being used only as pre-trial custody. Although it was known in the statutory laws of the first kings and also in the laws of King Andrew III,[235] there are few reports of its actual existence and functions in the early Middle Ages. The imposition of penalties of imprisonment emerged only in the fifteenth century[236] and started to be used more often only in the seventeenth and eighteenth centuries. Although as early as in the thirteenth century the *Regestrum Varadinense* mentions a *carcer* and its guards,[237] it is not possible to decide whether this *carcer* was a place of detention of convicted prisoners or only a pre-trial custody.[238] Another case mentioned in the *Regestrum*,[239] where two *iobagiones* were supposed to stay in *carcer*

[231] Wenzel, vol. 4, 341-342: "…nobis apud Ecclesiam Beate Virginis de Insula Budensi per eundem dominum Regem Ladislaum in ergastulo carceris conclusis…"
[232] As in DRMH, 14.
[233] See, e. g., Guy Geltner, "Medieval Prisons: Between Myth and Reality, Hell and Purgatory," *History Compass* 4, No. 2 (2006): 261-274.
[234] Trevor Dean, *Crime in Medieval Europe*, 121.
[235] Barna Mezey, "Der Kerker in der ungarischen Rechtsgeschichte," 389-391.
[236] Also in the statutory law–art. 1435:8 (8/Mar/1435) imposes incarceration forever–clearly as a punishment.
[237] *Regestrum Varadinense*, no. 223/1219.
[238] Ibidem, 401.
[239] Ibidem, 283 (case no. 341/1222): "Nominati autem duo ioubagiones carcerem intrare teneretur ibi, quoadusque vellet comes, moraturi."

as long as the ispán considered appropriate, could indicate the use of a prison (without any specification of its actual appearance) as a means of punishment. Here one can also call attention to a punishment of a pagan priestess according to a narrative source–*Chronici Hungarici Compositio saeculi XIV*: During the pagan uprising in Hungary in 1046, the priestess Rasdi was kept in prison until she ate her own feet and died.[240] However, it is again not clear whether she was waiting for a punishment or whether the imprisonment was the punishment itself.

2.5 Deprivation of office, privilege and of noble status

Deprivation of office was to be applied according to statutory law if an ispán allowed buying and selling horses at the frontier,[241] if he violated a decree of the king,[242] or–later in the thirteenth century–if a palatine badly managed the affairs of the king and the kingdom.[243] A judge could be deprived of his office for arresting a nobleman.[244] Deprivation of office was sometimes connected with or replaced by a financial penalty; a *centurio* who violated decrees of the king was deprived of his commission and had to pay fifty *pensae*.[245] If an ispán sold a Hungarian slave abroad, he was to be deprived of office, or lose two-thirds of his property.[246] And finally, if an ispán did not conduct himself honorably, bringing ruin to those attached to his castle, he was deprived of his office and had to make good the damage.[247] I was able to find only

[240] "…Rasdi capta fuit et tamdiu in carcere fuit reclusa donec recomederet pedes proprios, ibidem quoque moreretur…" Chronici Hungarici Compositio saeculi XIV, 338.
[241] Ladislas II: 17.
[242] Ladislas III: 15.
[243] 1231:1.
[244] 1298:13.
[245] Ladislas III: 15.
[246] Coloman 77.
[247] 1222:14.

one piece of evidence for actual deprivation of office in the sample of extant charters that I used–a certain ispán Laurentius was deposed from his office for his misdeeds.[248]

Deprivation of privilege was a rare punishment, used only in article 1298:15 imposing loss of a market privilege for not allowing silver money to circulate. Loss of noble status was also regulated as a punishment only once–in the same decree, article 1298:1 imposed this for not restoring occupied property. However, it is important to note that in the previous period noble status was only evolving and there were no general rules relating to its existence and acquisition. Defeat of a claim[249] for leaving the royal palace before promulgating a judicial decision or for not appearing before the king at all should probably not be considered as punishment. This was only a procedural matter. A number of cases of this nature are reported in the *Regestrum Varadinense*, when a party failed to appear before the judge or chapter for an ordeal and therefore was considered to be convicted. All in all, there are thirty-seven cases when a party did not come to the ordeal; of these, in fourteen cases the party was expressly proclaimed as convicted by the judge, but without the imposition of any specific punishment.

2.6 Ecclesiastical punishments

Excommunication and other ecclesiastical punishments (fasting or expelling people who disturbed the mass from the church) represented a separate kind of punishment. In Árpádian statutory law, penance was imposed either alone or together with some other punishment and both penalties had to be suffered. In general, penance had both sacramental and disciplinary aspects; it restored the favor of God towards the

[248] "…Laurencium filium Ompud Comitem in Gerha primo statuissemus, non ut probus in eo aliquid lucri fecit, se tanquam malus mala intulit, de quo Comitatum hunc denuo abstulimus, penam, ut meruit inferentes…" (1228, Wenzel, vol. 1, 256-257).
[249] Recognized as a specific punishment by Daniela Hrnčiarová, *Trestno-právne vzťahy v uhorskej spoločnosti v 11. storočí a na začiatku 12. storočia*, 168.

sinner.[250] The connection of penance with secular punishment clearly indicates the idea of crime as a sin.[251] Excommunication started to be widely used by legislators only in the thirteenth century, although it was known already in article 74 of the canons of the synod of Esztergom as exclusion from the community of the faithful for conspiring against the king. It was also widely used as a part of *formulae sanctionales* in the early charters. Later it was imposed as a penalty for "those noblemen who do not render justice according to the terms of our statute" until they had properly given satisfaction to the person who suffered an injury.[252] Excommunication was also used as a penalty for the king if he would not act in concordance with the Golden Bull as it was confirmed in 1231 *in fine* and in 16:1298. It was also imposed for not restoring occupied property,[253] for declining to report robbery,[254] for those who gave alms to excommunicated monks or interceded in their favor,[255] for acting against church liberties,[256] for judging by improper judges,[257] for forcing nobles to serve a magnate,[258] and for taxation of churches and monasteries.[259] Excommunication was connected with certain financial consequences in the case of collecting illicit dues.[260]

Fasting was another ecclesiastical punishment. It was used in the case of killing,[261] especially of one's own wife,[262] ans also imposed for eating meat on

[250] John McNeill and Helena M. Gamer, *Medieval Handbook of Penance*, 15. For more on penance see Sarah Hamilton, *The Practice of Penance, 900–1050*. On the problem of public penance see. Mary C. Mansfield, *The Humiliation of Sinners*.
[251] On using the new religion to strengthen attempts at keeping the peace and avoiding blood feuds see also János M. Bak, "Signs of Conversion in Central European Laws," 118. On the other hand, Libri Poenitentiales were also influenced by secular law, extending penitential rules to all crimes punished by earlier Roman authorities. Cf. John McNeill and Helena M. Gamer, *Medieval Handbook of Penance*, 8.
[252] 1231:4.
[253] 1298:1.
[254] 1298:3.
[255] 1298:4.
[256] 1298:10.
[257] 1298:11.
[258] 1298:12.
[259] 1298:18.
[260] 1298:9.
[261] Stephen I: 14.

Fridays and Ember days,[263] and for breaking an oath.[264] It was also imposed on witches.[265] Another partially ecclesiastical or at least closely linked punishment (but perhaps only a justified action and not a punishment) was chasing people who disturbed the mass away from the church.[266]

From among the cases in the limited sample of charters that I have used, excommunication was pronounced either by the pope himself or by his legate or by the archbishop of Esztergom. The pope punished the bishop of Csanád in this manner for imprisoning the abbot and the monks of the monastery of Bisztra (*monasterium Bistriensis*);[267] James of Praeneste, a papal legate, excommunicated a certain knight called Fabian because of his contumacy[268] in their dispute (although Fabian did not care much about the punishment[269]). The Archbishop of Esztergom, Lodomerius, excommunicated Master John, ban Nicolas, and ispán Henry[270] for infringing ecclesiastical liberties (destruction of church property, collecting tithes, etc.).[271] All these cases come from the thirteenth century. This makes sense because in the previous period of Christianization it is possible that no respect was yet shown for this penalty by the culprits. Even in the thirteenth century one can find evidence of contempt shown for excommunication, for example, in the case of the already

[262] Stepen I: 15.
[263] Stephen I: 10, 11.
[264] Stephen I: 17.
[265] Stephen I: 33.
[266] Stephen I: 19.
[267] 1236, Wenzel, vol. 7, 10-13.
[268] 1234, Wenzel, vol. 1, 323-324: "…propter suam multiplicem contumaciam…"
[269] Ibidem: "…non uideatur curare de excommunicatione predicta…"
[270] 1281, Wenzel, vol. 12, 336-338.
[271] Ibidem: "…eosdem Magistrum Johannem, Nicolaum Banum et Comitem Henricum ac ipsorum sequaces in festo Annunciacionis Beate Vinginis proxime preterito, in Wereuce, apud ecclesiam Fratrum Minorum, que in honore Beate Virginis Marie est constructa, plublice excommunicavimus in scriptis et denunciavimus excommunicatos, pulsatis campanis, candelis accensis et extinctis, et ab omnibus arcius evitandos, ac totam terram ipsorum ecclesiastico supponimus interdicto, donec de premissis excessibus et commissis dampnis et iniuriis illatis Deo, Ecclesie et nobis, ac fratribus nostris, Capitulo videlicet Zagrabiensi, satisfaciant…"

mentioned Fabian or in another case reported in a charter from 1234.[272] I was not able to find any case of other church penalties different from excommunication in my sample of charters.

2.7 Combined punishments

There are many examples in the extant statutory law where several kinds of punishment are closely linked. Combination of the loss of liberty with a fine or a compository payment is present in the case of a falsely accused judge: if the offender had greater means than the judge, he was supposed to pay a fine and lose his freedom.[273]

Fines and corporal punishment were linked in the regulation of cases when someone prevented the tying up a thief. This person had to pay fifty-five *pensae* and had to be bound himself.[274] Corporal punishment and compository payment were both applied when a bondsman committed a theft worth less than ten pennies; the thief had to pay double and lost his nose.[275] Similarly in later cases, when a bondsman stole property worth less than six pennies, he lost his eye and his master had to pay double.[276] Corporal punishment (with the possibility of redemption) applied together with restoration and capital punishment is a rare case in Saint Stephen's laws. It applied in the case of theft by a bondsman, when the stolen property had to be restored and five young oxen paid, otherwise the thief's nose was to be cut off. In the case of a second offence, the thief lost his ears, and the third time, he was punished by death. In the charters, only death penalty combined with the loss of property is reported (see chapter 2.1).

[272] Wenzel, vol. 11, 269-270: "…excommunicauit eundem, et fecit excommunicatum publice nunciari… Sed dictus D. ea contempta in ipsa iam perstitit contumaciter per sex annos, prefatum monasterium per uiolentiam detinendo."
[273] Ladislas II: 6.
[274] Ladislas II: 3.
[275] Ladislas II: 14.

2.8 Punishment left to the king, his judges or clergy, and punishment by analogy

Some norms of statutory laws do not contain any specific punishment. In one group of the regulations, the case was to be transferred to the king or his judges: a witch was supposed to be instructed in the faith and marked with a key between her shoulders, but should she be caught in the act again, she had to be handed over to the judges.[277] According to Coloman, sorcerers discovered by messengers of the archdeacon and the ispán should be judged by them.[278] A person beating a bishop's messenger asking for a promised donation was to be handed over for royal judgment;[279] a theft of a large object by a cleric was to be punished by degradation by the bishop and the cleric was to be sentenced *iudicio vulgari*;[280] a person manumitting a girl sold for theft should lose her price and be brought to the king's court,[281] a bishop violating the king's decrees should be judged according to the king's will.[282] Royal justice was also applied if the king's horse got lost in a village–the people of the nearest village, known as a village of thieves, were held responsible.[283] From the later statutory law two regulations of this kind are extant–article 1290:18, according to which barons should be punished for omissions and misdeeds in accordance with the judgment of the king and his councilors, and a general statement in article 1290:20–if an offender was pardoned, justice (in the form of damages) should be rendered to the plaintiff anyhow.

A special group here is represented by cases where punishment is reserved for ecclesiastics following canon law; not observing Christianity was to be punished by

[276] Ladislas III: 8.
[277] Stephen I: 33.
[278] Coloman 60.
[279] Ladislas I: 5.
[280] Ladislas II: 13.
[281] Ladislas III: 7.

the bishop according to the canons and only if the person kept resisting should s/he be handed over to royal judgment.[284] Punishment was similarly left to ecclesiastical persons in the case of a woman who killed her offspring,[285] cases of the abduction of women,[286] and adultery.[287]

Of special interest here is a case of a sorcerer who was to be handed over to the person hurt and to his kindred to be judged (and punished) according to their will.[288] Here no royal judges are involved. From among the charters, there is a case of the chapter of Győr, mentioning *regali iudicio* without further specification. Probably it was used in the general sense of royal punishment by the king himself or his court.[289]

In some specific cases the punishment is expressed by analogy to another crime for which the same punishment is imposed. Rape should be punished like homicide;[290] the seller of stolen property was to be punished as a thief,[291] someone keeping a murderer in one's house should be punished the same as the killer,[292] a person stealing a four-footed animal or clothing to the value of twenty pennies was to be punished as a thief,[293] as was a thief seized on mere suspicion,[294] and any inhabitant of Hungary who bought a Hungarian horse, if proven guilty by ordeal.[295] In practice, punishment (the settlement of a dispute respectively) was often delegated to non-official arbitrators or mediators. I will deal with this matter below in chapter 3.

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[282] Ladislas III: 15.
[283] Coloman 62.
[284] Stephen I: 13.
[285] Coloman 58.
[286] Coloman 59.
[287] Coloman 61.
[288] Stephen I: 34.
[289] 1237, Wenzel, vol. 2, 73-74: "…eidem A. perpetuo adiudicavimus possidendam, dictos vdvornicos in regali iudicio condempnantes pro eo, quod calumpniosam moverant accionem…"
[290] Ladislas I: 32.
[291] Ladislas III: 11.
[292] Coloman 50.
[293] Coloman 54.
[294] Coloman 55.

2.9 Restoration

The restoration of damage was already mentioned in the subchapters on corporal and pecuniary punishment, when there were cases of combining these punishments with a restoration (restitution). Restoration can be seen only as a specific obligation connected to punishment, rather obvious and just, and also as one of the goals of punishment, but it is not a punishment in itself. I have already mentioned cases of pecuniary punishments when a party had to repay several times the value of the damaged or stolen property. In the following cases, the stolen or damaged property or kidnapped person was restored *in natura*; besides the cases already mentioned of a cleric or freeman or bondsman who stole a goose or a hen which had to be restored, [296] a bondsman-thief who fled to a church had to be returned to his master.[297] If a thieving slave fled to the church, he was supposed to be redeemed by his master for one *pensa* and restitution was to be done to the man whose property was stolen.[298] Coloman also ordered stolen things to be returned.[299] The later regulations also took care of the restoration of property–article 1231:5 asked for lands of nobles which were occupied and retained to be restored to those nobles; article 1290:13 ordered unjustly seized or violently occupied properties to be returned and restored; article 1298:1 restored the property of the king; article 1298:3 asked for stolen things to be returned, and article 1298:5 presupposed restoration of property of the church occupied by the king.

2.10 General observations

Persons involved in administering justice

[295] Coloman 76.
[296] Ladislas II: 12, 13.
[297] Ladislas III: 5.
[298] Ladislas III: 5, if master not able to restitute, he should pay one pensa to church and slave would belong to church as well.
[299] Coloman 84.

It would be useful to offer an overview of the judicial system itself first. However, we do not know much on the earliest system. For sure, the count palatine and royal ispáns performed the judicial tasks. More information on the system of other judges is lacking. In the thirteenth century, judges known as *biloti* (*bilochi*) *regales* appear. The information on judicial procedure is only scarce, scattered in surviving charters. No proper judicial records from this period are preserved.

Based on the extant sources, the possibility of a judge being "false," i.e., not officially appointed or at least being challenged in his authority was a risk, albeit probably not often a problem, while having a case decided. An example of such a challenge to the judicial authority is in a charter from 1299.[300] An interesting context of this problem is to be found in the statutory law–in Ladislas III: 23, dealing with "false" judges. Perhaps some remnants of Hungarian tribal judges (an institution of pre-christian and pre-state origin) were meant by this expression. It is improbable that any tribal judges would still have exercised judicial powers around the year 1300. Probably only the official authority of judges appointed by the king was challenged in later cases.

When considering the possibility of statutory law being applied by judges in practice, one has to realize that these judges, although officially appointed, were not legally trained in the sense of any academic education. Their knowledge of law, if any, was learned only by years of practice. From my point of view, even if the judges or ispáns would have liked to apply these early laws, they would have had serious problems doing so. It is not known to what extent the officials were acquainted with the texts of the legal norms nor how the contradictions between these norms were resolved nor whether previous norms were applied to questions not regulated by later

legislation. The main question is: Were the laws applied in practice at all? Eckhart states in so many words that "reference to laws in court is not usual before the fifteenth century."[301] These laws probably could not have been used in a way we would use them today and we also can not ascribe to them today's theoretical approaches to law and legal regulation.

The nature and development of punishment

However, it is possible, as was done by earlier and also today's scholars, to discern certain approaches and development, for example, in punishments for murder or theft. It is often claimed that Ladislas made Stephen's regulation of murder more lenient–instead of capital punishment he introduced imprisonment of the offender.[302] On the other hand, Coloman did not introduce any new punishment for murder, but only divided murder into simple murder, *parricidia*, and other murders.[303] From a comparison of Stephen's and Ladislas' regulations for theft it is sometimes concluded that Ladislas reformed Stephen's laws by establishing a certain monetary limit for the crime of theft and by lowering the limits in other cases issued even more severe punishments (a nose could no longer be redeemed, the eye of the thief was plucked out or the thief was punished by death).[304] In Coloman's laws, theft was punished by blinding, but the regulation was expressed in a completely different manner, not paying attention to the casuistic nuances as in the case of earlier regulation by King Ladislas.[305] From among other differences, according to Ladislas' laws, in the case of

[300] Wenzel, vol. 5, 236-241: "…Zoda, Bors et Nicolaus deberent comprobare, vt Magister Leurente, Comes Mathyas et Magister Heym sint falsi judices, et predicte littere eorum inquisitorie similiter false et modo prehabito emanate…"
[301] Eckhart, *Jogtörténet*, 154.
[302] Ladislas II: 8.
[303] Coloman: 50.
[304] Daniela Hrnčiarová, 62. Ladislas II: 1, 2. It may be that the situation of civil war and anarchy may have led to more severe regulations in Ladislas' laws.
[305] Coloman: 53, 54, 84.

a thief his children were sold into slavery if they were older than ten years.[306] Later, Coloman punished only sons older than fifteen years by enslavement.[307] However, I have my doubts whether any theoretical legal conclusions can be drawn from the formulation of the laws of the first Hungarian kings. As Závodszky has already pointed out,[308] Stephen's laws relied partially on Western patterns and where the laws did not follow foreign patterns they were probably only reacting to already known and previously solved cases and tried to regulate similar cases *pro futuro*. That is why no serious theories can be drawn from these regulations. For example, from the existence of a regulation in Stephen's laws punishing the drawing of a sword with intent to kill it is often deduced by scholars that the contemporary legal theory considered an attempt to commit a crime as worth punishing.

I argue that, like the later codes of Ladislas and Coloman, these laws were not the result of any deeper scholarly work. If there was a specific intention in the minds of the legislators it was more likely to have been the aim of the laws to strengthen the king's position and to secure peace and order in the kingdom, expressing the king's belief in his ability to regulate life in his kingdom. However, I infer that the medieval rulers were not able to enforce the implementation of laws in every case and perhaps– if one accepts the idea of medieval codes being only a literary genre–they did not even wish to do so. It is possible that Saint Stephen had enough power to implement his laws if he really wanted to do so, but generally the laws of the holy kings only tried to set general rules of behavior, hoping they would be followed and that in that way peace and order would be kept. I have to stress again that we do not know anything concrete about the actual use of these laws in practice, as almost no written documents are extant from this period. Our only sources for studying legal practice

[306] Ladislas II: 12.
[307] Coloman: 56.

are charters from the later period and a specific source from the thirteenth century–the *Regestrum Varadinense.*

Application of medieval law in the practice of punishment

Analyzing the sources from the thirteenth century, one can only discover part of the legal practice of this time. It is nevertheless interesting to compare the later practice with at least hypothetically previously used statutory law to see whether any remnants of its usage are extant in later sources. The statutory law of the thirteenth century, as far as is known, did not treat matters of criminal law at all. The only statutory law that could have been used was probably the law issued by the first kings or customary law. One might assume that if the laws of the first kings had been used in practice at least during the eleventh and the beginning of the twelfth century it is probable that their content would have become part of the customary law.

Based on my research it seems that this was not the case. From the four cases of specific punishment reported in the *Regestrum*, in the first the judge imposed a monetary punishment which was not regulated by the statutory law. The second case represents enslavement for false accusation,[309] which was not regulated by the statutory law either. In the following two cases[310] the party accused of theft took refuge in a church after the ordeal[311] and the person, together with his wife and children of both sexes (without any mention of their ages), was sold. In the second of these cases, even the female servant and her son and all the family's property were sold. However, there is no regulation in statutory law allowing a person taking refuge in a church to be sold. Moreover, both Ladislas and Coloman placed an age limit on

[308] Tested by DRMH 1.
[309] 388/1235.
[310] Cases 54/1213 and 257/1220.
[311] The institution of asylum is known in statutory law, however the fact of asylum being used in practice does not necessarily mean implementation of statutory law in practice, as the institution of church asylum was generally customarily known – also probably from canon law.

selling the children of a culprit, which did not seem to be a problem in this case. All in all, it does not seem that the judges would have adhered to any written law. No remnants of using the statutory law of the eleventh and twelfth centuries can be found, not even in the Latin vocabulary used in the *Regestrum*. The same is true for the later charters–from among linguistic items used in the statutory law no match could be found in charters.[312] The laws of the first Hungarian kings are not even mentioned; even when I found a mention of *statuta Regni*, their ascribed content does not match the content of any extant statutory law. Also, the term itself does not necessarily have to mean written, statutory law. In the overall situation of legal consciousness of Árpádian Hungary's society no conclusions can be drawn from any *quasi*-legal term.

Even in the early sixteenth century it was not quite clear to Werbőczy, the great codifier of medieval Hungarian law, what the exact relation and difference was between law and custom.[313] In the Prologue (influenced by Bartolus), he uses the term *ius* as a general category for *lex* and *consuetudo*, while at the beginning of Part One, *ius* is set in opposition to *consuetudo* and later *consuetudines* represent the particular law of the Hungarian kingdom, i.e., national law, in contrast to the learned *ius commune*.[314] Even before Werbőczy, a formulary from Somogyvár dated to the year 1460, but containing earlier texts,[315] deals with the relationship between local custom and *lex* (sanctified by the "holy fathers"), which were both supposed to be applied by judges when deciding disputes. The third source of law was the *decreta* issued by contemporary kings. These were valid only during the king's reign, if they were incompatible with custom. If a plaintiff asked for his case to be decided according to

[312] At least as far as the following keywords are concerned: "rapuerit," "invadente," "custodie," "fornicatus," "aures, "lingua," "nasum," "monoculus."
[313] Prologue: 10, *Opus Tripartitum*, 30-33.
[314] David Ibbetson, Custom. László Péter, The Primacy of *Consuetudo*, 20-23.
[315] DRMH 2, s. xlv. Referring to György Bónis, "A Somogyvári Formuláskönyv," *Emlékkönyv Kelemen Lajos születésének 80. évfordulójára* (Bucarest : Tudományos Könyvtár, 1957).

lex, the judge could not apply *consuetudo*. On the other hand, when deciding according to *consuetudo, leges* were supposed to be ignored. *Leges* and *consuetudines* both were set aside when deciding on the basis of royal *decretum*. However, the text ends by allowing for the judge to decide a case simply on the basis of his own consideration and natural justice.[316] To sum up, the image of law and its content is generally very relative for the period concerned, which is also indicated by different decisions in the same cases, as, for example, Péter Banyó has pointed out.[317]

A concrete statute–an edict of King Andrew II ordering the restoration of occupied lands belonging to castles–is mentioned only in case 317/1220[318] of the *Regestrum Varadinense*. This edict[319] is not extant and also did not play any role in the actual decision of the dispute solved there, which was finished by private

[316] Et sic differentia est inter legem et consuetudinem, ac ius et decretum. Lex enim debet firmari secundum originem regni, quitquid est sanctitum per sanctos patres. Consuetudo vero secundum seriem status, ut quilibet de suo státu consuetudinem debet allegare, ut hodie Bude, cras Albe et sic de singulis. Decretum vero intelligitur solum de rege, et tamen decretum debet semper convenire cum consuetudine bona, et durabit, si fuerit extra consuetudinem, usque tempus regis ipsius. Ius siquidem semper debet habere locum suum et comprehendit omnia premissa secundum deum et eius iustitiam, quitquid agitur in iudicio debet adimplere secundum iura salubriter, et per iudicem ordinarium non obstantibus consuetudinibus, decretis et legibus quibuscunque, reddendo unicuique quod suum est. Dum vero sedente iudice pro tribunali in aliqua civitate vel alio loco querulans de aliqua re ex parte alicuius secundum legem iudicium habere voluerit, ex tunc non advertat consuetudinem, sed legem. In casu, si talis iudex factum ipsius querulantis fide vidisset occulata, adhuc non debet sententiam inmediate fulminare, nisi secundum legem ipsius loci evidentibus documentis admissis, secundum institutiones sanctorum patrum predictorum. Et econverso si causa ipsa per consuetudinem debuerit terminari, omnibus legibus originalibus pretermissis advertat approbatam consuetudinem illius loci et causam ipsam concludat per eandem. Ubi autem omnis lex et consuetudo in aliqua causa introduceretur et necesse esset per decretum causam aliquam terminare, extunc semotis legibus et consuetudinibus quibuscunque decretum debet firmari et stabiliri, ne ipsius decreti ymmo potius regis edicti transgressores videantur et inobedientes. Quod si quis iudicum in solio sedens iustitie et aliquis querulans per aliquem offensus conspectui ipsius iudici se presentaret ab eodem iustitiam postulando, idemque iudex certa fide et plena veritate sibi patefacta sua propria contemplatione de offensione ipsius querulantis publice fieret edoctus, extunc talis iudex secundum deum sed et iustitiam, postergatis omnibus premissis et nullis documentis et probationibus admissis contra reum sententiam debet ferre, et hoc est iure… Cf. Ferenc Dőry, György Bónis, V. Bácskay, *Decreta regni Hungarie : Gesetze und Verordnungen Ungarns 1301-1457* (Budapest: Akadémiai Kiadó, 1978), 24-25.

[317] Péter Banyó, "The Filial Quarter in Medieval Hungary: Inheritance of Noblewomen in Medieval Hungary," MA Thesis (Central European University, Budapest, 1999), 49. Cf. also Paul Brand, Local custom.

[318] The dating of the entry in the Regestrum as given by Karácsonyi and Borovszky is probably wrong, because the edict quoted is dated 1221 and the report of the case is dated 1220: "anno Dominicae Incarnationis mille CC XXI cum esset edictum a rege Andrea, quod terrae castrorum, a quocunque violenter occupatae castris restituentur…"

[319] It did not necessarily have to be a legal act, a *lex* or *decretum*. It could also have taken the form of a charter.

settlement before the ordeal was held. However, this case offers important information on how widespread the knowledge of the king's edicts was. In this case, the inhabitants of the villages Vruz, Kolond and Gontoy (*villani de Vruz et de Kolond et de Gontoy*) with the *iobagiones castri* Luca, Tegeegu, Paul, and others used the edict as an argument to sue the sons of Bocion (their social position is not reported) for occupation of the *terra castri*,[320] but gave up in the end and left the land to the sons of Bocion. It is not known whether any other articles comprised the edict, as the *villani* supported their claim with only this one point. As the *villani* and *iobagiones castri* knew about the edict, it is probable that the edicts were announced in the castle and adjacent villages, maybe in a language that the inhabitants could understand, or at least its contents were translated for the people by locals knowing Latin. However, this is the situation in the thirteenth century and the content of the edict is relatively simple. The situation in the eleventh century and at the beginning of the twelfth century, especially if the content of promulgated legal norms was much more complex, remains unknown.

2.11 Shift in the idea of punishment

In previous scholarship it was often supposed that the regulations that comprised the statutory law of Árpádian Hungary actually represent the valid legal practice in the first three centuries of the kingdom. However, modern scholarship has started to realize that the character of the first legislative attempts may not have meant to regulate actual life, but only to follow general medieval patterns of "what a Christian ruler should do." The sources on actual judicial practice that I have analyzed here show the lack of any corporal punishment, in concordance with the results of research of scholars in the Western Europe. These have also pointed to a lack of reports on

[320] *Regestrum Varadinense*, 273-274.

mutilating or other corporal punishments.[321] Three alternatives, albeit only of a speculative nature, are possible here: first, that the system of penalties as construed in the statutory laws of the first kings was applied throughout the whole period of Árpádian Hungary, but the relevant sources are missing; second: in the time of the first kings their laws and the penalties imposed in them were used, but later the system of penalties was simplified to the system based mainly on monetary punishments and the private settlement of disputes, omitting corporal punishment; and third, the possibility is that even during the reign of the first kings their laws and the penalties imposed in them were not applied in practice. The first alternative does not seem to be plausible, at least it is highly improbable that no charter would be extant and no report would be found in the *Regestrum Varadinense* that would be based on the statutory law of these kings and would apply their system of penalties. The only mention of mutilating punishment that I found–the case of talionic maiming of an offender's hands–does not offer enough evidence for mutilating punishments being used in practice. Not even in this case was this punishment applied; a pecuniary settlement of the dispute was reached instead. Of course, it is true that information is only available for the free layer of Árpádian Hungarian society. Information is lacking on what happened in the proto-towns and villages and among slaves and bondsmen. It is possible that here corporal punishment was in use, but among the free people of Hungary no mutilating punishment seems to have been used in the thirteenth century. For this layer of society either alternative two or three is valid–either that corporal penalties imposed in the statutory laws of the first kings ceased to be applied or that they were never applied at all. Another version might be that statutory law was applied in a restricted way, in the king's own decisions or by the judges in the royal

[321] See for example Florike Egmond, Execution, 96.

court administering justice in the king's name, but I have not found any evidence for that.

Following these speculations, the absence of corporal penalties and their later emergence in the Late Middle Ages and Early Modern period would then mean a shift in the idea of punishment. Current scholars claim that medieval punishment, until the fourteenth or mid-fifteenth century, consisted predominantly of the payment of fines, whether in money, bricks or other commodities; physical punishment was relatively rare.[322] They connect the emergence of penalties inflicted on the bodies of criminals in the fifteenth and sixteenth centuries with (1) the introduction of the inquisitorial system through the revived Roman law, (2) the introduction of certain penalties based on myths and folk tales, (3) changing relations between public authorities and citizens and, finally, (4) with the individualization of penalties when the role of families was also transformed in the sphere of responsibility for the deeds of family members.[323] This would explain possible alternative three, that is, that corporal punishment was not applied before the fifteenth century and if then, only rarely. Its wider usage emerged only at that time.

This would not explain, however, the possibility of using corporal penalties during the times of the first kings and then ceasing their usage, at least among the free layer of society. One could come to a conclusion that the individualization of punishment was introduced in Hungary much earlier, but failed. However, as corporal punishment also appears in other medieval codes and surviving sources indicate the prevalence of pecuniary punishment in Western Europe until the fifteenth century, it would have to mean that these codes failed as well. But these are mere extrapolations. All in all, whether the laws of the first kings were used in Hungarian practice during

[322] Ibidem.
[323] Ibidem, 97.

the reign of these kings or not, after their death they were not used at all, although they were still recognized by later legislators. This may have been because of the lack of motivation of later kings to implement these laws or because of a different idea of punishment than was the contemporary belief of society (at least the idea of the layer of society represented by the emerging nobility).

I assume the lack of corporal punishment was caused by the special situation of the Hungarian nobility with its broad autonomous rights. As the immediate superior authority of this social group was the king, whose court was far away, freemen (later nobles) had to settle their disputes by themselves in their autonomous organizations, counties, which evolved from the beginning of the thirteenth century. In this situation of a relatively equal position between the offender and the victim (which existed even before the thirteenth century), conflicts were undoubtedly solved by a judge or arbitrator who knew both parties, and may have been in a close relationship with both of them. In such a situation corporal punishment was not the solution.[324] In contrast, in towns, where the mayor and city council represented authority which was constantly present in the town to solve possible conflicts among the inhabitants representing different layers of society, corporal punishment and later defamatory punishments like the pillory could possibly have been used.

As I have already mentioned in the introduction, it was a general practice of the kings in the thirteenth century to issue royal privileges granting immunities from the competence of royal officials and different rights to colonists coming from foreign countries.[325] Based on these privileges they received an immediate authority–a village

[324] Mutilation was explicitly forbidden in III: 20, *Opus Tripartitum*, 399.

[325] Privileges from the second half of the thirteenth century often contained the right to autonomous judicial decision of cases, based on the ideas of justice or foreign laws introduced by the hospes (colonizers). For example, in a charter from 1262 (Wenzel, vol. 3, 29) for hospes of Nagy-Szőllős: "Item omicida proomicidio judici eorum soluet duas marcas; item pro mortali uulnere vnam marcam; et de simplici percussione, sine sit cum sanguine, siue non, dimidiam marcam. Item super causis inter se

reeve or a mayor. Any information on this problem, however, exceeds the scope of this thesis.

exortis liberare habeant pacem reformandi facultatem. … Item uolumus, quod ubicunque fuerint cum suis mercimonijs, nullas eosdem presumpmat inpedire; sed si aliquis aliquid accionis habuerit contra eosdem, coram villico eorum ordine judiciario prosequatur." Or in the privilege for Cluj (1260—1270, Wenzel, vol. 8, 266-268): "villicus ipsorum omnes causas contra ipsos et intra metas ipsorum exortas, exceptis causis homicidij, furti latrocinij, incendij et wlneris, quod wlgo dicitur boyseb (baj-seb), quas judex noster et villicus ipsorum pro tempore constituti pariter judicabunt, judicia inter se taliter diuidentes, quod duabus partibus judici nostro cedentibus, terciam partem in dictis causis villicus ipsorum optinebit." Or in the privilege issued by master Theodoricus for terra nostra Koy (1273, Wenzel, vol. 4, 32-33): "Item omnes causas ibidem exortas eorum villicus iudicabit, excepta causa furti, homicidii, et violencie, quam cum nostro homine iudicabit, duasque partes judicij nobis exigendo, terciam vero villico relinquendo."

3 VARIETIES OF DISPUTE SETTLEMENT

As shown in the previous chapter, practice of punishment within judicial dispute resolution does generally not match with the punishments prescribed by the statutory law. Moreover, a number of cases decided by judges finished in financial composition, without any actual punishment. Deciding non-criminal cases where no punishment is necessary represents another group of cases. Judges have namely decided also property disputes where the only problem was to determine the owner. Similarly, in cases of disputes concerning questions of status, no criminal deed was to be punished.

From among disputes concerning determination of status by judge, a charter from 1212 reports a case when Farcasius and Jacobus claimed to be *liberi et seruientes Regis,* what was challenged by abbot of Várad who considered them to be *iobagiones* of his church. After hearing witnesses they were proclaimed to be *liberos* by the archbishop of Esztergom.[326] Property dispute represents for example a case when palatine Laurencius in a charter from 1268 restored the possession of certain Grab, whose land was violently occupied.[327] From among other property disputes a charter from 1239 reports a dispute between Abbot Uros of Saint Martin of

[326] Wenzel, vol. 6, 355—356: "…Farcasius et Jacobus proposuerunt, quod Abbas ipsos omnibus possessionibus ipsorum, terris, vineis, molendinis et omnibus rebus in villa, que dicitur Hetin, contra iusticiam spoliasset; Abbas autem respondit, quod ijdem Farcasius et Jacobus iobagiones essent Ecclesie Waradyensis, et quia a seruicio Ecclesie se uolebant subtrahere, ut ipsos in seruicio Ecclesie retineret, ne per contumaciam alienarentur ab Ecclesia, ipsa bona detineret… Interim autem utraque pars composuit sub hac fama, quod Abbas et Capitulum, et dicti jobagiones, quia falso ipsos impecievant, a lite cessarent, et eis terram eorum in dicta uilla Heten ad duo aratra cum L iugeribus pinguis terre, IIII vineas, et II molendina, V prata, III silulas et II antra restituerent, Farcasius vero et Jacobus pecuniam, quam ultra possessiones scriptas petebant, se in presencia Capituli de Sacsard et aliorum plurimorum nunquam requisituros promiserunt. Deinde pristaldus noster Bethlem Canonicus Dymisiensis utrique parti terminum prefixit, quo se nostro conspectui presentarent; die autem prefixo Farcasius et Jacobus in nostra constituti presencia aduersam partem expectauerunt; que cum non venisset, pristaldo precepimus, ut parti que non venit, terminum prefigeret competentem; que cum primo, secundo, tercio, quarto, quinto citata non venisset, cognoscentes iusticiam dictorum Farcasij et Jacobi, ipsos ab impeticione Abbatis, Capituli et iobagionum absoluimus et liberos esse pronunciauimus, precipientes pristaldo nostro possessiones prescriptas restitui, et eis sub discretorum virorum testimonio assignari."

Pannonhalma and *jobagiones et ciuiles Posonienses* concerning Sala. Abbot claimed to possess it since the times of holy kings,[328] *iobagiones* claimed it was occupied by the abbot. Palatine left the decision to king, who adjudicated Sala to the abbot.[329] *Iobagiones* were even to be punished as *calumniatores*, but their penalty (not specified) was forgiven.[330]

Judicial resolution of disputes (on the actual appearance of which for this period any detailed information is lacking) was not the only means of conflict resolution in Árpádian Hungary. Although there must have been a huge number of cases where the settlement was reached extrajudicially and was not even written down, in my sample of the extant charters the cases of extrajudicial settlement are reported in similar numbers as the cases of judicial settlement. This was similar to elsewhere in medieval Europe, as Trevor Dean remarked:

> many disputes were resolved through private arbitration rather than judgment in a court of law. Arbitration was attractive because it was quicker and cheaper than litigation, especially when judicial corruption was rife, and because it offered the prospects of higher compensation as well as reconciliation between the parties… However, it would be wrong to think of arbitration and judgment as opposite methods of conflict resolution, private and public remedies… In England, arbitration in cases of violence, even of homicide, was not unknown… but it was used chiefly in land disputes. In Saragossa it seems to have been used more widely in crimes…[331]

In Árpádian Hungary there is no information on judicial corruption, on the speed of arbitration or mediation in comparison to judgment, on prospects for a higher compensation or on a higher probability of reconciliation of the parties outside of court. It seems that arbitrators and mediators were used either because of a lack of

[327] Wenzel, vol. 3, 186—187: "…inuenissemus, dictam particulam terre de iure hereditario fuisse Grab antedicti, eandem ipsi Grab exclusis populis domine Regine de eadem restituimus hereditario iure perpetuo possidendam…"
[328] Wenzel, vol. 2, 94—95: "…Abbas et fratres eius responderunt dictam possessionem Ecclesiam eorum a tempore Sanctorum Regum predictorum continue possedisse…"
[329] "…taliter diffiniuit, quod possessio Sala et terra predicta, pro qua lis inter partes uertebatur, in ius cederet totaliter et permaneret Ecclesie supradicte…" Ibidem.
[330] "…personarum condemnacionem, quam merebantur, relaxarunt…" Ibidem.
[331] Trevor Dean, *Crime in Medieval Europe*, 100–101.

official judges or because of the lesser degree of formality and official character of the procedure. The nature of the deed does not seem to have played a role, either. In either a property dispute or a violent crime like murder, both were decided in the same manner by arbitrators or settled by the parties themselves with or without the help of mediators.

It is not easy to distinguish between arbitration and mediation in the records. Today, under the term arbitrator one understands a selected independent person given power by both parties to the dispute to decide their case. Parties are obliged to accept the decision of the selected arbitrators. In contrast, mediators do not possess the power to decide a case definitively. They can only help parties to find common grounds on which the parties themselves settle their dispute.

However, G. R. Evans, on the basis of contemporary medieval legal treatises, distinguishes between *arbitrii* in the sense of judges who are not given their jurisdiction by the parties' agreement (it comes "from the law itself") and arbitrators.[332] Evans quotes Johannes Bassianus from the late twelfth century, who allegedly understands arbitration as something closer to mediation or conciliation in the modern sense.[333] Whether this or any other division was known and followed in Árpádian Hungary is doubtful. To explore the utility of such a classification, I will divide the cases of settlement of disputes in extant sources on the basis of the terminology used into cases settled with the help of arbitrators or mediators, and those where is no mention of the intervention of a third party.

[332] G. R. Evans, *Law and Theology in the Middle Ages*, 163-164.
[333] Ibidem, 163.

3.1 Arbitration, mediation, and dispute settlement in the Regestrum Varadinense

In most cases reported in the *Regestrum* the settlement of the conflict was reached by compromise and private agreement between the parties. As already mentioned, Van Caenegem speaks of about seventy-five cases of agreement and twenty-five cases of complaint withdrawal in the *Regestrum*.[334] Compared to that, judicial decision is reported in twenty-six cases, mediators are mentioned in eight cases and arbitrators in two cases. In the remaining cases, no final resolution is reported, but it can be deduced from the reported outcome of the ordeal. Many cases in which one party admitted having falsely accused the other might also be considered cases of actual settlement, but no evidence for this is present. The settlement regularly consisted of pecuniary satisfaction for the opposing party, the judge and the *pristaldus*. However, in a case of theft reported under number 176/1219, no *pristaldus* is mentioned; in 372/1234 (a case of a property dispute) the settlement was reached with the permission of a judge, through the advice of friends (i.e., mediation), but a reward for the judge is not mentioned. In 277/1220 (blinding) financial rewards for neither the *pristaldus* nor the judge are mentioned and the dispute was finally settled through mediation. The same form applied in the case reported in 373/1234 (a runaway slave) and in 385/1235 (a property dispute). However, the latter was solved with the help of arbitrators, not mediators. In case 317/1220, again, the *pristaldus* and the judge were not rewarded and the case was concluded without even mediation.

As already mentioned, sometimes it is not possible to distinguish between judges, mediators, and arbitrators, as these terms are not used consistently. For example, in case 343/1220 (a property dispute) the terms judges and arbitrators are

[334] R. C. Van Caenegem, *Legal Histor: A European Perspective*, 76.

used as synonyms. It is possible that the functions were combined – the official judges could have also acted as arbitrators. A private settlement (356/1229) written down by a judge is a special case; the content of this agreement was presented to the chapter of Várad/Oradea and copied into the *Regestrum*.

3.2 Arbitration in charters

From among the cases that explicitly mention arbitrators, a case reported in a charter from 1214 seems to support the idea that arbitrators were selected to decide the case with binding power.[335] The same applies to a case from 1258.[336] In the former case of dispute between the abbot of Saint Martin (of Pannonhalma) and the *jobagiones et civiles* of Pozsony/Bratislava concerning the possession and destruction of two villages,[337] the official judges sent two officials to investigate the details of the dispute. However, before rendering judgment, both parties asked for permission to have the case decided by selected arbitrators. They chose the bishop of Csanád/Cenad, former Count Palatine Poth and the ispán of Somogy County, promising to obey and respect their decision under the penalty of sixty marks.[338] The arbitrators finally adjudged the land together with the right to damages in the amount of thirty five marks to the abbot, who had to cede two *aratra* of the land to the *jobagiones* for the sake of peace (*pro bono pacis*). However, the *jobagiones* made another agreement with the abbot, leading to a compromise according to which they did not demand the

[335] Wenzel, vol. 1, 132-136.
[336] Wenzel, vol. 2, 309-310.
[337] Wenzel, vol. 1, 132-136: "…causam, que uertitur super terra de Sala duarum uillarum, Stara scilicet et minoris Oduory et destruccione earundem inter Abbatem Sancti Martini nomine V(riam) ex una parte et iobagiones et ciuiles Posonienses, maxime quendam nomine Khucar ex altera…"
[338] Ibidem: "…nostro consensu pro bono pacis D(esiderium) uenerabilem Episcopum Cenadiensem, Poth quondam Palatinum, Alexandrum Comitem Symygiensem arbitros elegerint, promittentes firmiter sub pena LX marcarum, se ratum habituros omnia, que essent arbitri, contradictores uero sentencie eorum penam LX marcarum incursuros."

two *aratra* and the abbot in turn forgave them ten marks from their debt of thirty five marks, although the two *aratra* had an estimated price of only five marks.[339]

The other case is that of a dispute between the abbot of Saint Jacob from Selicz (Zselicszentjakab) and the relatives of the monastery's secular patron on the one hand and the abbot of Saint Martin of Pannonhalma on the other, concerning woodlands and land of one *aratrum* which the abbot of Saint Martin asked for from the abbot of Selicz and a piece of land of hundred and twenty *iugera* asked from the secular lords. The parties selected canons Master Saul, archdeacon of Sopron, and Master Marcus as arbitrators to decide their dispute and agreed to respect their decision.[340] Finally, based on the decision of the arbitrators, the abbot of Saint Martin received the woodlands and eighty *iugera* of land, which he considered enough to desist from further litigation.[341]

The cases decided by arbitrators represent both property disputes and cases of violence. These comprise murder, unintentional killing, capture of people, and destruction of property. Property disputes (sometimes connected with violent destruction) were generally solved by dividing the land in dispute between the parties[342] and payment of damages[343] or exchanging land,[344] or simply ceding the land

[339] Ibidem: "…dictam particulam terre, scilicet ad duo aratra tantum terram ad estimacionem bonorum uirorum ibidem existencium, scilicet ualentem V marcas, reddiderunt Abbati; Abbas uero condescendes eisdem, ex gracia dictis iobagionibus Posoniensibus cum Khucar et ciuilibus de certa summa XXXV marcarum sibi debita pro particula dicte terra, scilicet terra ad duo aratra, tantum decem marcas remisit; et sic tota illa terra de Sala adiudicata est Ecclesie Sancti Martini…"

[340] Wenzel, vol. 2, 309-310: "…ex permissione domini Regis ipse partes compromisissent in arbitros, obligando se eorumdem sentenciam irrecusabiliter tolerare. Igitur per sentenciam dictorum arbitorum taliter exstitit ordinatum…"

[341] Ibidem: "hijs omnibus idem F(auus) Abbas ad se recetis plenarie contentus, tam ipsum dominum Abbatem de Seliz, quam prefatos nobiles, renunciando liti et disceptacioni, absoluit ab omni accione et impeticione liti et disceptacioni, absoluit ab omni accione et impeticione, quam racione suprascripta mouerat contra ipsos, prout partes supradicte, insuper eciam Magister Saulvs Archidiaconus Supruniensis, et Magister Marcus concanonci nostri, in quorum presencia et arbitrio processus sev composicio extitit ordinata et decisa, nobis recitarunt unia noce."

[342] Wenzel, vol. 1, 187 (years 1219—22): "…quod ipsam terram, quam sepedictus Abbas requirebat, Capitulum nostrum eidem cum vno molendinos super quamdam fossatam voluntate reliquit perpetuo possidendam; aliud vero molendimun, quod super Rabbam volutat, cum insula Capitulum sepedictum sibi ipsi retinuit pacifice possidendum." Or in 1262 (Wenzel, vol. 3, 31-32): "…taliter sumus arbitrati:

to one of the parties.[345] A case of the destruction of property connected with theft and other misdeeds is exceptional; it was settled in a different manner–by establishing peace among the parties.[346] Cases of murder that I found in my sample were settled by monetary payment or by granting land. For example, when Albeus killed Germanus,

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Quod Petro filio Feliciani et fratribus suis suam terram diuisimus tali distinccione…" Similarly in 1264 (Wenzel, vol. 3, 104-105): "Adicimus, quod de omnibus hys, que idem Woch Benedicto, Petro, Phyle et Stephano predictis reliquit, ijdem confessi sunt, quod dimidietas omnium cederet in ius et perpetuitatem Benedicti, Petri et Phyle, dimidietas autem similiter in ius et perpetuitatem Stephani memorati. Nos itaque hanc composicionem amicabilem, factam inter ipsos, ratam habentes atque firmam, petentibus eisdem nostris litteris duximus confirmandam…"

[343] In 1214 (Wenzel, vol. 1, 132-136): "…iobagiones et ciuiles Posoniensen, maxime Khucar totam terram duarum uillarum, scilicet Stara et Vduory Abbati in pace dimitterent possidendam; in recumpensacionem uero tocius dampni duarum uillarum sepedictarum penitus destructarum XXXV marcas persoluerent; Abbas uero, cum persona et causa sint ecclesiastice, ne secundum quorumdam opinionem nimis uideretur lucrum appetere, pro bono pacis de totali terra duarum uillarum, scilicet Stara et Vduory, particulam quandam scilicet ad duo aratra tantummodo terram sepedictis iobagionibus et ciuilibus Posoniensibus una cum Khucar assignaret. Finally the iobagiones gave their part of land to the other party in exchange of diminishing their obligation to pay damages: Ibi autem particula terre sepedictarum duarum uillarum, scilicet ad duo aratra tantummodo terra assignata, recognoscentes se supradicti iobagiones cum Khucar, et ciuiles Posonienses, ac utilius sibi reputantes dictam particulam terre, scilicet ad duo aratra tantum terram ad estimacionem bonorum uirorum ibidem existencium, scilicet ualentem V marcas, reddiderunt Abbati; Abbas uero condescendes eisdem, ex gracia dictis iobagionibus Posoniensibus cum Khucar et ciuilibus de certa summa XXXV marcarum sibi debita pro particula dicte terra, scilicet terra ad duo aratra, tantum decem marcas remisit; et sic tota illa terra de Sala adiudicata est Ecclesie Sancti Martini…"

[344] In 1270 (Wenzel, vol. 8, 323-324): "…taliter concordassent: quod media pars predicte terre Saag, super qua litis materia fuit mota, sicut eciam in eisdem litteris nostris vidimus contineri, cessit per arbitratores in ius et proprietatem Capituli supradicti, in pace et sine aliquo concambio possidere; aliam autem partem ispius terre prefati nobiles de Saag permiserunt, dederunt, et ex sua concesserunt bona voluntate ipsi eidem Capitulo perpetuo possidendam. Hac tamen condicione interposita, quod ipsi et eorum successores semper in sempiternum, viam habeant pereandem terram ad vsum siluarum Bersen liberam transeundi. Que quidem terra iacet inter fontem Bana vocatum, et inter fontem Fenkw nominatum; et conterminatur terre Monasterij de Boldua. Capitulum uero Strigoniense in concambium ipsius terre quandam particulam terre sue, similiter Saag vocate, triplo mensuratam, dederunt et plene condiderunt prenominatis nobilibus Egidio, Andree et Garman perhempniter habituram…"

[345] In 1258 (Wenzel, vol. 2, 309-310): "Igitur per sentenciam dictorum arbitorum taliter exstitit ordinatum; quod dictus Abbas de Selyz Monasterio Beati Martini statuit quandam siluam… Item eidem Monasterio Beato Martini superaddendo statuit quadraginta iugera terre… Corradus uero et Georgius supradicti statuerunt eidem Fauo Abbato eciam quadraginta iugera similiter… Et hijs omnibus idem F(auus) Abbas ad se recetis plenarie contentus, tam ipsum dominum Abbatem de Seliz, quam prefatos nobiles, renunciando liti et disceptacioni, absoluit ab omni accione et impeticione liti et disceptacioni, absoluit ab omni accione et impeticione, quam racione suprascripta mouerat contra ipsos…"

[346] In 1274 (Wenzel, vol. 9, 98-99): "…per sentenciam et arbitrium virorum nobilium, propter bonum pacis et amicicie perseueranciam taliter concordassent: Quod prefatus Magister Omodeus nullo unquam tempore ab hac hora in antea super premissis causis poterit Magistrum Gregorium, Petrum filium Nycolay, et Petrum filium Dominici predictos in causam trahere uel inquietare, nec quomodelibet molestare; nec idem Magister Gregorius, et Petrus filius Nycolay, ac Petrus filius Dominici, racione possessionis Gogan uocate, nomine sui iuris, si quod eis forsitan in ipsa possessione conpetebat, ullam poterunt in perpetuum contra Magistrum O. et suos heredes litem ingredi, vel aliquam susscitare materiam questionis. Et sic partes cassatis omnibus litteris, que hincinde super causis iam preteritis emanauerant, ad plene pacis et concordie deuenerunt vnionem. Adiecerunt eciam, quod si Alexius filius Jacinti de Sul, nec non Bala de Gogan, seruientes predicti Magistri O., nec non jobagiones sui de eadem villa Gogan super captiuacione, pudore et dampnis irrogatis sibi per

following the arbitration of *virorum proborum* he was supposed to pay nine marks of silver to the sons of the murdered Germanus. Not having enough money, he paid them three and a half marks in cash and for the remaining amount he offered them a piece of his land.[347] Unintentional killing connected with a property dispute was settled by a payment of sixteen marks,[348] while the capture of a person and other connected acts of violence were settled by the payment of two hundred marks[349] together with a imprisonment in a monastery for seventy-three days, followed by public supplication

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Magistrum Gregorium, ut dixerunt, in aliquo molestare presumpserint, Magister O. tenetur ipsum Magistrum Gregorium modis omnibus defensare."

[347] In 1281 (Wenzel, vol. 9, 325-327): "…idem Albeus pro seipso ac expedicione sua de morte Germani predicti nouem marcas argenti iuxta arbitrium virorum proborum Lewa supradicto, Dyonisio Gergen, Donch et Pethke, filijs suis coram nobis soluere debuisset; sepedictus Albeus in nostri presencia soluit quatuor marcas minus fertone in prompta pecunia Lewa et filijs eiusdem supradictis; residuum nero, videlicet quinque marcas et fertonem, quas in prompta pecunia soluere non potuit, totam porcionem suam in terra Palasth quam habebat, cum omnibus vtilitatibus suis, pro eisdem quinque marcis et fertone, dedit et assignauit Lewa et filijs eiusdem perpetuo et irrevocabiliter possidendam, tenendam et habendam; presentibus et consencientibus generacionibus suis, Vrbano videlicet filio Thoma, qui pro se et pro Laurencio fratre suo comparuit, Johanne filio Leustachij, qui pro se et domina relicta Umresa comparuit, item Almus filio Guze, qui pro se ipso astitit coram nobis…" Similarly in 1287 (Wenzel, vol. 9, 460): "…secundum arbitrium proborum virorum et de uoluntate parcium pro morte et occisione prefati Thyuodori soluerunt coram nobis Mathie et orphano supradictis viginti marcas in argento finito. Assumpmens ipse Mathias, quod quicunquc prefatos filios Madach racione et occasione mortis et occisionis sepedicti Thyuodori niteretur molestare, ipse teneretur eos expedire et excusare proprijs laboribus et expensis." Or in another case of murder connected to more different crimes, probably as a part of feud – in 1295 (Wenzel, vol. 8, 577-578): "…predictus Magister Corrardus pro morte prefata predicti Vrbanus, racione scilicet eiusdem Sebastiani, pro quo Sebastiano ipse Magister Corrardus extiterat fideiussor, persoluit vndecim marcas; item pro dampnis eorundem filiorum Leunardi per eundem Sebastianum irrogatis eisdem persoluit quinque marcas et dimidiam; item ipse Magister Corrardus racione judiciorum pro eodem Sebastiano persoluit duas marcas. Quarum omnium marcarum predictarum sumpma facit decem et octo mareas et dimidiam. Quam pecuniam totam eodem Magistro Corrardo persoluente Dionisio et Stephano filijs Leunardi, item filijs Comitis Dominici et filijs Johannis, filiorum videlicet Leunardi supradicti; ex quibus et pro quibus predictus Dionisius filius Leunardi persoualiter comparendo recepit pecuniam totam supradictam; cuius quidem pecunie sumpna, et modus solucionis, litteris Ducisse torius Sclauonie plenius continetur…" And in a case from 1277 written down in three versions – Wenzel, vol. 9, 181-182, 187-188, 188-189), where sixty marks were to be paid: "…debuerant soluere coram predicto Conuentu sexagita marcas in tribus terminis ad hoc assignatis…"

[348] In 1268 (Wenzel, vol. 8, 218-219): "…exhibuerunt nobis litteras Stephani Curialis Comitis Thriciensis, ordine judiciario confectas super morte Laurencij, quem dicebant per Blasium casualiter fuisse interfectum; continentes, quod Blasius parti adverse pro morte Laurencij nominati, et pro quadam particula terre circa riwlum Zuhuice uocatum existente, quam terram Herk cum cognatis suis ex collacione Regia dicebat possedisse, pro qua eciam terra diucius fuerat inter partes prefatas litigatum, solueret sedecim marcas, partim in condigna estimacione, et partim in denarijs, sicut per uiros idoneos inter ipsos fuerat arbitratum. Itaque supra memoratas marcas Blasius coram nobis, prout fuerat obligatus, plenaire persoluit; Herk uero et fratres sui eidem Blasio heredibusque suis et heredum successoribus, terram eandem permiserunt inperpetuum pacifice possidendam…"

[349] In 1285 (Wenzel, vol. 9, 435-437): "...dixerunt se taliter concordasse: quod quia idem Comes Kemen eundem Jacobum et seruientes suos quosdam indebite captiuauit, equos, (animalia) et uestes eiusdem Jacobi et seruiencium suorum, ac ceteras res quaslibet et bona eorundem auferendo: ex eo

for forgiveness.[350] In this interesting case of arbitration, the culprit, named Kemen, had to pay one hundred marks for the capture of Jacobus' servants and for stealing some of his animals and chattels and another one hundred marks if the opposing party swore an oath with sixty noble compurgators to Kemen's responsibility for killing villagers and for the destruction of three of Jacobus' villages.[351] If Kemen failed to pay the amount, divided into five installments of fifty, twenty five, twenty five, fifty and again fifty marks plus a kind of interest in the form of four horses valued together at twelve marks, one of the arbitrators, Michael *de genere* Budmer, promised to stand surety to the amount of another hundred marks.[352]

3.3 Private settlement and mediation in charters

In many other cases no arbitrators are mentioned and cases were supposedly solved by private settlement between the parties to the dispute or rather with the intervention by third persons as mediators, although these are sometimes referred to as "arbitrators." In most cases, the third persons are not referred to by any specific term.

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idem Comes Kemen dabit centum marcas, quas pro liberacione ipsius Jacobi recepit a – – – refundet eidem Jacobo coram nobis in terminis infrascriptis."

[350] Ibidem: "Comes Kemen intrabit vnam domum pro carcere apud fratres Predicatores de Qhinqueecclesijs, mansurus in eadem solus septuaginta tribus diebus, in septuagesimo autem quarto die manebit cum centum hominibus nobilibus, de quo exeundo cum eisdem hominibus idem Comes Kemen discalciatus, selicto cingulo, supplicans eidem Jacobo reuerenciam faciendo."

[351] Ibidem: "Preterea si idem Jacobus in sabbato proximo post diem Cinerum hoc in anno (cum) sexaginta hominibus nobilibus prestiterit sacramentum coram nobis super eo, quod idem Kemen supra tres uillas eiusdem Jacobi Nogkemed, (Kys)kemed et Jula vocatas die fori, quod quidem forum in predicta villa Kemed celebratur, irruendo destruxerint easdem, in qua quidem destruccione in predicta villa Jula sex Gallici jobagiones eiusdent Jacobi sint interfecti, quorum homicidia sunt computata ad sexaginta (octo) marcas, et predictarum villarum dampnum ad triginta duas marcas; extunc idem Comes Kemen ipsas centum marcas persoluere tenebitur predicto Jacobo in terminis tunc per nos assignandis."

[352] Ibidem: "Supra dictarum autem ducentarum marcarum tunc per eundem Comitem Kemen persoluendarum predicto Jacobo termini sunt isti: scilicet in octauis Epiphanie Domini proxime venturis Comes Kemen dabit quinquaginta marcas; item in octauis Beati Gregorij dabit vigintiquinque marcas, et duos equos valentes sex marcas insimul, hoc est quilibet equus valeat tres marcas et non ultra; item in octauis Apostolorum Phylippi et Jacobi dabit vigintiquinque marcas, et eciam duos equos similiter ualentes sex marcas; item in octauis Sancti Regis dabit quinquaginta marcas; item in octauis Epiphanie Domini dabit quinquaginta marcas…si predictus Comes Kemen, sicut premittitur, contumax fuerit repertus, extunc sine strepitu alichius judicij ante litis ingressum persoluere debebit ducentas marcas Jacobo antedicto, et insuper Mychael filius Comitis Nicolai de genere Budmer centum marcas eidem Jacobo soluere debebit, prout idem Mychael impresenciarum astando ad hec se obligauit spontanea uoluntate…"

They are simply called *boni viri* and their role and the authority of their intervention in the process of conflict resolution are left to the imagination. Moreover, these were often mentioned only by their names without further information on their social status. It is apparent, however, that they belonged to the same layer of society as the parties to the dispute. Sometimes the status of mediators was reported; they were "honorable" men, ispáns, village reeves, citizens of towns and similar.[353] At other times it is especially stressed, similarly to the cases of arbitration, that the settlement was reached with the permission of the judge (e. g., in a charter dated between 1290-1301).[354] These cases comprised, just as in arbitration, property disputes (with violent occupations and destruction), status suits, murders, killings, and mutilations. A reported status dispute connected with a property dispute ended in a settlement which ceded the property to one of the parties; the question of status was later resolved by judicial decision by the archbishop of Esztergom.[355] Cases of murder were resolved in the same manner as cases of arbitration and judicial decisions, by financial compensation, as in the case of murder and other damages in a charter from 1214[356] or

[353] In 1257 (Wenzel, vol. 7, 469-471): "…mediante sentencia nobilium plurimorum a partibus hinc inde electorum in talem conposicionis formam deuenissent…" In 1277 (Wenzel, vol. 9, 187-188): "…mediantibus uiris ydoneis, Comite videlicet Archyno, Elkyno uillico, et Gerardo, ciuibus Strigoniensibus, item Michaele Comite Camere Regis, Augustino Preposito Chenadiensi, et Comite Mark de genere Rysd arbitros per partes adductos…"

[354] Wenzel, vol. 5, 271-272): "…eodem judice permittente…"

[355] Wenzel, vol. 6, 355-356.

[356] Wenzel, vol. 6, 370-372: "…boni uiri eiusdem prouincie taliter inter partes composuerumt, ut propter bonum pacis rei persoluerent actoribus tam pro dampnis illatis, quam interfeccione hominis sui, nec non et aliis iniuriis sexaginta et duas marchas, terram uero in litigio positam relinquerent iisdem actoribus sine omni lite in pace in perpetuum possidendam, secundum quod Petrus Comes patruus eorum olim possederat… Hec composicio facta est coram predicto P. de Zundia pristaldo Magistri Salomonis, et coram multis aliis prouincie sue yobagionibus…" Or in 1274 (Wenzel, vol. 4, 48-49): "…confessi sunt viva voce, quod super homicidio fratris eorum Venceslai me morati, patris videlicet Nicolai ante dicti, per predictos Pous, Laurencium et dictam villam Borsoth solutis septem marcis juxta composicionem et ordinacionem inter eos factam, et ab eis pro bono pacis receptis partim in denarijs partim vero in estimacione condigna, ipsis fuisset per omnia satisfactum, relinquentes ipsos racione predicti homicidij expeditos et per omnia alsolutos ita, ut de cetero nec ijdem Gregorius, Christianus et Nicolaus, nec posteritates ipsorum vel cognati racione sepedicti homicidii contra predictos Pous, Laurencium vel suos heredes, ac ipsam villam Borsoth nullam possint vel debeant movere materiam questionis." Mutilation and murder is reported in a charter from 1277 (Wenzel, vol. 12, 215-216): "Nycolaus et fratres sui prenotati ipsi Ladizlao et fratribus suis pro morte predicti Leustachij patris ipsorum ac dicto Buhta pro amputacione manus eiusdem, et pro alio vulnere eidem illato, sibi ac alijs

in a case of mutilation mentioned in charters from 1227[357] and 1291 (with payment in the form of land).[358] Property disputes (dowry,[359] occupations,[360] destruction,[361] and other property disputes[362]) were again solved by ceding the land to one of the parties,[363] exchange of land,[364] division of the land in dispute[365] or by payment in money or animals.[366]

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fratribus suis antedictis soluissent viginti marcas, et eosdem super premissis reddidissent et coram nobis reddiderunt expeditos; obligantes se predicti Buhta et Ladizlaus, et heredes suos, ac fratres ipsorum prenotatos, ipsum Nycolaum et fratres suos ac heredes eorundem recione premissorum molestare nitentibus expedire proprijs laboribus et expensis. E conuerso autem prefatus Nycolaus super mutilacione manus sue ipsum Buhta et alios fratres suos predictos reddidit coram nobis omnino expeditos…" Murder and other misdeeds in 1298 (Wenzel, vol. 12, 630-633): "…predicti pro morte predicta, et omnibus damnis et iniurijs modo prebabito illatis dictis filijs Stephani soluent ducentas marcas in terminis infrascriptis coram nobis…"

[357] Wenzel, vol. 6, 447-448: "…ne sanguinis fieret effusio, cum alijs uiris discretis se interponentes in hunc modum composuerunt: Vt Villemirus prefatus et alij tres fratres eius prenominati traderent omnes terras suas et vineas, preter solam terram, quam Villemirus in uilla Kenese habuit, Misce Comiti possidendas…"

[358] Wenzel, vol. 5, 55-56: "…per ipsum Cosmam mutilacionem excepit vnius digiti, alter uero, videlicet Johannes, similiter per eunden Cosmam uitam finiuerit capite detruncato; volens igitur idem Comes Petrus decapitacionem et mutilacionem filiorum prefati Georgij recompensacione et satisfaccione aliqualiter restaurare, quandam terram suam Kusvista, uel alio nomine Kusfolu uocatam, existentem a parte orientali inter terras Castri Posoniensis Vista uocatas, a parte uero occidentali inter terras suas Vista uocatas, cum omnibus utilitatibus suis, videlicet siluis, nemoribus, virgultis, fenetis, ac alijs pertinencijs vniuersis, eidem Georgio, et per eum suis heredibus heredumque suorum successoribus dedit, contulit et donauit perpetuo possidendam, preseute et assistente Thoma, filio Comitis Tiburcij, fratris sui, qui huiusmodi donationi consensum suum prebuit et assensum, ita, quod de cetero nec ipse, nec filij sui, nec aliqui de cognacione sua ipsam terram ab eodem Georgio, aut filijs uel posteritatibus suis possint quoquomodo alienare, uel in irritum reuocare, obligando se, quod quicumque processu temporum de heredibus aut generacionibus suis, eandem terram ab ipso Georgio, uel heredibus suis alienare, aut irritare forsitan attemptarent, alienatores, uel irritatores huiusmodi donacionis eidem Georgio, uel successoribus suis taxacionem quinquaginta marcarum, quibus decapitacio et mutilacio digiti filiorum sepedicti Georgij per proborum virorum arbitrium est taxata, soluere teneantur."

[359] In a charter from 1283 (Wenzel, vol. 4, 260).

[360] In 1239 (Wenzel, vol. 7, 76-77).

[361] In 1232 (Wenzel, vol. 11, 251-252), in 1282 (Wenzel, vol. 12, 365-367) or in 1296 (Wenzel, vol. 10, 232-238).

[362] In 1225 (Wenzel, vol. 11, 180-181), in 1239 (Wenzel, vol. 7, 77-78), in 1239 (Wenzel, vol. 11, 309-310), three cases in 1254 (Wenzel, vol. 7, 370, 374-375, 376-377), a case in 1255 (Wenzel, vol. 7, 408-409), in 1256 (Wenzel, vol. 2, 275-276), in 1258 (Wenzel, vol. 7, 483-484), in 1262 (Wenzel, vol. 11, 523), in 1267 (Wenzel, vol. 3, 167-168), in 1268 (Wenzel, vol. 8, 193-195), in 1281 (Wenzel, vol. 12, 339-341) and in a case from 1290-1301 (Wenzel, vol. 5, 271-272).

[363] Charters from 1232 (Wenzel, vol. 11, 251-252), 1281 (Wenzel, vol. 12, 339-341: "…partibus volentibus talis composicio amicabilis extitit inter ipsas: quod dictam terram Wybeech totalem, existentem extra magnum fossatum a parte ville Jenv supra palacium Comitis Wernerij… reliquerunt Ecclesie Beate Virginis… iure perpetuo pacifice possidendam…"), and from 1290–1301 (Wenzel, vol. 5, 271-272). Restoration is mentioned in 1253 (Wenzel, vol. 7, 356-357).

[364] In 1254 (Wenzel, vol. 7, 376-377): "…uidelicet possessionem Feirighaz cum omnibus utilitatibus suis, sub antiquis metis et terminis, quibus a uicinis suis separatur, dictus Mikou commisisset et reliquisset Andree predicto et suis posteritatibus perpetuo possidere; e conuerso autem idem Andreas possessionem Tikus et porcionem eorum in Zeuchen habitam dedisset et reliquisset eidem Mikou et suis heredibus similiter perpetuo possidere…"

A practical example can be offered by a case of murder reported in 1214.[367] In this complex case of violent destruction of property connected to robbery and murder, the king delegated the case to two judges: Master Solomon and ispán Letrus, joined later by another two, Bishop Kalanus of Pécs and Bishop Robert of Veszprém, because the original two judges were not trustworthy enough to the parties (*supradicti judices eisdem suspecti uidebantur*). The four judges together estimated the damage at three hundred and fifty marks. The parties then asked the king and the judges to allow them to retreat to their county and have their case decided in a more "friendly" way,[368] which indeed happened, when after an intervention by the "good people of the county" (*boni viri eiusdem provincie*) the financial composition was set only at sixty-two marks. Finally, the parties returned to the king and after his approval had the settlement recorded in the form of a charter.[369] This again suggests that in a case when the parties sought a remedy before an official judge or the king they were not allowed to simply secede from the proceedings and have their case decided by arbitration or mediation. They had to seek the approval of the judge to do so.

[365] E. g. in a charter from 1225 (Wenzel, vol. 11, 180-181): "…in nostra presencia taliter composuerunt: ut duas partes memorate terre matri M(otmerii) pro iniuria illata restituit Christianus…" Other cases are reported in charters from 1239 (Wenzel, vol. 11, 309-310), 1254 (Wenzel, vol. 7, 370), 1254 (Wenzel, vol. 7, 374-375), 1255 (Wenzel, vol. 7, 408-409), 1256 (Wenzel, vol. I2, 275-276), 1258 (Wenzel, vol. 7, 483-484), 1262 (Wenzel, vol. 11, 523) or 1296 (Wenzel, vol. 10, 232-238).

[366] Monetary payment is reported in charters from 1239 (Wenzel, vol. 7, 76-77, 77-78), 1252 (Wenzel, vol. 2, 128-129), 1267 (Wenzel, vol. 3, 167-168), 1268 (Wenzel, vol. 8, 193-195) and 1283 (Wenzel, vol. 4, 260: "…amicabilis composicio in viginti quinque marcis facta fuisset, mediantibus probis viris, quas videlicet viginti quinque marcas prefatus Domasa ab ipso Bodow Comite iam dudum coram nobis se asseruit plenarie recepisse…"). Payment in oxen is reported in a case from 1282 (Wenzel, vol. 12, 365-367): "…racione destruccionis ville earundem sororum Samud vocate duodecim boues composicionaliter in certis terminis eisdem sororibus coram nobis dare et soluere debuerit…"

[367] Wenzel, vol. 6, 370-372.

[368] Ibidem, "…rogauerunt dictum Regem et Judices, ut remitterent partes a sua persona ad propriam prouinciam, cupientes causam magis amicabili uia sopiri, quam iudiciali sentencia decidi."

[369] Ibidem, "Hec composicio facta est coram predicto P. de Zundia pristaldo Magistri Salomonis, et coram multis aliis prouincie sue yobagionibus. Ego vero Rex A. Hungarie huic composicioni consensum adhibens, ut predicta composicio firma et rata permaneat, sigilli mei impressione (így) feci roborari."

Another example is a case of a plain property dispute from 1255 not involving any violence.[370] The charter refers only to the conclusion of the dispute *mediantibus probis viris*; namely the division of the land in dispute into four parts, ceding three parts to the opponent to the dispute.[371] The case of a property dispute from 1225 is interesting, although it is not from the core Hungarian territory, but from Slavonia. In this case, a piece of land was lost in a duel (used as an ordeal due to the lack of any evidence of ownership[372]), but afterwards it was divided between the winning and losing party without any arbitration or mediation being mentioned.[373] This may be one of the cases where the dispute was solved by the parties themselves, without any intervention of arbitrators or mediators.

To conclude, there seems to have been no difference between decisions reached through judges, arbitrators, and mediators or by the parties themselves. There also does not seem to have been any similarity in deciding similar cases, either in arriving at their solution (which in most cases was a settlement reached on the basis of financial compensation) or in the amount of damages rewarded to the victim or damaged party. In almost none of the cases analyzed was there any reference to a

[370] Wenzel, vol. 7, 408-409.
[371] Ibidem, "…mediantibus probis viris talis inter ipsos fuisset facta composicio. Quod retenta quarta parte terrarum predictarum pro suo vsu, ex superiori fine tres partes earundem Egidio memorato et suis heredibus de consensu fratris sui et consanguineorum suorum pvedictorum reliquisset perpetuo possidendas; ita quod si quis de cetero siue consanguineus eius, siue quicunque alias extraneus racione trium parcium terrarum predictarum Egidium et suos heredes molestare niteretur, ipse contra omnes molestantes in possessione covum conseruare teneretur."
[372] More on duels cf. Jane Martindale, Between law and politics. There are more mentions of ordeal by duel in the charters for this period: for example in the cases from 1226 (Wenzel, vol. 1, 219: "…habito jobagionum nostrorum consilio et assensu ad examen duelli iudicavimus exequendum…"), 1239 (Wenzel, vol. 7, 77-78: "Pousa et Laurencius contra Rekam et Bolosey in examine duelli pro furti crimine sunt conuicti…"), 1262 (Wenzel, vol. 8, 48: "Sank vero et ijdem quinque homines prenominati non comparuerunt, nec pugilem adduxerunt…")..The use of this method of ordeal was abolished in Hungary only under the rule of Mathias Corvinus in the second half of the 15th century.
[373] Wenzel, vol. 11, 180-181: "…terram suam, que est sita circa Toplica Canonicorum Zagrabiensium, in duello contra Christianum perdidisset… Super quo eciam postquam ingressi fuissent in nostra presencia taliter composuerunt: ut duas partes memorate terre matri M(otmerii) pro iniuria illata restituit Christianus."

statute or customary law.[374] This strongly suggests that the whole idea of conflict resolution was based on mutual agreement of the parties or the decision of an independent judge or selected arbitrator, not following any specific legal norm, either statutory or customary, but simply taking into consideration the specific circumstances of the individual case. That is why it is more than difficult to talk about any specific "customary law" in this situation. The only similarity of all the cases which might represent some kind of approved custom was the mainly monetary means of the solution of conflicts.

[374] An exception is case of murder reported in a charter from 1294 (Wenzel, vol. 10, 162-165): "Magister Kemyn soluet homicidium eiusdem, sicut consuetudinis est in Regno."

4 RESTORATION OF PEACE AND JUSTICE

4.1 The main goal–compromise

Based on the surviving sources, it seems that judicial and extrajudicial conflict resolutions were at least equal in number; the extrajudicial settlement of disputes even dominated slightly in my sample. In numbers, my ninety-two charters reported fifty-three cases of judicial resolution and fifty-five cases of extrajudicial conflict resolution. (Some charters dealt with more than one case.) However, as I already mentioned, extrajudicial settlements were probably often reached without having the compromise recorded. Therefore, the actual number of extrajudicial conflict resolutions may have far outweighed the judicial ones. In the *Regestrum*, as already mentioned, about seventy-five cases were settled and only twenty-six judicial resolutions are explicitly reported. In general, the vast majority of disputes were settled by financial means–either by payment in money, land or animals or by division or exchange of land. There was no essential difference in judicial and extrajudicial resolution of disputes–the damages awarded to the victim are so varied that no specific pattern can be drawn. Maybe only the relations between the amount of the damage caused (respectively, the damage claimed by the victim) and the actual damages rewarded by the judge or the arbitrator is interesting, considering that in the majority of the cases only one-third or one-fourth of the claimed damage was paid by the offender.

Anyway, it is certainly incorrect to say in the spirit of traditional legal theory that because of a low degree of development of production the disputes were settled by punishment inflicted on the body of the offender.[375] In contrast, I was not able to find any case of corporal punishment. I argue, albeit on the grounds of my limited

[375] This approach is also criticized by Trevor Dean in his *Crime in Medieval Europe*, 118-120.

sample, that corporal punishment was not used frequently, at least on the level of society which appears in the sources examined. These results are mirrored in similar results of Western scholars.[376] I infer that corporal punishment would not have brought any satisfaction to the victim or his relatives. Of course, the conflict resolution did not follow only the goal of satisfying the victim; at least on the theoretical level punishment for trespass against the order of the world and peace in the land was also part of the desired outcome. Already in Stephen I:1 there is an attempt to consider the public interest: "...he (the culprit) should also feel the indignation of his lord, the king, whose good will he disparaged and whose good order he subverted." A similar interest in order and peace was expressed by the magnates in the regulation that appears as a part of the first book of laws of Saint Ladislas (I: 2): "we, magnates of the kingdom,... sought to determine how to prevent the deeds of evil men and how to promote the affairs of our people…" Similarly, cooperation of the king and magnates in this matter is reported in the introduction to Coloman's laws:

> When he saw that ... the legal order of the kingdom which had already lost in large measure its ancestral traditions was destroyed... he assembled the magnates of the kingdom and reviewed with the advice of the entire council the text of the laws of the said King Stephen of holy memory.[377]

An example from legal practice is offered by a charter from 1294, where both God and the kindred are mentioned as reasons for which the arbitration was held between the culprit and the victim's brother.[378] It clearly shows the crime as both a sin against

[376] Tabuteau: "Punishments," 138; Dean, *Crime in Medieval Europe*, 119..
[377] DRMH 1, 25.
[378] Wenzel, vol. 5, 101: "Oka est confessus, quod cum ex suasione diabolica Johannes seruus hereditarius Petri superius memorati, Andream fratrem Oka supradicti casualiter occidisset, tandem tam propter Deum, quam eciam propter lineam consanguinitatis, mediantibus probis viris inter ipsos habitam in quindecim pensis denariorum Wienensium, partes de bona voluntate concordassent, quam summam pecunie prefatus Oka, ab eisdem Petro et seruo suo Johanne supranominato, se plenarie recepisse coram nobis est confessus…"

the Creator and a social reality where peace among the parties was to be reestablished and maintained.

It seems that the main tool to reach the goal of the punishment or settlement, namely to restore peace and justice, was to offer satisfaction to the victim and to reduce the honor and wealth of the offender, but not so much as to induce him to do further misdeeds in taking revenge for the humiliation. The perception of a decision or settlement as just was a precondition for the restoration of peace and order. This is also suggested by a case reported in a charter from 1233, where the parties expressed explicitly that they considered the decision of the arbitrators to be just.[379]

Finding a compromise was a secure way to restore peace among relatively equal parties. As public prosecution was almost absent in this period, parties to the dispute were usually allowed to have their cases decided by a selected arbitrator or by the parties themselves using the help of mediators. Royal authority (namely royal judges) was present, but the parties were given an opportunity to choose the means of conflict resolution without the help of the royal judges. And the king did not oppose this, as is shown by the previously offered examples from the charters.[380] Even when the parties used the service of the royal judge, the actual conflict resolution did not differ from the pattern of extrajudicial decisions.

Generally speaking, the king was mainly interested in peace and justice in the kingdom, no matter whether it was maintained by the inhabitants of the kingdom themselves or by judicial rulings. Of course he could have been more interested in judicial rulings as these were a source of revenue coming from cases decided by a royal judge in the form of a certain share in the payment (although these shares are

[379] Wenzel, vol. 6, 538-544: "Que partes omnes unanimiter homologauerunt omnia supradicta, dicentes sibi esse justissime judicatum."

often not mentioned). That is probably one of the reasons (besides his interest in peace and order) why the king established and maintained an apparatus of judges (including the palatine and the ispáns). On the other hand, as already mentioned, by issuing a number of privileges he exempted certain settlers from the competence of his royal apparatus and granted them rights to have their conflicts settled by a representative of their community. True, the king never forgot to stress his right to a part of the revenue from the imposed penalties.

4.2 The consequences of a misdeed

As I have already pointed out, one of the cases in my sample ended in a judicial decision or a settlement according to which the culprit did not have to suffer any penalty. However, this was an exceptional case. Generally, in all the cases a certain penalty (a fine or a punishment) was imposed. Of course, in cases of plain property disputes without any violence involved, the decision did not have to comprise any punishment as the only aim was to determine a person's right of possession.

From among articles of statutory law relating to the consequences of crime, according to Ladislas III:1, people previously known as thieves could not undergo an ordeal. That means they had lost their good reputation and become *infami*. Furthermore, according to Coloman 83, false testimony was to be punished by branding and other testimonies of this person were to be refused. In contrast, the *Regestrum Varadinense* offers many cases where a party admitted to having falsely accused the adversarial party, but no consequences are mentioned, either in the form of a punishment or in the form of *infamia*. Of special interest is a case of abolishing a privilege obtained through fraud, mentioned as a consequence of the misdeed in a

[380] Also an article of statutory law from a much later period, namely 4: 1435 (8/Mar/1435) recognizes that "ancient and laudable custom of our kingdom prescribes and allows free settlement to be made in such cases of violent trespass and others." Cf. DRMH 2, 65.

charter from 1295.[381] However, this can not be seen as a punishment, but is more or less a kind of administrative action.

Closely connected to the question of the consequences of crimes is the question of relations between the victim and the offender. Trevor Dean poses truly a rare question in his book on crime in medieval Europe: How were injuries remembered? Were grudges carried across generations? Were there, in every town or village, families divided for decades by "mortal hatreds?"[382]

In charters from the period of Árpádian Hungary one can only rarely find any report on such relations. From my sample, it is only in a charter from 1227 where enmity based on the grounds of past murder is mentioned, when a person refused to cooperate in any manner with another because his grandfather had been killed by that person's grandfather.[383] In contrast, there are many cases where the parties promised to perform mutual help and support as part of a settlement, which should have meant the end of enmity and hatred.[384] Whether it worked in practice, however, is not possible to judge on the basis of the sources I used.

[381] Wenzel, vol. 10, 196-197: "…vnde si ita est sicut dicitur, priuilegium sub sigillo nostro contra easdem dominas sorores super facto eiusdem possessionis Vyzlow per eundem Comitem Jacobum per huiusmodi fraudem, dolositatem et maliciam optentum, cassamus et per omnia irritamus…"
[382] Trevor Dean, *Crime in Medieval Europe*, 102-103.
[383] Wenzel, vol. 6, 440-442: "…idem Johannes inimicus eius esset a tempore auorum suorum, eo quod auus Pauli auum Johannis occidisset, ideo non debere se participare cum illo…"
[384] In 1277 (Wenzel, vol. 9, 181-182): "…secundum formam composicionis inter partes habite, et continenciam litterarum Magistri et Conuentus predictorum teneantur eos defendere et expedire suis proprijs laboribus et expensis…"

CONCLUSION

In this thesis, I have tried to challenge certain stereotypes in the central European study of medieval conflicts, punishments and legal history in general. On the grounds of my limited (but perhaps representative) sample, it seems that there was no great difference between conflict resolution in Western Europe and in Árpádian Hungary. All the main patterns detected by Western scholars (a prevalence of the financial settlement of disputes, a lack of corporal punishment) are also present in the sources from Árpádian Hungary. This is a valuable piece of information in comparison to what is traditionally written in textbooks on legal history in Hungary and also in neighbouring Slovakia, relying generally only on information derived from statutory law, but without taking other sources into consideration. That is why in these books one can find the enumeration of different kinds of corporal punishments claiming they were in fact used in practice, for which no evidence has been found for the period of Árpádian Hungary in sources other than statutory law.

Whether the statutory laws of the first kings were actually used in contemporary practice cannot be proved definitely, due to the lack of sources on legal practice. What is certain is that the later practice does not contain any remnants of statutory law. Even more, only rarely were norms invoked or customs mentioned in cases of dispute resolution. It probably depended only on the level of knowledge of the scribe who wrote the decision down, or the judge (arbitrator) who determined the solution to the conflict. Moreover, it seems that the majority of the cases was settled outside the court, through the intervention of notable men from the neighbourhood or the county without any formal law being consulted. Even if there had been a specific law dealing with conflict resolution, it was not necessarily used in everyday conflict resolution. That could be achieved without a law code, first because there was no

public prosecution but only the private initiative of the injured person or victim and his family, and second, because the population did not differentiate between legal and other dimensions of particular events.[385] It seems that every case was decided only on the grounds of basic ideas of justice. The structures of administering royal power, the possibilities of alternative (extrajudicial) dispute resolution, and the expectations and needs of the layer of society about which some information is extant led to ways of conflict resolution based mainly on financial compensations following the goal of restoring and maintaining peace and order.

From all the analyzed cases it seems that financial composition was the most convenient and easiest way to resolve a dispute. Capital punishment and mutilation would only have caused a vacuum in the social structure, affecting the family members and estate management, possibly even leading to revenge. I argue that this consideration played a role in the situation of relatively equal status of the parties to the dispute and the lack of an immediately present decisive authority of the king. Even if there were royal judges, their decisions were not automatically considered the most convenient for the restoration of justice among the parties to the dispute, not only as far as the means of punishment, but also concerning the amount of financial compensation or damages awarded. In this situation, the only way to solve a dispute was to try to restore peace among the parties. The parties were well aware of this themselves, both when having their case decided by a selected arbitrator and when trying to settle the dispute on their own. To establish to what extent the idea of restoration of peace was effective in practice requires further research on relationship between an offender and a victim (or the relatives).

[385] Warren C. Brown, Piotr Górecki, What Conflict Means, 25.

The situation could have differed in communities which were granted a royal privilege to decide their disputes on their own, respectively by their elected representatives. There was no need to rely on royal judges or arbitrators. An immediate authority was present. This, however, does not have to automatically mean a shift in the idea of punishment. If corporal punishment emerged in the later period it was probably in a completely different situation where the state's and government's interest was in punishing offenders for misdeeds against the public order. To satisfy the victim and to restore peace between the parties was no longer the only important goal. To punish the offender in a cruel way and thus to deter other possible offenders became more important. The centuries immediately following the Árpádian age were a transitional period from a self-regulating society to a more and more centrally controlled society.

GLOSSARY[386]

Aratrum (plough) – amount of and that could be cultivated by one plough-team; varied from 55 to 110 hectares

Arbitrator – a person selected by the parties to the dispute, given power to decide the case in manner binding for the parties; sometimes the difference between judge and arbitrator was blurred

Birsagium – judicial fine (from Hung. bírság)

Bondsman/Bondswoman (*servus, ancilla*) – the general term used for male and female servile persons to avoid the misleadng terms "slave" or "serf"

Cives (men of the castle) – men attached to the royal domain; commanded by the ispán; obliged to maintain the castle

Composition (*compositio*) – a sum of money expressed often in cattle or land, owed by a culprit who killed, maimed or otherwise harmed another person; it was used to avoid and replace the feuds

Homagium – not specified payment; sometimes synonymous to wergeld, later used in sense of a homage

Ispán – the royal officer in charge of the counties; the commander of the castle-warriors (*jobagiones castri*), supervisor of serving people, collector of revenues and judge of the free and unfree men of the county

Jobagio castri (castle-warrior) – a dependent freeman obligated to military service, attached to a royal castle and commanded by the ispán; gradually disappeared from the thirteenth century onwards

Judge (*judex*) – royal judges, maybe modeled on Bavarian *judices*; some were referred to as *bilochi* – maybe assistant to the judges, later judges themselves (until 1240)

Judicium – means both fine and ordeal

Mediator – person intervening in the dispute, trying to bring the parties to establishing a compromise; not given power to decide the case on his own

Ordeal – a medieval method of proof based on belief of divine intervention in the determination of guilt; had forms of carrying hot iron, duel, cold or hot water; administered by the clergy of major churches

Pensa – coin used in the eleventh-century Hungary, equal to one Byzantine *solidus*, or to the value of a young ox, or 40 pennies

[386] Based on the glossary in DRMH 1, 139-148.

Pristaldus – the executive officer of a judge; delivered summonses, assisted in the process of trial and punishment

Serviens regis – a propertied man rendering military service and subject only to the king; emerged from the upper strata of the castle warriors

Udvarnok – peasant on settlement attached to the royal household, supplying it with agricultural produce grown on their plots

Wergeld – price of the man, used as a measure of composition to be paid to avoid a feud; sometimes synonymous with *homagium*

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APPENDIX

List of charters used:

No. of charter in Wenzel-Volume and page in Wenzel-Issuer

9/1092 - 1, 38-39 – Ladislas I.

66/1210 – 11, 105-108 – Andrew II.

217/1212 – 6, 355-356 – John, Archbishop of Esztergom

66/1214 – 1, 132-136 – Queen Gertrude

224/1214 – 6, 370-372 – Andrew II.

92/1220 – 1, 167-168 – Palatine Nicolas

107/1219-1222 - 1, 187 – Cosmas, Bishop of Győr

120/1225 – 11, 180-181 – Junior King Béla

129/1226 – 1, 219 – Pope Honorius III.

130/1226 – 1, 220 – Palatine Nicolas

280/1227 – 6, 440-442 – Andrew II.

284/1227 – 6, 447-448 – Chapter of Veszprém

151/1228 – 1, 256-257 – Coloman, King of Galicia and Ban of Slavonia

174/1232 – 11, 251-252 – Chapter of Győr

337/1233 – 6, 529-530 – Palatine Dionisius

343/1233 – 6, 538-544 – Enoch, Canon of Esztergom

184/1234 – 11, 269-270 – Pope Gregory IX.

200/1234 – 1, 323-324 – Jacob, Bishop of Praeneste

206/1235 – 1, 336-337 – Pope Gregory IX.

356/1235 – 6, 569-570 – Andrew II.

8/1236 – 7, 10-13 – Pope Gregory IX.

18/1237 – 7, 27-30 – Béla IV.

23/1237 – 7, 36-37 – Béla IV.

38/1237 – 2, 73-74 – Gregory, Bishop of Győr

50/1239 – 7, 76-77 – Béla IV.

51/1239 –7, 77-78 – Palatine Dionisius

55/1239 – 2, 94-95 – Palatine Dionisius

58/1239 – 2, 99-100 – Convent of the Monastery of Zala

217/1239 – 11, 309-310 – Palatine Dionisius

64/1240 – 7, 100-102 – Béla IV.

104/1244 – 2, 167-168 – judges of the Curia Reginae

119/1244 – 7, 183 – Chapter of Vasvár

239/1244 – 11, 334-335 – Bishop of Zagreb

118/1246 – 2, 190-191 – Dominic, viceiudex aule Regiae

270/1245-1258 – 7, 381 – Béla IV.

151/1252 – 2, 228-229 – Palatine Roland

244/1253 – 7, 351-352 – Béla IV.

249/1253 – 7, 356-357 – Chak, Magister Thavarnicorum (Master of Treasury)

259/1254 – 7, 370 – Henry, judge curiae Regis

264/1254 – 7, 374-375 – Chapter of Pozsony/Bratislava

266/1254 – 7, 376-377 – Convent of the Monastery of Somogy

212/1258 – 7, 309-310 – Chapter of Győr

290/1255 – 7, 408-409 – Chapter of Eger

184/1256 – 2, 275-276 – Chapter of Székesfehérvár (Alba)

331/1257 – 7, 469-471 – Chapter of Fehérvár (Alba)

340/1258 – 7, 483-484 – Béla IV.

341/1258 – 7, 484-485 – Béla IV.

383/1260 – 7, 539-540 – Chapter of Veszprém

25/1262 – 3, 31-32 – Lawrence, judge curiae Regis

32/1262 – 8, 48 – Palatine H.

366/1262 – 11, 523 – Chapter of Pozsony/Bratislava

72/1264 – 8, 103-104 – Simon, viceiudex curiae Regis

111/1267 – 3, 167-168 – Chapter of Buda

113/1267 – 8, 162-164 – Béla IV.

122/1268 – 3, 186-187 – Palatine Lawrence

132/1268 – 8, 193-195 – Queen Mary

147/1268 – 8, 218-219 – Chapter of Nyitra/Nitra

3/1270 – 12, 6-10 – Stephen V.

218/1270 – 8, 323-324 – Chapter of Vác

24/1274 – 4, 48-49 – Chapter of Veszprém

59/1274 – 9, 198-199 – Chapter of Veszprém

137/1275 – 12, 161-163 – Chapter of Pécs

123/1277 – 9, 181-182 – Chapter of Esztergom

128/1277 – 9, 187-188 – Master Herman and Convent of Hospitallers in Esztergom

129/1277 – 9, 188-189 – Master Herman and Convent of Hospitallers in Esztergom

178/1277 – 12, 215-216 – Chapter of Eger

159/1279 – 9, 223-225 – Ladislas IV.

207/1280 – 9, 289-290 – ? not given

231/1281 – 9, 325-327 – Convent of Ság

281/1281 – 12, 336-338 – Lodomerius, Archbishop of Esztergom

282/1281 – 12, 339-341 – Peter, Master of Treasury

306/1282 – 12, 365-367 – Chapter of Buda

160/1283 – 4, 260 – Chapter of Pozsony/Bratislava

310/1285 – 9, 435-437 – Chapter of Pécs

331/1287 – 9, 460 – Convent of Ság

378/1287 – 12, 451-453 – Ladislas IV.

218/1289 – 4, 341-342 – Queen Elisabeth

34/1291 – 5, 55-56 – Chapter of Pozsony/Bratislava

45/1291 – 10, 64-65 – Chapter of Pozsony/Bratislava

52/1293 – 5, 84-86 – Chapter of Pécs

65/1294 – 5, 101 – Chapter of Pozsony/Bratislava

94/1294 – 10, 145-148 – Andew III.

107/1294 – 10, 162-165 – Chapter of Pécs

129/1295 – 10, 196-197 – Martin, viceiudex curiae Regis

464/1295 – 12, 577-578 – Chapter of Pécs

155/1296 – 10, 232-238 – Chapter of Pécs

501/1298 – 12, 630-633 – ? not given

154/1299 – 5, 236-241 – Stephen, viceiudex curiae Regis

176/1290-1301 – 5, 271-272 – Chapter of Esztergom

252/1300 – 10, 379-380 – Stephen, viceiudex curiae Regis

264/1300 – 10, 402-404 – Chapter of Vác

521/1300 – 12, 659 – Chapter of Pécs