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Free from obedience: constitutional expressions of the right of resistance in early modern Transylvania and Poland-Lithuania

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Abstract: With its tradition of elected kings and rebellious nobility, Poland-Lithuania has acquired a certain amount of fame that goes beyond its own region. To anybody who has heard of the Polish-Lithuanian political system, it would probably come as no surprise that the Commonwealth's laws included the right to disobey a king who broke the promises he had made at his election. This version of the right of resistance was introduced in Poland-Lithuania's laws in 1573, and with very few modifications, it was confirmed by all of Poland-Lithuania's subsequent monarchs and remained valid until the late eighteenth century, when the country disappeared off the map of Europe. In contrast to that of Poland-Lithuania, Transylvania's history is much more obscure to outsiders, even though it too included elected rulers, enthronement conditions, and the right of resistance. The latter was introduced in Transylvania's constitutions later than in Poland-Lithuania; its first explicit mention dates from 1613. Its lineage, however, can be traced back to one of Europe's earliest known versions of a resistance clause: the Hungarian Golden Bull of 1222. While the Polish-Lithuanian formulation was milder, more passive, and less specific than some of the Transylvanian versions, its practical application was more effective than it ever became in

Transylvania. This article discusses the development and variations of the right of resistance in early modern Polish-Lithuanian and Transylvanian constitutions and it offers some reflections on the complex relationship between constitutional theory and political practices. The Transylvanian case is analyzed in more detail because it is relatively less well-known.

Keywords: early modern, constitutionalism, right of resistance, elective monarchy, accountability, Poland-Lithuania, Transylvania, Hungary

Introduction

Constitutional guarantees against the arbitrary power of rulers, such as mutual oaths and charters of rights, were a common feature of late medieval Europe. The most famous examples are Magna Carta and the Brabantine Joyous Entries, but such practices could be found in other parts of Europe as well.[1] Charters were granted almost as often as they were violated and revoked; still, they were useful instruments of political negotiation and self-definition and they fostered a certain cooperation between ruler and estates. Such agreements did not entirely disappear in the early modern period; in fact, they continued to play an active role in the political identity of the territories in question. This was the case with the Brabantine right of disobedience, which was invoked during the Dutch Revolt even though its legal validity outside Brabant was rather dubious. To the authors of sixteenth-century political treatises, it was the spirit, rather than the letter of the medieval constitutions, that mattered more.[2] Likewise, French and German Protestant elites adapted medieval notions of resistance to their own needs.[3] In the seventeenth century, in response to this tradition, ambitious rulers introduced a novelty: 'the absolutist constitution'. Laws conferring hereditary rights and more extensive authority to rulers were introduced in parts of the Holy Roman Empire and

Denmark, for instance.[4] France had its own trend of legalistic development in the first half of the seventeenth century, when the lese-majesty law was clarified and extended on the basis of Roman imperial jurisprudence to strengthen the position of the king, rather than that of the estates.[5] From this perspective, the traditional tendency in historiography to define constitutionalism in terms of 'effective cooperation against the princes' is at least partly misleading.[6] In the early modern period, and especially from late-sixteenth century onward, constitutions were used by both rulers and estates to support and strengthen their position within the political community.

This article examines early modern constitutional arrangements of the traditional kind, meaning that they were rooted in late medieval contractual thinking and tended to support the estates rather than the rulers. Throughout Transylvania's and Poland-Lithuania's autonomous existence as elective polities (1571-1711 for Transylvania and 1573-1795 for Poland-Lithuania), their responses to immediate circumstances tended to be codified in contractual arrangements based on late medieval models but adapted to early modern conditions. Under different pressures yet dealing with at least two very similar dilemmas – a religiously diverse population and the Habsburg-Ottoman rivalry – the two countries ended up developing comparable constitutional rules: elective thrones, multiconfessionalism (for the purpose of civil peace), and constitutional provisions for lawful disobedience. Their antecedents were thirteenth- and fifteenth-century Hungarian and Polish charters that were quite similar to their English and Brabantine counterparts and whose main role in the early modern period was to lend legitimacy to new measures. Transylvanian and Polish-Lithuanian early modern constitutions went far beyond the medieval charters that they repeatedly cited; they were reflections of changing ideas, adaptations to complex realities, and the results of recent compromises. They allow a glimpse into how their creators imagined their communities, by

which standards they evaluated them, and how they negotiated changes in those standards over time.

I have chosen to discuss Transylvania rather than the remainder of Hungary (known as Royal Hungary between 1526 and the late seventeenth century) because the latter would provide a more problematic comparison with Poland-Lithuania. While it is true that, under Habsburg control, Royal Hungary retained some of its earlier constitutional practices and developed new ones as well (for instance the law of 1606-1608 that sanctioned religious pluralism), its elective system was reduced to a formality after 1526. In Transylvania, by contrast, princely elections and the possibility of deposition continued to provide the estates with periodic opportunities for constitutional renewal – regardless of the irregularities often involved in the process. That aspect brings Transylvania closer to Poland-Lithuania than to post-1526 Royal Hungary, especially from the perspective of the right of resistance, which, as this article argues, had a different scope in elective and dynastic systems.[7]

The disobedience clause in Poland-Lithuania

The Commonwealth of Poland-Lithuania, constituted in 1569 as an elective monarchy with a common parliament (*Sejm*) and ruler, had three socio-legal estates of unequal importance: the clergy (represented in the senate alongside royal officials), the nobility or *szlachta* (represented in the 'deputies' chamber'), and a handful of towns that also sent representatives to the deputies' chamber, but which had very little clout except in matters directly related to them. As in Transylvania's case, it was mostly the nobility—and especially the Protestant middling and lower nobility from the Polish provinces, joined by Catholics of *politique* orientation—that was behind the initiatives that established the Polish-Lithuanian constitutional framework in the first decades of its existence. That being said, it is important

to note that the Polish-Lithuanian legal and constitutional system functioned on the basis of a logic that gave more importance to parliamentary estates – namely the king, senate, and the chamber of deputies. Important decisions could only be made in the presence and with the consent of all three – except in lese-majesty and impeachment cases, which after 1588 were tried in the absence of the king. In many cases, rifts between the senate and the lower chamber as well as those among the Polish, Lithuanian, and Prussian provinces were more decisive than those between clergy, nobility, and towns, as far as the process of decision-making was concerned. However, the political culture that dominated the Commonwealth in the late sixteenth-century was mostly driven by the lower and middle nobility.

The right of disobedience made its first unequivocal appearance at Poland-Lithuania's first royal election, which took place in 1573 and laid the constitutional foundation of the Commonwealth for the rest of its existence. The general tone of that constitution, which mainly aimed to limit the power of the king, had been anticipated by two older laws that that had been passed in the Polish kingdom before its 1569 union with Lithuania, namely: the *Neminem Captivabimus* privilege (1430, 1433), which is comparable to the English *Habeas Corpus* Act; and the *Nihil Novi* constitution (1505), which established the legislative role of Sejm. A more direct antecedent, as far as the right of resistance is concerned, was the clause accepted by Sigismund I in 1536-1537, which stipulated that, after his death, his subjects would owe no allegiance to his son unless the latter confirmed all the laws, privileges, liberties, letters, and immunities granted by his father and his predecessors. The origin of this clause was the 1530 election of Sigismund's son during the reign of his father (*vivente rege*), which went against the rule of organizing elections only after the incumbent's death. The Sejm accepted that irregular succession but it also issued a resolution that forbade elections *vivente rege* in the future and stipulated that the nobility, from then on, should always send envoys at such events.[8]

It was only after the extinction of the male line of the Jagiellonian dynasty in 1572 that the right of disobedience became a permanent fixture of Polish-Lithuanian constitutions. The electoral assembly of May 1573 decided that, from then on, the kings of Poland-Lithuania had to agree to two sets of conditions before their coronation. The first was a collection of articles called *Artykuły Henrykowskie* (Henrician Articles), named after Poland-Lithuania's first elected king, Henry of Valois (the future Henry III of France). The articles established the general constitutional framework of the Commonwealth and were reconfirmed, in updated form, at all of Poland-Lithuania's twelve subsequent elections.[9] The second set was called *pacta conventa* and it was a collection of much more specific promises. If the Henrician Articles were essentially a detailed coronation oath containing mostly negative rules about what the king was not allowed to do (i.e., change or violate the existing laws of the country and the liberties of its citizens); in contrast, the *pacta* specified what the king would do in exchange for his election. Those specific promises varied from election to election; they included military assistance, monetary donations, commercial and strategic alliances with the new king's country of origin, funding for local education, and other such concrete engagements.

At later elections, the separation between the two sets of agreements disappeared and the constitutional clauses were put together with the more specific ones, while the name *pacta conventa* referred to the entire package. They were communicated to the counties after each election – first in handwritten form, and from 1576 in print as well.[10] Frequent references to the constitutional updates that had occurred after Henry's election turned these texts into increasingly complex feats of legal erudition. One example are Augustus III Wettin's *pacta conventa*, confirmed in 1736, which promptly sends the reader to the 'constitutions of 1576, 1607, 1609' in connection to the right of disobedience, and to 'the Henrician laws' regarding the functioning of the king's court.[11]

The first of the Henrician Articles was a ban against the hereditary principle in the royal succession, even though the possibility of dynastic establishment remained open. In other words, sons of kings could (and occasionally did) occupy their fathers' throne, but they never *inherited* it. Succession was based neither on birth right, nor on notions of private inheritance, but on their 'free election' by the citizens of the republic:

> The estates… requested… and we [the king] decided… that we will not… appoint or elect, nor arrange the election, in any manner or form, of a king for this country, as our successor… And that is in order that the free election of the king by all estates of the crown should remain for all eternity, after our and our descendants' passing. And for this purpose, neither we, nor the Polish kings our successors, shall use the title of heir.

Even Jean Bodin, a decided opponent of elective monarchy and a staunch supporter of absolute (i.e. independent) royal sovereignty, had misgivings about the hereditary principle. He certainly preferred that royal succession be based on male primogeniture, but only by virtue of public, or 'royal law', and not according to the principles of private inheritance implied by the term 'heredity.' Bodin was quite vehemently opposed to seeing the kingdom as the property of the king, which would make the state 'seigneurial' instead of 'royal' and therefore subject to the whims of a king's testament. In the ideal republic, according to Bodin, the eldest male child of a king should not be his 'heir' by private law, but rather his successor by public law.[12] The framers of the Henrician articles – some of whom, incidentally, met Bodin when they came to Paris in the summer of 1573 – had the same distinction in mind, with the one essential difference that the public law that was going to regulate Polish-Lithuanian successions was based on the outcome of elections rather than birth.

The second Henrician article promised to protect religious peace:

> And since within this noble nation of Poles and Lithuanians, Ruthenians and Livonians, and others, there are considerable differences of religion, in order to prevent the sedition and tumults that may later arise on account of religious disagreements, some citizens of the Crown stipulated in a particular confederation that in matters of religion they will preserve the peace. Which we [the king] promise them to keep entirely and forever.

Similarly to the Transylvanian version of multiconfessionalism that will be discussed below, the Polish-Lithuanian one included a ban against religious persecution and an individual understanding of the freedom of conscience rather than a territorial principle of confessionalization. In contrast to Transylvania, however, the Polish-Lithuanian religious clause was quite vague and it was never clarified subsequently. There has been considerable debate in Polish historiography about the juridical scope and meaning of its terms – for instance, some authors claim it covered not only the Protestant but also the Orthodox population – but there is less disagreement about its stipulations being essentially restricted to the nobility, which means that a limited version of confessionalization regulated the religious affairs of towns and especially peasants. Another difference from the Transylvanian situation was that the Warsaw Confederation was met with more significant resistance. Most of the ecclesiastical senators protested against the religious article and the first few elections were punctuated by the papal nuncios' efforts behind the scenes to convince prospective candidates to reject it. Yet their opposition was not decisive, at least from a constitutional perspective. Although Antitrinitarianism was outlawed in 1658 and the political rights of non-Catholics declined in the seventeenth and eighteenth centuries, religious disturbances remained relatively minor throughout the Commonwealth's existence.[13]

The rest of the Henrician articles included, among other clauses, the king's promise to summon the Sejm every two years, to refrain from appointing foreigners to royal offices, and

to submit at all times to the supervision of four resident senators elected by the Sejm for this purpose. Legislation regarding supervision by resident senators had already been advanced in 1453. The idea goes all the way back to Sparta's ephors but it can also be found in English, Brabantine, Flemish and Polish medieval constitutions. Machiavelli's proposal that four resident provosts should oversee the actions of the Florentine *signoria* at all times belongs to the same tradition.[14] After the Henrician articles, reiterations were adopted or proposed on numerous occasions, but the institution remained rather ineffective throughout its existence. The senators' decisions only became binding in 1773, two years before the idea was eventually scrapped from the Commonwealth's governmental structure.

Finally, the last clause of the Henrician articles – or *de non praestanda oboedientia*, as it was known at the time – spelled out the right to withhold obedience should the king violate any of the conditions listed above:

> And if, God forbid, we [the king] should commit offense against the laws, liberties, articles, conditions, or if we should fail to fulfill [them] in some way, then we [will] free the Crown citizens of the Commonwealth from the obedience and allegiance due to us.[15]

The clause was further clarified in 1576, 1607, and 1609. In its last version, allegiance could only be renounced after three unheeded admonitions to the king and only in cases of willful violations (the latter change had already been introduced in 1576). The admonitions could be carried out by senators in the first instance, and by any member of the nobility (during a session of the Sejm) in the second and third. Abusers were to be tried by the Sejm in the absence of the king – as he was considered an interested party – following the procedure adopted in 1588 for lese-majesty cases, although the 1609 amendment fell short of labeling abuses of *de non praestanda oboedientia* as lese-majesty.[16]

The Polish-Lithuanian disobedience clause differed from western formulations in the sense that it promised no return of obedience once allegiance was withdrawn; by contrast, both the English and the Brabantine articles had stipulated temporary suspensions of allegiance until the king redressed the situation. At the same time, the Polish-Lithuanian clause was similar to its Brabantine counterpart inasmuch as it articulated a rather passive (or at any rate vague) understanding of disobedience. Allegiance was to be annulled – but there was no indication of what that might imply. The impression of passivity is accentuated by the phrasing of the articles in the name of the king rather than the citizens. Earlier drafts of the articles, which were submitted to Henry for confirmation, were written in the name of the estates, but his confirmation as well as those of later kings were formulated as royal privileges. The difference was that between an estate resolution and a public law; the former could only become the latter if confirmed by the king, and it was that confirmation that was inscribed in the public record.[17] True, the later amendments spoke in terms of the citizens 'observing' the disobedience article – as if indeed it were a civic obligation – but the fact remains that the Polish-Lithuanian clause does not adopt the strong language used in Magna Carta or the Dutch Revolt.[18]

Interestingly, this proved no impediment for the Polish-Lithuanian nobility, who rose against their kings on at least four occasions while invoking the disobedience clause in the process. Two of those conflicts amounted to armed resistance: the Zebrzydowski rebellion of 1606-1609, which issued a dethronement act in 1607 (rendered moot by the Pacification Sejm of 1609); and the Lubomirski rebellion of 1665-1666, which militarily resisted the king's plans to introduce elections *vivente rege* and other reforms. On two other occasions, parliamentary inquests were set up against royal measures that were deemed unconstitutional. In one instance, King Sigismund III had to reconfirm his *pacta conventa* (1592); in the other, King Vladislav IV was threatened with the application of the disobedience clause should he

refuse to change his policies (1646). Such acts of opposition were not without results: they all ended in policy changes (or freezes) that reflected the most important demands of the confederates, even when they had been defeated on the battle field. That is not to say that the main principles established in 1573 were always faithfully observed. Occasionally, the right of free election was violated in troublesome interregna, especially in the eighteenth century, while the ban against religious persecution was increasingly disregarded from mid-seventeenth century onward. However, the discursive attachment to (and legal validity of) these principles survived until the Commonwealth's demise, supported by a political culture that had placed the right of resistance at its core.

The right of resistance in Transylvania

Before 1526, Transylvania had been a distinct but integral part of Hungary. Its governors (*voivodes*) were appointed by the Hungarian king, but its social and political structure was somewhat different from that of the rest of the kingdom. The Transylvanian estates were known in the early modern period as *nationes* and they included the nobility (mostly Hungarian), the Saxons (German-speaking burghers), and the Secklers (a Hungarian-speaking military caste comparable to the Cossacks in Poland-Lithuania but with political rights that the Cossacks did not have). There were significant rifts within the nobility itself – mostly between high dignitaries and the lower nobility, but also between the western and the east-central counties – but overall, after 1571, the nobility increased their ascendancy over the other two estates; the Saxons mostly kept their privileges and economic power, but they became increasingly marginal in central politics, while the Secklers saw their fiscal and judicial autonomy gradually diminished. Besides the three estates described above, the general assemblies (diets) convened in Transylvania after 1544 were also attended by representatives of the nobility of East Hungary or the *Partium* (a few counties located at Transylvania's

western border), those of a few non-Saxon towns, and a number of nobles personally invited by the ruler. There was also a large Romanian population that consisted mostly of peasants with no political representation.[19]

The province had a certain autonomy within the Hungarian kingdom before it was cut off by the Ottoman advances, but historians are divided over the degree of Transylvanian distinctiveness before 1526. They oscillate between two positions: one, that Transylvania had been a constitutive part of Hungary that was artificially separated from it; and the other, that it already had a strongly-developed separate identity before the Ottoman conquests. The middle ground seems most plausible: Transylvania had exhibited some signs of autonomy as early as the fifteenth century, but it is unlikely that it would have become a separate principality without the support of external factors.[20]

In 1526, the Ottoman armies conquered a considerable chunk of south-central Hungary and the king of Hungary himself (Louis II) died at the battle of Mohács. As Louis had no offspring, two rival assemblies of the Hungarian estates attempted, in late 1526, to replace him with their respective favorite candidates: Archduke Ferdinand I of Habsburg and Transylvanian voivode John Zápolya. The situation was never resolved; the two competed for the right to wear the Hungarian crown until 1540, when Zápolya died. The Ottomans, who had supported Zápolya in his claim to the throne, moved swiftly and conquered Buda in 1541, thus expanding the area they had been controlling since 1526. The result was a crystallization of Hungary's threefold division, each with its own separate ruling authority: the Habsburg part to the West and North, the Ottoman part in the center, and to the East the former province of Transylvania, which became an autonomous Ottoman vassal. Suleiman the Magnificent handed Transylvania over to Zápolya's widow – Queen Isabella, incidentally a member of the Polish-Lithuanian Jagiellonian dynasty – and to her newborn son, John Sigismund. In 1542, the Transylvanian estates confirmed the sultan's decision by investing Queen Isabella and her

son with the authority to rule their country. In 1566 and 1571, the Porte issued confirmations of the estates' request to freely elect their rulers in the future.[21]

The Ottoman advance thus separated the Transylvanian estates from the Hungarian central government on which they were accustomed to rely, which in turn forced them to mobilize and put together a central government of their own, especially after Ferdinand of Habsburg repeatedly failed to recover the lost territories. In 1571, Transylvania's separate status became visible at the very top of its political structure: that was the year when John Sigismund Zápolya died and the Transylvanian estates elected a separate ruler for the first time in a conscious break from the authority of the Habsburg king of Hungary and without presenting a claim to the Hungarian throne.[22] From 1571 to 1711, there were twenty-five successions of Transylvanian rulers (first called voivodes, later princes). If we put aside the troubled period of the Long War between the Ottomans and Habsburgs, which led to six power transfers in the space of only seven years (1598-1605), all remaining nineteen rulers were formally elected by representatives of the estates. Here one of the most important differences between Transylvania and Poland-Lithuania should be emphasized: whereas in the Commonwealth all nobles could participate in elections *viritim* (in person), which resulted in electoral assemblies of thousands of participants, in Transylvania the estates sent representatives that amounted to 300-350 people at most. Still, at some elections, uninvited contingents of Secklers and lower nobility congregated outside the capital with a view to pressuring the assembly. Such was the case in 1571, when they showed up to make sure the new Transylvanian ruler would be determined by election, rather than appointed by the Hungarian king or the Ottoman sultan.[23]

Most Transylvanian power transfers followed the death or formal resignation of the incumbent and were accompanied by conditions of enthronement for the new ruler. The usual procedures were not followed when rulers were replaced by imperial commissaries during the

Long War, but even then there were negotiations about the terms of imperial administration.[24] Each reign started with the new ruler's confirmation of a series of 'articles', 'constitutions', or 'conditions' (these terms were used interchangeably throughout the period). The constitutions were made public after each diet; in 1653, a compendium of Transylvania's fundamental laws was printed and received the stamp of princely approval. It consisted of a synthesis of the legislation passed after 1540, including the enthronement conditions confirmed after 1607, in somewhat abridged form; an updated edition followed in 1696. Extant copies of the original texts were gathered and published without abridgment by Sándor Szilágyi in the nineteenth century.[25]

The promises made in 1571 by Transylvania's first elected ruler, Stephen Báthory, had been nothing as elaborate as the Henrician Articles or the *pacta conventa*. They included three main points: that he would do everything in his power to execute and observe his predecessor's donations, entitlements, and exemptions; that he would protect and uphold 'the liberties and religions' of the country; and that he would put no man above the law and let no private interests, friendship, or fancy guide him in the distribution of justice. In return, the delegates of the estates swore their allegiance and willingness to serve and obey their new ruler.[26] By comparison, the oath sworn by Báthory's predecessors (Isabella and John Sigismund Zápolya) had been even more limited. In December 1556, Isabella promised to 'protect and maintain each and every one of this country's orders and estates in their laws and liberties, and conserve them lawfully and religiously; and also, when the most serene Prince will be of mature age, he will observe all of the above'. There was no mention of religious liberties, as this ceremony took place before the adoption of the most extensive laws sanctioning confessional pluralism, which were passed in 1568 and 1571.[27]

Unlike in Poland-Lithuania, where the general format of electoral conditions remained virtually the same for two centuries, in Transylvania they changed significantly over time.

Initially, they were only marked by reciprocal oaths sworn by the prince, the main dignitaries of the country, and the representatives of the estates (referred to as 'the inhabitants of the country'). The oaths included a few specific promises, such as those mentioned above, but they did not go into many details. The promise to uphold the right of free election, for instance, was only added in 1607. Suleiman's confirmation of that right was mentioned in the articles adopted by the general assembly that followed Báthory's enthronement in May 1571, but at that time the promise to uphold the right of free election had not been included in his oath.[28] In 1607, in the aftermath of a long period of troubles peppered with violations of the elective principle, the estates reasserted the right of election and started including it among the enthronement articles of newly elected princes.[29] From 1608 onward, the articles grew increasingly complex. They were turned into separately numbered items or 'conditions of the new elected prince', which gradually became more numerous (from eight in 1608 to twenty-four in 1661). Oaths were still sworn, but they no longer included specific promises; they were listed in the public record immediately after the conditions, to which they referred in bulk – much like the Polish-Lithuanian coronation oaths, which did not repeat all the conditions but usually referred to their written version as a whole.

While the Henrician Articles (with their subsequent updates) were cited as such at every Polish-Lithuanian election, Transylvanian enthronement conditions varied more. Although they did at times refer to earlier constitutions, they were more often rehashed for present circumstances. One could guess the most pressing matters of the day by looking at the order in which the articles were listed. In 1571, Stephen Báthory's first promise was to observe the (highly contested) donations of the previous ruler – unsurprisingly, the oath had been put together by dignitaries who greatly benefited from those donations. In December 1630, 'legitimate' elections were mentioned before religious liberty (which was pushed down to article 5) – George I Rákóczi's election came after one year of unstable government, during

which two princes with contested legitimacy followed one another in rapid succession. In 1652, the issue of election was again mentioned first, as a reminder to the chosen successor (Francis Rákóczi) that, even though he was elected during his father's reign, the right of 'free election' remained valid, as stipulated in the 1607 constitution.[30]

Until 1613, the Transylvanian enthronement conditions did not include a disobedience clause, which is arguably the most significant difference from the Henrician Articles. In that sense, if the Polish-Lithuanian articles were a contract, the Transylvanian ones were only a promise. Even though the oath was pronounced solemnly before the orders and estates of the country, the person taking it was – in theory at least – answerable to God alone, because the oath included no mention of concrete, political repercussions if it were to be broken. From that perspective, it may be stated that the Transylvanian ruler's vows were not that different from the coronation oath of any other monarch at the time, although it may be argued that Sultan Selim II's letter to the Transylvanian estates, which confirmed Stephen Báthory's election in 1571, may be perceived as a potential, albeit limited, precondition for a disobedience clause. The letter stated that the estates were responsible for their ruler's behavior; they were supposed to watch over him and make sure he remained friends with the Ottomans. However, the estates' responsibility vis-à-vis the Porte was limited to Transylvania's foreign policy. The sultan did not sanction in any explicit way – nor did he ban, for that matter – the right of the estates to disobey their ruler on account of internal policies.[31]

Events that took place at the beginning of the seventeenth century, however, eliminated all ambiguity on the matter. In October 1613, after electing Gabriel Bethlen as their new ruler, the assembled Transylvanian estates adopted eleven articles that were to constitute the new ruler's oath and conditions of office. The articles were drafted at the election and Bethlen swore to observe them a few days after his enthronement (in Poland-

Lithuania, the oath was sworn before the coronation).[32] The first article reiterated the protection of 'religious liberty', an issue that would often be listed first in enthronement conditions. Transylvania's laws had been sanctioning confessional pluralism since the 1540s, with the most permissive measures having been adopted in 1568 and 1571. After 1571, the political establishment compromised over the conservation of the status-quo, which came down to several fully instated confessions (Lutheranism, Calvinism, and Antitrinitarianism, with Catholicism added in 1595) and several tolerated ones (communal practice was permitted to Orthodox Christians and, after 1622-23, Jews and Anabaptists). Confessional tensions and the vulnerable positions of the Orthodox and Catholic churches determined certain historians to argue that there was no true religious liberty in early modern Transylvania, while others emphasized the tolerant elements of its religious culture. More recently, a change in nomenclature has made some progress toward eliminating the confusion between a liberal, modern understanding of religious tolerance and the term 'religious freedom' – which occurs frequently in sixteenth-century Transylvanian sources – by way of referring to the Transylvanian situation in more accurate terms, such as 'confessional pluralism', 'denominational plurality', or 'multiconfessionalism'.[33]

The other conditions imposed on the prince in 1613 included: maintaining peace with the Porte and the Habsburgs (a matter of utmost importance for Transylvania, especially after the disastrous consequences of the Long War), protecting the laws and rights of the estates; promoting justice, and consulting with the princely council on all matters of foreign policy. Article 7 referred to the free election (*libera electio*) of the princes and mentioned Suleiman's 1566 confirmation of that right. Lastly, the ending clause articulated the possibility of actively opposing the prince. It was recorded in the name of the estates, rather than the prince:

> Among princes, many abuse their princely authority, forget the law of free election, rob their dominion at their discretion, and move into illegal, and other corrupt and

> improper things, which leads to terrible danger for our home. We have therefore decided that the towns, councilors, Secklers, and other military captains and officials shall have the authority that if the prince transgresses, and innovates against the law, they are released from their oaths and should gather together to stand against the prince, without the stain of infidelity (*absque nota infidelitatis*), according to the contents of the decree (*decretum*).[34]

To my knowledge, that was the first explicit mention of the right of resistance in Transylvania's history as an elective principality. One possible antecedent from the pre-elective period is the 1506 resolution, according to which, in the event of the voivode's violation of the estates' laws and liberties, their representatives could request that he be removed from office by the Hungarian king.[35] Interestingly enough, the 1613 resistance clause was included neither in the compendium published in 1653, nor in the 1696 edition, even though later formulations of the clause were featured in both.[36]

After 1613, the right of the Transylvanian estates to withdraw their allegiance from princes who violated their conditions of enthronement was again unambiguously stated (although in different terms) in 1630, 1652 and 1681. In four additional cases (1658, 1660, 1661, 1690), the conditional nature of the estates' obedience was emphasized. These eight explicit references to the right of resistance were not uniformly phrased, yet some patterns may be observed. The strongest formulation was that of 1613. The others were milder and ranged from 'absolution' from duty and allegiance (1630, 1652, 1681) to an emphasized if-clause that could be paraphrased in the following terms: 'we promise not to rise against the prince, provided that he stays within the boundaries of these conditions' (1658, 1660, 1661, 1690).[37]

The legal antecedents of the 1613 constitution deserve some discussion. The right of resistance had appeared long before in the legal corpus of the Hungarian kingdom and it was

arguably rooted in even earlier, non-documented practices of assembly and consensus.[38] It was officially granted for the first time in the Golden Bull of Andrew II (1222) as the 'free mandate' to 'resist and contradict' the king in case he went against the dispositions of the bull, 'without the stain of infidelity' (*sine nota infidelitatis*) – in other words, without running the risk of being accused of high treason.[39] Despite this provision, the 1222 formulation was weaker than the resistance clause included in Magna Carta inasmuch as it did not specify the manner in which resistance could be manifested. After all, the original meaning of *resistere* is to stop, or stand still – a rather passive understanding of disobedience. As Martyn Rady convincingly argues, the resistance clause in Andrew's Bull did not mean to sanction rebellion, but rather to ensure the continuation of the relationship of fidelity and reward that bound the king to his servants, regardless of the latter's occasional acts of contradiction. Rady calls it not a resistance clause but a 'fidelity clause', in order to emphasize the fundamental difference between the thirteenth-century provision, which stressed the strength of the bond between monarch and subjects, and later interpretations of resistance, which denoted its rupture. Rady acknowledges, however, that already by mid-fourteenth century the article in question acquired the more radical meaning of a breach between ruler and subjects.[40] The 1613 Transylvanian version went further: the rather passive 'resist and contradict' was replaced with the more aggressive 'gather together to stand against the prince' – a formulation that had more in common with late-sixteenth-century French and Dutch resistance theories than with the Polish-Lithuanian right of disobedience or the medieval formulations discussed above.

In 1517, shortly before Transylvania's separation from the rest of Hungary, István Werbőczy had included the resistance clause in his compendium of Hungarian law in almost identical terms (namely the free mandate to resist and contradict the king *sine nota infidelitatis*) as those of the 1222 bull, to which he referred as 'King Andrew's decree.'

Werbőczy claimed that the right belonged to all noble members of the Holy Crown of St. Stephen, next to their fiscal and judicial privileges and their right to elect their kings. (In Werbőczy's work, the 'noble members' of the Crown of St. Stephen were to be understood as the recipients of royal land donations, who amounted to about one third of the nobility.) After 1351, several kings of Hungary had indeed confirmed Andrew's Bull in its entirety, but not all of them and not before their coronation, as Werbőczy claimed.[41] The *Tripartitum* was part legal compendium and part wishful thinking, but, regardless of its unofficial status (its publication had royal approval but it never became legal statute), it became immensely popular by virtue of its singularity, since no other comprehensive collection existed for a long time. It became the most cited reference text in Hungarian courtrooms and it was simply known as the 'decree' (*decretum*) from the second half of the sixteenth century, although its usage was mostly restricted to private and procedural law, where some of its articles continued to be applied into the twentieth century.[42]

In 1604-1606, its political articles were brought to prominence in the Hungarian context by the Transylvanian prince-turned-rebel Stephen Bocskai. During his revolt against Rudolf II, who had been Transylvania's suzerain on and off since 1595, Bocskai rallied the Hungarian estates behind him and claimed the Hungarian throne against its Habsburg occupant. Several documents issued by Bocskai and his supporters quoted Werbőczy's rendition of Andrew's resistance clause, which by then had evidently acquired a broader meaning than originally intended. After that moment, the seventeenth century was peppered with re-publications of the Golden Bull (in Hungary) and explicit references to it in enthronement conditions (in Transylvania).[43] In 1687, after yet another failed revolt in Hungary, King Leopold I pressured the Hungarian estates to specifically revoke the last article of the Golden Bull and concede hereditary rights to the Habsburg line.[44] The Transylvanian estates followed suit in 1688 by abolishing their own right of free election, although the

process of actual incorporation under Habsburg control lasted until 1711. Between 1688 and 1711, two additional elections-turned-revolts challenged the Habsburg hereditary claim and evoked the resistance clause in the process.

It is against this wider background that the enthronement conditions of 1613 should be evaluated. The mention of the *decretum* as well as the formula *absque nota infidelitatis* featuring in the last sentence were direct references to Werbőczy and to King Andrew's Bull. They show that the Transylvanian resistance clause was neither a total innovation, nor an imitation of the more widely known Polish-Lithuanian model. Instead, the much older Hungarian version, mediated by Werbőczy's *Tripartitum*, was its source of inspiration. In fact, it may even be argued that Andrew's Bull was a source of inspiration for the Polish (and later Polish-Lithuanian) versions of the right of resistance as well, considering that the terms of the Bull had been introduced to Poland by Louis I of Hungary in 1355 and 1374. That, together with the frequent dynastic and cultural contacts that bound Hungary's and Poland's nobilities and ruling houses in the late medieval period, point in the direction of a likely Hungarian influence in Polish political culture. Direct influence, however, is much harder to prove, as it does not amount to explicit textual references as it does in Transylvania's case.[45]

Furthermore, the 1613 clause was not a bolt from the blue, but had been preceded by three other enthronement constitutions that made references to the Golden Bull. In 1599, 1607, and 1608 (and then again in 1630 and 1642), although no explicit mention of the right of resistance was made, the promise to observe 'King Andrew's decree' was included among the conditions of enthronement of newly elected princes. In the first three of these cases, the prince also promised to observe 'the decree of Hungary' (which I take to mean either Andrew's Bull or Werbőczy's *Tripartitum*, as discussed above); in 1630 and 1642, the 'articles emanating from the inauguration of the prince in 1613' in connection to the due process of law were also cited. In 1657, only the 'decretum' was mentioned.[46] To recapitulate:

'King Andrew's decree' (five cases); the 'Hungarian decree' (three cases overlapping with the previous five); and 'the decree' (one case wedged in between two explicit mentions of the right of resistance) were mentioned in the enthronement conditions of six rulers between 1599 and 1657. I interpret these six instances as implicit references to the clauses of the Golden Bull, the *Tripartitum*, and the 1613 constitution respectively, thus bringing to fourteen the total number of times that implicit or explicit references to the right of resistance were made in Transylvanian constitutions.

It might seem that to include the implicit mentions of the right of resistance is to stretch the point. After all, they were placed rather inconspicuously among the other enthronement conditions - usually in the article confirming the estates' ancient privileges, liberties, inscriptions, donations, etc. or the guarantee of the due process of law. In contrast, the explicit versions would normally constitute the eschatocol or concluding paragraph of the enthronement conditions (for the stronger versions) or they would be included in the allegiance oath sworn by the 'inhabitants' of the country to the new prince (for the softer formulations). Nevertheless, the formula 'juxta contenti decreti' of the 1613 constitution brings to attention the possibility that other references to 'King Andrew's decree' could be interpreted as implicit endorsements of the right of resistance. As a side note, it is perhaps not accidental that 'King Andrew's decree' started appearing in enthronement conditions soon after Transylvania's ruler was named prince of the Holy Roman Empire (1595) and thus became a vassal of the same person who ruled Hungary. That rapprochement might have put the old Hungarian laws back onto the Transylvanian agenda, albeit only informally, considering that there was no formal reunion with Royal Hungary (or its legal corpus) at that time, and that the prince in whose enthronement conditions 'King Andrew's decree' appeared for the first time was not Habsburg-backed, but Ottoman-backed. In short, this looks like an instance of cultural recycling rather than one of legal colonization. There were probably

similar connections between the constitutional manifestations of Bocskai's rebellion in Hungary and the 1607, 1608, and 1613 constitutions in Transylvania, but additional research on this period, with a special focus on the people involved in drafting the texts, is necessary before drawing firmer conclusions on this matter.

One indication that the references to the Golden Bull could be interpreted as implicit endorsements of the right of resistance is provided by the events that preceded the election of 1613. Not only did Bethlen's enthronement conditions include a resistance clause, but they also followed the formal deposition of the previous prince, Gabriel Báthory. Gabriel Báthory's own enthronement conditions of 1608 had contained no explicit mention of the right of resistance, but 'King Andrew's decree and the decree of Hungary' were listed among the provisions he promised to observe.[47] Evidently that was enough ground for the estates to compose a letter of dismissal for Báthory five years later. In it, they declared themselves free of obligations toward him due to his violations of his enthronement conditions (for instance by sowing discord among the inhabitants and disturbing the peace with the Ottomans). Numerous references to historical cases of benevolent abdications, meant to convince Báthory not to resist the assembly's decision, were included. Indeed, Báthory had alienated the estates with irresponsible fiscal measures, hazardous foreign policy, and severe violations of the privileges of the Saxon *natio*. His gravest mistake was probably to strike an anti-Ottoman alliance with the Habsburgs, which not only went against one of the most important articles of his enthronement but also proved to be a strategic error as it was largely unsuccessful. After dispatching the letter, the representatives of the estates 'unanimously' agreed to have Gabriel Bethlen replace his predecessor. By that time, Bethlen had already sought – and received – quite noticeable Ottoman support, of which the estates were well aware and which certainly influenced their decision. Conveniently enough, the deposition and election of 1613 were followed by Báthory's murder by an anonymous assassin.[48]

The deposition of 1613 suggests that the representatives of the Transylvanian estates already felt entitled to withdraw their allegiance in case of princely misconduct. At the same time, they must have found the previous legal expression of that right insufficient, which is probably why they introduced a formula that was at once time-honored ('King Andrew's decree') and adapted to current circumstances ('resist and contradict' was replaced with 'release from oath' and 'gather and stand against'). Interestingly enough, subsequent versions of the right of resistance (in its stronger explicit forms) dropped the reference to the 'decree' altogether and focused instead on release from allegiance and duty. The implicit forms, however, continued to refer to 'King Andrew's decree.'

The meaning of constitutionalism in elective monarchies

The events of 1613 may be interpreted in two different ways. From one perspective, they may be seen as a sign of current strength and a gesture that further empowered the estates. Dissatisfied with Gabriel Báthory's rule, the estates first rid themselves of him then paved the way for easier future replacements. In this interpretation, the constitution of 1613 can be seen as the legal consolidation of a power that the estates already had, and which they were planning to use again in the future, as demonstrated by the forced resignations as well as the references to violated enthronement conditions in several acts of opposition that took place between 1605 and 1711. Among the former, we may count the resignations of Catherine of Brandenburg and Stephen Bethlen (1630), Akos Barcsai (1658), John Kemény (1661), and arguably the withdrawal of allegiance from the Rákóczi house (1660). Among the latter, there was Bocskai's 1604-1606 rebellion against Rudolf II, under whose rule Transylvania found itself at that time (the right of resistance was explicitly invoked by the Hungarian estates in 1605); the deposition of Gabriel Báthory by the Transylvanian estates in 1613; and Francis II Rákóczi's justification of rebellion against Joseph I in 1703-1711. Additionally, the 1613

resistance clause was also cited (and quoted verbatim) by Stephen Bethlen in his unsuccessful efforts to bring about the deposition of his rival George I Rákóczi in 1636.[49]

In a different interpretation, proposed by Wim Blockmans and Raymond van Uytven in connection to Brabantine and Flemish constitutionalism, the moment of codification reveals not strength, but a fundamental weakness.[50] Questioning the much celebrated constitutional history of Brabant, Blockmans and Van Uytven suggested that the *de facto* power of Flemish towns before the fifteenth century had been stronger than when it was finally codified in 1477, which only happened – as in Brabant's case – because their power had been seriously diminished by ducal abuses in the previous decades: 'Not until the headstrong duke Charles the Bold had utterly ignored the unwritten laws of the Estates in various fields, did these latter consider it an urgent necessity to have their authority fixed formally'.[51]

This argument can certainly be applied to Transylvania's situation in 1613. After all, the estates had been made increasingly vulnerable by their rulers' repeated violations of the article regarding the peace with the Habsburgs and the Ottomans. They all swore to observe it, but that was the promise they broke most often and which proved to be the main source of trouble in Transylvania's autonomous history. In 1613, the estates seized a moment of weakness in princely power in order to pass a law that they hoped would accomplish what previous constitutions had not managed to do: protect them from the princes' propensity to break promises and gamble their country's safety in the process. But that law may be seen as an empty gesture. The constitutional freedoms of the Transylvanians may have been important in their political mythology, but they were rather less so in the logic of hard politics. Despite their increasingly restrictive enthronement conditions, princes continued to succeed one another with the backing of military force, factional strife, or Ottoman pressure. The insistence of the estates on performing the ritual act of election – even when it was little more than the legal sanction of a coup – and the inclusion of the right of resistance in their

constitutions may well be seen as irrelevant at best and foolish at worst. Indeed, many historians of early modern Transylvania have dismissed the significance of Transylvanian constitutional practices, claiming that the sultan's suzerainty coupled with the internal powers of the princes – and the influence that some of them managed to have on determining their successors – brought Transylvanian politics closer to absolutist rule than to constitutional government.[52]

Indeed, a well-established prince was often able to dominate the estates in assemblies, both in Transylvania and Poland-Lithuania. The system of elective monarchy used in the two countries should not obscure the fact that the ruler's prerogatives remained considerable: ultimate jurisdiction in criminal and fiscal cases, the exclusive right to appoint territorial officers, control over the agenda of assembly debates. The traditional image of the Polish-Lithuanian king as a weak monarch pays too much attention to his elective status and not enough to his executive powers. After all, legislation regarding the supervision of the king by resident senators was repeatedly issued precisely because it was rarely observed. Effective resistance against the ruler's power may have been greater in Poland-Lithuania than in Transylvania (despite the language of their disobedience clauses, which may suggest otherwise), but even in the Commonwealth an astute monarch could get around constitutional limitations. In the early decades of the Commonwealth, for instance, both Báthory and the Vasa kings used certain strategies to obtain approval for taxation and other controversial measures directly from local assemblies (*sejmiki*) after they had been rejected by the Sejm. Although the method may be argued to come closer to direct democracy than to absolutism, in practice it was used by kings to intimidate and pressure the smaller and more vulnerable *sejmiki* into giving them whatever endorsement they sought.[53]

Based on these observations, we may draw the conclusion that early modern constitutionalism was essentially the legal expression of a basic power struggle between rulers

and estates. However, the logic of a zero-sum game does not satisfyingly reflect the early modern idea of government. In many European monarchies and certainly in Transylvania and Polish-Lithuania, the estates did not so much aim to diminish the importance of princely (or royal) executive power as they wished to control it. A ruler was not expected to be a wax figure; he had important tasks and the estates did not wish to do his job – what they wished was to hold him accountable for his actions. In Transylvania and Poland-Lithuania, accountability was to be enforced by the act of election combined with the legal possibility of disobedience. As destabilizing as they were, elections were windows of opportunity: they were constitutionally-sanctioned chances to reform the body politic without resorting to more dangerous upheavals. As mentioned in a speech dating from the first Polish-Lithuanian interregnum, 'now is the time to correct old mistakes; we will not have such a chance soon.'[54] It was for this purpose that elections *vivente rege* – which would have eliminated interregna and made the electoral process subject to royal interference and therefore less 'free' – were banned by the Polish Sejm after the irregular election and coronation of Sigismund II Augustus. After 1530, even though sons of kings were elected three times during the Commonwealth's existence, the Sejm (and particularly the lower nobility) made sure elections were never held before the death or resignation of the incumbent. John II Casimir's attempts to introduce elections *vivente rege* and the fierce opposition they raised were arguably the main reason why he lost control of the throne and eventually abdicated in 1668.[55]

In Transylvania's case, the precarious position between the Ottomans and the Habsburgs – which may indeed have created a higher degree of 'political discipline' – caused the estates to be less attached to interregna than to the narrower formal right of election.[56] Their power transfers lasted weeks, not years like in Poland-Lithuania; elections were attended by representatives rather than *viritim*; compromises between factions were more quickly reached; and successions *vivente principe* were more easily permitted. Between 1571

and 1704 (when the last Transylvanian election took place), six elections were held during the lifetime of the incumbent. Those elected were either the son (four times), brother (one time), or wife (one time) of the current ruler, although only three of them ruled effectively: Francis Rákóczi was elected to succeed his father in 1652 but was never enthroned; Catherine Brandenburg ruled for only a few months in 1630; and Michael II Apafi was elected as his father's successor in 1683 but was only a nominal prince after his father's death in 1690.[57] Their elections were de facto dynastic successions, which nevertheless formally respected the right of 'free' election. The official justification was usually to avoid the dangers of an interregnum – as had been argued at Sigismund Báthory's election *vivente principe* in 1581 – but the unspoken factor was the undeniable ascendancy of a well-established prince over the estates; it is no coincidence that such elections only happened during relatively long and stable reigns.[58]

After 1599, when 'King Andrew's decree' was mentioned for the first time in Transylvanian enthronement constitutions, each of the four elections that were conducted *vivente principe* included a resistance clause (three times explicitly, one time implicitly). In those cases, it seems that the resistance clause served as a reminder that, although irregularities might be occasionally allowed, the law of the land remained unaltered and was to be transmitted to posterity as such. While it may be argued that the enthronement constitution of 1613 was little more than the ratification of a power struggle that had already been decided on the battlefield (by the time its terms were drafted, Báthory's troops had already retreated at the advance of Bethlen's supporters), the mere fact that the estates legalized the situation in these terms reveals, if nothing else, the degree to which attachment to constitutional principles and the elective system permeated Transylvanian political culture.[59] That is also how we may explain why the Transylvanian estates did not object to the Ottoman-backed coup of 1613, which allowed them to keep their elective system, but refused

to ratify the Habsburg-backed coup of 1571, which aimed to replace election with appointment:

> People say that if he [the contender backed by Maximilian II] continues his practices, he will bite the dust and lose his property, and so will anybody else who dares breach the rights of this country, hinder free elections and draw the anger of the mighty emperor [the sultan] on this country.[60]

Their choices dumbfounded outsiders such as Jean Bodin, who noted with irony:

> The estates of the kingdom of Hungary… were so obstinate [against the house of Austria] that they preferred to abandon themselves to the Turks rather than lose the right [of election].[61]

By focusing on the independence that had been lost externally, Bodin dismissed the value placed on the elective system internally. But for the estates, it had strong symbolic power: 'free elections' quite literally signified their liberty, generally understood as the capacity to have a say in government, and which was left mostly unhindered by the Ottomans. Besides, the connection with liberty was not only symbolic, but also had a practical side: elections enabled self-government by allowing the estates to periodically draw enthronement constitutions, which, after numerous adaptations and compromises, translated into law their vision of how their body politic should work. Looking from this perspective, it is perhaps easier to understand why the Transylvanian idea of liberty was less threatened by the necessity to keep the Ottomans happy than by losing the right of 'free' election – which I would argue mattered less because of the identity of the rulers it sanctioned than because of the constitutional practices it enabled.

The right of resistance in Poland-Lithuania and Transylvania can only be properly understood in conjunction with the elective system: the latter fundamentally affected the way

the former was envisioned and practiced. On the one hand, the elective nature of the throne rendered the right of resistance more meaningful than it could have been in a dynastic system. Without a valid method for replacing abusive rulers from an enlarged pool of unrelated successors, disobedience had either a limited scope or profoundly disruptive consequences – as had been arguably the case in England and the Low Countries. Conversely, the right of resistance reinforced the elective system, since suffrages could theoretically happen at any time (i.e., whenever a ruler violated the laws of the country) and not only after his death or abdication, thus giving citizens expanded electoral rights. Thus, when coupled with the resistance clause, the elective system became – or at any rate was meant to become – more powerfully geared toward fostering accountability. In practice, depositions seldom happened, as they rarely constituted the ultimate goal of protesters and malcontents. There was only one formal deposition in Poland-Lithuania (Stanisław Leszczyński's dismissal in 1710, albeit technically an annulment rather than a deposition) and two in Transylvania (Gabriel Báthory's in 1613, and the estates' withdrawal of allegiance from the Rákóczi house in 1660).[62] What protesters usually pushed for were changes in policy—or the prevention thereof. For that purpose, the threat of deposition coupled with the constitutional guarantee of that possibility proved effective negotiation tools in more than one act of opposition.

Conclusions

The early modern constitutions of Poland-Lithuania and Transylvania, together with the contractual principle on which they were based, were a continuation of the legalistic trend that permeated most of Europe from the thirteenth century onward, so in a formal sense they were neither new nor singular. Their contents, however, reflected recent developments and were quite unique in comparison with the rest of the continent. They represented local solutions to problems universally experienced at the beginning of the early modern period in Europe:

religious fragmentation, the vagaries of dynastic succession, and the issue of representation in central institutions of growing importance. These solutions came to be epitomized, in Transylvania and Poland-Lithuania, by three main constitutional principles: confessional pluralism, elected rulers, and the right of disobedience. In Poland-Lithuania, the elective principle and the right of disobedience received more attention and were applied earlier and more consistently; in Transylvania, it was the articles of religious peace that were more extensive and received earlier legal and practical attention. In both countries, the elective system imposed a certain cyclicity on the process of constitutional renewal, which was formalized in the practice of issuing enthronement conditions for each newly elected ruler. These conditions, in turn, kept the elective system going and prevented its fundamental principles from falling into disuse. The right of disobedience had a relatively simple constitutional evolution in Poland-Lithuania, whereas in Transylvania it had a sinuous trajectory. Both deserve more attention in future scholarship, as they can help expand our understanding of political resistance in early modern East Central Europe.

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[1] The studies and source editions related to English and Brabantine constitutionalism are too numerous to list here; the most important titles include: D. Alan Orr, 'A Prospectus for a "New" Constitutional History of Early Modern England', *Albion: A Quarterly Journal Concerned with British Studies*, Vol. 36, No. 3 (2004), 430–50; R. H. Helmholz, 'Magna Carta and the Ius Commune', *University of Chicago Law Review*, Vol. 66 (1999); James

Clarke Holt, *Magna Carta* (Cambridge 1992); J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (Cambridge 1987); Ria van Bragt, 'De Blijde Inkomste van 3 januari 1356. Een kritische uitgave, met afbeeldingen, een Latijnse vertaling, en een beknopte inleiding', *De Brabantse Folklore*, Vol. 133 (1957), 56–85; R. van Uytven and P. de Ridder, 'De Blijde Inkomst van Maria van Bourgondië (29 mei 1477): uitgave van de tekst en van een eigentijdse commentaar', in Maurice-A. Arnould and Wim P. Blockmans, eds, *Het algemene en de gewestelijke privilegiën van Maria van Bourgondië voor de Nederlanden, 1477* (Kortrijk-Heule 1985), 286–356; Wim P. Blockmans and R. van Uytven, 'Constitutions and Their Application in the Netherlands during the Middle Ages', *Revue Belge de Philologie et d 'Histoire*, Vol. 47 (1969), 399–424; Robert Stein, '74 Woorden die het verschil maken: Over de ontwikkeling van het Brabantse recht van weerstand', *Noordbrabants Historische Jaarboek*, Vol. 29 (2012), 46–63; Jelle Haemers and Bram Vannieuwenhuyze, 'Het Charter van Kortenberg en de constitutionele geschiedenis van Brabant', *Eigen Schoon en de Brabander*, Vol. 96 (2013), 1–22. For Aragon's semi-mythical right of resistance, see Ralph E. Giesey, *If Not, Not: The Oath of the Aragonese and the Legendary Laws of Sobrarbe* (Princeton, NJ 1968).

[2] Stein, '74 Woorden die het verschil maken', 58–60; Martin van Gelderen, *The Political Thought of the Dutch Revolt, 1555-1590* (Cambridge 1992), 133, 139–40.

[3] Paul Saenger, 'The Earliest French Resistance Theories: The Role of the Burgundian Court', *The Journal of Modern History*, Vol. 51, No. 4 (December 1979), D1225–49; Robert M. Kingdon, 'The Political Resistance of the Calvinists in France and the Low Countries', *Church History*, Vol. 27, No. 3 (September 1958), 220–33; Julian H Franklin, ed., *Constitutionalism and Resistance in the Sixteenth Century: Three Treatises by Hotman, Beza, & Mornay* (New York 1969); Cynthia Grant Shoenberger, 'The Development of the Lutheran

Theory of Resistance: 1523-1530', *Sixteenth Century Journal*, Vol. 8, No. 1 (April 1977), 61–76.

[4] Ernst Ekman, 'The Danish Royal Law of 1665', *The Journal of Modern History*, Vol. 29, No. 2 (1957), 102–7; Jens Chr. V. Johansen, 'Absolutism and the "Rule of Law" in Denmark, 1660–c. 1750', *The Journal of Legal History*, Vol. 27, No. 2 (2006), 153–73; Hans-Wolfgang Bergerhausen, 'Die "Verneuerte Landesordnung" in Böhmen 1627: ein Grunddokument des habsburgischen Absolutismus'*, Historische Zeitschrift*, Vol. 272, No. JG (2001), 327–52.

[5] See Ralph E. Giesey, Lanny Haldy, and James Millhorn, 'Cardin Le Bret and Lese Majesty', *Law and History Review*, Vol. 4, No. 1 (Spring 1986), 23–54; William Farr Church, *Richelieu and Reason of State* (Princeton, NJ 1973). For a view questioning the absolutist tendencies of the legal system in 17th-century France, see David Parker, 'Sovereignty, Absolutism and the Function of the Law in Seventeenth-Century France', *Past & Present*, Vol. 122, No. 1 (1989), 36–74.

[6] B. Lyon, 'Medieval Constitutionalism: A Balance of Power', *Anciens Pays et Assemblées d'Etats*, Vol. 24 (1961), 157–83,167.

[7] R. J. W. Evans points to the validity of comparing the Polish and Hungarian monarchies while partially agreeing with the assertion that the two seemed to 'part ways' in the seventeenth century. See R. J. W. Evans, 'The Poland-Lithuanian Monarchy in International Context', in Richard Butterwick, ed., *The Polish-Lithuanian Monarchy in European Context C. 1500-1795* (Basingstoke 2001), 29-31.

[8] See Stanisław Grodziski and Irena Dwornicka, eds, *Volumina Constitutionum*, 4 vols. (Warsaw 1996-2005) [hereafter VC], 1: 150. For an overview of constitutional developments in late medieval and early modern Poland, see Krzysztof Koehler, 'The Heritage of Polish Republicanism', *The Sarmatian Review*, No. 2 (2012), 1658–65; Karol Górski, 'The Origins

of the Polish Sejm', *The Slavonic and East European Review*, Vol. 44, No. 102 (1966): 122–38.

[9] A recent critical edition of the Henrician Articles can be found in VC 2/1:326-29. For a detailed study of the Henrician Articles and their application, see Dariusz Makiłła, *Artykuły henrykowskie (1573-1576). Geneza – Obowiązywanie – Stosowanie. Studium historyczno-prawne* (Warsaw 2012).

[10] See Jacek Jędruch, *Constitutions, Elections and Legislatures of Poland: 1493-1993: A Guide to Their History* (New York, 1998), 54–6.

[11] Stanisław Konarski and Zdzisław Kaczmarczyk, eds, *Volumina Legum: przedruk zbioru praw staraniem XX: Pijarów w Warszawie od roku 1732 do roku 1782 wydanego*, 8 vols. (Petersburg 1859-1860) [hereafter VL], 6:305, 309.

[12] Jean Bodin, *Les six livres de la république*, Christiane Frémont, Marie-Dominique Couzinet, and Henri-Marie Rochais, eds (Paris 1986), 227; Daniel Lee, 'Office Is a Thing Borrowed: Jean Bodin on Offices and Seigneurial Government', *Political Theory: An International Journal of Political Philosophy*, Vol. 41, No. 3 (2013), 409–40; Ralph E. Giesey, 'The Juristic Basis of Dynastic Right to the French Throne', *Transactions of the American Philosophical Society*, Vol. 51, No. 5 (1961), 3–47

[13] Michael G. Müller, 'Protestant Confessionalisation in the Towns of Royal Prussia and the Practice of Religious Toleration in Poland-Lithuania', in Ole Peter Grell and Robert W. Scribner, eds, *Tolerance and Intolerance in the European Reformation* (Cambridge 1996), 262–81, 269; Stanisław Salmonowicz, 'Geneza i treść uchwał konfederacji warszawskiej', *Odrodzenie i Reformacja w Polsce*, Vol. 19 (1974), 7–30; Mirosław Korolko, *Klejnot swobodnego sumienia: Polemika wokół konfederacji warszawskiej w latach 1573-1658* (Warsaw 1974); Jędruch, *Constitutions, Elections and Legislatures of Poland*, 347.

[14] See items 7 and 8 in the Henrician Articles (VC 2/1:327-28) and Niccolò Machiavelli, 'A Discourse on Remodeling the Government of Florence', in *Machiavelli: The Chief Works and Others*, trans. Allan Gilbert, vol. 1, 3 vols. (1989), 101–15, 111-12.

[15] VC 2/1:329.

[16] VL 2:462-463. For the 1588 lese-majesty law, see VL 2:251-252.

[17] Makiłła, *Artykuły henrykowskie*, 51-108.

[18] For the English right of disobedience, see art. 61 of the Magna Carta. For the 'passivity' of the Brabantine right of disobedience, see Stein, '74 Woorden die het verschil maken', 58. The theorists of the Dutch Revolt took the Brabantine version (and especially its stronger formulations in the New Regiment of 1421-1422) and turned it into an active right of resistance (including by military force) in the late 1570s and 1580s. See Gelderen, *The Political Thought of the Dutch Revolt*, 110–165.

[19] Gerald Volkmer, 'Premisele politice și cadrul juridic al diversității religioase în Transilvania, între Reformă și Iluminism', in Joachim Bahlcke and Konrad Gündisch, eds, *Toleranţă, coexistenţă, antagonism: Percepţii ale diversităţii religioase în Transilvania, între Reformă şi Iluminism* (Cluj-Napoca, 2013), 33.

[20] For an overview of this issue in Hungarian historiography, see Teréz Oborni, 'From Province to Principality: Continuity and Change in Transylvania in the First Half of the Sixteenth Century', in István Zombori, ed., *Fight Against the Turk in Central-Europe in the First Half of the 16th Century* (Budapest 2004), 165–79. Oborni's views occupy the middle ground between the two extremes.

[21] Sándor Szilágyi, ed., *Erdélyi Országgülési Emlékek*, 21 vols. (Budapest 1876-1898) [hereafter EOE], 1:64-7, 169. For an overview of this period, see Béla Köpeczi, ed., *History of Transylvania: From the Beginnings to 1606*, vol. 1, 2 vols. (Boulder, CO 2001), 422. For the 1571 re-confirmation, see Sándor Papp, *Die Verleihungs-, Bekräftigungs- und*

Vertragsurkunden der Osmanen für Ungarn und Siebenbürgen: eine quellenkritische Untersuchung (Vienna 2003), 182–5. See also Farkas Bethlen, *Historia de rebus Transsylvanicis*, 2 vols. (Sibiu 1782), 84-5.

[22] The conscious nature of the decision to hold elections in defiance of Maximilian's attempts to maintain authority over Transylvania is indicated by the sources of the period. See EOE 2:451, 454-455; Veress Endre, ed*., Báthory István erdélyi fejedelem és lengyel király levelezése*, 2 vols. (Kolozsvár 1944), 1:111-112; Forgách Ferencz, *Magyar historiája, 1540-1572*, ed. Majer Fidél (Pest 1866), 467; Bethlen, *Historia de rebus Transsylvanicis*, 224. For the changes surrounding the 1571 moment, see Oborni Teréz, 'Erdély közjogi helyzete a speyeri szerződés után (1571-1575)', in Pál Fodor, Pálffy Géza, and Tóth István György, eds, *Tanulmányok Szakály Ferenc Emlékére* (Budapest 2002), 291–305. Oborni gives a thorough overview of the 1526-1575 period in'From Province to Principality'.

[23] EOE 2:454-55.

[24] EOE 4 and 5.

[25]*Approbatae Constitutiones regni Transylvaniae et partium Hungariae eidem annexarum* (Várad 1653); *Approbatae Constitutiones Regni Transylvaniae & Partium Hungariae eidem annexarum*, 3rd ed. (Cluj 1696). Because the *Approbatae Constitutiones* edition does not faithfully reproduce older enthronement articles, for this article I have used the EOE collection, which was based on extant copies of the original texts. I refer to the *Approbatae Constitutiones* edition only in the context of the second half of the seventeenth century.

[26] EOE 2:459.

[27] EOE 2:56.

[28] EOE 2:472.

[29] See EOE 5:457-458 for the 1607 text.

[30] EOE 9:151-52 (1630); 11:140 (1652).

[31] For Selim's letter, see EOE 2:461-463; Forgách, *Magyar Historiája*, 465.

[32] See for instance Marcin Kromer, *Martini Cromeri Polonia sive de situ, populis, moribus, magistratibus et Republica regni Polonici libri* duo (1578), ed. Wiktor Czermak (Cracow 1901), 73.

[33] Mihály Balázs, '"A Hit... Hallásból Lésszön": Megjegyzések a Négy Bevett Vallás Intézményesüléséhez a 16. Századi Erdélyben', in *Tanulmányok Szakály Ferenc Emlékére* (Budapest 2002), 52–73; Katalin Péter, 'Tolerance and Intolerance in Sixteenth-Century Hungary', in Ole Peter Grell and Robert W. Scribner, eds, *Tolerance and Intolerance in the European Reformation* (Cambridge 1996), 249–61; Graeme Murdock, 'Multiconfessionalism in Transylvania', in *A Companion to Multiconfessionalism in the Early Modern World* (Leiden 2011), 393–416; István Keul, *Early Modern Religious Communities in East-Central Europe: Ethnic Diversity, Denominational Plurality, and Corporative Politics in the Principality of Transylvania (1526-1691)* (Leiden, 2009); and Mihály Balázs, 'Tolerant Country – Misunderstood Laws: Interpreting Sixteenth-Century Transylvanian Legislation Concerning Religion', *Hungarian Historical Review*, Vol. 2, No. 1 (2013), 85–108.

[34] The original Hungarian text is in EOE 6:359-360. The English translation provided here incorporates the one published by Graeme Murdock in '"Freely Elected in Fear": Princely Elections and Political Power in Early Modern Transylvania', *Journal of Early Modern History*, Vol. 7, Nos 3/4 (2003): 213–44, 231. Murdock's translation stops at 'prince'; I have included the remainder of the paragraph for a specific reason that will be explained below.

[35] Oborni, 'From Province to Principality', 170–1.

[36] *Approbatae Constitutiones*, 1696, part 2, title 1.

[37] EOE 9:113 (1630); 11:144, 147 (1652); 17:190 (1681); EOE 12:99 (1658); 12:480 (1660); 13:85 (1661); 20:410 (1690). I did not take into account the inclusion of similar mentions in

the constitutions of Hungary from 1605, as a consequence of Stephen Bocskai's rebellion; see Rady, 'Bocskai, Rebellion and Resistance'.

[38] János M. Bak and Pavel Lukin, 'Consensus and Assemblies in Early Medieval Central and Eastern Europe', in P. S. Barnwell and Marco Mostert, eds, *Political Assemblies in the Earlier Middle Ages* (2003), 95–113.

[39] For a Latin/English critical edition of the Golden Bull, see János M. Bak, György Bónis, and James Ross Sweeney, eds, *The Laws of the Medieval Kingdom of Hungary, Volume 1: 1000-1301* (Bakersfield, CA 1989), 32-7. The right of resistance is included in article 31 (37).

[40] Martyn C. Rady, 'Hungary and the Golden Bull of 1222', *Banatica*, Vol. 24, No. 2 (2014): 87–108. Another important point emphasized by Rady elsewhere ('The Right of Resistance in Hungary: Lecture Delivered at Károli Gáspár University, Budapest, 11 June 2013', accessed May 25, 2014, https://www.academia.edu/3683922/The_Right_of_Resistance_in_Hungary._A_Lecture) is that the early modern version of the right of resistance in Hungary was not only inspired by medieval law but also closely connected to Calvinism. Calvinist rhetoric was certainly used in the Transylvanian political context in the seventeenth century—as pointed out by Graeme Murdock and Istvan Keul in their works—and so indeed there may be a link, or at least affinity, between the 'Calvinization' of the political establishment and the introduction of the right of resistance in Transylvanian constitutions, but the intricacies of that connection in the Transylvanian context should be elaborated with further research.

[41] István Werbőczy, *Tripartitum opus juris consuetudinarii inclyti regni hungarie* (Glashütten/Taunus 1971), part 1, art. 9 (facsimile version, no pagination); László Péter, 'The Holy Crown of Hungary, Visible and Invisible', *The Slavonic and East European Review*, Vol. 81, No. 3 (July 2003): 421–510, 551; Rady, 'The Right of Resistance in Hungary'; Rady,

'Bocskai, Rebellion and Resistance'; Bak, Bónis, and Sweeney, *The Laws of the Medieval Kingdom of Hungary*, 97.

[42] Martyn Rady, 'The Prologue to Werbőczy's Tripartitum and Its Sources', *The English Historical Review*, Vol. 121, No. 490 (February 1, 2006), 104–45, 104-5; Rady, 'Bocskai, Rebellion and Resistance'; Andor Cizmadia, 'Previous Editions of the Laws of Hungary', in Bak, Bónis, and Sweeney, *The Laws of the Medieval Kingdom of Hungary*, xix-xxxv, xxvii-xxviii; Nataša Štefanec, 'Pergošić's Translation of the Tripartitum into Slavonian', in Martyn C. Rady, ed., *Custom and Law in Central Europe* (Cambridge 2003), 71–86.

[43] See Rady, 'Bocskai, Rebellion and Resistance'.

[44] Péter, 'The Holy Crown of Hungary'', 449-50; Kálmán Benda, 'Habsburg Absolutism and the Resistance of the Hungarian Estates in the Sixteenth and Seventeenth Centuries', in Robert J. W. Evans and Trevor V. Thomas, eds, *Crown, Church and Estates: Central European Politics in the Sixteenth and Seventeenth Centuries* (New York, 1991), 123–28, 128.

[45] Rady, 'Hungary and the Golden Bull of 1222', 2–3.

[46] EOE 4:280 (1599); 5:457 (1607); 6:98 (1608); 9:153 (1630); 10:324 (1642); 11:323 (1657).

[47] EOE 6:89-91.

[48] For an overview of Gabriel Báthory's reign, see Katalin Péter, 'The Golden Age of the Principality, 1606-1660', in Béla Köpeczi, ed*., History of Transylvania: From 1606 to 1830*, vol. 2, 2 vols. (Boulder, CO 2002), ch. 1-2. For more details on the 1613 election, see Murdock, 'Freely Elected in Fear', 227–8. For the letter of dismissal sent to Gabriel Báthory, see EOE 6:348-351.

[49] EOE 9:544 (1636).

[50]Blockmans and van Uytven, 'Constitutions and Their Application', 423.

[51]Ibid., 418.

[52] Katalin Péter, 'Transylvanian Society under Absolute Princely Rule', in Köpeczi, *History of Transylvania: From 1606 to 1830*, 2: 153-99; Laszlo Makkai, 'The Crown and the Diets of Hungary and Transylvania in the Sixteenth Century', in Evans and Thomas, eds, *Crown, Church and Estates,* 80-91, 89-90; Trócsányi Zsolt, *Az Erdélyi Fejedelemség korának országgyűlései: adalék az erdélyi rendiség történetéhez* (Budapest 1976); Vencel Biró, *Az Erdélyi Fejedelmi Hatalom Feilödése* (Kolozsvár 1917).

[53] Stanisław Płaza, *Sejmiki i zjazdy szlacheckie województw sieradzkiego: ustrój i funkcjonowanie, 1572-1632*, vol. 1 (Warsaw 1987); Kazimierz Baran, 'Procedure in Polish-Lithuanian Parliaments from the Sixteenth to Eighteenth Centuries', *Parliaments, Estates and Representation*, Vol. 22, No. 1 (2002), 57–69; Felicia Roşu, 'Monarch, Citizens, and the Law under Stefan Batory: The Legal Reform of 1578', in Karin Friedrich and Barbara M. Pendzich, eds, *Citizenship and Identity in a Multinational Commonwealth: Poland-Lithuania in Context, 1550-1772* (Leiden 2009), 19–48; Joseph Siemieński, 'La politique parlamentaire en Pologne du roi Etienne Batory', in Adrien de Divéky, ed., *Etienne Batory: roi de Pologne, prince de Transylvanie* (Cracow 1935), 263–91.

[54] 'Slachcica polskiego do rycerskiego koła, braciej swej miłej o obieraniu krola krotka przemowa', printed in Jan Czubek, ed., *Pisma polityczne z czasów pierwszego bezkrólewia* (Cracow 1906), 279.

[55] See Robert I. Frost, *After the Deluge: Poland-Lithuania and the Second Northern War, 1655-1660* (Cambridge 1993), especially ch. 7-9. Modern scholars of the Commonwealth's later period, while noting that interregna allowed the szlachta to 'put right the damage which the deceased incumbent had done', nevertheless see the nobility's attachment to interregna as ultimately pernicious, on account of the external vulnerability it eventually created. 'The very device designed to restore harmony and the rule of law in Poland—the interregnal election—was responsible for its subversion.' See Jerzy Lukowski, 'The Szlachta and the Monarchy:

Reflections on the Struggle Inter Maiestatem Ac Libertatem', in Richard Butterwick, ed., *The Polish-Lithuanian Monarchy in European Context c. 1500-1795* (Basingstoke 2001), 133–49, 134-5.

[56] Graeme Murdock confirms Lukowski's evaluation of Poland-Lithuania's interregna but states the opposite for Transylvania, on account of the Transylvanian estates' greater 'political discipline.' See Murdock, 'Freely Elected in Fear', 243–4. A similar (although more temperate) assessment of the balancing effect of Transylvanian elections may be found in Oborni Teréz, 'Erdély. Abszolutizmus vagy rendi centralizmus?' *Rubicon*, Nos. 4–5 (1996), 21–3.

[57] I have included here the appointment/election of Christopher Báthory as voivode of Transylvania in 1576, after his brother's election to the Polish-Lithuanian throne.

[58] See EOE 3:157 for the 1581 argument.

[59] Murdock makes the same point in 'Freely Elected in Fear', 243.

[60] Kristóf Hagymásy to Janos Liszt (27 May 1571), in Kemény József, ed., *Erdélyország történetei tára; egykoru 's magyar nyelven készített történet-iratok-, levelek-, országgyúlési végzések-és törvényczikkelyekböl*, vol. 1 (Kolozsvár 1837), 108.

[61] Bodin, *Les six livres de la république*, bk. 1, ch. 10, 318.

[62] VL 6:70; EOE 12:461.

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