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## THE GERMAN EMPIRE AND THE GRAND MASTER OF THE TEUTONIC ORDER IN THE LIGHT OF THE GOLDEN BULL OF RIMINI

### I

The interpretation of the public and legal relation of the Grand Master of the Teutonic Order to the Empire, stated in the diploma issued to the Teutonic Knights by Emperor Frederick II in Rimini, dated March 1226,<sup>1</sup> described in literature as the

<sup>1</sup> From numerous editions of the Golden Bull see *Preussisches Urkundenbuch. Politische Abteilung* (further quoted as : PrUb), vol. 1, Part I, ed. by (R.) Philippi, (C.P.) Woelky, Königsberg 1882, No. 56, and the newest edition: E. Weise, *Interpretation der Goldenen Bulle von Rimini (März 1226) nach dem kanonischen Recht*, in : *Acht Jahrhunderte Deutscher Orden in Einzeldarstellungen*, ed. by K. Wieser, Quellen und Studien zur Geschichte des Deutschen Ordens, vol. I, Band Godesberg 1967, pp. 22 ff. And most recently P. Zinsmaier, *Die Reichskanzlei unter Friedrich II.*, in : *Probleme um Friedrich II.*, ed. by J. Fleckenstein, Vorträge und Forschungen, vol. XVI, Sigmaringen 1974, pp. 147 ff., put forward the thesis that the Golden Bull was written after 1232, or even in the fourth decade of the 13th century. However, the formal arguments given by him are weak, so we should leave the problem open ; see U. Arnold, *Probleme um Friedrich II.: Der Deutsche Orden und die Goldbulle von Rimini, "Preussenland"*, vol. XIV, 1976, pp. 44 ff. ; W. Hubatsch, *Zur Echtheitsfrage der Goldbulle von Rimini Kaiser Friedrichs II. für den Deutschen Orden 1226*, in : *Von Akkon bis Wien. Studien zur Deutschordensgeschichte vom 13. bis zum 20. Jahrhundert*, ed. by U. Arnold, Quellen und Studien zur Geschichte des Deutschen Ordens, vol. XX, Marburg 1978, pp. 3 ff. We have left out of our discussion the interpretation of the Golden Bull made by E. Pitz in his a priori theory of rescript—see E. Pitz, *Papstreskript und Kaiserreskript im Mittelalter*, Bibliothek des Deutschen Historischen Instituts in Rom, vol. XXXVI, Tübingen 1971, pp. 200 ff. The opinions of this author were very critically evaluated by the researchers of the Papal and Imperial chancelleries.

Golden Bull of Rimini, is probably decisive in evaluating the role and significance of that charter in shaping the legal foundations for the rule of the Teutonic Order in Prussia. So it is not surprising that this question has for a long time aroused the interest of both German and Polish mediaevalists. Here is short summary of to-date discussions, containing opinions that have a decisive influence on the direction of research. And so, in the opinion of Edmund E. Stengel<sup>2</sup> and of Ingrid Matison,<sup>3</sup> on the strength of the diploma of 1226, Prussia became part of the German Kingdom. The first of these researchers gives the Grand Master the position of a prelate of the Empire ; I. Matison does not investigate that matter in detail. On the other hand, Albert Werminghoff<sup>4</sup> sees Prussia as part of the Roman Empire, which is also composed of Germany, Italy and Burgundy, and gives the Grand Master the position of an imperial prince. Beside the "incorporationists" we can also distinguish the "universalists", who place Prussia within the universal *Imperium Romanum*. In consequence, they treat the Grand Master as a sovereign ruler. The representatives of this view, although they differ in details, are Gerard Labuda<sup>5</sup> and Erich Weise.<sup>6</sup>

<sup>2</sup> E. E. Stengel, *Regnum und Imperium. Engeres und weiteres Staatsgebiet im alten Reich*, Marburger Akademische Reden, No. 49, Marburg 1930, pp. 16 ff.; idem, *Hochmeister und Reich. Die Grundlagen der staatsrechtlichen Stellung des Deutschordenslandes*, in: idem, *Abhandlungen und Untersuchungen zur Geschichte des Kaisergedankens im Mittelalter*, Köln-Graz 1965, pp. 207 ff. (first edition 1938).

<sup>3</sup> I. Matison, *Die Lehnsexemption des Deutschen Ordens und dessen staatsrechtliche Stellung in Preussen*, "Deutsches Archiv für Erforschung des Mittelalters" (further quoted as: DA), vol. XXI, 1965, pp. 194 ff.; see eadem, *Zum Politischen Aspekt der Goldenen Bulle von Rimini*, in: *Acht Jahrhunderte Deutscher Orden*, pp. 49 ff.

<sup>4</sup> A. Werminghoff, *Der Hochmeister des Deutschen Ordens und das Reich bis zum Jahre 1525*, "Historische Zeitschrift" (further quoted as: HZ), vol. CX, 1913, pp. 473 ff.

<sup>5</sup> G. Labuda, *La position de l'Ordre Teutonique à l'égard du Saint-Empire Romain Germanique d'après la Bulle d'Or de Frédéric II de 1226*. "Czasopismo Prawno-Historyczne" (further quoted as: CPH), vol. III, 1951, pp. 124 ff. In the author's opinion between the Emperor, in the sense of a universal ruler, and the Grand Master there was a relation of protection. See also idem, *Stanowisko ziemi chełmińskiej w państwie krzyżackim*

The importance of the problem and the diversity of views in the literature on the position of the Grand Master and Prussia as stated in the Golden Bull, justifies another look at this question.

## II

It is quite a general view that the Golden Bull did not precisely define or regulate the legal relations between the Emperor and the Grand Master by virtue of the possession of Prussia by the Order. In Manfred Hellmann's opinion<sup>7</sup> the reason for this was consideration for the Holy See. According to I. Matison,<sup>8</sup> this relation was for contemporaries obvious and that is the reason why there was no need for a more precise definition. In turn, Henryk Łowmiański writes that "*der Deutsche Orden in Preussen in einer Abhängigkeit zum Kaiser stehen sollte, die in ihrer*

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*w latach 1228—1454 [The Stand of Chełmno Land in the Teutonic State in the Years 1228—1454], "Przegląd Historyczny", vol. XLV, 1954, p. 283 and note 10.*

<sup>6</sup> Particularly E. Weise, *Interpretation der Goldenen Bulle...*, pp. 15 ff.; idem, *Die Amtsgewalt von Papst und Kaiser und die Ostmission besonders in der 1. Hälfte des 13. Jahrhunderts*. Marburger Ostforschungen, vol. XIII, Marburg/Lahn 1971. The author, developing his earlier views, sees the place of Prussia within the framework of *sacrum Imperium Romanum, quod est apud ecclesiam*. In I. Matison's opinion (*Die Lehnsexemtion...*, p. 197, note 7) E. Caspar (*Hermann von Salza und die Gründung des Deutschordensstaats in Preussen*, Tübingen 1924) can also be regarded as "universalist". It is contrary to G. Labuda's view (*La position...*, p. 137) which does not link E. Caspar's "programme theory" to the "universal empire theory". This opinion seems to be more correct. A broader review of literature is given by: G. Labuda, *La position...*, pp. 126 ff.; I. Matison, *Die Lehnsexemtion...*, pp. 196 ff.; E. Weise, *Interpretation der Goldenen Bulle...*, pp. 16 ff. See also B. Koehler, *Goldbulle von Rimini*, in: *Handwörterbuch zur deutschen Rechtsgeschichte*, ed. by A. Erler, E. Kaufmann, vol. I, Berlin 1971, col. 1737 ff.

<sup>7</sup> M. Hellmann, *Über die Grundlagen und die Entstehung des Ordensstaates in Preussen*, "Nachrichten der Giessener Hochschulgesellschaft", vol. XXXII, 1962, pp. 117 ff.

<sup>8</sup> I. Matison, *Die Lehnsexemtion...*, p. 200.

*Form nicht näher bestimmt wurde*".<sup>9</sup> As possible reasons for this state of affairs he sees either caution towards Duke Conrad I of Mazovia or "*Respekt vor den päpstlichen Verordnungen*".<sup>10</sup> Erich Caspar<sup>11</sup> also wrote about the vague definition of the Grand Master's relation to the Empire. The acceptance of this assumption means that the reconstruction of the legal relation between the Emperor and the Grand Master had to be based on premises apart from the text of the Golden Bull. Namely, an essential role was played here by the views of individual researchers on three problems : (i) The intentions of Herman of Salza ; (ii) the attitude of Frederick II to the Baltic region ; (iii) the relations between the Empire and the Papacy.

Without negating the importance of these questions (we will return to them later) we consider that the starting point should be the text of the Golden Bull. We would like to present the hypothesis that the legal relation of the Grand Master to the Emperor by virtue of the possession of Prussia can be contained in the term *fidelis noster*, used in the diploma of Frederick II in reference to Hermann of Salza.<sup>12</sup>

As we know, the terms *fidelis*, *fidelitas* could have various meanings, from loyalty in the general ethic sense, to a more or less close dependence, and in the early Middle Ages—(10th—11th

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<sup>9</sup> H. Łowmiański, *Anfänge und politische Rolle der Ritterorden an der Ostsee im 13. und 14. Jahrhundert*, in : *Der Deutschordensstaat Preussen in der polnischen Geschichtsschreibung der Gegenwart*, ed. by U. Arnold and M. Biskup, Quellen und Studien zur Geschichte des Deutschen Ordens, vol. XXX, Marburg 1982, pp. 58 ff. (first edition in the Polish language 1973).

<sup>10</sup> *Ibidem*, p. 59 and see p. 58. The author means the Bull of Pope Honorius III of 1220 which prohibited the Order to accept land as a fief (see below).

<sup>11</sup> E. Caspar, *Herman von Salza...*, p. 18. E. Caspar's views should be considered in the context of his "programme" theory. Compare also H. Lubenow, *Kaisertum und Papsttum im Widerstreit bei der Gründung des Deutschordensstaates in Preussen*, "Geschichte in Wissenschaft und Unterricht", vol. XXIII, 1972, p. 209.

<sup>12</sup> So far literature has not attached any importance to this term. I. Matison, *Die Lehnsexemption...*, p. 222, note 108, writes that Hermann was defined as "*einfach fidelis noster*".

centuries)—also feudal relation.<sup>13</sup> And in Germany the term *fidelis noster*, as far as it was a synonym of the term *fidelis imperii (regni)*, meant “belonging to the Empire” (*Reichsangehöriger*). Persons so described were members of the union of subjects of the Empire (*Reichsuntertanenverband*) on the basis of an oath of fealty but not a vassalage relation. Besides, the *fidelis noster* term was also used in the same meaning in subsequent centuries. In Georg von Below’s opinion “*die Idee, dass die fideles die dem Reiche durch Treueid (nicht speziell durch den Lehnseid) verbundenen Personen sind, lässt sich auch in den letzten Jahrhunderten [des Mittelalters—M.D.] bestimmt nachweisen*”.<sup>14</sup>

There is no doubt that the delay in feudalization and the weakness of feudal law in Germany<sup>15</sup> had to leave a great deal of room for various kinds of non-vassalage relations. Here, the importance of the *ministeriales* was particularly spectacular. The *ministeriales* only made an oath of fealty, without paying homage.<sup>16</sup> It

<sup>13</sup> See, for instance, F. Graus, *Über die sogenannte germanische Treue*, “Historica”, vol. I, 1956, pp. 95 ff.; K. Kroeschell, *Die Treue in der deutschen Rechtsgeschichte*, “Studi Medievali”, vol. X/1, 1969, pp. 465 ff.

<sup>14</sup> G. von Below, *Der deutsche Staat des Mittelalters. Ein Grundriss der deutschen Verfassungsgeschichte*, vol. I: *Die allgemeinen Fragen*, Leipzig 1914, p. 211; see also W. Kienast, *Untertaneneid und Treuevorbehalt in Frankreich und England. Studien zur vergleichenden Verfassungsgeschichte des Mittelalters*, Weimar 1952, p. 26—here further literature. See H. Mitteis, *Lehnrecht und Staatsgewalt. Untersuchungen zur mittelalterlichen Verfassungsgeschichte*, Weimar 1933, p. 430, note 600.

<sup>15</sup> See T. Mayer, *Die Ausbildung der Grundlagen des modernen deutschen Staates im hohen Mittelalter*, in: *Herrschaft und Staat im Mittelalter*, ed. by H. Kämpf, Wege der Forschung, vol. II, Bad Homburg 1963, p. 312 (first edition 1933); M. Bloch, *La société féodale*, Paris 1968, pp. 257, 466—467, 475; R. Boutruche, *Seigneurie et féodalité*, vol. I: *Le premier âge des liens d’homme à homme*, Paris 1959, pp. 209, 262; W. Ebel, *Über den Leihgedanken in der deutschen Rechtsgeschichte*, in: *Studien zum mittelalterlichen Lehenswesen, Vorträge und Forschungen*, vol. V, Lindau-Konstanz 1960, p. 35; G. Droege, *Landrecht und Lehnrecht im hohen Mittelalter*, Bonn 1969.

<sup>16</sup> H. Mitteis, *Lehnrecht und Staatsgewalt...*, p. 489; K. Bosl, *Die Reichsministerialität der Salier und Staufer. Ein Beitrag zur Geschichte des hochmittelalterlichen deutschen Volkes, Staates und Reiches*, vol. II, Schrif-

should also be remembered what a responsible position was given in the German system to free ownership, which in its legal content was opposed to the fief. Persons owning a grant for free ownership made an oath of fealty to those who had made the grant.<sup>17</sup>

There is no doubt about the great importance of bonds of loyalty in the system of the Empire. But we are not so certain whether the term *fidelis*, meaning "belonging to the Empire" excludes the existence of a vassalage relation. We cite state ordinances (*Reichsgesetze*) from the period of the rule of Frederick II. The addressees of the ordinance issued in 1220 (*Confoederatio cum principibus ecclesiasticis*) were "*fideles nostri principes ecclesiastici*".<sup>18</sup> The first wording of *Statutum in favorem principum* issued in 1231 referred to "*principes nostros ecclesiasticis et mundanos ceterosque fideles regni nostri*".<sup>19</sup> And finally, the ordinance on land peace, issued in 1235 (*Mainzer Reichslandfriede*) was proclaimed "*presentibus- -principibus, nobilibus plurimis et aliis fidelibus imperii*" (in the German version: "*mit der fursten rat und ander des riches getruwen*").<sup>20</sup> It follows from these examples that the term *fidelis*, understood as "belonging to the Empire", sometimes included also persons who were to the ruler of the Empire in a vassalage relation (for instance, imperial

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ten der Monumenta Germaniae historica, vol. X, Stuttgart 1950, p. 609; *idem*, *Das ius ministerialium. Dienstrecht und Lehnrecht im deutschen Mittelalter*, in: *idem*, *Frühformen der Gesellschaft im mittelalterlichen Europa. Ausgewählte Beiträge zur einer Strukturanalyse der mittelalterlichen Welt*, München—Wien 1964, p. 296 (first edition 1960). In the opinion of H. Mitteis, *Lehnrecht und Staatsgewalt...*, p. 488 and see also p. 424, the oath of fealty alone, without paying homage, was enough for a real, though untypical feudal relation. However, K. Bosl defines such a fief as "*nicht echte*".

<sup>17</sup> See D. von Gladiss, *Die Schenkungen der deutschen Könige zu privatem Eigen (800—1137)*, DA, vol. I, 1937, particularly pp. 104 ff.

<sup>18</sup> K. Zeumer, *Quellensammlung zur Geschichte der deutschen Reichsverfassung in Mittelalter und Neuzeit*. Quellensammlung zum Staats-, Verwaltungs-, und Völkerrecht, vol. II, Tübingen 1913, No. 39.

<sup>19</sup> *Ibidem*, No. 47.

<sup>20</sup> *Ibidem*, No. 58.

princes—*principes*).<sup>21</sup> Also a typical inscription in the imperial (royal) charters *universis imperii fidelibus* points to the very wide scope of meaning of the term *fidelis*.

We think that Hermann of Salza appears in the Golden Bull as "belonging to the Empire" by virtue of an oath of fealty which he made to the Emperor. Of course, here the Emperor is only an administrator of the abstract institution of the Empire, elected by the imperial princes ("*principes imperii*"). Ernst Kantorowicz had no doubt that Hermann had made an oath of fealty to Frederick II,<sup>22</sup> although he did not investigate that matter in detail. This opinion is also supported by the close links between the Emperor, the Grand Master and the Teutonic Order. Karl Bosl even gave an opinion that for political reasons Hermann can be counted among the *ministeriales* of the Empire.<sup>23</sup> We add to this the next circumstance, namely the endeavours of the Staufer to exclude the Order from the feudal hierarchy.<sup>24</sup> The feudal relation could be replaced by the bond of loyalty, as follows from our previous deliberations, of a public-legal character, which completely fits in with the system realities of the Empire.

Also, we cannot ignore the fact that Frederick II attached great importance to personal bonds of loyalty. This is indicated by his efforts to reform the feudal law in the Kingdom of Sicily. Heinrich Mitteis writes: "*- Die ganze Person des Vasallen soll vom Dienste erfasst werden, ohne Rückhalt an dinglichen Besitzrechten zu finden- -*".<sup>25</sup> E. Kantorowicz writes similarly: "*- nicht Land und Lehen verbanden den Adeligen mit dem Kaiser- - sondern allein persönlicher Dienst. Und so blieb es auch fortan: da nämlich nicht der Lehensbesitz dem Adligen Geltung verschaffte, son-*

<sup>21</sup> See F. Keutgen, *Der Deutsche Staat des Mittelalters*, Jena 1918, p. 121.

<sup>22</sup> E. Kantorowicz, *Kaiser Friedrich der Zweite*, Berlin 1931, p. 85. W. Kienast, *Lehnrecht und Staatsgewalt im Mittelalter. Studien zu dem Mitteis'schen Werk*, HZ, vol. CLVIII, 1938, p. 21, writes: "Ob aus dem Wort *fideles* ein Treueid herauszulesen ist, bleibe dahingestellt". In the case in question such doubts would probably not be justified.

<sup>23</sup> K. Bosl, *Die Reichsministerialität*, vol. I, p. 184 and vol. II, p. 564.

<sup>24</sup> I. Matison, *Die Lehnsexemption...*, p. 210, note 59.

<sup>25</sup> H. Mitteis, *Lehnrecht und Staatsgewalt...*, p. 414.

*der nur seine persönlichen Dienste-*”.<sup>26</sup> Frederick II also kept the principle of reserving the right of the ruler to the loyalty of vassals (*salva fidelitate regis*), dating back to the period when the Norman kings ruled. Thanks to this he had direct bonds of fealty with all levels of the feudal pyramid (*dominus ligius ante omnes*).<sup>27</sup> Reserving the right to fealty was an obvious consequence of the general oath of subjects (*Untertaneneid*) to be loyal to their ruler.<sup>28</sup> The importance attached by Frederick II to the idea of loyalty is demonstrated by the prominent place given to it in the religious-political ideology created by the Emperor and those surrounding him.<sup>29</sup>

The Emperor's preferences could, of course, have favoured the formulation in the Golden Bull of the relation of the Grand Master to the Emperor in the form of a bond of loyalty. On the other hand, there is no doubt that in this charter we have acceptance of German, not Sicilian system models. So, as in the Golden Bull Hermann of Salza was not—in the public-legal sense—excluded from the Empire, this means that Prussia was included in the Empire, precisely by the person of the Grand Master, who had public power in that territory.<sup>30</sup> I. Matison showed, in our

<sup>26</sup> E. Kantorowicz, *Kaiser Friedrich der Zweite...*, pp. 111—112.

<sup>27</sup> W. Kienast, *Untertaneneid und Treueverbehalt. Ein Kapitel aus der vergleichenden Verfassungsgeschichte des Mittelalters*, “Zeitschrift der Savigny-Stiftung für Rechtsgeschichte”, Germanistische Abteilung (further quoted as: ZRG GA), vol. LXVI, 1948, p. 145; R. Boutruche, *Seigneurie et féodalité*, vol. II: *L'apogée (XI<sup>e</sup>—XIII<sup>e</sup> siècles)*, Paris 1970, pp. 214—215; H. Mitteis, *Der Staat des hohen Mittelalters. Grundlinien einer vergleichenden Verfassungsgeschichte des Lehnszeitalters*, Weimar 1955, p. 425.

<sup>28</sup> See W. Kienast, *Untertaneneid und Treueverbehalt in Frankreich und England...*, pp. 15, 73, where a distinction is made between an oath made by a subject and a feudal oath.

<sup>29</sup> See W. Seegrün, *Kirche, Papst und Kaiser nach den Anschauungen Kaiser Friedrich II.*, HZ, vol. CCVII, 1968, pp. 24—25.

<sup>30</sup> See in this context the general deliberations of H. Werle, *Titelherzogtum und Herzogsherrschaft*, ZRG GA, vol. LXXIII, 1956, p. 265. The power of the Grand Master was “delegated” to him by the Emperor. It should be assumed that the rights of superior authority in Prussia were held by the Emperor; see E. Schrader, *Ursprünge und Wirkungen der Reichsgesetze Friedrichs II. von 1220, 1231/32 und 1235*, ZRG GA, vol. LXVIII, 1951, pp. 354 ff.



opinion indisputably, that Frederick II granted Prussia to the Grand Master as an allodial ownership.<sup>31</sup> This thesis is not contradictory to the view of the authoress about Prussia belonging to the Empire.<sup>32</sup> This confirms only the regularity observed in Germany : the creation of territories strengthened the allodial element in the system of the Empire. The above hypothesis about the relation of loyalty between the Emperor and the Grand Master, about the Grand Master—the possessor of Prussia—belonging to the Empire, strengthens the view on the inclusion of Prussia into the Empire in 1226. The question : The Roman Empire or the *Regnum Teutonicum* has no greater practical meaning, as even before the Staufer, there was no distinction between the *regnum* and the *imperium*.

In our opinion it is possible to put aside the universalistic conception. The universalistic phraseology of the *Imperium Romanum* used in the Golden Bull is above all connected with the universalistic basis of the granting of Prussia,<sup>33</sup> which did not exclude its joining the Empire, or with the rivalry with the Pa-

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<sup>31</sup> I. Matison, *Die Lehnsexemtion...*, pp. 210 ff. In E. Weise's opinion (*Die Amtsgewalt...*, pp. 69 ff.) it was not a matter of granting Prussia, in the Golden Bull, but a matter of confirmation of the future conquests of the Order in the fight against the pagans. These conquests were due to the Order by virtue of the church law. However, the land won from the enemy was treated as an *allodium*—see E. Mitteis, *Lehnrecht und Staatsgewalt...*, p. 331, note 208.

<sup>32</sup> I. Matison, *Die Lehnsexemtion...*, pp. 197, 204, 210, and eadem, *Zum politischen Aspekt...*, p. 53, which rightly brought into prominence the allodial character of the granting of Prussia and the same character of the possessions of the Order in Germany, seeks a decisive argument in favour of Prussia belonging to the Empire (*Regnum Teutonicum*) in the fact that the Grand Master was made an equal with the princes of the Empire, "*die dem Regnum unterstanden*". The authoress does not perceive the role of *allodium* and bonds of loyalty in the system of the Empire.

<sup>33</sup> See G. Labuda, *La position...*, pp. 142 ff.; H. Łowmiański, *Anfänge und politische Rolle...*, p. 44; I. Matison, *Die Lehnsexemtion...*, p. 202, note 16; H. Boockman, *Der Deutsche Orden — Zwölf Kapitel aus seiner Geschichte*, München 1981, p. 85. See also E. E. Stengel, *Hochmeister und Reich...*, pp. 220—221 and E. Caspar, *Hermann von Salza...*, p. 16, which deals with the idea of the rights of the conqueror and the sovereign rights of the German kings to "ownerless" territory.

pacy in the area of the Baltic Sea.<sup>34</sup> It is worth here to recall that also in the charters of Frederick II for the Knights of the Sword of May 1226 and of September 1232, Master Folkwin and the brothers of the Order were defined as *fideles nostri*.<sup>35</sup> The fact that the Knights of the Sword belonged to the Empire arouses no doubts as they were subordinated to Bishop Albert of Riga, who from 1207 was a prince of the Empire.<sup>36</sup>

As is known, an oath of fealty, like homage, can fulfil apart from feudal law, various jurisdictional functions.<sup>37</sup> In the opinion of H. Mitteis "*die Bindung durch den Treueid- -bezieht- -nicht auf einzelne periodisch wiederkehrende Leistungen, sondern auf ein Dauerverhalten. Dieses stellt sich zunächst dar als Unterlassung- -die Treue ist in ihrem Kern die Pflicht zu einem negativen Verhalten, ihre Verletzung positive Anspruchsverletzung*".<sup>38</sup> The same scholar stresses at the same time that, in concrete situations, an oath of fealty could, to a lesser or greater degree, be filled with a positive content.<sup>39</sup> Dietrich von Gladiss sees it a little differently, according to him "*fidelitas Taten fordert*".<sup>40</sup> On the other hand, he points out that *devotio* has a negative character. Similarly, Robert Boutruche undermines the view of the negative character of oaths of fealty and sees, precisely in their positive content, the source of their vitality.<sup>41</sup>

The text of the Golden Bull says nothing about the positive contents of the fealty of the Grand Master towards the Emperor. This was certainly because for both sides the content of the oath was obvious. They did not result from the granting of territory, which is dealt with by the Golden Bull, but from the personal bond between the Emperor and the Grand Master (a closer

<sup>34</sup> See below.

<sup>35</sup> *Liv-, Esth- und Curländisches Urkundenbuch* (further quoted as: LECUB), vol. I, ed. by F. G. von Bunge, Reval 1853, Nos. XC, CXXVII. On the lists of witnesses to these charters the name of Hermann of Salza also figures.

<sup>36</sup> See below.

<sup>37</sup> H. Mitteis, *Lehnrecht und Staatsgewalt*..., pp. 487—488.

<sup>38</sup> *Ibidem*, pp. 48, 482.

<sup>39</sup> *Ibidem*, pp. 482, 488—489.

<sup>40</sup> D. von Gladiss, *Die Schenkungen*..., p. 109.

<sup>41</sup> R. Boutruche, *Seigneurie et féodalité*, vol. I, pp. 199—200.

characterization of this bond was not the intention of the man who issued the Golden Bull). The bond between the Emperor and the Grand Master was much stronger than a vassalage relation (particularly in the Empire). Hermann served the Emperor unconditionally, with the whole of his person. His activity in the interest of the Staufer as a diplomat, politician and organizer, does not merit here a wider characterization. The links of the whole Order with the Staufer are another vital element, particularly in view of the circumstance that in the Empire the Teutonic Knights were included in the administrative apparatus of the *terrae imperii* as *procuratores rerum imperialium*, that the commanderies of the Order, endowed by the Staufer from the funds of the royal and imperial territories (*Reichsländer*), and then enriched further by grants from various *ministeriales* of the Empire, played a vital role in the territorial policy of the rulers of that dynasty in Germany and in some cases were under the local royal burgraves and *Dienstmänner*.<sup>42</sup> So the endeavours of the Staufer to exclude the Order from the feudal hierarchy did not mean that it was excluded from service to the Emperor in Germany and fulfilling functions characteristic for the *ministeriales* of the Empire.<sup>43</sup> This leads us to the conclusion that the lack of information in the Golden Bull on the services rendered to the Empire by the Order does not support the "universalistic" interpretation of that charter.<sup>44</sup>

<sup>42</sup> See E. Kantorowicz, *Kaiser Friedrich der Zweite*, p. 84; K. Bosl, *Die Reichsministerialität...*, vol. I, pp. 198, 215—216, 224, 289; D. Wojtecki, *Der Deutsche Orden unter Friedrich II.*, in: *Probleme um Friedrich II.*, pp. 187 ff.

<sup>43</sup> One is led to suppose that also in Germany the legal relation between the Order and the Emperor could be based on bonds of loyalty. G. Labuda, *Stanowisko ziemi chełmińskiej...*, p. 283 and note 16, one can guess here at a relation of advocacy; see E. Weise, *Interpretation der Goldenen Bulle...*, p. 39.

<sup>44</sup> What was suggested by G. Labuda, *La position...*, p. 137. Based on the above mentioned lack of information, he developed his idea of the relation of protection between the Emperor and the Grand Master (see *ibidem*, p. 153). However, the Golden Bull does not show any similarity to the protective bulls issued by Frederick II for the Teutonic Order—see E. Strehlke, *Tabulae Ordinis Theutonici*, Berlin 1869, Nos 58, 149, 256, 259 (the years 1221—1226); see also the protective bull for the Knights

## III

In interpreting the relation of loyalty between the Grand Master and the Emperor one should not overlook the bull issued by Pope Honorius III for the Teutonic Knights on 15 December, 1220 according to which "*ne ulla ecclesiastica secularisve persona*

of the Sword issued in 1232—LECUB, vol. I, No. CXXVII. On the other hand, E. E. Stengel, *Hochmeister und Reich...*, p. 231, assumes that despite Prussia belonging to the Empire, it was from the very beginning released from obligations to the Empire, whether in the form of service or levies. However, the character of the obligations could be different from the feudal ones. Also, belonging to the Empire did not have to be achieved in the form of a vassalage relation, which E. Weise, *Die Amtsgewalt...*, p. 81, does not wish to recognise. The fact that there is no mention of feudal services also misled other researchers, see, for instance, E. Maschke, *Der deutsche Ordensstaat. Gestalten seiner grossen Meister*, Hamburg 1935, p. 37. In the discussion on the legal-public relation of the Grand Master in the light of the Golden Bull, the chronicle of Peter of Dusburg, who wrote that Hermann received from the Emperor the privilege of "*insignia regalia imperii deferenda in suo vexillo*", is often referred to—see *Petri de Dusburg Cronica terre Prussie*, ed. by M. Toebben, in: *Scriptores rerum Prussicarum*, vol. I, Leipzig 1861, p. 23 (in the translation of Jeroschin: "*des riches zeichen*". E. E. Stengel, *Hochmeister und Reich...*, pp. 218—219, quotes this late source as a proof of Prussia belonging to the Empire. G. Labuda, *La position...*, p. 141—142, considers that this information is "*savante légende*" which had a current importance. E. Weise, *Die Amtsgewalt...*, p. 84, describes the eagle as "*Feldzesichen des imperator Romanorum*" and not as an emblem of the Empire; besides, the events described by Dusburg have the dates 1227/1229; see *idem*, *Interpretation der Goldenen Bulle...*, pp. 44—45. Attention should be drawn to the fact that the institutional-territorial understanding of the emblem of the Empire (a one-headed black eagle on a golden shield, and from the middle of the 14th century—a two-headed eagle) was only formed in the second half of the 13th century during the reign of Rudolph I of Habsburg—see recent work of F.-H. Hye, *Der Doppeladler als Symbol für Kaiser und Reich*, "Mitteilungen des Instituts für österreichische Geschichtsforschung" (further quoted as: *MIÖG*), vol. LXXXI, 1973, pp. 64—65. In the times of Frederick II, the banner of the Order could have born a *scutum imperatoris*. and not *regalia imperii/des riches zeichen*. So special attention should not be paid to Dusburg's work, because—as can be seen—he did not have any reliable sources of information and writing his "scientific legend" in the first quarter of the 14th century, he operated with the realities that existed at that time.

*a magistro et fratribus eiusdem domus exigere audeat fidelitates, hominia seu iuramenta vel reliquas securitates, que a secularibus frequentantur*".<sup>45</sup> On this basis, E. Stengel formulated a thesis about the passive feudal inefficiency of the Grand Masters.<sup>46</sup> It seems, however, that I. Matison's explanation is more correct: "*Das Privileg Honorius III. ist- -mehr als ein Lehnsverbot : - -Genau genommen geht es- -nicht nur um Lehnsverhältnisse, sondern um eine allgemeine Herausnahme des Ordens aus allen Bindungen an irgendwelche geistliche oder weltliche Autoritäten, die durch Eide oder andere für weltliche Personen übliche Verpflichtungen gesichert werden*".<sup>47</sup>

It follows from the bull of Pope Honorius III that the Teutonic Knights were prohibited to make an oath of fealty in general, and not particularly in connection with the establishment of a vassalage relation. Thus we arrive at the following conclusions : (i) The Golden Bull violated the decisions of the Papal bull of 1220 ;<sup>48</sup> (ii) the feudal inefficiency of the Grand Master was not the reason why in 1226 a vassalage relation between Frederick II and Herman of Salza<sup>49</sup> was not established. Since the Papal bull of 1220 was violated as regards the oath of fealty, it could have

<sup>45</sup> E. Strehlke, *Tabulae...*, No. 306.

<sup>46</sup> E. E. Stengel, *Hochmeister und Reich...*, pp. 222 ff.

<sup>47</sup> I. Matison, *Die Lehnsexemption...*, p. 208. The authoress defines this legal state with the name "*Lehnsexemption*" (*ibidem*, p. 209), thus finally accenting the feudal context. I. Matison draws attention to the fact that such a clause appeared for the first time in the bull of Pope Honorius III of 8 December, 1216 (*ibidem*, p. 208). It seems, however, that this bull concerned only the possessions of the Order in Palestine, on Cyprus and in Armenia (see E. Strehlke, *Tabulae...*, No. 303). The decision of interest to us was worded a little differently in that bull, which was pointed out by H. Łowmiański, *Anfänge und politische Rolle...*, p. 58, note 47.

<sup>48</sup> The bull of Pope Honorius III of 1220 was confirmed by Pope Gregory IX on 28 July 1227 (E. Strehlke, *Tabulae...*, No. 424). The question arises, was he provoked to this by the decisions of the Golden Bull of Frederick II. See in connection with this the series of bulls issued by this Pope in 1227, PrUb, vol. I, Part I, Nos. 60–62.

<sup>49</sup> This view has already been expressed by T. Mayer, *Fürsten und Staat. Studien zur Verfassungsgeschichte des deutschen Mittelalters*, Weimar 1950, p. 244, but he based himself on different premises.

been also violated as regards the feudal homage. However, because of the Emperor's interests, for whom a relation of loyalty was apparently the best, this was not done. On the other hand, the matter was not decided by Salza's aspiration for autonomy, as the lack of a vassalage relation did not free him from services to the Emperor.<sup>50</sup>

Such an aspiration must have been alien to the Grand Master ; the whole of his activity proves his interest in services to the Empire. He could only count on successes in the Baltic region—as well as in the Mediterranean region<sup>51</sup>—with the support of the Empire and within the framework of the Emperor's policy. The Transylvanian episode, which ended with the expulsion of the Teutonic Knights in 1225, was the best proof of this. Albert, Bishop of Riga, behaved in a similar way : in 1207, Livonia, which he regarded as his *allodium*, was transferred by him to King Phillip of Suabia and then received it back from him as *feudum oblatum*. His example was later followed by other Livonian bishops.<sup>52</sup>

It would be difficult to agree with the opinion that the political ambitions of the Staufer were limited to the Mediterranean area, to the disadvantage of "Eastern policy". Also Frederick II supported the German territorial expansion to the East. This expansion was not only an imperial matter ; from the 12th century this burden was undertaken by local dignitaries : lay and eccle-

<sup>50</sup> The opinion on Salza's aspiration for autonomy was formulated by E. Caspar, *Hermann von Salza...*, pp. 16—17; he was supported by G. Labuda, *La position...*, pp. 144—145, and I. Matison, *Die Lehnsexemption...*, pp. 205—206, who attempted to reconcile the view on Prussia belonging to the Empire with the opinion of E. Caspar.

<sup>51</sup> See W. Hubatsch, *Der Deutsche Orden und die Reichslehnschaft über Cypern*, "Nachrichten der Akademie der Wissenschaften in Göttingen", phil.-hist. Kl., 1955, No. 3, pp. 246, 256, 259. See also T. Mayer, *Das Kaisertum und der Osten im Mittelalter*, in: *Deutsche Ostforschung*, vol. I, Leipzig 1942, p. 303—304.

<sup>52</sup> See especially F. Koch, *Livland und das Reich bis zum Jahre 1225*, Quellen und Forschungen zur baltischen Geschichte, No. 4, Posen 1943, pp. 22 ff. 58, 68 ff.; G. A. Donner, *Kardinal Wilhelm von Sabina, Bischof von Modena 1222—1234*. Societas Scientiarum Fennica, Commentationes Humanarum Litterarum II. 5, Helsingfors 1929, pp. 116 ff.; H. Łowmiański, *Anfänge und politische Rolle...*, pp. 48, 58.

siastic territorial lords, orders of knights, etc. This fact, on the one hand, strengthened the Empire, and on the other—the power of the nobility, because the aim of the expansion was the building of stable territorial lordships.<sup>53</sup>

Also, the aim of the Prussian efforts of Hermann of Salza, undertaken within the framework of the realization of the aims of the Empire in the East,<sup>54</sup> was the building of a territorial lordship. We have purposely used the term “territorial lordship”<sup>55</sup> and not—as it is usually done—the term “state”. Similar territorial lordship was also to have been built in Prussia by the Landgrave of Thuringia Louis (IV) to whom in April 1226 Frederick II granted “-iure pheodi marchiam Mynensem et Lusaciam et terram Pruscie quantum expugnare valeret et sue subicere potestati”.<sup>56</sup> The credibility of this chronicle note was variously evaluated in literature on the subject,<sup>57</sup> however it is necessary to agree with the views recently expressed by Hans Patze<sup>58</sup> and Hartmut Bock-

<sup>53</sup> See H. Peher, *Friedrichs I. von Hohenstaufen Politik gegenüber Dänemark, Polen und Ungarn*, Münster 1906, pp. 31 ff.; T. Mayer, *Die Ausbildung der Grundlagen...*, p. 307, 312—313; M. Bünding, *Das Imperium Christianum und die deutschen Ostkriege vom X. bis zum XII. Jh.*, Glesen 1940, pp. 31—32, 54 ff.; K. S. Bader, *Volk, Stamm, Territorium*, in: *Herrschaft und Staat im Mittelalter*, pp. 268 ff., 273 ff.; B. Töpfer, E. Engel, *Vom staufischen Imperium zum Hausmachtkönigtum. Deutsche Geschichte vom Wormser Konkordat 1122 bis zur Doppelwahl von 1314*, Weimar 1976, pp. 22 ff.

<sup>54</sup> Also already P. Kirn, *Die Verdienste der staufischen Kaiser um das Deutsche Reich*, HZ, vol. CLXIV, 1941, p. 266.

<sup>55</sup> Also recently H. Boockmann, *Der Deutsche Orden...*, Chapter 3.

<sup>56</sup> *Cronica Reinhardsbrunnensis*, ed. by O. Holder-Egger, in: *Monumenta Germaniae Historica, Scriptores*, vol. XXX, Part I, Hannover 1896, p. 605. This donation does not clash with the decisions of the Golden Bull, as Hermann did not receive the whole of Prussia, but “*totam terram, quam in partibus Pruscie, deo faciente, conquiret*”.

<sup>57</sup> See E. Caspar, *Hermann von Salza...*, pp. 69—70 and note No. 58, where he quotes older literature.

<sup>58</sup> H. Patze, *Die Entstehung der Landesherrschaft in Thüringen*, vol. I. *Mitteldeutsche Forschungen*, vol. XXII, Köln-Granz 1962, pp. 267—268; *idem*, in: *Geschichte Thüringens*, vol. II, Part I: *Hohes und spätes Mittelalter*, ed. by H. Patze and W. Schlesinger, Köln-Wien 1974, p. 34.

mann,<sup>59</sup> based on an analysis of the relations between the Order, the Landgraves of Thuringia and the Staufer, that this information should be trusted. Though in the case of the Grand Master we are dealing with allodial possession, and in the case of the Landgrave with feudal possession (for Louis was a prince of the Empire), obviously both grants have a common, universalistic basis. The rule of the Landgrave Louis and the rule of the Grand Master were obviously to be built within the framework of the Empire. And one more concurrence : Hermann and Louis were connected by personal bonds with the political elite of the Empire. This confirms the regularity about which Karl S. Bader<sup>60</sup> wrote : the second stage of the Eastern expansion of the Empire depended on the assistance of those who were "the Empire" themselves.

#### IV

Frederick II endowed Hermann of Salza with numerous privileges, above all broad economic and judicial immunities, and also sovereign rights (regalia).<sup>61</sup> Efforts to explain such a range of public power or the endeavours of Hermann to obtain "sovereignty",<sup>62</sup> or the conception of a "missionary state",<sup>63</sup> or finally the conflict between the Empire and the Papacy,<sup>64</sup> cannot be regarded as convincing. In our opinion the range of the power of the Grand

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<sup>59</sup> H. Boockmann, *Die Bedeutung Thüringens und Hessens für den Deutschen Orden*, in : *Die Rolle der Ritterorden in der Christianisierung und Kolonisierung des Ostseergebietes*, ed. by Z. H. Nowak. Ordines militares. Colloquia Torunensia Historica I, Toruń 1982, pp. 62—63.

<sup>60</sup> K. S. Bader, *Volk, Stamm, Territorium...*, pp. 269—270.

<sup>61</sup> G. Labuda, *La position...*, pp. 131 ff., showed that the privileges granted to the Grand Master applied only to Prussia. See also *idem*, *Die Urkunden über die Anfänge des Deutschen Ordens im Kulmerland und in Preussen in den Jahren 1226—1243*, in : *Die geistlichen Ritterordens Europas*, ed. by J. Fleckenstein and M. Hellmann. Vorträge und Forschungen, vol. XXVII, Sigmaringen 1980, p. 304.

<sup>62</sup> See E. Maschke, *Der Deutsche Ordensstaat*, p. 38.

<sup>63</sup> E. Weise, *Interpretation der Goldenen Bulle*, pp. 37 ff.

<sup>64</sup> G. Labuda, *La position...*, p. 147 ff.



Master should be interpreted on the basis of the allodial ownership of the Order in Prussia. In mediaeval times, the protection of one's possessions was not the duty of the "State" but of the possessor himself. So he had to have the power that would make such protection possible and effective.<sup>65</sup> And this did not concern only things, but also the people settled in the allodial lands, whose protection (*Schutz und Schirm*) was the duty of the allodial lord. The possession of an allodium was therefore the basis for an independent and autogenous power of the mediaeval nobility.<sup>66</sup> The territorial superior authority (*Landeshoheit*) had its origin in the allodial rights, extended with the help of other rights of various origin : judicial power, sovereign rights (*regalia*), immunity.<sup>67</sup>

The scope of the territorial rights of the Grand Master, stated in the Golden Bull, is the effect of the process of shaping territorial lordship, which was intensified precisely in the 13th century. The basic aim of the rising territorial lords was to unify all the scattered rights and to create a compact territorial lordship (*Herrschaftsgebiet*). This can be seen most clearly in the creation of principalities (*Herrschaftsherzogtum*).

The whole of the power of the Grand Master as a territorial lord (*Landesherr*) is contained in the decision that "*magister et successores sui iurisdictionem et potestatem habeant et exercent in terris suis, quam aliquis princeps imperii melius habere dicitur in terra, quam habet, ut bonos usus et consuetudines penant, assisias faciant et statuta, quibus et fides credencium roboretur et omnes subditi pace tranquilla gaudeant et utantur*". A solitary view is held by E. Weise : "*Man darf--den princeps imperii gestrost mit 'eine Obrigkeit des Romischen Imperiums' übersetzen*".<sup>68</sup>

<sup>65</sup> See O. von Gierke, *Allod*, in: *Deutsches Rechtswörterbuch*, vol. I, ed. by R. Schröder and E. Freiherr von Künssberg, Weimar 1914—1932, cols. 486 ff. ; H. Ebner, *Das freie Eigen*, Klagenfurt 1969, pp. 139 ff., 319 ff.

<sup>66</sup> H. Ebner, *Das freie Eigen*, pp. 140, 155.

<sup>67</sup> See H. Aubin, *Die Entstehung der Landeshoheit nach niederrheinischen Quellen. Studien über Grafschaft, Immunität und Vogtei*, Berlin 1920.

<sup>68</sup> E. Weise, *Interpretation der Goldenen Bulle...*, p. 42 ; see also *idem*, *Die Amtsgewalt...*, p. 75, note 287. It seems that this opinion is meant to refute I. Matisson's argument in favour of Prussia belonging to

He considers that it is a matter of "einen speziefierten Fall ausübender Amtsgewalt — den Schutz des Glaubens der Neubekehrten und, im engsten Zusammenhang damit, die Erhaltung des Gottesfriedens".<sup>69</sup> This "universalistic" interpretation is not convincing, because it concerns decisions which were an integral element of a greater whole (and only separated artificially by E. Weise) : the enumeration of the Grand Master's rights. Of these even this "universalistic" minded author wrote: "*Der Romische Kaiser verleiht diese Temporalien nach dem Muster der Verhältnisse im Deutschen Reich*".<sup>70</sup>

E. Weise considers that in the Empire of those times there were no territorial lords of a comparable scope of public power.<sup>71</sup> He bases this conclusion not only on comparing the Golden Bull to the state ordinance of 1220 (*Confoederatio cum principibus ecclesiasticis*), but also to the *Statutum in favorem principum* of 1231/1232. In this case, however, such comparison is a little risky. H. Mitteis wrote : "*die Gesetze von 1220 und 1231/32 weniger normativen, als symptomatischen Charakter tragen. Sie bezeichnen die Mass, bis zu dem die Zersetzung schon fortgeschritten war. Nicht die einzelnen Sätze, sondern der Geist und das Prinzip der Dokumente sind für ihre Wertung ausschlaggebend*".<sup>72</sup> "The spirit and the principle" are common to both state ordinances and the Golden Bull. These charters should not so much be opposed to each other, but treated jointly, as a testimony to the shaping of territorial superior authority.<sup>73</sup>

The opinion of E. Weise, as we have already mentioned, is a singular one. At present, the most common view, most fully formulated by E. Stengel,<sup>74</sup> is that the scope of the territorial

the Empire, namely, making the Grand Master an equal with the princes of the Empire, *die dem Regnum unterstanden*—see above, note 32.

<sup>69</sup> E. Weise, *Interpretation der Goldenen Bulle...*, p. 40.

<sup>70</sup> *Ibidem*, p. 37.

<sup>71</sup> *Ibidem*, p. 41; see also *idem*, *Die Amtsgewalt...*, p. 75.

<sup>72</sup> H. Mitteis, *Der Staat des hohen Mittelalters...*, p. 352.

<sup>73</sup> See H. Thieme, *Die Funktion der Regalien im Mittelalter*, ZRG GA, vol. LXII, 1942, p. 84.

<sup>74</sup> E. E. Stengel, *Hochmeister und Reich*, pp. 207, 232. Earlier, E. Caspar, *Hermann von Salza...*, pp. 12—13, 18, wrote on the Grand Master being given privileges equal to those of princes of the Empire.

rights (*landeshoheitliche Rechte*) of the Grand Master was the same as that of the princes of the Empire ; on the other hand, the Grand Master did not receive the rank of a prince of the Empire. Also, after the research carried out by this scholar, we do not see in this solution any of the discrepancies that E. Caspar<sup>75</sup> emphasized, looking for an argument in favour of the "programme theory". E. Stengel pointed to a similar case : in 1310 King Henry VII granted the rights of a prince of the Empire to Count Berthold of Henneberg, but did not grant him this dignity.<sup>76</sup>

The question arises : what was the aim of Frederick II in granting the Grand Master the rights of a prince of the Empire ? Above all, it should be pointed out that the public power granted was a supplementation of the allodial ownership of the Teutonic Order in Prussia. These two factors together made it possible to create territorial superior authority. On the one hand, the granted rights rendered the Grand Master independent of the power of a prince, and made him from the legal point of view, an equal with the magnates elite of the Empire. On the other hand, the execution of the power of a prince, irrespective of the official scope of activity, was above all, applied to the *allodium* he possessed.<sup>77</sup>

In the period of interest to us, the position of prince and belonging to the Empire was decisive in admittance to the group of the highest nobility in Germany.<sup>78</sup> Both of these conditions

<sup>75</sup> E. Caspar, *Hermann von Salza...*, p. 16 ; similarly G. Labuda, *La position...*, p. 129.

<sup>76</sup> E. E. Stengel, *Land- und lehnrechtliche Grundlagen des Reichsfürstenstandes*, in: idem, *Abhandlungen und Untersuchungen zur mittelalterlichen Geschichte*, Köln-Graz 1960, pp. 170—171 (first edition 1948). The procedure of granting the title of prince of the Empire described in this work makes it clear that the Grand Master could not receive it only on the basis of the Golden Bull. The imperial chancellery would have to issue at least one more charter granting Hermann Prussia as a *feudum oblatum*, of course, after Hermann had transferred this area to the Emperor.

<sup>77</sup> See T. Mayer, *Die Ausbildung der Grundlagen...*, pp. 304—305 ; H. Werle, *Titelherzogtum und Herzogsherrschaft...*, pp. 226—227.

<sup>78</sup> H. Werle, *Titelherzogtum und Herzogsherrschaft...*, p. 272 ; see G. Tellenbach, *Vom karolingischen Reichsadel zum deutschen Reichs-*

were fulfilled as regards Hermann of Salza, who came of a *ministerialis* family. That is why we should agree with the opinion already expressed in literature, that the decisions of the Golden Bull also concerned the personal situation of Hermann: his social advance.<sup>79</sup> It is true that Hermann did not receive the dignity of a prince of the Empire. However, we should not attach too much importance to this circumstance, if we recall that there existed in the Empire various kinds of titled princes,<sup>80</sup> who had the dignity, but did not own a principality.

## V

To properly assess the importance of the Golden Bull of Rimini issued by Frederick II, we should also give consideration to the protective bull issued by Pope Gregory IX on 3 August, 1234.<sup>81</sup> The Pope took over Prussia—already gained by the Order, and all territories which it would gain in the future—“*in ius et proprietatem beati Petri*”. At the same time he granted it to the Order “*cum omni iure*”, prohibiting the granting of these lands by the Teutonic Knights or anyone else to any other power.<sup>82</sup>

Newer research either suggests the equivalence of the two charters or puts forward the thesis that it was precisely the protective bull of 1234 that was of decisive importance for the formulation of the legal foundations for the power of the Teutonic

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*fürstenstand*, in: *Herrschaft und Staat im Mittelalter*, pp. 233 ff. (first edition 1943).

<sup>79</sup> See M. Hellmann, *Bemerkungen zur sozialgeschichtlichen Erforschung des Deutschen Ordens*, “Historisches Jahrbuch,” vol. LXXX, 1961, pp. 130 ff.; K. Górski, *The Teutonic Order in Prussia*, “*Mediaevalia et Humanistica*,” No. 17, 1966, p. 24.

<sup>80</sup> See E. Werle, *Titelherzogtum und Herzogsherrschaft...*, *passim*.

<sup>81</sup> PrUb, vol. I, Part I, No. 108.

<sup>82</sup> G. Labuda, *Stanowisko ziemi chełmińskiej...*, pp. 299 ff., and *idem*, *Die Urkunden...*, pp. 301 ff., proved that the Bull of 1234 concerned only Prussia. Also recently J. Fried, *Der päpstliche Schutz für Laienfürsten. Die politische Geschichte des päpstlichen Schutzprivilegs für Laien (11.—13. Jh.)*. *Abhandlungen der Heidelberger Akademie der Wissenschaften, phil.-hist. Kl.*, vol. LXXX/1, Heidelberg 1980, p. 302, note 260.

Order in Prussia. E. Weise treats the two bulls as equivalent, which is obviously the consequence of his view on the close cooperation between the Empire and the Papacy in creating "a missionary state" in Prussia, carried out by the Teutonic Order. As the Emperor and the Pope were both representatives of the Church, the protective bull of 1234 did not in his view change anything, just supplemented—in *spiritualibus*—the decisions of the Golden Bull of 1226.<sup>83</sup> This researcher's view on the cooperation between the Empire and the Papacy in creating the "missionary state" in Prussia and basing the legal foundations of this "state" on the regulations of canon law, arouses fundamental doubts. For it was precisely the religious character of the imperial theory in the Middle Ages (which are reflected in canon law) that made a big contribution to the sharpening of antagonism of both kinds of universalism and not to its alleviation.<sup>84</sup> The view on the foundation of the power of the Teutonic Knights in Prussia on canon law gives on the other hand, an ideological, moral justification of the power of the Order in Prussia, what is more, it demonstrates its indispensability for the progress of Christianity on the Baltic Coast.<sup>85</sup>

The view of the decisive importance of the protective bull issued by Pope Gregory IX in 1234 for the shaping of the legal foundations for the power of the Order in Prussia, represented for a long time by G. Labuda,<sup>86</sup> was formulated in an extreme form not long ago by Jerzy Sikorski, who qualified it as "the first legal

<sup>83</sup> E. Weise, *Die Amtsgewalt...*, pp. 74 ff.; see also *idem*, *Interpretation der Goldenen Bulle...*, pp. 21, 39.

<sup>84</sup> See, for instance, J. Baszkiewicz, *Uwagi o uniwersalizmie i koncepcji suwerenności państwowej w feudalnej teorii politycznej (do początków XIV wieku)* [Remarks on Universalism and the Conception of State Sovereignty in Feudal Political Theory to the Beginning of the 14th Century], part I, CPII, vol. VII, 1955, No. 1, pp. 22 ff., 28 ff., 40 ff., 48. We shall bypass here the fact that E. Weise based his construction largely on late mediaeval sources: the acts of the Polish-Teutonic Knights case at the Council of Constance.

<sup>85</sup> See E. Weise, *Die Amtsgewalt...*, particularly pp. 59, 63 ff., 78.

<sup>86</sup> See G. Labuda, *La position...*, pp. 151 ff., *idem*, *Stanowisko ziemi chełmińskiej...*, pp. 294 ff.; *idem*, *Die Urkunden...*, pp. 310, 315.

title to Prussia".<sup>87</sup> The starting point was the inappropriate interpretation of the protective bull issued by Pope Honorius III on 15 December 1220, as the author identifies Papal protection with the conception *ius et proprietatis s. Petri*. Namely, he considers that the "legal result—[of the act of protection—*M.D.*] was the gaining of [limited] possession by the Pope".<sup>88</sup> From this he evolves the inference that "Papal protection could be the exclusive legal base for the creation and functioning of the state of the Teutonic Knights".<sup>89</sup> According to this opinion, the Golden Bull was only issued to provoke the Pope to grant Prussia to the Order, although in practice, the author observes, the so-called forged charter of Kruszwica served this purpose.<sup>90</sup>

In the meantime, Pope Honorius III in his bull of 1220 gives his protection and that of St. Peter to all the current and future possessions of the Order and guarantees their defence (*tutela et defensio*). On the other hand, there is not a single word about taking these possessions *in patrimonium s. Petri*.<sup>91</sup> So the Papal bulls of the years 1220 and 1234 spoke of various forms of Papal protection of the possessions of the Order.

Did the bull of 1234 limit the position of the Order in Prussia and to what extent? There is no doubt that the allodial character of the possession of Prussia was infringed. It is true that the Pope granted Prussia to the Order "*cum omni iure—in perpetuum libere possidendum*", but demanded a recognition rental "*in recognitionem dominii et percepto libertatis*". However, the *alodium's* owner was exempt from services to those placed higher

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<sup>87</sup> J. Sikorski, *Monarchia polska i Warmia u schyłku XV wieku. Zagadnienia prawno-ustrojowe i polityczne* [The Polish Monarchy and Warmia at the End of the 15th Century. Legal-System and Political Problems]. Rozprawy i Materiały Ośrodka Badań Naukowych im. Wojciecha Kętrzyńskiego w Olsztynie, No. 65, Olsztyn 1978, p. 20.

<sup>88</sup> *Ibidem*, p. 14.

<sup>89</sup> *Ibidem*, p. 18. The author interpretes in a similar way the Papal protective bull for the Bishop of Riga, Albert (1219), and the Knights of the Sword (1228).

<sup>90</sup> *Ibidem*, pp. 19—20.

<sup>91</sup> E. Strehlke, *Tabulae...*, No. 306. On the terms: *protectio, tutela, defensio*, see recent work of J. Fried, *Der päpstliche Schutz...*, pp. 43 ff.

than he.<sup>92</sup> Hermann of Salza's service of Frederick II was due to his personal bond with him and not to the granting of Prussia within the framework of the Empire, that is, under imperial supremacy. The allodial character of possession was also threatened by the bull of Pope Gregory IX, which announced the future division of Prussia into dioceses and the creation of bishoprics. E. Weise even suggests that in the bull of 1234 the Pope granted Prussia as a *fief-benefice*.<sup>93</sup> This term suggests it was a temporary grant given for some service but in fact there was no such situation in this case.

Did the dominion of the Pope over Prussia threaten its bond with the Empire? Was Prussia by virtue of the bull of 1234 excluded from the framework of the Empire? Johannes Fried, who is an expert on the problems of Papal protection, considers that this situation is in agreement with the legal base for the power of the Pope over the Kingdom of Sicily: "*Wie der König von Sizilien 'besitz' auch der Orden sein Land seit 1234 aus abgeleitetem Recht*".<sup>94</sup> As regards taking over the Transylvanian possessions of the Order "*in ius et proprietatem s. Petri*" by Pope Honorius III in 1224, he notes: "*Das Burzenland drohte Ungarn zu entgleiten*".<sup>95</sup>

We think that the claims of the Pope for political supremacy over Prussia did not yet mean the exclusion of the legal link with the Empire.<sup>96</sup> As is known, in the Middle Ages dependence on

<sup>92</sup> See M. Bloch, *La société féodale...*, p. 244.

<sup>93</sup> E. Weise, *Die Amtsgewalt...*, p. 97.

<sup>94</sup> J. Fried, *Der päpstliche Schutz...*, p. 303, note 263.

<sup>95</sup> *Ibidem*, p. 301. Accepting the interpretation of the bull issued by Pope Honorius III in 1220 proposed by J. Sikorski one should expect expulsion of the Teutonic Knights from Hungary already in 1220; assuming his interpretation one could not explain taking over the possessions of the Teutonic Knights *in ius et proprietatem s. Petri* once more in 1224.

<sup>96</sup> I. Matison, *Die Lehnsexemption...*, p. 217, note 86, treats the Bull of 1234 as an expression of the endeavours of the Pope to gain political supremacy over Prussia. On the other hand, H. Łowmiański, *Anfänge und politische Rolle...*, pp. 66—67, considers that the decisions of that Bull were not in conflict with (not ver clearly defined) the supreme authority of the Emperor over Prussia. However, the protective bulls issued by the Pope for Livonia (1219, 1228), referred to by the author, do not sup-

many masters was a common phenomenon. For instance, feudal law elaborated many criteria regulating the conflict of the duties of vassals to their many seniors.<sup>97</sup> It is a vital thing that the bull issued by Pope Gregory IX did not break the personal bonds between the Grand Master and the Emperor. And anyway, even the breaking of such bonds did not mean the automatic breaking of links with the Empire. Some interesting comparative material is provided by the policy of the west German vassals of the Empire serving France but, in spite of this, remaining within the frontiers of the Empire.<sup>98</sup>

It is very probable that the Papal dominion over Prussia was imposed upon Hermann ; it does not follow from the bull of Pope Gregory IX that the Grand Master came forward with such as initiative.<sup>99</sup> Of course, in the strife over Prussia with Conrad of Mazovia, the Grand Master needed Papal support. Conrad claimed rights to Prussia without regard to the decisions of the Golden Bull.<sup>100</sup> The diplomatic efforts of the Order after 1226 were to

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port his opinion as the Pope did not accept Livonia at that time as the possession of St. Peter. It is worth mentioning that similar interpretation of the protective bulls as given by H. Lowmiański was proposed by B. Baethgen, *Die Kurie und der Osten im Mittelalter*, in: idem, *Mediævalia. Aufsätze, Nachrufe, Besprechungen*, vol. I. Schriften der Monumenta Germaniae historica, vol. XVII/1, Stuttgart 1960, p. 67 (first edition 1942). The acceptance of the possessions of the Knights of the Sword in *patrimonium s. Petri* only took place in 1237, on the occasion of the confirmation of the incorporation of the Knights of the Sword into the Teutonic Order — see LECUB, vol. I, No. CXLIX.

<sup>97</sup> See, for instance, W. Kienast, *Untertaneneid und Treuevorbehalt in England und Frankreich*, pp. 93 ff., 260 ff.

<sup>98</sup> See P. Kern, *Die Anfänge der französischen Ausdehnungspolitik bis zum Jahre 1308*, Tübingen 1910 ; K. Kienast, *Die deutschen Fürsten im Dienste der Westmächte bis zum Tode Philips des Schönen von Frankreich*, vols. I—II, Utrecht—München 1924—1931.

<sup>99</sup> J. Fried, *Der päpstliche Schutz...*, pp. 301—302, 304, thinks otherwise. The issue of the bull of 1234 was considered in the context of Bishop Christian being a prisoner of the Prussians and the so-called forged charter of Kruszwica. Without negating the possibility of such a connection, attention should be drawn to the fact that it was issued in the period when Henry (VII) rebelled. The Pope could have taken advantage of the difficulties of the Emperor in Germany to weaken his position in Prussia.

<sup>100</sup> The same can be said of Bishop Christian.



a great extent aimed at insurance against the claims of Conrad, on whom the temporarily small group of Teutonic Knights were dependent and availed themselves of the advantages of his grant, political and military support. It was expected that Papal protection would better safeguard the interests of the Teutonic Knights than the Golden Bull, which Conrad obviously did not respect. Pope Gregory IX could take advantage of the difficult position of the Teutonic Knights (and Frederick II) and took over Prussia *in patrimonium s. Petri*. However, this circumstance cannot be a basis for the negation of the legal-public importance of the Golden Bull of 1226. It was the first and a sufficient legal title for the Order to take possession of Prussia (within the framework of the Empire) and the source of the public power of the Grand Master.

Papal protection in 1234 limited the rights of the Teutonic Knights in Prussia. This is seen also in the prohibition of the alienation of Prussia : "*ut per vos aut alios dicta terra nullius umquam subiciatur dominio potestatis*". The observation of the above clause made it impossible to change the legal position of Prussia within the framework of the Empire, namely, to raise it to the rank of a principality of the Empire, for a principality of the Empire was, in principle, a combination of *feudum datum* and *feudum oblatum*.<sup>101</sup> However, when there was not a fief, then the *allodium* of the interested person,<sup>102</sup> granted to him by the Emperor as a *feudum oblatum*, was sufficient. This was the procedure applied towards the Livonian bishoprics. The prohibition of the alienation of Prussia, apart from the feudal inefficiency of the Grand Master, was another obstacle to making Prussia a principality of the Empire. This multiplication of safeguards by the Holy See, like the violation of the decisions of the bull of Pope Honorius III of 1220 by the Emperor in his Golden Bull, shows the strength of the bonds between Hermann of Salza and Frederick II.<sup>103</sup>

<sup>101</sup> E. E. Stengel, *Land- und lehrenchliche Grundlagen...*, passim.

<sup>102</sup> T. Mayer, *Fürsten und Staat...*, p. 242.

<sup>103</sup> This should obviously be treated as a contribution to the controversial question of the relations between the Empire and the Papacy in the area of the Baltic mission. These problems, richly dealt with in lite-

## VI

In June 1245, Frederick II granted Grand Master Henry of Hohenlohe Courland, Lithuania and Semigallia. On this occasion he issued another Golden Bull, which was really a repetition of the contents of the diploma of 1226, but with a significant addition: The Teutonic Knights "*nulli teneantur inde, nisi tantum nobis et successorum nostris Romani principibus respondere*".<sup>104</sup> The issue of this charter coincides with the Council of Lyons, at which Pope Innocent IV brought about the dethroning of Frederick II (17 July, 1245). Earlier, on the other hand, in 1243 the same Pope conferred on Grand Master Gerhard of Malberg an investiture of Prussia.<sup>105</sup> The grant of 1245 was undoubtedly intended to strengthen the position of the Emperor to Pope Innocent IV. So it is obvious that the oaths of fealty made by the Grand Masters were for Frederick II a sufficient guarantee of

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nature on the subject, we shall not deal with more closely. We are of the opinion that the interests of both universalisms were contradictory in the Baltic area.

<sup>104</sup> LECUB, vol. I, No. CLXXV. I. Matison, *Die Lehnsexemtion...*, p. 220, rightly considers that the clause was implicite in the diploma of 1226.

<sup>105</sup> PrUb, vol. I, Part I, No. 147. More recent literature mostly does not interpret the relation between the Grand Master and the Pope as feudal. I. Matison, *Die Lehnsexemtion...*, p. 219, uses (after K. Verhein) the notion "Feudal-Emphyteuse"; similarly J. Fried, *Der päpstliche Schutz...*, p. 302, note 263. However, G. Labuda, *Urkunden...*, p. 315, writes about a feudal relationship. The Grand Master received a ring and made an oath of fealty. He still had the duty to pay recognition rental. As regards the oath of fealty, I. Matison, *Die Lehnsexemtion...*, p. 219, states that "*war dem Orden nur die für weltliche Personen übliche Form [des Treueides—M.D.] verboten; der Hochmeister hat ihn [d.h. den Treueid—M.D.] vermutlich in der für hohe Geistliche vorgeschriebenen Fassung geleistet*". However, the bull of Pope Honorius III of 1220 did not say anything about the form of oaths, homage, etc., but forbade the Teutonic Knights to make them ("*fidelitates, hominia seu iuramenta vel reliquas securitates, que a secularibus frequentantur*"). The form of an oath of fealty is not very important, for the essence of loyalty remains the same, independent of the form of oath. By demanding of the Grand Master an oath of loyalty, Pope Innocent IV violated the decisions of the Bull of his predecessor.

their loyalty to him, even in situations exceptionally difficult for him. And in actual fact, Hermann of Salza's successors to the dignity of Grand Master : Conrad, Landgrave of Thuringia (1239—1240), Gerhard of Malberg (1241—1244) and Henry of Hohenlohe (1244—1249) remained in the imperial camp, even when the Prussian Landmeister — and after him the Prussian branch of the Order — declared themselves in favour of the Pope.

It was only after the fall in the middle of the 13th century of the Staufer, with whom the Teutonic Order and its Grand Masters were linked, as well as the period of *interregnum* and the weakening of the institution of the Kingdom in Germany, that the Grand Masters interest in serving the Empire decreased and their endeavours to obtain an independent position increased.<sup>106</sup> At the same time as the strengthening of the position of the Grand Masters, their self-dependence in relation to the rulers of the Empire increased. This process was not something exceptional. Many *ministeriales* of the Empire evolved their attitude in a similar direction. From the end of the 12th century, they made efforts to gain an independent position by building up their own territorial lordships. The weakness of the kingdom accelerated this process considerably.

The change in the attitude of the Grand Masters towards the Empire was greatly contributed to by the transfer of the capital of the Teutonic Order to Marienburg (Malbork) in Prussia at the beginning of the 14th century. The affairs of the Empire became for the Prussian branch of the Order (the same applies to the Livonian branch) more and more alien. In the meanwhile the German *Landmeisters* of the Order, aiming at the formation of territorial lordship in Germany independent of the Grand Master, began to give services to the Germany's Empire again, during the reign of Louis IV of Bavaria (1314—1347).<sup>107</sup> As a consequence of

<sup>106</sup> Attention was drawn to this circumstance by E. E. Stengel, *Hochmeister und Reich...*, p. 236, and J. Matison, *Die Lehnsexemption...*, p. 221; and recently also H. Boockmann, *Die Bedeutung Thüringens...*, p. 65.

<sup>107</sup> See R. ten Haafl, *Deutschordensstaat und Deutschordensballeien. Untersuchungen über Leistung und Sonderung der Deutschordensprovinzen in Deutschland vom 13. bis zum 16. Jahrhundert.* Göttinger Bausteine zur

the growing importance of feudal law in the political system, particularly in relation to territorial lordship, this service was being given a feudal interpretation to greater and greater extent.<sup>103</sup> In 1494 the German Landmeister paid feudal homage to Maximilian I of Habsburg and received the title of prince of the Empire.

It seems that it was precisely this attitude of the German branch of the Order that encouraged the Emperors in the 14th and 15th centuries to restore the services rendered to the Empire by the Grand Masters. And here too, they endeavoured to attain this end by applying feudal law. A closer analysis of these endeavours goes beyond the framework of this treatise. On the other hand, we should stress that the late mediaeval practice of political relations between the Grand Masters of the Teutonic Order and the Empire does not provide arguments in favour of the "universalistic" interpretation of the Golden Bull of 1226.

(Translated by Doris Ronowicz)

#### APPENDIX

On September 25—26, 1987 a fourth conference was held in Toruń from the series *Ordines militares. Colloquia Torunensia Historica*, on the subject "Die Ritterorden zwischen geistlicher und weltlicher Macht im Mittelalter". Among other papers delivered there three dealt directly or indirectly with the problems raised in the present article. These were by : Prof. Udo Arnold (Bonn), *Der Deutsche Orden zwischen Kaiser und Papst im 13. Jahrhundert* ; Prof. Hartmut Boockmann (Göttingen), *Bemerkungen zu den frühen Urkunden für den Deutschen Orden in Preussen* ; Prof. Gerard Labuda (Poznań), *Über die sogenannten Fälschungen des Deutschen Ordens im Kulmerland und in Preussen in den Jahren 1226—1234*. We did not notice in these papers any arguments undermining our interpretation

*Geschichtswissenschaft*, vol. V. Göttingen—Frankfurt—Berlin 1954, pp. VI, 13, 17, 66—67.

<sup>103</sup> See G. Theuerkauf, *Land und Lehnswesen vom 14. bis zum 16. Jahrhundert*, Köln-Graz 1961, pp. 16 ff.; B. Diestelkamp, *Lehnrecht und spätmittelalterliche Territorien*, in: *Der deutsche Territorialstaat im 14. Jahrhundert*, vol. I, ed. by H. Patze, Vorträge und Forschungen, vol. XIII, Sigmaringen 1970, pp. 65 ff., 77 ff.

of the attitude of the Grand Master of the Teutonic Order to the German Empire in the light of the Golden Bull of Rimini.

Already after having written this article we got acquainted with the work by Helmuth Kluger, *Hochmeister Hermann von Salza und Kaiser Friedrich II. Ein Beitrag zur Frühgeschichte des Deutschen Ordens*, Quellen und Studien zur Geschichte des Deutschen Ordens, vol. XXXVII, Marburg 1987. The author is in favour of the traditional dating of the Golden Bull of Rimini to 1226 and presents a new elucidation of the circumstances of its issue. He does not propose a new interpretation of the attitude of the Grand Master to the German Empire and is not distinctly in favour of any the hitherto conceptions.