

## The Constitutional Principles of the Kingdom of Sicily under Frederick II Hohenstaufen

### Abstract

This study formulates a list of constitutional principles of the Kingdom of Sicily under Frederick II Hohenstaufen based on the provisions of the *Constitutiones Regni Siciliae* from 1231. The aim is to systematize the main assumptions of the emperor's legislation, which sought to create a specific constitutional system, sometimes referred to as a medieval absolutist monarchy. The reason for choosing the *Liber Augustalis* for the basis of this analysis was its adoption at the peak of Frederick II's rule. It is therefore safe to assume that it best reflects the main tenets of the emperor's political and legal doctrine. The research methodology included an analysis of the legal text and a comparison of the results with the findings of historians regarding Frederick II's actions in other areas. The resulting catalogue consists of four basic principles: 1) the sacralization of power, 2) the sovereignty of the monarch's power, 3) the rule of law, and 4) the concentration of power. The article provides a new perspective on the *Constitutiones Regni Siciliae* not only as a legal text, but also a historical source and political manifesto.

**Keywords:** *Liber Augustalis*, *Constitutiones Regni Siciliae*, Frederick II Hohenstaufen, Constitutional principles, medieval law

The year 1231 should be regarded as the apogee of Frederick II's power. Two years earlier, he had returned from a victorious crusade, during which he managed to acquire the prestigious title of King of Jerusalem, elevating his status significantly. Additionally, a year prior, he had concluded a favorable peace treaty in San Germano with his greatest rival – Pope Gregory IX, thereby stabilizing the political situation on the Italian Peninsula.<sup>1</sup> Therefore, the timing was near-perfect for the emperor to attempt to create his ideal state. The result of this endeavor was the promulgation of the *Constitutiones Regni Siciliae* (also known as the *Liber Augustalis*, or the Constitutions of Melfi). Considering the circumstances surrounding the law's institution in 1231, it is fair to assume it was as close to a genuine manifesto of Frederick II's political doctrine as can be, making it the best source for examining his constitutional ideas. Notably, Frederick II's vision of the state was very much atypical and even exceptional for his time, so

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<sup>1</sup> Hauziński, *Fryderyk II Hohenstauf*, 82–95; Wies, *Cesarz Fryderyk II*, 137–53; Kantorowicz, *Fryderyk II*, 157–66; Abulafia, *Frederick II*, 164–226.

much so, that many contemporary scholars have described it as a medieval version of an absolutist state.<sup>2</sup>

Over the years, the *Liber Augustalis* has been extensively studied by scholars from various countries and disciplines to the point that it appears nearly impossible to list all their publications in one place. However, the literature on the subject can be roughly divided into several main groups, each one focusing on another facet of the document. Many researchers have comprehensively examined the material contained in the *Liber Augustalis* to create a holistic interpretation of this legal act or to describe the historical circumstances of its creation.<sup>3</sup> Others have focused on ascertaining Frederick II's inspirations for issuing the codification or on highlighting the influence of other legal systems such as Roman, Frankish, or even Byzantine law on the *Constitutiones Regni Siciliae*.<sup>4</sup> Numerous works have also been produced concerning specific branches of law, such as public law,<sup>5</sup> private law,<sup>6</sup> or even medical law contained within the document.<sup>7</sup> Researchers have similarly explored issues such as women's rights or legal professions within the *Liber Augustalis*.<sup>8</sup> Another trend involves examining the effects of the legislation and jurisprudence that developed around it.<sup>9</sup> Finally, some scholars used the document to focus on the emperor's political doctrine, pointing out and analyzing its various aspects.<sup>10</sup> Each of the aforementioned approaches to the *Constitutiones Regni Siciliae*

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<sup>2</sup> It is especially noticeable in the biographies of Frederick II or studies describing Kingdom of Sicily; Hauziński, *Fryderyk II*, 57, 90; Wies, *Cesarz Fryderyk II*, 149; Kantorowicz, *Fryderyk II*, 167; Marongiu, "A Model State", 314–5.

<sup>3</sup> For instance: Capasso, *Sulla storia esterna delle costituzioni del regno di Sicilia*; Gaudenzi, "La costituzione di Federico II"; Lagenpusch, *Kaiser Friedrich II.*, vols. 1–2; De Angelis, *La legislazione normanno-sveva*; De Vergottini, *Studi sulla legislazione imperiale di Federico II*; Calasso, "Rileggendo il «Liber Augustalis»"; Dilcher, "Die Bedeutung der Laterankonzilien"; Powell, "Introduction"; Trombetti Budriesi, "Una proposta di lettura del Liber Augustalis"; Wolf, "Kaiser Friedrich II. und das Recht"; Martino, *Federico II*; Pennington, "Gregory IX, Emperor Frederick II"; Sibylle, Rosch, *Kaiser Friedrich II.*; Lemma, "Leggi d'altri tempi ovvero il «Liber Augustalis»"; Zecchino, "Il «Liber Constitutionum»"; Zecchino, *L'origine del diritto in Federico II.*; Vaccaro, "Considerazioni sul Liber Augustalis".

<sup>4</sup> For instance: Kantorowicz, "Kaiser Friedrich II."; Buyken, *Das römische Recht*; Dilcher, "Normannische Assisen und römisches Recht"; Dilcher, "Juristisches Berufsethos"; Buyken, *Die Constitutionen von Melfi*.

<sup>5</sup> For instance: Malinowska-Kwiatkowska, "Limiti giuridici e politici"; Kamp, "Die sizilischen Verwaltungsreformen"; Schminck, *Crimen laesae maiestatis*; Kölzer, "Die Verwaltungsreformen Friedrichs II"; Pasciuta, "Procedura e amministrazione della giustizia"; Lepsius, "Systematisieren und Glossieren"; Pasciuta, "«Ratio aequitatis»".

<sup>6</sup> Eg.: Malinowska-Kwiatkowska, *Prawo prywatne*.

<sup>7</sup> Eg.: Hein, Sappert, *Die Medizinalordnung Friedrichs II*; Powell "Greco-arabic influences"; Iacovelli, "Ordinamenti sanitari"; Rossi, "La «scientia medicinalis»"; Zecchino, "Medicine and health".

<sup>8</sup> Eg.: Caravale, "La legislazione del Regno di Sicilia"; Cuozzo, "Matrimoni e successioni feudali"; Cuozzo, "Nobiltà e militia"; Mazzaresse Fardella, "La condizione giuridica della donna"; Cantore, "Il mito e l'impegno politico federiciano".

<sup>9</sup> For instance: Kloos, "Nikolaus von Bari"; Zecchino, "I reverberi delle costituzioni di Federico II"; Pasciuta, "Tra diritto e politica"; Spadaccini, "Der erste Glossator".

<sup>10</sup> Eg.: Vehse, *Die amtliche Propaganda*; Marongiu, "Politica e diritto"; Schaller, "Die Kaiseridee Friedrichs II"; Stürner, "Rerum necessitatis und divina provisio"; Berg, "Staufische Herrschaftsideologie und Mendikantenspiritualität"; Mazzaresse Fardella, "Federico II e il mondo del diritto"; Enzensberger, "Macht und

has significantly contributed to the current state of knowledge on the subject; however, due to their immense variety, it is difficult to outline a unified view of Frederick II's normative achievements.

This paper aims to create a list of constitutional principles of the legal system established by Frederick II, based on the text of the *Liber Augustalis*. Constitutional principles are a highly useful concept in legal science. However, lawyers and scholars have not agreed on a single definition of a constitutional principle, so they are interpreted differently depending on the particular law or scholar. For this reason, it is safe to define them simply as a system of axiological rules on which state legislation is based.<sup>11</sup> Although this concept was not yet developed in medieval legal culture, creating a catalogue seems to be the best way to highlight the most important aspects of a state's constitutional system due to its clarity. This kind of methodology is not "orthodox" in the field of legal sciences, but is not anything new, either. For example, it was used in Waclaw Uruszczak's monograph on medieval and early modern law of Poland-Lithuania.<sup>12</sup> The methodology adapted in this study involves formulating the constitutional principles of the Kingdom of Sicily based on norms of the Codification of Melfi. The provisions identified as constitutional law norms are primarily those numbered XXXI-LIX and LX-LXXXI from the First Book of the *Liber Augustalis*,<sup>13</sup> along with the opening statement – the *Proemium*, and occasionally other parts. The corroborating test for these principles is their comparison with Frederick II's actions identified by historians in various areas such as politics, law-making or his court's culture. The perspective described above can lead to a new, so far not considered point of view on the *Liber Augustalis*, as well as Frederick II's "absolutist" political views.

### 1. The principle of sacralization of the state

The first principle in the catalogue of constitutional rules of the Kingdom of Sicily under Frederick II is the **sacralization of the state**. In a literal sense, it implies that obeying the commands of the ruler and his administration is considered not only a duty but also a religious obligation. It also reflects the image of the monarch and his representatives created within the culture and legal enactments, which present them more like divine chaplains than politicians or

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Recht"; Reichert, "Der sizilische Staat Friedrichs II.," Segl, "Die Feindbilder in der politischen Propaganda Friedrichs II.," Kölzer, "Ein Königreich im Übergang?"; Macconi, *Federico II, sacralità e potere*; Jasiński, "Idea Imperium Romanum"; Santangelo, "Dottrina dello Stato"; Oevermann, "Charismatisierung von Herrschaft".

<sup>11</sup> Leszczyński, Maroń "Zasady prawa", 320–1.

<sup>12</sup> Uruszczak, *Historia państwa i prawa polskiego*, vol. 1, 43–75.

<sup>13</sup> Malinowska-Kwiatkowska, *Prawo prywatne*, 32.

clerks. This idea has its roots in the general political thought of the Middle Ages, where rulers were often seen as ordained by divinity to exercise power, rather than having acquired it by mortal means. That is why in pagan tribes, commanders were believed to possess magical powers, while in Christian kingdoms, rulers were thought to have the ability to heal the sick. By Frederick II's time, however, medieval thinkers had concluded that the sanctity of a monarch derived from the sacrament of anointment during coronation ceremonies, attributing holiness not to the individual but to the institution of kingship.<sup>14</sup>

It should be pointed out that this particular constitutional principle is the sole such principle, which was almost explicitly emphasized in the provisions of the *Liber Augustalis*. In the code's text it is listed as a Title IV of the First Book, promulgated by one of Frederick's predecessors – the Norman king Roger II:

Disputare de regis iudicio, consiliis et institutionibus factis non oportet; est enim pars sacrilegii disputare de ejus iudiciis, factis et constitutionibus atque consiliis, et an is dignus sit quem rex elegit et decrevit.<sup>15</sup>

It would be hard to express the essence of the **sacralization of power** more directly than in the above-mentioned law, wherein disputing the decisions of the ruler is equated with sacrilege. It becomes even more evident in comparison with the vision of the state and the role of the monarch, expressed in the *Proemium* to the *Liber Augustalis*. According to the view expressed therein, kingdoms and their monarchs were established directly by Divine Providence, and their purpose is to rectify and punish the sins committed by subjects. The general picture presents a vision of state power characterized primarily by repression, with the ruler primarily serving as a judge.<sup>16</sup> In this context, it is worth noticing that the Kingdom of Sicily was not only ruled by the special, sanctified emperor but also the state itself was considered in some way sacred because of its purpose for existence. It is especially noticeable in the famous theory of the two bodies of the king embodied in the rulership of Frederick II. It was based on perceiving administrative organs as a political emanation of the monarch, who was therefore potentially omnipresent, continuously exercising direct authority over the entire territory of the kingdom.<sup>17</sup> The most visible and practical application of the theory of the state as the mystical body of the

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<sup>14</sup> Baszkiewicz, *Myśl polityczna wieków średnich*, 89–94; Bloch, *Królowie cudotwórcy*, 103–30.

<sup>15</sup> Huillard-Breholles, *Constitutiones Regni Siciliae*, 9. Translation by James Powell: “No one should dispute about the judgment, plans, and undertakings of the king. For to dispute about his decisions, deeds, constitutions, plans, and whether he whom the king has chosen is worthy is comparable to sacrilege.” Powell, *The Liber Augustalis*, 11.

<sup>16</sup> Huillard-Breholles, *Constitutiones Regni Siciliae*, 3–4.

<sup>17</sup> Schaller, “Die Kaiseridee Friedrichs II”, 132.

ruler was the institution called “defense,” which was also mentioned in the *Liber Augustalis* itself. It operated as follows: a subject of Frederick, defending himself against an attacker, could invoke the emperor’s name, and if the attacker did not cease the attack, they became guilty of the crime against the monarch.<sup>18</sup>

The often-expressed sanctity of the emperor extended also to his second, “mystical body” – the state. For this reason, damaging property or causing other losses to the possessions of a person serving in the imperial army or administration resulted in the imposition of a penalty, which can be described as extraordinarily strict compared to its other provisions.<sup>19</sup> The special status of the ruler was also intended by the legislator to provide greater protection for officials acting on his behalf. This was directly expressed in laws numbered XL and XLI of the Third Book, emphasizing that those who harm individuals carrying out tasks assigned by the emperor are guilty of insulting his majesty. Interestingly, it was noted, that this protection applies to them only when they are in service, whereas officials who abuse their position for personal gain and harm the emperor’s subjects are to be severely punished.<sup>20</sup> Thus, it seems that the authority and sanctity of state power were to be protected both from external threats and from abuses from within those who wielded it. The extension of the emperor’s sanctity to all the state’s institutions is also visible in the provision regulating the expected behavior during the trial, where the action taking place in court is referred to as *cultus justitie*.<sup>21</sup>

In the culture of Frederick’s kingdom, the sanctity of royal power was emphasized in a completely different way than the typical medieval approach described above. The focus was rather on the personal characteristics of Frederick II, who, due to his status as a Roman Augustus and king of Jerusalem, was believed to have received some kind of special grace from God.<sup>22</sup> It is hard not to get the impression that the Sicilian elites shaping the image of the emperor went so far that it almost ceased to resemble the narrative usually surrounding European monarchs. Examples of the almost pagan cult of Frederick II can be found in many areas of Sicilian culture of that period. The best examples are the often-expressed comparisons made between the emperor and Christ: the province where the ruler was born was likened to the Holy Land, his birthplace (the town of Jesi) to Bethlehem, and Frederick to a divine angel. When one of his subjects wrote the emperor from captivity, he paralleled his suffering to the martyrries for Christ.

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<sup>18</sup> *Ibid.*, 17–23; Marongiu, “A Model State”, 319.

<sup>19</sup> Huillard-Breholles, *Constitutiones Regni Siciliae*, 33.

<sup>20</sup> *Ibid.*, 146–7.

<sup>21</sup> *Ibid.*, 34–5.

<sup>22</sup> Macconi, *Federico II, sacralità e potere*, 76–9; Jasiński, “Idea Imperium Romanum”, 27; Kantorowicz, *Fryderyk II*, 167–8.

When some barons rebelled against his power, it was presented as if Christ had been crucified again. Writings and court documents contained near on pagan and magical phrases alluding to a ruler capable of controlling all the elements, reinforced by Walther von der Vogelweide's poetry, exalting the emperor's greatness.<sup>23</sup> It can be concluded that these efforts were at least partially effective, as evidenced by the legends that grew around the emperor after his death. It was said that he did not die, but only departed towards Mount Etna, and would one day return. There were also legendary reports of the "royal sign" that the monarch's descendants were said to bear.<sup>24</sup>

## 2. The principle of sovereignty of monarch's power

The second place in the catalogue, due to its fundamental significance, should be given to the **principle of sovereignty of the monarch's power**. This concept was introduced into the "mainstream" of political thought by the 16<sup>th</sup>-century author Jean Bodin. However, it is worth noting that various historians trace the origins of the principle of sovereignty to medieval monarchies as early as the 13<sup>th</sup> century. It is most associated with the reign of Philip II Augustus in France or Pope Innocent III.<sup>25</sup> Analyzing the provisions of the *Liber Augustalis*, it is evident that the **principle of sovereignty**, defined as the attribution of all state power to the king, who delegates it only at his discretion, aligns with Frederick II's vision of the ideal state too. This kind of understanding of the principle is a characteristic aspect of absolutist state systems, which do not allow any type of formal control to be exercised on the ruler, the one and only source of all laws.

The legal basis upon which the **principle of sovereignty** is built can be derived from the image of the state painted in the various provisions of *Liber Augustalis*. The first one is the fact that the most important administrative offices were installed exclusively by the emperor. It was the ruler who was responsible for appointing justiciars and judges who then represented him around the country. Nor does the codification contain a rigid time frame after which a given official should cease to exercise his function, possibly also leaving this matter at the disposal of the emperor.<sup>26</sup> According to the findings of Evelyn Jamison, Frederick II had a habit of changing officials in their positions after just one year of tenure, thus demonstrating the

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<sup>23</sup> Baszkiewicz, *Myśl polityczna wieków średnich*, 116; Von der Vogelweide, *Selected poems*, 77.

<sup>24</sup> Bloch, *Królowie cudotwórcy*, 297.

<sup>25</sup> Bodin, *Sześć ksiąg o Rzeczypospolitej*, 88–106; Boureau, "How Christian Was the Sacralization of Monarchy", 31–4.

<sup>26</sup> Huillard-Breholles, *Constitutiones Regni Siciliae*, 35–44; Powell, *Introduction*, xxvii.

sovereignty of his power over them and the territory.<sup>27</sup> It is worth mentioning, that the statute number VIII of the First Book specifically reserves the power of executing justice to the state officials, excluding every other power in the kingdom from doing that.<sup>28</sup> The second proof, connected to the one mentioned above is the multiple times it cites the “Law of Grace,” which of course was an exclusive prerogative of the monarch. In conjunction with this, it is important to point out, that it was the emperor who embodied the highest instance of justice in the state.<sup>29</sup>

The third premise indicating the existence of the monarch’s sovereignty is the fact that the position of the emperor rarely appears in the text of *Liber Augustalis*, in a way leaving him outside of the legal system. The Codification from Melfi does not contain a direct description of the prerogatives of the monarch, mentioning his role solely in relation to other offices.<sup>30</sup> As the ruler of the kingdom, he possessed all power and was responsible for its exercise in the state, delegating only part of the tasks according to his will to local delegates. All other manifestations of power, not recorded in the codification such as legislation, military command, the conduct of foreign policy, etc., lay solely within the monarch’s jurisdiction. In the Kingdom of Sicily, there was not even an estate representation that could serve as a control measure against the king’s potential abuse of power. It was also solely at Frederick II’s discretion to maintain the *Liber Augustalis*, and theoretically the codex could be revoked by the emperor at any time.<sup>31</sup> It is obvious that the argument *ex silencio* is a little bit controversial and cannot stand as the sole premise supporting a thesis, but in this case, the fact of the “non-existence” of the king’s prerogatives in the Constitutions is very characteristic and symptomatic.

Frederick II’s vision of law-making, the main attribute of the monarch’s sovereignty, was expertly described by Ernst Kantorowicz on the basis of 13<sup>th</sup>-century Sicilian culture. The most important concept often used at the imperial court was the idea of Reason, perceived as something alike natural law. These rules (rational, reasonable, and therefore proper) had to be “decoded” from the surrounding world so that the law could serve the cause of justice. Meanwhile, the emperor, as the *pater et filius iustitiae*, and the *lex animata*, had the task of establishing laws that would originate in his mind, from the aforementioned Reason. Thus, the emperor was the main source of law in the Kingdom of Sicily. The provisions introduced by

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<sup>27</sup> Jamison, “The Norman Administration of Apulia and Capua”, 315.

<sup>28</sup> Huillard-Breholles, *Constitutiones Regni Siciliae*, 12–3.

<sup>29</sup> *Ibid.*, 35.

<sup>30</sup> *Ibid.*, *passim*.

<sup>31</sup> Because of the Frederick II’s status as an emperor it probably would not even be a problem to revoke the Constitutions as the promulgation of a completely new law was a sole prerogative of a Roman emperor’s. Pasciuta, “Tra diritto e politica”, 217–8.

him did not have to be based on anything other than Frederick's will to put them into effect.<sup>32</sup> It remains uncertain as to whether the Constitutions were promulgated by the Hohenstaufen as emperor or as king. However, it seems that according to the articulated doctrine, the legal act binding in the kingdom should be proclaimed by the sovereign king of Sicily, independent of anyone else. In this sense, the continuous use of the imperial title in the codification text can be seen primarily as a tool to strengthen Frederick II's authority as the sovereign ruler of the state.<sup>33</sup> The final important issue in this context is the question of the ruler's subordination to universally applicable law. On one hand, he was not obliged to adhere to the laws established by himself because there existed no mechanism of control over the king in the Kingdom of Sicily even in the case of breaching regulations. On the other hand, however, the monarch should respect the laws established by himself in order to uphold his authority and because, as laws created by himself, they could not be irrational and therefore unjust. However, Kantorowicz's approach is sometimes questioned, it seems to fully support the theory of sovereignty.<sup>34</sup>

The cultural background for the sovereign rule of the monarch can be derived from two main enduring notions. The first was the classical medieval understanding of all power originating from God, who chose certain rulers to govern the earth, a "Staufen" variation of which was presented in the commentary of the Sicilian glossator Marino Caramanico.<sup>35</sup> The second were the republican roots of the imperial office and the ceding of power to the emperor by the Roman people pointed out by some authors of Frederick II's times.<sup>36</sup> The position of the ruler in the Kingdom of Sicily was also the result of a long historical process and the combination of many different political traditions. Creating his version of "absolutist monarchy," Frederick II could rely on the position already developed by the Hautevilles. The kings of that dynasty had significantly broader powers than other European rulers of the medieval period. For instance, they had the ability to block episcopal appointments within their kingdom or enact marital law, which was traditionally assigned to the Catholic Church. A certain inclination towards strong monarchical power, present in the Hauteville tradition, is also evident in the preferred cultural model of feudalism in this circle, granting the suzerain far wider

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<sup>32</sup> Kantorowicz, *Dwa Ciała Króla*, 88–91. Similar interpretation has been created by Beatrice Pasciuta, but with the use of other phrases: *ius commune* and *ius proprium*. Pasciuta, "«Ratio aequitatis»", 68–9.

<sup>33</sup> Powell, "Introduction", xxvii–xxviii.

<sup>34</sup> Kantorowicz, *Dwa Ciała Króla*, 87–8; For example, Powell disagreed with Kantorowicz, suggesting that his interpretation was far-fetched. Powell, "Introduction", xxiii–xxiv.

<sup>35</sup> Caramanico, *Il proemio di Marino de Caramanico*, 184.

<sup>36</sup> Kantorowicz, *Dwa Ciała Króla*, 85–6; Jasiński, "Idea Imperium Romanum", 17, 19–20.



powers over all subjects than in the European variant.<sup>37</sup> The fact that the kings from Norman dynasty were formally vassals of the pope was not mentioned at all at the imperial court.<sup>38</sup> Other inspirations for Frederick II could have been the systems of Muslim despotisms, with which the emperor had constant cultural and diplomatic contact, as well as the traditions of the ancient Roman Empire.<sup>39</sup> The patterns described above, as well as Frederick II's personal views, resulted in the formation of a specific vision regarding his possession of complete sovereign power in the Kingdom.

### 3. The principle of the rule of law

The **rule of law** is widely regarded as a fundamental principle of a democratic state, most commonly encapsulated in the phrase that state organs act on the basis and within the limits of the law.<sup>40</sup> Due to the democratic associations connected with the discussed principle, it should be treated more as a working definition of a certain tendency noticeable in Hohenstaufen legislation, rather than as a developed legal principle in the strict sense. In the context of Frederick II's state, it therefore signifies the commitment of state organs to act within the framework of rules established by the emperor, and the particular place of enacted law in the political and constitutional doctrine represented by the Hohenstaufen. Interestingly, the monarch seemed to consider the establishment of laws his main prerogative and means to achieve his goals.<sup>41</sup> The enormous authority of the ruler allowed for the implementation through legislation of many social and political transformations that other monarchs could not afford to pass.<sup>42</sup>

The requirement to adhere to the law should be treated as a basis on which the whole constitutional system of the Kingdom was founded. As such it is also mentioned in many of the codex's provisions. For instance, in the section concerning the position of a judge, it was stipulated that they are obliged to adjudicate solely on the basis of enacted law and relating to the local customs. Their own consideration was only expected in cases not regulated by any statutes.<sup>43</sup> Another provision required the bailiff to collect dues in accordance with the

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<sup>37</sup> Marongiu, "A Model State", 314–9; Pybus, "The Emperor Frederick II", 134–41.

<sup>38</sup> Abulafia, *Frederick II*, 211–2.

<sup>39</sup> Gabrieli, "Frederick II", 56–7; Buyken, *Das römische Recht*, 7–10; Macconi, *Federico II, sacralità e potere*, 57–61.

<sup>40</sup> The good example is the Article 7 of the contemporary Polish Constitution. Article 7, Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 (Dz.U. 1997 nr 78 poz. 483).

<sup>41</sup> Ernst Wies expressed a similar opinion, titling the chapter of his book on this subject "The Arsenal of Statutes". Wies, *Cesarz Fryderyk II*, 96–116.

<sup>42</sup> It is valuable to point out the abandonment of the duels, which in the Western Europe was an important element of the chivalric culture. Huillard-Breholles, *Constitutiones Regni Siciliae*, 105–6.

<sup>43</sup> *Ibid.*, 54–5.

principles laid out in the *Liber Augustalis*.<sup>44</sup> It is also worth noting that holding offices such as bailiff, judge, or chamberlain was associated not only with a higher social position or specific financial benefits but also with particular responsibility. The *Liber Augustalis* contains many provisions imposing severe penalties on officials who improperly perform their duties. For example, embezzlement committed while holding office was punishable by death, and only the monarch's mercy could spare the convicted individual from execution. However, officials were not only liable for crimes. Frederick II maintained in force an important law of King Roger II, introducing the penalty of confiscation of an official's property if their negligence caused financial losses to the state treasury.<sup>45</sup>

In Title LX of the First Book, concerning the office of master chamberlain, Frederick II made an interesting remark about the danger arising from the mixing of competencies of different officials, which needed to be prevented.<sup>46</sup> It is obviously a reference to the chaos in the European (including Sicilian) administrative system, which was a heritage of the older existing feudal laws and privileges. The description of the office of bailiff took this rule into account, authorizing the official to administer justice only within his own administrative district. However, if a criminal, subject to another official of equal rank, fell under their jurisdiction, the criminal had to be handed over to the court of the justiciar.<sup>47</sup> In a large part of cases, the emperor attempted to prevent the emergence of jurisdictional disputes by limiting the discretionary power of officials, giving the administration of the Kingdom of Sicily a strongly centralized character.<sup>48</sup> Moreover, the norms contained in the *Liber Augustalis* often pertained to very specific matters such as issuing permits for work or environmental protection.<sup>49</sup> This characteristic can be seen as an attempt to prevent state officials from exceeding their authority. They may have operated in a wide range of areas, but their actions were strictly regulated.

The **principle of the rule of law** is also reflected in the organization of the most important offices in the Kingdom – the justiciar and the bailiff. The very name of the office was derived from the Latin words *ius* or *iustitia*, which resonate in both legislation and the political doctrine of Frederick II.<sup>50</sup> What is more, all justiciars, both at higher and lower levels, had to swear an oath, the framework of which was presented in Title XLVI of the First Book,

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<sup>44</sup> *Ibid.*, 44–5.

<sup>45</sup> *Ibid.*, 35–6.

<sup>46</sup> *Ibid.*, 40–41.

<sup>47</sup> *Ibid.*, 36.

<sup>48</sup> The good example is a position of a castellan who did not even get to decide how many of his subordinates were allowed to go outside of his castle; *Ibid.*, 44.

<sup>49</sup> *Ibid.*, 151–2; Zecchino, “Medicine and health”, 91–5.

<sup>50</sup> Huillard-Breholles, *Constitutiones Regni Siciliae*, 47.

promising that they guaranteed fair resolution of cases to every subject of the emperor and the swift conclusion of proceedings. Similar requirements were also imposed on bailiffs, who had to swear an oath before assuming their duties, promising to uphold justice and safeguard the monarch's possessions.<sup>51</sup> To ensure the most impartial approach possible by the justiciar, the legislation specified certain prohibited circumstances for their appointment, including the personal exercise of the office by a baron, knight, or land-holding prelate, as well as their appointment of their own justiciars. Moreover, a justiciar already performing their duties could not temporarily delegate their functions to anyone else, under the threat of dismissal and confiscation of property. Only men from the districts in which they were to operate could hold this office, and they could not combine their position with that of a judge or with a clerical position.<sup>52</sup>

It can be said that Frederick II's and his court's perception of law was the result of transformations in the mentality of Europeans that took place at the turn of the 12<sup>th</sup> and 13<sup>th</sup> centuries. This was a period of jurisprudence, sometimes even called "the age of jurisprudence", emphasizing the great importance attached to law as such at that time.<sup>53</sup> The court culture in Sicily was at the forefront of this new wave, giving the idea of law a higher status than ever before. According to some scholars, in the Hohenstaufen monarchy, the law was understood not so much as mere rules governing social life, but as a quasi-religious issue. At the center of this new "cult" were to be *Pax et Justitia* as its most important values.<sup>54</sup> The best manifestation of such a system of values was the vision of the state described in the *Proemium*, where the administration of justice was presented as the main purpose of the state's existence. From this cult of law and jurisprudence emerged the special position of lawyers in Frederick II's kingdom. In reference to Justinian's Digests, judges and other lawyers were considered to be "priests" of justice, seeing as they made use of "sacred" books of law.<sup>55</sup> This kind of devotion surrounding the law and the lawyers supports the theory of the existence of some primitive form of the **principle of the rule of law**. Although, as it was mentioned above, the emperor himself as the *lex animata* and the sovereign creator of laws was excluded from the strict obligation to obey the law. Therefore, the ruler served to enforce the adherence of state officials to the law,

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<sup>51</sup> *Ibid.*, 38.

<sup>52</sup> *Ibid.*, 33–4.

<sup>53</sup> Kantorowicz, *Fryderyk II*, 177; This was also a time of professionalization of the legal professions, confirming the newfound value of jurisprudence and law itself. Brundage, "The Medieval Advocate's Profession", 444–7.

<sup>54</sup> Jasiński, "Idea Imperium Romanum", 27; Powell, "Introduction", xxxvii–xviii.

<sup>55</sup> Schaller, "Die Kaiseridee Friedrichs II", 132–3; Kantorowicz, *Dwa Ciała Króla*, 98–101.

however he himself was not subject to it; him obeying it was seen as in line with custom, not at all mandatory.

#### 4. The principle of concentration of power

The formulation of the **principle of the concentration of power** aims to illustrate the characteristics of the system of the Kingdom of Sicily, such as the integration of all institutions under Emperor Frederick II and the extensive scope of the competencies of the Sicilian state. The combination of these elements resulted in the formation of a single source of all power in the state, connecting all the elements of the modern tripartite division, with the addition of acting as a suzerain in the feudal social system. At the same time, the Norman and Roman heritage to which Frederick II often referred to, ensured a much higher status of the monarch, under whose influence no other center of power was excluded.<sup>56</sup> Regarding this matter, the case of the Hohenstaufen emperor is rather exceptional within its age, seeing as a medieval ruler's authority was usually curtailed by either Church laws or extensive privileges of the nobles or cities. In the case of the monarchy of Frederick II, such a situation was unthinkable, and the state had the means to influence all spheres of life of its subjects and all legal entities operating on its territory.

The legal basis for formulating the **principle of the concentration of power** can be found in the *Proemium*, where four main tasks of the Sicilian state were laid out.

[...] principes gentium sunt creati per quos posset licentia scelerum coerceri: qui vite necisque arbitri gentibusqualem quisque fortunam, sortem, statumque haberet, velut executores quodammodo divine Providentie stabilirent. De quorum manibus, ut villicationis sibi commisse perfecte reddere valeant rationem, a Rege regum et Principe principum ista potissime requiruntur ut sacrosanctam Ecclesiam, Christiane religionis matrem, detractorum fidei maculari clandestinis perfidiis non permittant et ut ipsam ab hostium publicorum incursibus gladii materialis potentia tueantur, utque pacem populis eisdemque pacificatis justitiam, que velut due sorores se ad invicem amplexantur, pro posse conservent.<sup>57</sup>

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<sup>56</sup> Schaller, "Die Kaiseridee Friedrichs II", 110–1; The only exception were priests who were kept under jurisdiction of the clerical courts if they were not accused of treason or other major crime. Huillard-Breholles, *Constitutiones Regni Siciliae*, 48.

<sup>57</sup> Huillard-Breholles, *Constitutiones Regni Siciliae*, 4. Translation by Powell: "[...] princes of nations were created through whom the license of crimes might be corrected. And these judges of life and death for mankind might decide, as executors in some way of Divine Providence, how each man should have fortune, estate, and status. The king of kings and prince of princes demands above all from their hands that they have the strength to render account perfectly of the stewardship committed to them so that they do not permit the Holy Church, the mother of the Christian religion, to be defiled by the secret perfidies of slanderers of the faith. They should protect her from attacks of public enemies by power of the secular sword, and they should, if possible, preserve peace and, after the people have been pacified, justice, which embrace each other like two sisters." Powell, *The Liber Augustalis*, 4.

Therefore, we can infer that the competencies of the state in Sicily were very broad. The first two tasks can be viewed in the context of the classical medieval theory of the “two swords,” as they pertain to the obligations a secular ruler holds toward religion.<sup>58</sup> This involved protecting the faith from blasphemers and providing armed defense to the Church against its enemies, which was a typical element of medieval political thought and had to appear even in the ideological declaration of Frederick II, despite his notoriety as the pope’s greatest enemy.<sup>59</sup> The next two tasks are purely “secular” and concern the obligations of the state to its inhabitants. The state was empowered to impose the death penalty and was also responsible for fairly regulating social relations in the kingdom. The fact that such diverse tasks were entrusted to one entity – the state, represented by the ruler – indicates the existence of a very strong center of power, which was concentrated in the figure of the emperor.

The principle is evident in Frederick II’s style of governing by the concentration of rights to control vast spheres of social life in the hands of one person. It is necessary to admit that in the provisions of the *Liber Augustalis*, one can observe that the priority was to create a working judicial system, although some administrative prerogatives also show the vast range of the power of the officials. For example, in Title LXII of the First Book, concerning bailiffs, there is an obligation to oversee royal property and to collect fees in accordance with local customs and imperial laws.<sup>60</sup> Another indication of the broader activities of bailiffs was the obligation to appoint two trusted individuals to oversee the adherence to the designated gold standard by the goldsmiths working within the state’s territory.<sup>61</sup> Based on Title XLIX of the Third Book, they were also required to organize workshops for goldsmiths, grape pickers, and harvesters in their district, financed by the state budget under the condition that they did not change their place of residence.<sup>62</sup> In this case it is obvious that bailiffs were supposed to wield administrative power in territories belonging to the royal domain and were responsible for managing cities.<sup>63</sup> A slightly different situation can be observed in the case of the most important territorial office – the justiciars, which appears in the *Liber Augustalis* only in the

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<sup>58</sup> Although it is not possible to claim that the Gelasian theory is fully reflected in all aspects of the Sicilian political system; if it were, the state would not be able to interfere in religious matters or the organizational affairs of the Church; Marongiu, “A Model State”, 314–9.

<sup>59</sup> But it seems that Frederick II was able to use even that circumstance to his advantage, penalizing heresy as a *crimen laesae maiestatis*. Huillard-Breholles, *Constitutiones Regni Siciliae*, 5–7; Macconi, *Federico II, sacralità e potere*, 43–6.

<sup>60</sup> Huillard-Breholles, *Constitutiones Regni Siciliae*, 43–4.

<sup>61</sup> *Ibid.*, 154–5.

<sup>62</sup> *Ibid.*, 153–4.

<sup>63</sup> *Ibid.*, 50.

provisions describing their judicial competencies. Therefore, it is well known by contemporary historians that they also served as “provincial governors” or even regional army commanders.<sup>64</sup>

An argument supporting the **principle of the concentration of power** is the highly centralized nature of the offices administering the kingdom, providing the emperor with a short chain of command and therefore the expedient execution of political orders.<sup>65</sup> This is particularly evident in the organization of the justiciars’ service. In the regulations of the *Liber Augustalis*, the strict subordination of the lower level (regional justiciars) to the higher level (chief justiciars and the court justiciar) is very noticeable. For example, in regulation number XLI of the First Book, it is stated that:

Honorem debitum atquo procipuum nostro curie reservantes, edicimus utj si quando etiam predictus magister justitiarius civitatem quamlibet vel locum (e) intraverit, quousque in eodem loco magister justitiarius ipse una cum iudicibus nostris curiam nostram tenuerit, justiciarius regionum qui illic inventus fuerit silere debebit, ut puta minori lumine per luminare majus superveniens obscurato.<sup>66</sup>

Regional justiciars were therefore required to yield to higher-ranking officials when they were present in their territory. Similarly, the “treasury sector” of the kingdom was planned in a hierarchical manner, based on the lowest structure – tax collectors, who were overseen by chamberlains, who in turn were subordinate to the master chamberlain.<sup>67</sup>

The **principle of the concentration of power** was not influenced by the commonly accepted rules of the feudal system as seen throughout Europe. This issue, characteristic for the Middle Ages, which by the 13<sup>th</sup> century had already developed into its classical form in Europe, was viewed quite differently in the Kingdom of Sicily. The aim to create a centralized state resulted in a significant reduction of the local privileges of barons and cities. In 1220, Frederick II ordered a review of grants issued after the death of Henry VI, after which most of them were annulled as unlawful. The lands acquired in this way largely contributed directly to the state budget from then on.<sup>68</sup> Thus, the emperor not only strengthened his personal political position

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<sup>64</sup> Kamp, “Die sizilischen Verwaltungsreformen”, 126–8; Kantorowicz, *Fryderyk II*, 209–10.

<sup>65</sup> Pasciuta, “«Ratio aequitatis»”, 70–1.

<sup>66</sup> Huillard-Breholles, *Constitutiones Regni Siciliae*, 50. Translation by Powell: “We reserve the special honor due to our court. Therefore, we decree that when the master justiciar mentioned above has entered some city or district for the purpose of holding our court together with our judges, the regional justiciar, who is located there, should be silent. For the arrival of the greater light should enlighten the lesser light, which has been hidden.” Powell, *The Liber Augustalis*, 45.

<sup>67</sup> Huillard-Breholles, *Constitutiones Regni Siciliae*, 40–1.

<sup>68</sup> It was the beginning of the reforms conducted by Frederick II after his return from Germany. Kamp, “Die sizilischen Verwaltungsreformen”, 126.

within the kingdom but also contributed to the construction of a state stronger than one based on just feudal ties. However, these restrictions mainly affected the higher social classes, while the situation of the peasant class was more or less similar to that in other medieval states.<sup>69</sup>

The omnipresent nature of the Sicilian state can also be seen in many actions of the monarch related to the daily governance of the kingdom. A good example of this phenomenon can be seen in the organization of the university in Naples, which served entirely different functions than similar institutions in Western European countries. In Frederick II's state, it was almost a state institution aimed at preparing young elites for service in the administration, rather than an independent corporation of scholars.<sup>70</sup> By the power of his decree, the King of Sicily could also strongly influence the private lives of his subjects. A notable example is the resettlement of the Arab population inhabiting the island to a colony specially created for this purpose in Lucera.<sup>71</sup> The immense influence of the state on the individual's life is also evident in the ban on carrying weapons within the kingdom, as stipulated in the Codification of Melfi.<sup>72</sup> Thus, it can be observed that the afore-mentioned tasks of the state described in the *Proemium* were taken very seriously, and the ruler equipped himself with the tools to pursue these goals. The state power in the Kingdom of Sicily was therefore devoid of limitations that other states had to contend with in the Middle Ages.

## 5. Summary

The principles described above, rooted in the legal norms of the *Liber Augustalis*, create a clear vision of the state that, in the intention of Frederick II and his court, the Kingdom of Sicily was meant to become. This vision reflects the aspiration to significantly increase the status and competencies of the ruler, who was to reign as the sole, sanctified center of power, influencing all spheres of social life through his legislation. According to some scholars, this kind of structure was an entirely original vision of the emperor, considered the first Renaissance ruler. Others argue that the individual elements that make up the Hohenstaufen's political and governmental doctrine originated from Roman, Norman, or Muslim traditions.<sup>73</sup> Regardless of the sources for this legal order, it is noticeable that the vision of the state created by the *Liber Augustalis* stands out among contemporary European states that were entangled in their feudal heritage.

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<sup>69</sup> Malinowska-Kwiatkowska, *Prawo prywatne*, 36–57.

<sup>70</sup> Hauziński, *Cesarz*, 121; Abulafia, *Frederick II*, 210.

<sup>71</sup> Gabrieli, "Frederick II and moslem culture", 54; Wies, *Cesarz Fryderyk II*, 103–4.

<sup>72</sup> Huillard-Breholles, *Constitutiones Regni Siciliae*, 14–5.

<sup>73</sup> Reichert, "Der sizilische Staat", 21–5; Abulafia, *Frederick II*, 202–5.

It is important to clearly emphasize the specificity of the *Constitutiones Regni Siciliae* as a historical primary source, which cannot be seen in the same way as a chronicle or a document. Being a legal act, it presents a state of affairs proposed by the legislator, rather than reflecting the actual legal-political situation in southern Italy in the 13<sup>th</sup> century. When examining legal sources from past eras, one must avoid the mistake of treating the law as being in effect, if it was promulgated by the state. Frederick II's *opus magnum* should not be treated as an exception in this regard. Historiography has even recorded the rebellion against the overly direct implementation of the *Liber Augustalis* provisions, while in the most provincial parts of the state, the new law might have changed nothing in the lives of the emperor's subjects.<sup>74</sup> To sum up, *Constitutiones Regni Siciliae* are a magnificent primary source for examining the idea of the state as envisioned by the Sicilian elite, but it's dangerous to treat them as a proof of the functioning of an absolutist state in the 13<sup>th</sup> century.

This paper represents an attempt to offer a new perspective on the *Liber Augustalis* and to organize the vision of the state as reflected in the most important legal act issued by Frederick II. The enumerated list of constitutional principles, built upon *Constitutiones Regni Siciliae*, serves to contextualize other aspects of his extensive legislation. Finally, it should be stated that the above-described system of principles formulated on the basis of the *Liber Augustalis* finds confirmation in the culture, politics and propaganda of the Kingdom of Sicily. The list presented below can be expanded or refined further, the one constructed in this paper is a proposition on using irregular methodology of constitutional principles in the studies on medieval law, and more specifically, on Frederick II's legal and political philosophy. It can also help to understand the image of the emperor as a tyrant, which was popular in the Middle Ages and prevented him from stabilizing his power across both the Kingdom of Jerusalem as well as the north of Italy.

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<sup>74</sup> Wies, *Cesarz Fryderyk II*, 150–1.



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