

Chapter IV

Priests, Merchants, Warriors and Controversies about the Right to War (c. 1000 – c. 1450)

Claims for Autonomy

Within the great tradition of the law of war and peace, the fundamental problem of determining the criteria for the justice of war found basically uncontroversial solutions: Wars were just, when approved by religious institutions in charge of legitimising them, when conducted under the control of legitimate rulers and when arguable claims for compensation for previously inflicted injustice had found no response. The question under which conditions rulers could be legitimate and religious institutions could authoritatively approve of wars did not arise, because the great tradition of the law of war and peace derived the principles of the validity of the law from religious beliefs. Differences in theological dogma informing specific elements of these beliefs and, by consequence, taken to be acceptable only within specific communities of believers, had no impact on the underlying conviction, common to the various dogmata, that the justice of wars should be determined in line with religion.

However, since the eleventh century, beginning in Latin Christendom, the degree of certainty declined that general norms of the law of war and peace, as derived from Christian religious beliefs, could be taken to be valid for humankind as a whole. Instead, doubts came up whether all incumbents to legitimate institutions of rule could *ipso iure* be entitled to the right to war. The reasons, why these doubts arose in Latin Christendom, were complex and not only impacted on the law of war and peace, but also on the structure of political communities as well as the perception of the world as a divinely willed order. In the present context, these reasons can be addressed only with regard to the law of war and peace.

Some of these reasons had already been recognisable in previous centuries, although they had then not ushered in questions about the foundations of the law of war and peace. One of the older factors consisted in the large number of types of rulers, each accepted as having the right to war while all challenging this very entitlement among themselves. This conflict is on record already in the law of King Ine of 694 relating to the size of legitimate armed forces.¹ This law seems to point to Ine's attempt at restricting the use of the right to war to rulers capable of mobilising more than 35 warriors. The number, in its own right, seems small but should be correlated with the standard size of seventh-century armed forces. If at the time, a standard armed force consisted of 200 to 300 men,² army of 35 warriors is by no means a negligible fighting force. However, Ine's law was a unique case in its own time, and it remains unknown to what extent it was then actually applied.

Efforts to accomplish autonomy in the ecclesiastical realm are better known. The Catholic Church witnessed the rise of monastic communities since the sixth century, some of which succeeded in finding exemption from direct episcopal supervision. They accomplished exemption through papal privileges, placing sole control over these monasteries in the papal curia. Monasteries were sworn communities of monks and nuns, vowing to observe particular rules, which were usually laid down in writing. Monasteries might form larger communities following the same rules. Already in the sixth century, the Latin word *ordo* came in use for these communities of monasteries. The word *ordo* referred to the order on which each monastic community, community of monasteries as well as the world as a whole appeared to be based. It found its way into the European vernacular languages and had been represented by English 'order' in the dual sense of the monastic order and the order of the world. Initially, monastic orders were autonomous communities demanding for them a specific position in the order of the world. In the case that they succeeded in acquiring a papal privilege sanctioning their autonomy vis-à-vis bishops, they also had the option of expanding the

¹ Ine, King of Wessex, '[Laws]', § 13,1, edited by Felix Liebermann, *Die Gesetze der Angelsachsen*, vol. 1 (Halle, 1903), pp. 89-123, at p. 94 [reprint (Aalen, 1960)].

² Mogens Ørsnes, *Ejlsbøl I. Waffenopferfunde des 4. – 5. Jahrhundert nach Christus* (Copenhagen, 1988), pp. 180-181.

monasteries into centres of secular rule and even to establish an order that was not bound by a monastic vow. The transformation of monasteries into centres of secular rule began in the eighth century; religious orders without ties to monastic vow first came into existence in the eleventh century. Specifically in Southern Germany and the Alps, but not only in these areas, many monasteries acquired autonomous status, such as Fulda, St Gall and Quedlinburg, to name only some major institutions.

The model of the autonomous sworn community did not remain confined to the ecclesiastical realm. Outside the church, autonomous sworn communities are on record from the eighth century, but they had a dubious reputation. These communities appeared to be groups whose members united themselves not just for honourable purposes but could straightforwardly pursue criminal intentions. Therefore, they became targets of rulers' legislation aimed at suppressing the activities of these groups.³ Whether this impression was always drawn on good reason, remains difficult to determine in each recorded case, but some of these groups acted as sworn communities of merchants engaged in trade across the Northern Seas and Western Eurasia, even reaching Baghdad during the ninth, tenth and eleventh centuries.⁴ Since the eleventh century, these merchants established the habit of forming guilds meeting at local markets and trade fairs.⁵ Since that time, especially in Northern Italy, guilds of merchants and artisans combined their activities into local urban settlements of producers and distributors, striving to turn their towns and cities into autonomous political communities. They accomplished this goal either by way of obtaining the privilege of self-government from some power-holder in the vicinity, such as Freiburg in Southwest Germany early in the twelfth century,⁶ or through the incremental acquisition of various entitlements relating to the production of goods, the conduct of trade and the maintenance of order within their urban communities. The bundling of these entitlements, specifically privileges for holding markets and for minting, could eventually usher in the autonomy of a town or city. Northern Italy, the German-speaking areas and the Low Countries were homes to an exceptionally large number of autonomous towns and cities, the total number of which amounted to roughly 4000 in Latin Christendom between c. 1000 and c. 1450. Towns and cities as autonomous political communities were entitled to implement rule according to their own laws, including their right to war (*ius ad bellum*).

The inhabitants of autonomous towns and cities, in contradistinction against monastic communities, did not place themselves to an explicit vow, subjecting them to specified rules for the conduct of their lives. Yet, the inhabitants of towns and cities did oblige themselves to accept the rule of law within their political communities. The laws in force for an autonomous town or city were usually laid down in writing and, as with monastic orders, could be accepted as valid in several towns and cities. Urban law positioned urban political communities as part of the divinely willed world order. Hence, fourteenth-century and later political theorists could equate urban government as the model for government anywhere in the world.⁷ Many towns and cities even demonstrated their

³ 'Capitulary of Heristal [779]', edited by Alfred Boretius, *Capitularia regum Francorum*, nr 20 (*Monumenta Germaniae historica. Leges (in Folio) Capitularia*, 1) (Hanover, 1883), p. 51. For a study see: Otto Gerhard Oexle, 'Gilden als soziale Gruppen in der Karolingerzeit', in: Herbert Jankuhn, Walter Janssen, Ruth Schmidt-Wiegand and Heinrich Tiefenbach, eds, *Das Handwerk in vor- und frühgeschichtlicher Zeit (Abhandlungen der Akademie der Wissenschaften in Göttingen. Philol.-Hist. Kl., 3. F., vol. 122)* (Göttingen, 1981), pp. 284-354.

⁴ Gert Hatz, *Handel und Verkehr zwischen dem Deutschen Reich und Schweden in der späten Wikingerzeit. Die deutschen Münzen des 10. und 11. Jahrhunderts in Schweden* (Stockholm, 1974). Joachim Herrmann, *Wikinger und Slawen* (Neumünster, 1982). Dirk Jellema, 'Frisian Trade in the Dark Ages', in: *Speculum* 30 (1955), pp. 15-26. Stéphane Lebecq, *Marchands et navigateurs frisons du Haut Moyen Age*, 2 vols (Lille, 1983). Thomas S. Noonan, *The Islamic World, Russia and the Vikings. 750 – 900* (Aldershot, 1998).

⁵ Janet Lippman Abu-Lughod, *Before European Hegemony* (New York and Oxford, 1989). Peter Johanek and Heinz Stoob, eds, *Europäische Messen und Märktesysteme in Mittelalter und Neuzeit (Städteforschung, series A, vol. 39)* (Cologne, Weimar and Vienna, 1996).

⁶ Friedrich Keutgen, ed., *Urkunden zur städtischen Verfassungsgeschichte (Ausgewählte Urkunden zur deutschen Verfassungsgeschichte, 1)* (Berlin, 1901), nr 133 [reprint (Aalen, 1965)].

⁷ John of Soest, *Wie man wol eyn statt regyrn sol. Didaktische Literatur und berufliche Schreiben des Johann von Soest gen. Steinwart*, chap. 1, edited by Heinz-Dieter Heimann (*Soester Forschungen*, 48) (Soest, 1986), p. 23. For a study see: Ulrich Meier, *Mensch und Bürger. Die Stadt im Denken spätmittelalterlicher Theologen, Philosophen*

autonomy through their architectural structure within the physical environment. Following the precedent of ancient Roman cities, they encircled their settlements with enceintes, occasionally with circular earthworks, designed as fortifications against external enemies. In some cases, notably in Northern Italy, towns and cities became autonomous communities on the foundations of Roman settlements and simply expanded the walls from their Roman basis. This architectural structure likened towns and cities to the fortified residences of aristocrats, which were emerging roughly at the same time. At the turn towards the eleventh century, some aristocrats began to move their residences out of rural villages to uphill locations where the landscape allowed them to do so, and protected them with walls. They used their fortified residences as centres of rule of rural villages in the vicinity. The Latin word *burgus* together with its cognate *burh*, the root for Modern English borough, common since the eighth century, came in use for these residences as well as for urban communities equipped with walls.⁸ Initially, many a town and city was *burgus*, but not every *burgus* was a town or city. Some towns grew at the bottom of an aristocratic *burgus*, with walls separating the urban settlement from the aristocratic residence. In other cases, the wall may have encircled both the urban settlement and the aristocratic residence. Still other autonomous towns and cities used the name element *burgus*, such as Hamburg, although they featured no relation with any nearby aristocratic residence. The relations between autonomous urban political communities and nearby or even distant aristocratic rulers were often conflictual, with wars being endemic. Specifically large cities, such as those in the German Hansa League, namely Hamburg, Lübeck or Cologne, as well as Frankfurt or Nuremberg outside the League, often clinched with aristocrats in the vicinity, but also used the right to war in campaigns against rulers over large territories such as the King of Denmark. These campaigns ranked as just wars.

Merchants from towns and cities in Latin Christendom were embedded in networks spanning large parts of the Eurasian-African continental block and facilitating trade relations reaching as far as the interior of West Africa and East Asia. Some merchants undertook long-distance journeys to remote markets. The Venetian Polo family became famous for its two journeys to China, the latter of which lasted about twenty-five years at the end of the thirteenth century. Marco Polo (c. 1254 – 1324), a member of the travelling group, belonged to the very few traders who allowed the report on his experiences to be transmitted in writing, thereby making them available to a wider audience rather than keeping them as a professional secret.⁹ The first journey, in which Marco Polo did not participate, is known only from the brief remarks he included in his report about the second

und Juristen (Munich, 1994).

⁸ H. van Werveke, “*Burgus*”. *Versterking of nederzetting?* (Verhandelingen van de Koninklijke Vlaamse Academie vor Wetenschappen, Letteren en Schone Kunsten van België. Klasse der Letteren, vol. 27, nr 59) (Brussels, 1965). Hansjürgen Brachmann and Joachim Herrmann, eds, *Frühgeschichte der europäischen Stadt* (Schriften zur Ur- und Frühgeschichte, 44) (Berlin, 1991), pp. 35-49. Gabriele Isenberg and Barbara Scholkmann, eds, *Die Befestigung der mittelalterlichen Stadt* (Städteforschung. Reihe A, vol. 45) (Cologne, Weimar and Vienna, 1997), pp. 79-90 [also in: *Stadt- und Landmauern*, vol. 2: Stadtmauern in der Schweiz (Veröffentlichungen des Instituts für Denkmalpflege an der ETH Zürich. Vol. 15, Part 2.) (Zurich, 1996), pp. 41-60]. James D. Tracy, ed., *City Walls. The Urban Enceinte in Global Perspective* (Cambridge, 2000). Philip Andrews, ed., *Southampton Finds*, vol. 1: The Coins and Pottery from Hamwih (Southampton Archaeology Monographs, 4) (Southampton, 1988) Andrews, ed., *Excavations at Hamwih*, vol. 2: Excavations at Six Dials (Council for British Archaeology, Research Report 109) (London, 1997). Richard Hodges, “State Formation and the Role of Trade in Middle Saxon England”, in: David Green, Colin Haselgrove and Matthew Spriggs, eds, *Social Organization and Settlement* (British Archaeological Reports, International Series 47) (Oxford, 1978), pp. 439-453. Hodges and Brian Hobbey, eds, *The Rebirth of Towns in the West. AD 700 – 1050* (Council for British Archaeology, Research Report 68) (London, 1988). Herbert Wilhelm Alfred Jankuhn, “Trade and Settlement in Central and Northern Europe up to and during the Viking Period”, in: *Journal of the Royal Society of Antiquaries of Ireland* 112 (1983), pp. 18-50.

⁹ Marco Polo, *Liber de consuetudinibus et conditionibus orientalium regionum* (Antwerp, 1485) [reprint (Tokyo, 1949); further edns as *Le livre des merveilles* [Facsimile edn of Ms Paris, Bibliothèque nationale de France, Fonds Franç. 2810] (Tokyo, 1998); *The Book of Sir Marco Polo, the Venetian, Concerning the Kingdoms and Marvels of the East*, edited by Henry Yule, third edn (London, 1929); first edn of this text (London, 1871); *Notes and Addenda*, by Henri Cordier (London, 1920); *Il libro di Marco Polo*, edited by Daniele Ponchiroli (Turin, 1982); also edited by Ettore Mazzali, *Il Milione* (Milan 1982); *Der mittelhochdeutsche Marco Polo*, edited by Horst von Tscharnar (Berlin, 1935)].

journey. However, he did report that, on its return from the first visit, his father Maffeo obtained golden tablets requesting the granting of hospitality to him and his fellow travellers. The report seems trustworthy, as Marco inherited some gold tablets, which may have been identical with the hospitality instructions for Maffeo. With regard to the second journey, Marco provided details about the route the group had taken on its way and also described his activities in China. He also mentioned an island called Zipangu, placing it at a position usually featuring terrestrial paradise in world maps of Latin Christendom. In his fourteenth-century *Yüan-shi*, Lian Song (1310 – 1381) mentioned some Make Boluo and appears to refer to Marco Polo.¹⁰ In the trading network, Cairo served as a pivotal point, providing for a central market where trading routes connected Africa, Asia and Europe. Cairo also served not only served as a market for goods but also for news.

Apparently at the turn towards the eleventh century, aristocratic power holders began to identify themselves as members of a distinct *ordo*. They derived their status not from the model of the sworn community, into which members could seek acceptance at their own discretion. By contrast, aristocrats traced their own *ordo* directly back to what they gave out as divine will. The aristocratic *ordo* thus served as ideology purporting to legitimise aristocratic rule as part of the divinely willed world order. From their ideology, aristocrats derived the claim that membership in their *ordo* could only be acquired by birth, but, as a rule, not through some formal act of admission. At the turn towards the eleventh century, Catholic theologians¹¹ sought to support the claim for the divine origin of aristocratic ruling privileges, including the right to war, through resort to a schematic classification of the social order of humankind into the three *ordines* of priests, warriors and peasants.¹² This particular meaning of *ordo* was also represented by the Latin word *status*. The choice of this word was appropriate, as it was derived from the Latin verb *stare*, meaning ‘to stand’ and was thus applicable to the three *ordines* of humankind credited with perpetuity as part of the divinely willed world. The European vernacular languages borrowed the Latin word *status* in slightly modified versions, among them Modern French *état*, Modern English ‘estate’ as well as ‘state’, German *Staat* together with the loan formation *Stand*. Accordingly, the “warrior estate” was initially the *ordo* of the warriors with their privileged *status*, to which access was restricted by birth.

Aristocrats as members of the “warrior estate” thus claimed autonomy of rule for themselves, including the privilege of the right to war. Consequently, these privileged warriors had to be differentiable from ordinary warriors, who were being summoned to arms at rulers’ request and, hence, did not have their own right to conduct just wars. In order for this distinction to become operable, a specific, mainly literary warrior ethics emerged, again during the eleventh century. This ethics imposed tight moral obligations upon members of the “warrior estate”, explicitly demanding readiness for service and willingness to respect the honour of all estate members. Aristocrats implementing the warrior ethics ranked as “knights”. Originally, this word was a term for warriors fighting on horseback, thereby distinguishing them from ordinary non-aristocratic infantrymen. However, since the fourteenth century, the link between knighthood and capability to fight on horseback softened. From the eleventh century, knights, like monks, could unite into religious orders.

¹⁰ Ibid., pp. 6-7, 161-165. Lian Song, *Yüan-shi*, chap. 119, vol. 10 (Beijing, 1976), pp. 2943-2944. For studies see: Hai Peng, ‘Guanyu Make Boluo zai Yangzhou’, in: Peng, *Make Boluo lai Hua shishi* (Beijing, 2010), pp. 291-296 [first published in: *Lishi yanjiu* 2 (1980)]. Hans-Ulrich Vogel, *Marco Polo Was in China. New Evidence from Currencies, Salts and Revenues* (Monnies, Markets and Finance in East Asia. 1600 – 1900, 2) (Leiden, 2013), pp. 77-78.

¹¹ Adalbero of Laon, *Carmen ad Robertum regem*, vv. 296-299, edited by Claude Carozzi (Les classiques de l’histoire de France au Moyen Age, 32) (Paris, 1979), p. 22. Aelfric, Abbot of Eynsham, *Die Hirtenbriefe Aelfrics in altenglischer und lateinischer Fassung*, edited by Bernhard Fehr (Bibliothek der angelsächsischen Prosa, 9) (Hamburg, 1914), pp. 225-226 [reprint (Darmstadt, 1966)]. Aelfric, *Treatise on the Old and the New Testament*, edited by Samuel John Crawford (Early English Text Society. Original Series, 160) (London, 1922), pp. 71-72 [reprint, edited by Neil Ripley Ker (London, New York and Toronto, 1969)].

¹² Claude Carozzi, ‘La tripartition sociale et l’idée de paix au XIe siècle’, in: *La guerre et la paix au Moyen Age* (Congrès National des Sociétés Savantes, 101) (Paris, 1978), pp. 9-22. Georges Duby, *The Three Orders* (Chicago, 1980) [first published (Paris, 1978)]. Otto Gerhard Oexle, ‘Die funktionale Dreiteilung als Deutungsschema der sozialen Wirklichkeit in der ständischen Gesellschaft des Mittelalters’, in: Winfried Schulze and Helmut Gabel, eds, *Ständische Gesellschaft und soziale Mobilität* (Schriften des Historischen Kollegs, Kolloquien 12) (Munich, 1988), pp. 19-51.

Initially, knightly orders were established in contexts of planned military campaigns. From then on, they converted into permanent institutions and could acquire their own entitlements to rule over land and resident population groups.¹³

These variegated types of power holders were added to the traditional *reges* who had been in control over larger or smaller territories with *gentes* as resident population groups. The number of rulers claiming for themselves the royal title re-increased from the tenth century. More often than in previous centuries, the Latin title *rex* came to be supplemented with vernacular forms such as English 'king', although this word, in the form *cyning*, had been on record in official use since the seventh century. Areas in Europe placed under the rule of *reges* or kings since the eleventh century could be considered to lie outside the confines of the Roman Imperium, such as Scotland, Poland, Hungary, Sicily, Portugal, Aragón and Castile; but, like Bohemia, they could also be perceived as part of the Imperium. The new kingdoms filled the ranks of the few remaining older counterparts, namely Denmark, England, France and Sweden. The eleventh century even witnessed the creation of the "Rex Romanorum", the Roman king next to the Roman Emperor, as the head of the "Regnum Teutonicum", the Kingdom of the Germans, came into existence within the Roman Imperium during the eleventh century.¹⁴ The new kingdoms, together with their traditional counterparts, faced the Roman Imperium to the North, West and South, so that the Imperium had to appear as factually limited through borders with its neighbouring kingdoms. As by the same time kingdoms were in existence within the Imperium, the questions, of which legal rules could regulate the relations between the Roman Emperor and the several kings and whether there was a distinction in rank between the Emperor as the believed universal ruler and the various autonomous rulers over larger or smaller areas, had to find their answers.

Claims for Universal Rule and the Right to War

The Roman Emperor in the Occident for Latin Christendom, together with the Basileus in Byzantium for Greek Christendom, continued to hold their positions as universal rulers above the local kings and other holders of secular power. The Catholic and the Orthodox churches separated in 1054 through the reciprocal excommunication. This was primarily a matter of internal ecclesiastical organisation with little immediate impact on the relations of the two Christian universal rulers. Yet in the long run, it did ferment alienation between the two religious communities by dividing them into two confessional camps with dogmatic and often also spatial boundaries. Even though the separation of the Orthodox and the Catholic churches did not imply the division of the Roman Imperium, it did elevate onto the political agenda the awkward question, how the two Christian rulers could cooperate to the end of preserving the Roman Imperium as an institution guaranteeing the continuity of the world.¹⁵ In Christian perspective, the question appeared urgent in view of the fact that Muslims stood in control of the Holy Land in Palestine. Moreover, fears of the approaching end of the world gained strength at the turn towards the second millennium.¹⁶ Because both, the Occidental and the

¹³ Bernhard of Clairvaux, 'Liber ad milites Templi de laude novae militiae', in: *Sancti Bernhardi Opera*, edited by Jean Leclercq and H. M. Rochais, vol. 3 (Rome, 1963), pp. 213-239. For a study see: Josef Fleckenstein, 'Die Rechtfertigung der geistlichen Ritterorden nach der Schrift "De laude novae militiae" Bernhards von Clairvaux', in: Fleckenstein, ed., *Die geistlichen Ritterorden Europas* (Vorträge und Forschungen, hrsg. vom Konstanzer Arbeitskreis für mittelalterliche Geschichte, 26) (Sigmaringen, 1980), pp. 9-22.

¹⁴ Jörg Jarnut, 'Ein Treppenwitz. Zur Deutung der Rechtsbezeichnung *regnum Teutonicorum* in den Salzburger Annalen', in: Franz-Reiner Erkens and Hartmut Wolf, eds, *Von Sacerdotium und Regnum. Geistliche und weltliche Gewalt im frühen und hohen Mittelalter. Festschrift für Egon Boshof* (Passauer Historische Forschungen, 12) (Cologne, Weimar and Vienna, 2002), pp. 313-323.

¹⁵ As raised by: Otto, Bishop of Freising, *Chronica sive historia de duabus civitatibus*, Prologus, edited by Adolf Hofmeister (Monumenta Germaniae historica Scriptores rerum Germanicarum in usum scholarum separatim editi, 45) (Hanover, 1912), pp. 6-8.

¹⁶ Claude Carozzi, *Weltuntergang und Seelenheil. Apokalyptische Visionen im Mittelalter* (Frankfurt, 1996). Carl Erdmann, *Die Entstehung des Kreuzzugsgedankens* (Stuttgart, 1935) [reprints (Darmstadt, 1955; 1965; 1972; 1974; 1980)]. Johannes Fried, 'Endzeiterwartung um die Jahrtausendwende', in: *Deutsches Archiv für Erforschung des Mittelalters* 45 (1989), pp. 381-473. Daniel Verhelst, 'Adso van Montier-en-Der en de angst voor het jaar Duizend',

Byzantine Basileus clashed with Muslim rulers in West Asia in their pursuit of claims towards universal rule, conflict between Christian and Muslim rulers about Palestine were becoming the more likely the more intense the belief intensified that Palestine was the centre of the world. In Christian perspective, the claim for universal rule was, then, no longer mere ideology, capable of pragmatically reconciling rival claims. Rather, since the second half of the eleventh century, at least some Christian rulers began to ascribe to themselves the task of implementing universal rule through the use of military means to the end of facilitating the conquest of Palestine.¹⁷

Practically, plans of military conquest remained confined to the eastern Mediterranean area. However, the intention of implementing the claim towards universal rule through military force translated into the strategy of conducting war against rulers and groups, factually or apparently outside the reach of or even resisting the control of the Basileus. In Roman imperial perspective, there were three categories of enemies of the Roman Imperium: first political communities within the Imperium demanding autonomy for themselves; second outside the Imperium, but within Latin Christendom rulers, specifically the King of France, who were denying any dependence upon the Emperor; third, beyond Latin Christendom, rulers either in control over areas bordering on the Roman Imperium or articulating their own claims for universal rule, namely Muslim rulers in West Asia, North Africa, the Iberian Peninsula and, since the fourteenth century, the Ottoman Turkish Sultan extending his sway over the Balkans. These three overlapping fields of conflict formed the background for the introduction of new norms into the law of war and peace. Within the framework of economics and politics of Latin Christendom, new rules were added to the basic stock which had formed the law of war and peace since Ancient Near Eastern times. The increasing demand for new norms, in turn, resulted in new approaches to theories of politics and of the law of war and peace

However, claims for universal rule articulated in China at the same time, specifically through the Yuan-Dynasty (1279 – 1368) by military means and by its successor, the Ming-Dynasty (1368 – 1644) through the practical conducts of politics, did not encounter responses among the competing universal rulers in the Mediterranean area. Chinese armies were never marched against Byzantine or Latin Christian forces, even though Mongolian warrior bands briefly penetrated into interior domains of the Arab Muslim world and touched upon the boundaries of Latin Christendom. The trans-Eurasian trade and other relations, jointly with trade relations between the Roman Imperium and the Songhai Imperium, which had been formed in the interior of West Africa in the tenth century as well as between the Roman Imperium and the Mali Imperium established in the upper Niger valley during in the fourteenth century, all continued to remain under the rule of the law of war and peace as constituted through the great tradition. The economic and political transformations occurring in Latin Christendom had no impact on areas east of Byzantium and West Asia up until the end of the fifteenth century. They also did not restrict the intensity of trade relations of some Christian cities, such as Genua and Venice, with markets in areas under Muslim control, specifically Cairo, and elsewhere in Africa and Asia.

Yet, the process of the formation of a pluralism of types of rulers impeded the construction of a sufficiently precise legal terminology applicable to types of rulers. This was so because the ideological foundations for theories of universal rule substantively differed from ideologies apt to legitimise quests for the recognition of the autonomy of government over partial territories and their residents. Notably, the solution of the problem of determining the legal status of universal rulers vis-à-vis rulers over more or less precisely demarcated territories proved to be a formidable task for political and legal theorists. Even a generic term for these territories and their rulers was lacking. Bishop John of Salisbury (c. 1120 – 1180), for one, decided to use the phrase *res publica* for the state and equated the armed forces with the “armed hand of the state”. He viewed the armed forces as cooperating closely with adjudicatory institutions, which he ranked as the “unarmed hand of the state”. John of Salisbury expected that cooperation between both “hands of the state” could contribute to the provision of “protection of life, hopes and the afterworld of working communities

in: *Tijdschrift voor geschiedenis* 90 (1977), pp. 1-10.

¹⁷ Bernd Schneidmüller, ‘Kaiser sein im spätmittelalterlichen Europa. Spielregeln zwischen Weltherrschaft und Gewöhnlichkeit’, in: Claudia Garnier and Hermann Kamp, eds, *Spielregeln der Mächtigen. Mittelalterliche Politik zwischen Gewohnheiten und Konventionen* (Darmstadt, 2010), pp. 265-290.

against enemies”.¹⁸ But *res publica* and other terms such as *civitas* could neither denote political communities other than states nor could they encompass the order of the world as a whole. On the other side, the Latin word *status* could stand for many things, estates as *ordines*, the divinely willed condition of the world and many types of power holders. The fundamental differences among the various types of *ordo* could apparently not be subsumed into a generic concept and a single word.

The consequences for the conceptualisation of the law of war and peace were straightforward. If, in view of the pluralism of types of rulers, no ranking scheme could be imposed upon them, all legitimate power holders would have to be granted their own right to war (*ius ad bellum*). Hence, there was no criterion, cast into legal norms, according to which legitimate power holders could be denied the capability of conducting just wars. This was so because, according to the great tradition of the law of war and peace, determining the justice of wars critically hinged on the ascertainability and recognition of the legitimacy of rule. However, as the pluralism of types of legitimate rulers sparked conflicts over the demarcation of borders, recognition of rank and the legal implications of titles on actual ruling competences, with all these conflicts frequently resulting in wars, efforts to restrict the right to war and the war-making capability were mandatory under the overarching common goal of preserving the stability of the divinely willed world order. Moreover, not only the number of military conflicts increased but also the size of armed forces led into battle and the sophistication of the weaponry expanded the destructive capacity of military action.

Initiatives to generate regulations of war and the *ius ad bellum*, beyond the restatement of norms pertaining to the great tradition of the law of war and peace, originated from the Catholic Church at the turn towards the eleventh century. Since that time, specifically bishops campaigned for the recognition of “sacred zones” around church buildings banning, among other things, the use of weapons within these zones. In Spain, these zones were unknown by the word *sagrera*. Already in the course of the eleventh century, bishops, mainly in Western Europe, began to mandate peace at specified places for limited periods under the technical term of the “Peace of God”.¹⁹ In the course of the twelfth century, secular rulers, including the Roman Emperor, joined the movement of the “Peace of God” and imposed regulations for the so-called “territorial peace” (*Landfrieden*) in areas under their control, including the prohibition to use weapons. These prohibitions were considered enforceable against every resident in these areas, including aristocrats.²⁰ The condition was that the population groups under the sway of territorial rulers, having been turned into their subjects, should settle their disputes before territorial courts of adjudication. In autonomous cities, the prohibition to carry weapons had existed anyway for all participants in urban activities, not just for residents. The condition, in this case, was that urban councils as governing institutions possessed the equivalent of the monopoly of the use of force within the communities under their control.²¹ But these measures, taken together, did not succeed in curtailing the aristocratic right to war in the long run, primarily when knights bore rule over dependent farming villages and retained their capability to expand the area under their sway at the expense of rival knights.

Nevertheless, the right to war, even when aristocrats could claim it successfully, was not necessarily of practical use, as its exercise depended upon the capability of mobilising a fighting force. Conventionally, aristocratic rulers would either recruit warriors from the farming population under their control or employ paid mercenaries, in order to lead them into battle. Some peasant warriors could form special contingents using technical weapons such as the bow, while some mercenaries could specialise in the use of crossbows. In any case, aristocratic rulers either needed considerable funds or a large population of subjects allowing the recruitment of sizeable fighting

¹⁸ John of Salisbury, *Policraticus*, chap. V/6, chap. VI/1-21, edited by Clement Charles Julian Webb (Oxford, 1909), pp. 548d-554a, 587d-620a [reprints (Frankfurt, 1965); (New York, 1979)].

¹⁹ Thomas Head and Richard Landes, eds, *The Peace of God. Social Violence and Religious Response in France around the Year 1000* (Ithaca and London, 1992).

²⁰ Arno Buschmann and Elmar Wadle, eds, *Landfrieden. Anspruch und Wirklichkeit* (Rechts- und Staatswissenschaftliche Veröffentlichungen der Görres-Gesellschaft, N. F. 92) (Paderborn, Munich, Vienna and Zurich, 2001).

²¹ As imposed, among others, for Nuremberg in: Joseph Baader, ed., *Nünberger Polizeiordnungen aus dem XIII. bis XV. Jahrhundert* (Bibliothek des Litterarischen Vereins in Stuttgart, 63) (Tübingen, 1861), pp. 38-39, 51-54 [reprint (Amsterdam and Atlanta, GA, 1966)].

forces. Hence, the size of the territory and the numbers of residents crucially affected the war-making capability of aristocratic knights, irrespective of their legal entitlement to conduct wars. Lesser aristocrats often had no choice other than to allow being employed in service to a higher, more affluent ruler or a city council, unless they forged alliances among themselves. Practical conduct of war thus privileged the higher aristocracy, whose members had better chances of expanding the territory under their control, which, in turn, provided them with more ample military means. In consequence of this hierarchisation of the aristocracy, a formal ordering scheme for aristocrats became institutionalised during the twelfth century, replacing the older criterion of measuring the rank of aristocratic kin groups in accordance with the length of their ascertainable genealogical tradition. The new ordering scheme, enforced explicitly only for a part of the Roman Imperium but tacitly applied elsewhere in Latin Christendom as well, provided for a ranks of titles of rulers, featuring the royal title in the highest echelon above dukes, earls and ordinary barons.²² The ranking scheme did not have to imply that areas under the control of barons or earls were necessarily identified as parts of territories under the sway of higher ranking aristocrats. Even though this perception is on record for England and France already for the eleventh century, within the Roman Imperium duchies, earldoms, territories under the rule of barons, towns and cities as well as territories under monastic rule could be regarded as exempted from the overlordship of higher-ranking aristocrats and placed under the sole authority of the Emperor. Within the Imperium, direct dependence on the Emperor meant the legal recognition of autonomy of control over demarcated parts of the territory of the Imperium. Since the thirteenth century, some kings outside the Roman Imperium solicited the further claim that they were the highest rulers over the territories and population groups under their sway. This claim was tantamount to the rejection of any imperial overlordship over these kingdoms. The kings of England, France and Sicily were explicit in stating this claim,²³ while kings in Spain gave indirect expression to it by styling themselves as Emperor without attachment to the Roman imperial tradition.

Such processes of the hierarchisation of rulers were not confined to Latin Christendom but occurred in other parts of the world between the twelfth and the fifteenth centuries as well. Most notably in Sung-Period China, the number of small local territories increased precipitating military conflicts about borders and effective control of territories. This prolonged period of rivalries among local rulers ended with the invasion of Mongol cavalry armies during the thirteenth century, whose leaders imposed themselves in control over Chinese ruling institutions. In Japan, a warrior aristocrat, having risen from low ranks, obtained control over competing aristocratic warrior bands in 1192 and established central governing authority over large parts of the archipelago. But the new authority quickly decentralized boosting the rise of new rivalling local rulers.

In all these cases, conflicts over the establishment of rank and the recognition of the autonomy of government increased the number of wars. The aim of these wars was not only victory in battle but also control over fortified places, specifically towns and cities. These aims enhanced the deployment of technical devices as weapons targeted both against fortifications and against outside aggressors. Prominent among these weapons were catapults, crossbows as well as tools capable of using fire not merely against ships but all sorts of targets. Progressive technologisation of war further increased the destructive capacity of the weaponry. Next to fire arrows, the iron-founded gun came in use by the end of the thirteenth century at the latest, allowing the ejection of bullets through controlled explosions. The type of firearm appears to have initially been directed against large-size targets, such as fortified urban settlements, and represented merely one type of engines against fortification. So far, the oldest pictorial record of a firearm comes from China.²⁴ Possibly,

²² Eike von Repgow, *Sachsenspiegel*, part 2: Lehnrecht, § 1, edited by Karl August Eckhardt (Monumenta Germaniae historica. Germanenrechte, N. F., vol. 1, part 2 = Fontes iuris Germanici antiqui, N. S., vol. 1, part 2). Göttingen 1956, p. 19.

²³ Robert Feenstra, 'Jean de Blanot et la formule "Rex Franciae in regno suo princeps est"', in: *Etudes d'histoire canonique dédiées à Gabriel Le Bras*, vol. 2 (Paris, 1965), pp. 17-45 [reprinted in: Feenstra, *Fata iuris Romani. Etudes d'histoire du droit* (Leiden, 1974), pp. 139-148]. Gennaro Maria Monti, 'Intorno a Marino de Caramanico e alla formula "Rex est imperator in regno suo"', in: *Annali del Seminario Giuridico Economico della R[eale] Università di Bari* 6 (1933), pp. 3-17.

²⁴ Joseph Needham, *Military Technology. The Gunpowder Epic* (Needham, Science and Technology in China, vol. 5,

Mongolian armies carried the gun to West Asia and to the Mediterranean area, from where it arrived in Europe. The oldest extant gun appears to have been founded early in the fourteenth century.²⁵ Pictorial and written sources are extant mainly from Southern and Central Europe from the 1320s and 1330s.²⁶ These early guns quickly grew into sizeable bombards but also converted into portable firearms deployable against mobile targets.

The use of the fire as a weapon had a long tradition in China as well as in the Mediterranean area. In addition, Byzantium was the home of an elaborate fortification and poliorcetic technology,²⁷ based on Ancient Roman tradition and applied early on in Latin Christendom as well. Eight- and ninth-century Latin chroniclers reported on sieges of fortified places, including the use of the fire as a weapon.²⁸ The use of fire in war is also on record from the tenth century.²⁹ In the twelfth century, Emperor Frederick I (1152 – 1190) ordered the use of catapults in the war he fought against Northern Italian cities challenging his imperial rule.³⁰ These cities tried to resist attempts to restore imperial rule by specialising on the production of new types of poliorcetic weaponry, namely large bombards and crossbows. Crossbows allowed the ejection of arrows which could fly across wide distances and then penetrate the armouries of aristocratic knights. Initially during the fourteenth century, these technologically complicated weapons were rarely operated in battle fields, while a gun appears to have been used in the battle of Crécy fought between the English and the French army in 1346. But, in this case, the gun does not seem to have decided the outcome of the battle, in which English longbow men accomplished victory.³¹

In contradistinction against the Arab Muslim world, initiative towards the technological development of firearms in Latin Christendom passed from the Emperor and the kings as rulers over large compounds of territory and commanders of sizeable armed forces to urban councils and territories under the sway of knightly orders. These institutions availed themselves of firearms in their campaigns against aristocratic rulers in their vicinity as well as against kings mainly in Northern Europe. The reason stimulating interest in advancing firearms technology among urban councils was simple. The production and deployment of large bombards as well as portable firearms in large numbers demanded huge funds. Aristocratic war lords, holding control only over a limited territory and small numbers of subjects, could not bear the costs of arming their military forces with technologically complicated weapons. But even kings and other high-ranking rulers, such as the kings of England, commanding sizeable armed forces, did not then, as a rule, have at their disposal amounts of revenue sufficient to allow the equipment of their armed forces with the required

part 7) (Cambridge, 1986), pp. 24-33, 228-229. Needham and Robin D. S. Yates, *Military Technology, Missiles and Sieges* (Needham, Science and Civilization in China, vol. 5, part 6) (Cambridge, 1994), pp. 184-240.

²⁵ Theodor Jakobsson, 'Ein waffengeschichtlich wertvoller Geschützfund im Armeemuseum von Stockholm', in: *Zeitschrift für Historische Waffen- und Kostümkunde* 17 (1943), pp. 124-127.

²⁶ Kelly Robert DeVries, 'A Reassessment of the Gun Illustrated in the Walter de Milimete and Pseudo-Aristotle Manuscripts [Holkham Hall Ms fol. 42^v]', in: *Journal of the Ordnance Society* 15 (2003), pp. 5-17. Wilfried Tittmann, 'Die Geschützdarstellungen des Walter de Milemete von 1326', in: *Waffen- und Kostümkunde* 35 (1993), pp. 145-147.

²⁷ Maurikios, *Das Strategikon des Maurikios*, edited by George T. Dennis (Corpus fontium historiae byzantinae, 17) (Vienna, 1981).

²⁸ Paul the Deacon, *Historia Langobardorum*, chap. IV/23, edited by Georg Waitz (Monumenta Germaniae Historica. Scriptorum rerum Langobardicarum et Italicarum Saeculorum VI – IX) (Hanover, 1878), p. 155. Abbo of Saint Germain-des-Près, *De bello Parisiaco libri III*, book I, vv 177-292, edited by Georg Heinrich Pertz (Monumenta Germaniae historica. Scriptorum rerum Germanicarum in usum scholarum separatim editi, 1) (Hanover, 1871), pp. 12-15.

²⁹ Robert Halleux, 'Aux origines des feux de guerre', in: Nicolas Prouteau, Emmanuel de Crouy-Chanel and Nicolas Faucherre, eds, *Artillerie et fortification. 1200 – 1600* (Rennes, 2011), pp. 13-21 [pp. 17-21: edition of select texts from: Bibliothèque Humaniste Sélestat, Ms Philippe Corning, Compositiones Lucenses, fol. 34^v-35^r, Hs 17 Mappae Claviculae, fol. 42^v, 45^v-46^r].

³⁰ Rahewin, *Gesta Friderici*, chap. III/32, edited by Georg Waitz (Monumenta Germaniae historica. Scriptorum rerum Germanicarum in usum scholarum separatim editi, 46) (Hanover, 1884), p. 165.

³¹ Henry William Lovett Hime, 'Cannon at Crécy', in: *Proceedings of the Royal Artillery Institution of Woolwich* 26 (1865/66), pp. 157-162. Matthew J. Strickland and Robert Hardy, *The Great Warbow. From Hastings to the Mary Rose* (Stroud, 2005).

numbers of firearms. Edward I (1272 – 1307), for one, in the battle of Falkirk (1298), fought with 7000 horsemen and at least twice as many infantrymen on the English side but hardly any of the novel, technologically sophisticated weapons.³² Moreover, the number of available technical specialists was small, who were capable of producing and deploying firearms, mainly gunners in charge of producing and operating large-size bombardars. These specialists usually charged high wages for their services, which usually only urban councils could provide. Hence, disposal over firearms placed urban councils within the Roman Imperium in the position of a strategic advantage, which they could play out against low-ranking aristocratic rulers in struggles for autonomy. Towns and cities forming urban leagues, such as the German Hansa, could amplify this advantage. Furthermore, the costs of the construction and maintenance of fortifications by far exceeded the financial capabilities of most aristocratic rulers. Consequently, only urban councils and high-ranking aristocratic rulers could afford effective fortifications for towns and cities.³³ The firearms enhanced the destructive potential of urban armies during the fourteenth and fifteenth centuries under peculiar economic and political conditions, not only in consequence of their technological features.³⁴

Concrete Norms of the Law in War and Programs for Peace

Together with changes of political theory, the transformations of the use of weapons in conjunction with the expansion of military activities provoked the formulation and attempts at the enforcement of new norms of the law of war and peace. Secular rulers together with Catholic Church institutions responded through the concretisation of hitherto abstract theological principles of the determination of the justice of wars and sought to condense these principles into positive legal norms relating to the law in war (*ius in bello*). The new textual genre of articles of war served as the means for the dissemination of these norms among fighting forces whose members received obligation to swear abidance by the articles before their deployment. Breach of the norms enshrined in the articles of war was sanctioned with severe punishment. The articles of war regulated combat action in battle and prescribed the application of the strict distinction between combatants and non-combatants.³⁵ According to the Articles of War, which Frederick I enacted for his troops fighting in Northern Italy in 1158, warriors had to treat women, children, senior people, clergy and unarmed peasants as non-combatants and refrain from any action against them.³⁶ Through his enforcement of the strict distinction between combatants and non-combatants, Frederick promulgated the definition of war as a conflict among bearers of weapons, who acted by authorisation of rulers as the legitimate holders of the right to war. Within this perspective, the armies under the command of urban councils, against whom Frederick was campaigning, were illegitimate resistance forces. At the time, the conceptual distinction between combatants and non-combatants was neither new nor specific to Latin Christendom. It had been part of the great tradition of the law of war and peace, serving the purpose of hedging war. This traditional feature of the law of war and peace was still present in the twelfth century articles of war, but, in these texts, it took a secondary role behind the needs of maintaining

³² Walter of Hemingburgh, *Chronicon*, edited by Harry Rothwell, *The Chronicle of Walter of Guisborough. Previously Known as the Chronicle of Walter of Hemingford or Hemingburgh* (Camden Third Series, 89) (Cambridge, 1957), p. 324.

³³ Gerhard Fouquet, 'Städtischer Wehrbau im Spätmittelalter. Finanzierung und Planung', in: Michael Matheus, ed., *Stadt und Wehrbau im Mittelrheingebiet* (Institut für Geschichtliche Landeskunde an der Universität Mainz. Mainzer Vorträge, 7) (Stuttgart, 2003), pp. 69-89.

³⁴ Clifford J. Rogers, 'The Military Revolutions of the Hundred Years' War', in: *Journal of Military History* 57 (1993), pp. 241-278 [reprinted in: Rogers, ed., *The Military Revolution Debate* (Boulder, San Francisco and Oxford, 1995), pp. 55-93; also in: Rogers, *Essays on Medieval Military History. Strategy, Military Revolutions and the Hundred Years War* (Aldershot, 2009), nr IV; also in: Alex J. Bellamy, ed., *Critical Concepts in Political Science. War*, vol. 2 (Abingdon, 2009), pp. 67-98]. Rogers, 'Tactics and the Face of Battle', in: Frank Tallett and David J. B. Trim, eds, *European Warfare. 1350 – 1750* (Cambridge, 2010), pp. 203-235.

³⁵ Wilhelm Beck, *Die ältesten Artikelsbriefe für das deutsche Fußvolk* (Mnich, 1908).

³⁶ Alois Elsner, *Das Heeresgesetz Kaiser Friedrichs I. vom Jahre 1158*, art. 5, 6, 14 (Schulprogramm des Königlich Katholischen St. Matthias-Gymnasiums zu Breslau. 1881-1882) (Breslau, 1882), pp. IV-V.

effective lines of command under the constraints of battle within armies with growing numbers of combatants. Accomplishing this goal appeared to be possible through the swearing of oaths to the end of enforcing the articles of war. Although the articles themselves could not prevent combatants from infringing upon the norms contained in them, as already Frederick's biographer lamented,³⁷ the sanctions threatening punishment breaking the articles did pose a warning for combatants ignoring them. But Frederick himself as the imperial commander on occasions chose to ignore the obligation to distinguish between combatants and non-combatants by commanding acts of terror such as the killing of prisoners of war in the face of his enemies.³⁸ Against these odds, the articles of war did testify to the twelfth-century conviction that warfare could be regulated and that the enactment of concrete norms for the law in war belonged to the duties of a legitimate military leader. The articles of war as a textual genre remained productive to the nineteenth century.

The Catholic Church used its own legislative instruments to oppose the use of technical devices as weapons it categorised as excessively lethal. For one, a church council meeting at the Lateran in Rome in 1139 banned the use of crossbows and several subsequent councils restated the ban.³⁹ Yet, these prohibitions remained without effect, even if they documented efforts to hedge war. Crossbows eventually went out of use during the fifteenth century, but not in consequence of church bans. Rather they were superseded by portable firearms, once the targeting capability of these weapons increased.⁴⁰

The use of firearms of all sorts raised concerns among critics, who heavily complained about the disastrous consequences of the burgeoning lethality of warfare and the high frequency of wars. While, early in the fourteenth century, Dante Alighieri⁴¹ could praise the Roman Imperium as the guarantor of justice and peace⁴² and treaties between rulers could class peace as the divinely willed condition of the world threatened solely by the devil,⁴³ fifteenth-century critics of warfare were unimpressed by such reference to Augustinian peace theology and, instead, treated as empty

³⁷ Otto of Freising, *Gesta Friderici* (Continuation by Rahewin), chap. III/29, edited by Georg Waitz (Monumenta Germaniae historica Scriptorum rerum Germanicarum in usum scholarum separatim editi, 46) (Hanover, 1884), pp. 161-163.

³⁸ Otto of Morena, *Das Geschichtswerk des Otto von Morena und seiner Fortsetzer über die Taten Friedrichs I. in der Lombardei*, edited by Ferdinand Güterbock (Monumenta Germaniae historica Scriptorum rerum Germanicarum in usum scholarum separatim editi, 7) (Berlin, 1930), pp. 107-115 (s. a. 1159).

³⁹ Charles-Joseph Hefele and Henri Leclercq, *Histoire des conciles*, vol. 7, part 1 (Paris, 1916), p. 442. Dietrich Kurze, 'Krieg und Frieden im mittelalterlichen Denken', in: Heinz Duchhardt, ed., *Zwischenstaatliche Friedenswahrung in Mittelalter und Früher Neuzeit* (Münsterische Historische Forschungen, 1) (Cologne and Vienna, 1991), pp. 1-44, at p. 35 [reprinted in: Kurze, *Klerus, Ketzer, Kriege und Propheten. Gesammelte Aufsätze*, edited by Jürgen Sarnowsky, Marie-Luise Heckmann and Stuart Jenks (Warendorf, 1996), pp. 344-392]. Ben Lowe, *Imagining Peace. A History of Early English Pacifist Ideas* (University Park, PA, 1997), p. 19.

⁴⁰ Sven Ekdahl, *Die Armbrust im Deutschordensland Preußen zu Beginn des 15. Jahrhunderts* (Fasciculi archaeologiae historicae, 5) (Lodz, 1992). Egon Harmuth, *Die Armbrust* (Graz, 1975) [second edn (Graz, 1987)]. Ralph William Frankland Payne-Gallwey, *The Crossbow* (London, 1903) [second edn (London, 1958); reprints (London, 1964; 1974; 1990; 1995); (Ludlow, 2007)]. Rogers, 'Tactics' (note 34), pp. 207-209. Strickland, *Warbow* (note 31), pp. 34-39.

⁴¹ Dante Alighieri, 'De Monarchia [c. 1317]', chap. I/11, edited by Bruno Nardi, in: Dante, *Opere minori*, vol. 2 (Milan and Naples, 1979), pp. 280-503, at pp. 328-330. Dante, '[Letter to Emperor Henry VII]', edited by Giorgio Brugnoli, in: Dante, *Opere minori*, vol. 2 (Milan and Naples, 1979), pp. 562-572. Antonio Roselli, 'Monarchia sive tractatus de potestate imperatori et papae', in: Melchior Goldast von Haiminsfeld, ed., *Monarchia Sancti Romani Imperii*, vol. 1 (Hanover, 1611), pp. 252-556 [reprint (Graz, 1960)].

⁴² For studies see: Friedrich Baethgen, 'Zur Geschichte der Weltherrschaftsidee im späteren Mittelalter', in: Peter Classen and Peter Scheibert, eds, *Festschrift für Percy Ernst Schramm*, vol. 1 (Wiesbaden, 1964), pp. 189-203. Eugenio Dupré Theseider, *L'idea imperiale di Roma nella tradizione del medioevo* (Milan, 1942). Othmar Hageneder, 'Weltherrschaft im Mittelalter', in: *Mitteilungen des Instituts für Österreichische Geschichtsforschung* 93 (1985), pp. 257-278. Kurt-Ulrich Jäschke, 'Zu universalen und regionalen Reichskonzeptionen beim Tode Kaiser Heinrichs VII.', in: Helmut Maurer and Hans Patze, eds, *Festschrift für Berent Schwineköper* (Sigmaringen, 1982), pp. 415-435.

⁴³ Treaty Galeazzo Viscount of Mailand – Theodore Marchgrave of Monferrato, 16 January 1383, in: Jean Dumont, Baron von Careels-Cron, *Corps diplomatique universel*, vol. 2, part . (The Hague, 1726), pp. 162-168; also in: Jörg Fisch, *Krieg und Frieden im Friedensvertrag* (Sprache und Geschichte, 3) (Stuttgart, 1979), pp. 651-673.

phrases not merely the imperial claim for universal rule but also the demonstrations of willingness to promote peace in the world as a whole. Critics such as Honoré Bouvet (= Bonet, c. 1340 – c. 1405), who had received training in law, denounced the conduct of war as the ultimately senseless wrangle for power among egoistic rulers.⁴⁴ They also advocated a new image of war. Whereas war had previously been perceived as a contest for control over political communities justified in pursuit of the presumed interests of their members, the new image propagated war as a sequence of rulers' actions standing against the legitimate security demands of combatants and non-combatants alike. The new literary genre of the *Querelae Pacis* (Complaints of Peace) began to flourish in the fifteenth century and relentlessly exposed the horrors of wars.⁴⁵ Jurist Pierre Dubois (c. 1255 – c. 1321) and George of Podebrad, King of Bohemia (1458 – 1471), in their own times demanded giving up the expectation that peace could arise eventually from the peace-bringing activity of the universal ruler. Instead, they urged rulers, holding the right to war, to instantaneously promote peace through purposeful human action in the form of the pledges to henceforth settle their disputes by way of peaceful arbitration.⁴⁶ These, they further demanded, should be laid down in formal treaties, which were to be binding for an identifiable group of rulers but not covering the whole world. Both Pierre Dubois and George of Podebrad designed their proposals of a general peace treaty for enactment by rulers in Latin Christendom, would envisage the promotion of future unity among all Christian rulers through access to the treaty, but would not desire to expand the range of the peace treaty to the boundaries of the globe. Instead, both proposals aimed at the uniting of Christian rulers in preparation for combat against Muslim rulers in Palestine, thereby being part and parcel of the crusading rhetoric.

The Crusades and the Law of War

The main factor inducing the confinement of programs for future peace to Latin Christendom, therefore, was the struggle between Christian and Muslim rulers over the control of Palestine as the perceived centre of the world. Since the seventh century, relations between Muslims and Christians had not been without conflict, but had been based on the mutual respect for Christians among Muslims and vice versa, whereby as late as in the tenth century, Emperor Otto I had authorised a diplomatic mission to Khalif Abd ar-Rahman of Córdoba. At the turn towards the eleventh century, however, the Latin Christian perception of Islam changed radically. An event of no more than temporary significance may have provoked the change, namely the partial destruction of the Church of the Holy Sepulchre in Jerusalem under Khalif al-Hakim (985 – 1021) on 18 October 1009. Even though the Khalif was soon driven from his office and the church was rebuilt, a report about the event appeared in an encyclical ascribed to Pope Sergius IV (1009 – 1012) but was probably written only late in the eleventh century. In this message, the pope is made to style the event as an attack on Christianity as a whole.⁴⁷ Thirty years after the event, chronicler Ademar of Chabannes (989 –

⁴⁴ Honoré Bouvet [also: Bonet]: *L'Arbre de bataille*. Ms Paris, Bibliothèque nationale de France, Fonds franç. 1274. First printed (Paris, 1493) [newly edited by Ernest Nys (Brussels, London, Leipzig and New York, 1883); further edn, edited by George W. Coopland (Liverpool, 1949): English version in: *Gilbert of the Hays's Prose Manuscript. The Buke of the Law of Armys or Buke of Battalis. Translated from the French l'Arbre des batailles*, vol.1, edited by John Horne Stevenson (Scottish Text Society, 44) (Edinburgh and London, 1901)].

⁴⁵ Otto Herding, 'Humanistische Friedensideen. Am Beispiel zweier "Friedensklagen"', in: Herding and Robert Stupperich, eds, *Die Humanisten in ihrer politischen und sozialen Umwelt* (Kommission für Humanismusforschung, Mitteilung 5) (Boppard, 1976), pp. 7-34. Kurze, 'Krieg' (note 39), pp. 344-392. Neil A.R. Wright, 'The Tree of Battles of Honoré Bouvet and the Law of War', in: Christopher Thomas Allmand, ed., *War, Literature and Politics in the Later Middle Ages* [Essays for George W. Coopland] (Liverpool, 1976), pp. 12-31.

⁴⁶ Pierre Dubois, *De recuperatione terrae sanctae*, chap. 1/3, edited by Charles-Victor Langlois (Paris, 1891) [partly printed in: Ernst Reibstein, *Völkerrecht. Eine Geschichte seiner Ideen in Lehre und Praxis*, vol. 1 (Orbis academicus. series I, vol. 5) (Freiburg, 1958), pp. 160-169]. George of Podebrad [Jiří z Poděbrad], 'Tractatus pacis toti Christianitati fiendae', art. I, edited by Jiří Kejř, in: Frederick Gotthold Heymann, ed., *The Universal Peace Organization of King George of Bohemia. A Fifteenth Century Plan for World Peace 1462/64* (The Garland Library of War and Peace, 126) (New York and London, 1972), pp. 69-78, at pp. 70-71.

⁴⁷ Sergius IV, Pope, '[Encyclical to the Catholic kings]', edited by Alexander Gieysztor, 'The Genesis of the

1034) again referred to the occurrence, fusing his report with the vision of the Crucifixus hovering in the sky and bleeding heavily from his wounds. Thus, Ademar also displayed the event as an expression of anti-Christian sentiment.⁴⁸ Subsequently, Muslims became identifiable as the perceived archenemies. In his call for war against Muslims of 1 March 1074, Pope Gregory VII (1073 – 1085) assured everyone, following the call, of absolution from ecclesiastical punishment, but did not explicitly mention Palestine as the prospective war theatre.⁴⁹ In fact, the practice of the Catholic Church to grant absolution from punishments for combatants in struggles against enemies of the Church achieved currency simultaneously with the rise of the crusading idea.⁵⁰ In 1095, Pope Urban II (1088 – 1099) added precision to the general terms of Gregory's call for war, pleading that the goal of the Crusade he demanded should be the conquest of Palestine and her subjection to Christian rule. Muslims, the Pope claimed, had destroyed Christian churches and other sacred places. The Council of Clermont-Ferrant, to which the pope submitted his plea, granted absolution to all warriors joining the Crusade. The pope classed the Crusade as a just war providing eternal rewards for its participants.⁵¹

Between 1099 and 1270, five Crusades reached Palestine, before the Crusaders withdrew. In Crusader perception, the campaigns did not entail lasting success, even though some military leaders could establish themselves temporarily as rulers over parts of Palestine. Yet the idea, arising in the course of the eleventh century, that just wars could be launched against Muslims in other parts of the Mediterranean area, against followers of allegedly heretic movements and against believers of so-called pagan religions, often served the purpose of legitimising the use of brutal force against Muslim rulers in the Iberian Peninsula, radical reform movements such as the Albigensians in southern France as well as against the Old Prussians in the Baltic area, who were coerced to convert to Christianity. As a rule, warriors conducting the Crusades were knights uniting themselves in religious orders during their campaigns in Palestine. Two of these orders, the Teutonic Order, known by this name since the thirteenth century,⁵² and the Maltese Order, using this name since 1530, rose to autonomous territorial rulers. The Teutonic Order subjected to its control areas on the southern shores of the Baltic Sea after the conversion of the Old Prussians during the first half of the thirteenth century and retained it until 1525. The Maltese Order established itself as ruler over Rhodes in 1309 and moved to Malta in 1530 after the Turkish conquest of Rhodes in 1522. The Maltese Order ruled over Malta until 1798 when Napoleon expelled it from the island.

Crusaders shared the conviction that non-believers as “infidels”, together with heretics, were “disloyal” enemies, who did not appear to be justified in demanding respect for the law of war, even more so if they happened to reside in areas the Crusaders took to be reserved for Christians as inhabitants and rulers. Within this perspective, Crusades did not serve the purpose of enforcing demands for compensation but were undertaken as acts of revenge for apparent previously inflicted injustice.⁵³ Crusaders developed the theory of the just war as a holy war only in the course of their campaigns. The proclamation of Crusades as holy wars had the consequence that Crusaders and their civilian supporters admitted solely the complete subjection and conversion of their enemies as their war aims and assumed that they had entitlement to pursue these aims with all available means,

Crusades. The Encyclical of Sergius IV (1009 – 1012)’, in: *Medievalia et Humanistica* 5 (1948), pp. 32-34.

⁴⁸ Ademar of Chabannes, *Chronique*, chap. III/46-47, edited by Jules Chavanon (Paris, 1897), pp. 168-171 [newly edited by Pascale Bourgain (Corpus Christianorum Continuatio Mediaevalis, 129) (Turnhout, 1999)].

⁴⁹ Gregory VII, Pope, [‘Proclamation on the Defence of Byzantium, 1 March 1074’], in: Gregory, *Registrum*, nr I/49, edited by Erich Caspar (Monumenta Germaniae historica Epistolae selectae, vol. 2, part 1) (Berlin, 1920), pp. 75-76.

⁵⁰ Lampert von Hersfeld, *Opera*, edited by Oswald Holder-Egger (Monumenta Germaniae historica. Scriptores rerum Germanicarum in usum scholarum separatim editi, 38) (Hanover, 1894), pp. 93-98.

⁵¹ Fulcher of Chartres, *Historia Jherosolymitana* [1107], chap. I/3, in: *Recueil des historiens des Croisades. Occident*, vol. 3 (Paris, 1860), p. 324 [reprints (Farnborough, 1967; 1969; 1983)]. Council of Clermont-Ferrand, 1095, ‘Canones’, in: *PL*, vol. 162, col. 713-720, at col. 717.

⁵² Hartmut Boockmann, *Johannes Falkenberg, der Deutsche Orden und die polnische Politik* (Veröffentlichungen des Max-Planck-Instituts für Geschichte, 45) (Göttingen, 1975).

⁵³ Baldric of Bourgueil, *Historia Hirosolymitana*, chap. IV/13, in: *Recueil des historiens des Croisades. Occident*, vol. 4 (Paris, 1879), p. 101 [Nachdrucke. Farnborough 1967; 1969; 1983]. Ordericus Vitalis, *The Ecclesiastical History*, edited by Marjorie Chibnall, vol. 5 (Oxford, 1975), pp. 348-349 [reprint (Oxford, 1985)].

including the application of tactics prohibited by the law in war as stated in the Christian articles of war. As late as in the fifteenth century, Pope Nicholas V (1447 – 1455) continued to adhere to this position.⁵⁴ On principle, all knights had the obligation to take part in Crusades and were credited with the capability of leading them. The obligation applied most strictly to the Emperor as the perceived universal ruler.

Muslims were not only familiar with the concept of the holy war but had their traditional theory of the law of war and peace, as formulated in the eighth century, ready for application against the Crusaders. According to the Muslim theory of the holy war, arrangements for a stable peace were not possible between Muslims and Christians, but the theory did promote temporary accommodation agreements. In contradistinction against the Crusaders, Muslims theorists continued to derive the norms of the law of war and peace from universally valid principles enshrined in religious beliefs. Hence, they justified the use of tactics and the pursuit of strategic goals in accordance with the norms of the existing unset law of war and peace.⁵⁵ Muslim military leaders conducted their operations under the assumption that the Crusaders, to whom Arab-speaking authors collectively referred as “Franks”, had come to Palestine as invaders and that military measures had to be undertaken in defence against the invasion. Within this perspective, Muslim warfare against the Crusaders was restricted to the defence of Palestine. Whereas the Crusades ranked as the all-or-nothing struggle for universal rule in Latin Christian strategy, Muslim strategists placed their military activities at the lower level of local defence measures. They could easily do so, because, according to the Muslim law of war and peace, the holy war was the basic condition of relations between Muslims and non-believers not necessarily soliciting concrete long-term and wide-ranging military activities. Rather, Muslim military leaders fought against invaders on the spot with the means that were available to them, while entering into temporary accommodation agreements when the invaders could not be overcome for the time being. Theorists concurred by arguing that the invaders had to be repelled because there was “no room” (la maqām) for further rulers in Palestine.⁵⁶

By consequence, already the First Crusade (1096 – 1099) witnessed a number of accommodation agreements, including the toleration of the establishment of a “Kingdom of Jerusalem” under Crusader rule in 1099. Mamluk Sultans of Egypt even entered into formal treaty relations with the “Frankish” “Kings of Jerusalem”.⁵⁷ As late as in 1229, Mamluk Sultan al-Kamil Muhammad al-Malik of Cairo (c. 1180 – 1238) could, in a pragmatic effort to maintain peace, grant Jerusalem to Emperor Frederick II (1198/1220 – 1250) for a period of thirty years, even agreeing with Frederick’s formal coronation as “King of Jerusalem” in the same year.⁵⁸ Frederick II himself concluded a treaty with the Sultan in 1230 regulating the protection of ships cruising in North African coastal waters. In 1231, a treaty followed with Emir Abu-Zakaria Yahya I. of Tunis (1229 – 1249). The latter treaty is extant in an edict, through which the Emir guaranteed the release of Christian prisoners and agreed to provide security along North African coasts. The Emir submitted the text of his edict to the custody of Frederick II. He thereby not only put on record that treaty relations between Muslims and Christians remained possible during the Crusades but also confirmed

⁵⁴ Nicholas V, Pope, *Bulla Romanus Pontifex*, 8 January 1455, in: *Monumenta Henricina*, vol. 12 (Coimbra, 1974), pp. 71-79.

⁵⁵ Alfred Morabia, *La notion de ġihād dans l’Islam medieval. Des origins à al-Gazāli*. LLD Thesis (University of Paris IV [Sorbonne], 1974). Albrecht Noth, *Heiliger Krieg und heiliger Kampf in Islam und Christentum* (Bonner Historische Forschungen, 28) (Bonn, 1966). Noth, ‘Glaubenskriege des Islam im Mittelalter’, in: Peter Herrmann, ed., *Glaubenskriege in Vergangenheit und Gegenwart* (Veröffentlichungen der Joachim-Jungius-Gesellschaft der Wissenschaften, 83) (Göttingen, 1996), pp. 109-122.

⁵⁶ Michael A. Köhler, *Allianzen und Verträge zwischen fränkischen und islamischen Herrschern im Vorderen Orient* (Studien zur Sprache, Geschichte und Kultur des islamischen Orients, N. F. 12) (Berlin, 1991).

⁵⁷ Peter Malcolm Holt, ‘The Treaties of the Early Mamluk Sultans with the Frankish States’, in: *Bulletin of the School of Oriental and African Studies* 43 (1980), pp. 67-76.

⁵⁸ Treaty al-Kamil Muhammad al-Malik of Cairo – Frederick II, Roman Emperor, 18 February 1229, edited by Ludwig Weiland, *Constitutiones et acta publica imperatorum et regum inde ab a. MCXCVIII usque ad a. MCCLXXII* (Monumenta Germaniae Historica Constitutiones, 2) (Hanover, 1896), pp. 369-370. Francesco Gabrieli, ed., *Arab Historians of the Crusades* (Berkeley and Los Angeles, 1969), pp. 269-273 [first published (Turin, 1957)]. Roger of Wendover, *Flores historiarum*, edited by Henry G. Hewlett, vol. 2 (London, 1887), pp. 364-374, 381 [reprint (Nendeln, 1965)].

his confidence that Frederick would not modify the text of the edict. The practice of the conclusion of treaties between Muslims and Christians thus remained within the great tradition of the law of war and peace.⁵⁹

Muslim rulers and military leaders based their pragmatic approach to the invasion of Palestine on their expectation that the Crusaders would not be able to keep their positions for long and that, consequently, wide-ranging military measures were not warranted. Despite the ongoing animosities, Muslim rulers and jurists in their service stuck to applying the general right of the free movement of persons (*ius peregrinationis*) and did not obstruct access by Christians to the Holy Land. Hence, pilgrimages continued to take place even in the form of organised tours regulated in contracts between pilgrims and travel entrepreneurs. Bernhard von Breydenbach (c. 1440 – 1497), an official in the chancellery of the Archbishop Elector of Mainz and visitor to the Holy Land as well as the Monastery of St Catherine on Mt Sinai, issued a printed report on his pilgrimage in 1486, into which he inserted the sample of a treaty between a travel entrepreneur (*patronus*) and pilgrims. According to the sample, the entrepreneur pledged to provide security for the pilgrims. As the entrepreneurs, usually owners of Venetian trading vessels en route to Palestine and Egypt, did not have their own means to implement the pledge, they could only enter into such contracts under the condition that Muslim rulers usually tolerated pilgrimages to the Holy Land. Because the pilgrims usually took the same ship for their outgoing and incoming voyages, they had often had only limited time to spend at the sacred places between the time when they were dropped off at Jaffa and were picked up there on their return.⁶⁰

Following the withdrawal of the Crusaders from Palestine, the normal condition of relations between Christians and Muslims was restored in Muslim perspective. Christian communities remaining in Palestine as elsewhere in West Asia were left untouched. Throughout the expansion of their rule during the fourteenth century, Ottoman Turkish sultans continued to practice toleration of non-believers, provided they fulfilled their duty to pay taxes. Sultan Mehmet II (1451 – 1481) agreed on several treaties with the Republic of Venice. The agreements were written in Greek and used the formulary of Byzantine legal instruments. Hence, they took the form of the ruler's acts of grace, bore the monogram of the Sultan with his name and title (*Tughra*) and began with the invocation of God and an oath.⁶¹ Mehmet's successor Beyazit II (1481 – 1512) acted upon the same practice and renewed the treaty with Venice.⁶²

By contrast, the Crusades received a different retrospective assessment in Latin Christendom. The withdrawal of Crusaders from Palestine left no doubt that the project of constituting Christian rule over the Holy Land had collapsed. First and foremost the Roman Emperor and, next to him, other Christian rulers had proved to be incapable of enforcing the claim

⁵⁹ Treaty al-Kamil Muhammad al-Malik of Cairo – Frederick II, Roman Emperor, 1230, in: Gottfried Wilhelm Leibniz, ed., *Codex iuris diplomaticus*, vol. 1 (Hanover, 1693), p. 13 [reprint (Berlin, 1964)]; also in: Jean Dumont, Baron von Careels-Cron, *Corps diplomatique universel*, vol. 1 (The Hague, 1726), pp. 168-169. Treaty Frederick II, Roman Emperor and King of Sicily and of Saxony – Abu Zakaria Yahya I., Emir of Tunis, 20 April 1231, edited by Ludwig Weiland, *Constitutiones et acta publica imperatorum et regum inde ab a. MCXCVIII usque ad a. MCCLXXII* (Monumenta Germaniae Historica Constitutiones, 2) (Hanover, 1896), pp. 187-189.

⁶⁰ Bernhard von Breydenbach, 'De forma contractus cum patrono galee', in: Breydenbach, *Sanctarum peregrinationum in montem Syon ad venerandum Christi sepulcrum in Hierusalem et atque montem Synai ad divam virginem et martyram Katherinam opusculum* [written in 1486; printed (Spyers, 1490)], edited by Folker E. Reichert and Margit Stolberg-Vowinckel, *Quellen zur Geschichte des Reisens im Spätmittelalter* (Ausgewählte Quellen zur deutschen Geschichte des Mittelalters. Freiherr-vom-Stein Gedächtnisausgabe, 46) (Darmstadt, 2009), pp. 80-86, at pp. 82, 86. Felix Fabri, *Fratris Felicis Fabri Evagatorium in Terrae Sanctae, Arabiae et Egyptii peregrinationem*, ed. C. D. Hassler, vol. 1 (Bibliothek des Litterarischen Vereins in Stuttgart, 2) (Stuttgart, 1843), pp. 28-60, at p. 41, where he complained that he lacked time to spend in Jerusalem during his pilgrimage in 1480.

⁶¹ Treaty Mehmet II., Sultan – Venice, 25 November 1479, edited by Franz Miklosich and Joseph Müller, *Acta et diplomata Graeca res Graecas Italasque illustrantia* (Acta et diplomata Graeca medii aevi sacra et profana, 3) (Vienna, 1865), pp. 302-306 [reprint (Vienna, 1968)]. Treaty Mehmet II., Sultan – Venice, April 1481, *ibid.*, pp. 306-309.

⁶² Treaty Beyazit II., Sultan – Venice, 30 May 1481, edited by Franz Miklosich and Joseph Müller, *Acta et diplomata Graeca res Graecas Italasque illustrantia* (Acta et diplomata Graeca medii aevi sacra et profana, 3) (Vienna, 1865), pp. 309-310 [reprint (Vienna, 1968)].

for universal rule in Palestine. Theologians such as Antonine of Florence (1389 – 1459) drew the conclusion that humankind had fallen apart into two groups, namely the Romans (*populus Romanus*) and the outsiders (*populus extraneus*). Outsiders, such as Muslims and Mongols, apparently refusing to subject themselves to the rule of Roman law, were classed as “infidels” with the implication that Antonine denied the existence of the *ius gentium* as a set of legal norms valid for all humankind.⁶³ Worse even, the Fourth Crusade, which occurred in 1204 and did not reach Palestine, ended in the sack of Byzantium by the Crusader army, followed by the oddity of the establishment of a “Latin Imperium” over the city and adjacent areas. The Crusaders drove the Basileus to Trapezond into exile, which lasted until the collapse of the “Latin Imperium” in 1261. In the course of these events, the territory under Byzantine control shrank dramatically, so that, by the fourteenth century, Byzantine Roman Imperial rule was factual rule over the city of Byzantium, while the surrounding area fell under the control of the Ottoman Turkish Sultan.⁶⁴ Thus, the Roman Emperor in Latin Christendom as well as the Roman Emperor in Byzantium lost credibility as universal rulers in consequence of the Crusades. The end of Roman imperial rule in Byzantium was solely a matter of time. On 29 May 1453, the city came under the control of Sultan Mehmet II after six weeks of siege and the death of Emperor Constantine XI. Palaiologos (1448 – 1453). The Sultan established his headquarters in city, renamed Istanbul, while the Greek Orthodox Church has continued to use it as its ecclesiastical centre.

New Elements in the Theory of the Law of War and Peace

In Latin Christendom, then, the Crusades enhanced the perception of an antagonism between Islam and Christianity. This perception induced some Christian authors to even deny to Muslims the moral status of human beings.⁶⁵ Against these fundamentalist convictions, some intellectuals demanded acceptance of the principal doctrine, enshrined in Christian as well as Muslim theology, that all human beings are divinely created and share their moral status irrespective of religious beliefs. These intellectuals insisted that this doctrine should be applied to the basic norms of the law of war and peace as well. Contrary to the twelfth-century code of ecclesiastical canons, which allowed the conduct of a just war only for the purpose of enforcing claims for compensation in reference to Isidore of Seville’s opinion,⁶⁶ St Thomas Aquinas, the most influential theologian of the thirteenth century, raised his voice against the crusading ideology, took from works by St Ambrose and St Augustine arguments supportive of the maintenance of peace as the divinely willed human obligation and gave further precision to the theological criteria for the determination of the justice of wars. According to St Thomas, who agreed on this point with Muslim theologians, these criteria were to be applied to all forms of legitimate military conflicts everywhere in the world, including holy wars. Consequently, warriors could expect recognition of their campaigns as just wars only under the conditions that legitimate rulers conducted them under the good intention of defence and with morally defensible war aims.⁶⁷ With this specification, St Thomas laid the basis for arguments

⁶³ Antoninus of Florence *Summa theologica*, part 3 (Verona, 1740), p. 213.

⁶⁴ Bertrandon de la Broquerie, *Le voyage d’Outremer*, edited by Charles Henri Auguste Schefer (Paris, 1892) [reprint (The Islamic World in Foreign Travel Accounts, 15) (Frankfurt, 1995)].

⁶⁵ *Richard Coeur de Lion: Der mittelenglische Versroman über König Löwenherz*, vv. 3214-3221, 3532-3562, edited by Karl Brunner (Wiener Beiträge zur Englischen Philologie, 42) (Vienna and Leipzig, 1913), pp. 256, 271-272.

⁶⁶ Gratian, *Decretum Magistri Gratiani*, Causa 23, Qu. II, chap. 1, edited by Ludwig Emil Richter and Emil Friedberg, second edn (Corpus iuris canonici, 1) (Leipzig, 1879), col. 894. Gregory IX, Pope, *Decretalia* [1234], edited by Emil Ludwig Richter and Emil Friedberg, *Decretalium collectiones*, book I, title XXXIV, chap. I (Corpus iuris canonici, 2) (Leipzig, 1881), col. 203: De treuga et pace [based on the decree of the Lateran Council of 1179]. Hostiensis [Henry of Segusio, Bishop of Ostia], *Summa Hostiensis super titulos Decretalium* (Venice, 1505), fol. 429^v-430^v [further edns (Cologne, 1612); (Lyons, 1537); reprint of the edn Lyons, 1537 (Aalen, 1962)]. Hostiensis, *Lectura siue apparatus per quinque libris Deretalium*, 2 vols (Strasbourg, 1512). Hostiensis, *Lectura in Decretales Innocentii IV* (Venice, 1581), pp. 69-81 [reprint (Turin, 1965)].

⁶⁷ Thomas Aquinas, ‘Summa theologiae’, book II, chap. 2, q 40 a 3, edited by Roberto Busa SJ, *Sancti Thomae Aquinatis Opera omnia*, vol. 2 (Stuttgart, 1980), pp. 573–768, at p. 580.

about the justice of war, which remained current during the subsequent two centuries. The Neapolitan Lucas de Penna (c. 1325 – c. 1390) restated St Thomas's doctrine⁶⁸ and the Cologne-based theologian Henry of Gorkum (c. 1378 – 1431) enriched it with quotations from the Holy Scripture.⁶⁹ St Thomas remained within the Augustinian paradigm of the sequence of peace, war and peace in admitting the restitution of previously inflicted injustice as the sole morally defensible war aim. As St Thomas took for granted the possibility of objectively ascertaining the factuality of previously inflicted injustice, he postulated that in any armed conflict only one side could credibly claim justice for the war. He thereby repeated the established conviction that war was regulated through legal norms of divine origin and beyond reach of human will.⁷⁰ He thus defined the law of war and peace as unmet and universally valid and followed the Ciceronian tradition in applying this definition to the *ius gentium* as well.⁷¹ In doing so, he opposed the demonisation of non-believers as irreconcilable with Christian theological doctrine and insisted that given pledges and valid treaties had to be honoured.⁷² The projection of the unity of humankind was not mere theological speculation but impacted on the practical conduct of church affairs. For example, Pope Innocent IV (1243 – 1254) sought to rescue the claim for universal rule by transferring it from the Roman Imperium to the Catholic Church. A contemporary of St Thomas, he supported his demand for recognition as a universal ecclesiastical ruler with the argument that all human beings, Christians and non-Christians alike, were "Christ's sheep", and included not only Muslims but also Mongols, to whom he dispatched a mission in his capacity as the Vicar of Christ.⁷³ Moreover, the theory of just war was not a merely abstract pattern of thought but influenced the practical conduct of war. Thus King Edward III of England (1327 – 1377), applying St Thomas's definition of war, justified the English invasion of France with the argument that the French king had unlawfully ignored allegedly just demands from the English side. The French side replied to the English declaration of war in similar legalistic fashion. King Philipp VI of France (1328 – 1350) complained that Edward had invaded French territory without any justification and that war was necessary to protect the rights of the king of France as a "sovereign ruler" (*souverain Seigneur*).⁷⁴ The so-called Golden Bulla of Emperor Charles IV (1346 – 1378) of 1356 even stipulated that the announcement of a feud (*diffidatio*) as a type of declaration of war should be communicated to the enemy three days in advance of the beginning of fighting.⁷⁵

The influential jurist Bartolo of Sassoferrato (1313 – 1357) raised the question how the claim towards universal rule of the Roman Emperor could be reconciled with the manifestly existing pluralism of power holders within and beyond Latin Christendom. Bartolo approached the question with the intellectual tools of jurisprudence rather than of theology.⁷⁶ He contended that originally the Roman Imperium had been the actual bearer of universal rule and postulated that successively, one Emperor after the other had given out privileges granting autonomy of

⁶⁸ Lucas de Penna, *Tres libri codicis* (Lyons, 1557), fol. 153^r [first published (1509)].

⁶⁹ Henry of Gorkum [Gorinchem], 'De iusto bello', in: Gorkum, *Tractatus consultatorii* (Cologne, 1503), fol. L^r-LVI^r.

⁷⁰ Otto Schilling, *Das Völkerrecht nach Thomas von Aquin* (Das Völkerrecht, 7) (Freiburg, 1919), pp. 30, 34, 41-43.

⁷¹ Thomas, *Summa* (note 67), book I, q 95 a 4, p. 326; book II, chap. 2, q 57 a 3, p. 599.

⁷² *Ibid.*, book II, chap.2, q 40 a 3, p. 580.

⁷³ Innocent IV, Pope, *Commentaria apparatus in V libros decretalium*, Ms., partly printed in: Felicitas Schmieder, 'Das Werden des mittelalterlichen Europa aus dem Kulturkontakt. Voraussetzungen und Anfänge der europäischen Expansion', in: Renate Dürr, Gisela Engel and Johannes Süßmann, eds, *Expansionen in der Frühen Neuzeit* (Zeitschrift für Historische Forschung, Beiheft 34) (Berlin, 2005), pp. 27-41.

⁷⁴ Edward III, König von England, 'Cartel de Deffy d'Edouard III, Roy d'Angleterre, du vingt-septième Julliet 1340', in: Andreas Steinlein, *Die Form der Kriegserklärung. Eine völkerrechtliche Untersuchung*. LLD Thesis (Strasbourg, 1917), pp. 13-15 [also in: Gottfried Wilhelm Leibniz, *Codex juris gentium diplomaticus* (Hanover, 1693) (reprint, Berlin, 1964)]. Philipp VI, King of France, '[Reply to the Cartel de Deffy d'Edouard III, Roy d'Angleterre]', in: Steinlein, *ibid.*, pp. 15-16 [also in: Leibniz, *ibid.*].

⁷⁵ Charles IV, Roman Emperor, *Bulla Aurea Karoli IV. Die Goldene Bulle Kaiser Karls IV.*, chap. XVII, edited by Wolfgang D. Fritz (Monumenta Germaniae Historica Fontes iuris Germanici antiqui in usum scholarum, 11) (Weimar, 1972), pp. 73-74.

⁷⁶ Bartolus of Sassoferrato, *In secundum Digesti noui partem commentaria*, ad dig. XLIX/15, 22 (Bartolus, Opera, vol. 6) (Venice, 1570-1571), fol. 227^v-228^r.

government to secondary rulers and *gentes* as political communities. These privileges, Bartolo argued, had allowed their recipients within the Roman Imperium to choose among coexisting legal systems. Thus, Bartolo posited, rulers had the choice between Roman law and non-Roman law within as well as outside the Roman Imperium. Bartolo thus explained the factually existing pluralism of power holders as the result of successive acts of the self-limitation of power from the side of the Roman Emperor. Each Roman Emperor had, at his own discretion, given out these privileges empowering secondary rulers. As, in Bartolo's perception, only the Roman Emperor had had the competence to limit the reach of his powers, all other rulers had ultimately derived their status and power from imperial acts of grace. Consequently, the Roman Emperor remained the sole genuinely universal ruler, holding some kind of overlordship, by which he could, on principle without resort to the use of military force, revoke a privilege or restore his control through escheat. According to Bartolo's juristic theory, the universal rule of the Roman Emperor stood under the rule of law, which was simultaneously Roman municipal and world law. The theory remained widely accepted down to the fifteenth century among theologians seeking to strengthen the belief in the divine origin of the Imperium, and among jurists struggling with questions about the justice of war. Specifically, jurist Giovanni da Legnano (1320 – 1383) and theologian Henry of Segusio, Bishop of Ostia [Hostiensis] (c. 1200 – 1271), concluded from Bartolo's theory that no one was allowed to start a war legally without imperial approval.⁷⁷ Already in 1280, jurist Jacques de Révigny (1230/40 – 1296) had proposed the same argument in limitation to wars of expansion. According to Révigny, wars of expansion were just only if they gave advantage to the Imperium and were conducted by command from the Emperor under the goal of promoting universal rule. For all other rulers, wars were allowed only for the purpose of repelling aggression.⁷⁸ Thus, these theorists of the law of war and peace advocated the need to restrict war-making capability by legal means and to limit the possibility of conducting just wars of aggression to the Roman Emperor as the ruler, who could articulate claims for universal rule but had comparative humble military means for implementing these claims. Hostiensis added a typology of wars other than the imperial war. He listed six types of wars which rulers other than the Roman Emperor could legitimately conduct, namely war for the enforcement of an arbitration (*bellum iudiciale*), war against a party acting against an arbitration (*bellum praesumptuosum*), war in self-protection or in defense of an ally (*bellum licitum*), war as an attack against an unjust ruler (*bellum temerarium*), war against a combatant acting in breach of the right to war (*bellum voluntarium*) and war in defence of against a ruler acting in breach of the right to war (*bellum necessarium*). Hostiensis's list of defensive types of war became standard in fifteenth-century theoretical discussions of the law of war.⁷⁹

There are indications showing that the derivation of legislative and war-making competence from the postulates of the omnipotence of the universal ruler was not only current among the learned but more widely spread. A variant of Legnano's argument that only the Roman Emperor could launch a war of aggression legally at his own discretion, reappeared in the Middle High German didactical epic *Der Ring*, apparently written by the lawyer Heinrich Wittenwiler at the court of the Bishop of Constance early in the fifteenth century. At great length, the epic describes a war between two neighbouring village communities. In one scene, farmers in a village located in the Toggenburg (in what is Switzerland today), deliberate the question whether they should start a war

⁷⁷ Enea Silvio Piccolomini, [Pope Pius II.], 'Epistola de ortu et auctoritate imperii Romani [ad Imperatorem Fridericum III, 1 March 1446]', edited by Gerhard Kallen, *Aeneas Sylvius Piccolomini als Publizist in der Epistola* (Stuttgart, 1939), pp. 51-97, at pp. 54-59, 70-73 [also in: Piccolomini, *Der Briefwechsel*, part 2: Briefe als Priester und Bischof von Trient, edited by Rudolph Wolkan, nr 3 (Fontes rerum Austriacarum. series II, vol. 67) (Vienna, 1918), pp. 6-24]. Juan de Torquemada, OP [Johannes de Turrecremata], 'Opusculum ad honorem Romani imperii et dominorum Romanorum [1467/68]', edited by Hubert Jedin, 'Juan de Torquemada und das Imperium Romanum', in: *Archivum Fratrum Praedicatorum* 12 (1942), pp. 267-278, at pp. 271-277. Giovanni da Legnano, *Tractatus de bello, de represaliis et de duello*, chap. 14, edited by Thomas Erskine Holland (Oxford, 1917), p. 94 [partly reprinted (New York and London, 1964)]. Hostiensis, *Lectura* (note 66), vol. 1, fol. 59^v.

⁷⁸ Cornelis Huibert Bezemer, 'A Repetitio by Jacques de Révigny on the Creations of the Ius Gentium', in: *Tijdschrift voor rechtsgeschiedenis* 49 (1981), pp. 287-321, at pp. 303-304.

⁷⁹ Martinus Garatus of Lodi [Laudensis], 'Tractatus de bello', in: Garatus, *Tractatus universi iuris* (Venice, 1584), fol. 324-325.

against their neighbours because of some previously injustice they claimed to have suffered. The village mayor makes it clear that the farmers can go to war, because “we have power from the *kaiser* [Imperator]” (gwalt wir von dem kaiser haben).⁸⁰ According to the epic, the village farmers argued that they had the right to war in response to previously inflicted acts of injustice by virtue of some imperial privilege. Wittenwiler played with stereotypes, which he took from thirteenth-century vernacular court literature discriminating farmers as ignorant people. He laid into the mayor’s mouth arguments about the justice of war by legitimate rulers, well knowing that dependent farmers did not have the competence to decide authoritatively about war and peace. The argumentation of the village mayor was inappropriate, because he tried to assure villagers of their *ius ad bellum* in two ways, first by adducing a non-existent imperial privilege granting war-making capability, and then again by resort to the right of resort to war in compensation for previously inflicted injustice. Wittenwiler let the village mayor weave together two contemporarily existing but mutually exclusive legal entitlements to war, by the grace of the universal ruler and in accordance with the divinely willed law of war and peace. The war, which the farmers eventually fight, then ends in a horrible carnage. The text is extant in only one single manuscript and thus does not seem to have circulated widely. But the author explicitly stated his intention not to address the public trained in law but to familiarise the general population with complex and complicated legal and moral issues through the narration of a story. However, in order to accomplish his goal, Wittenwiler had to anticipate that his audience, although not trained in law, would be able to follow the basic argument of the text. Put differently, Wittenwiler must have assumed that core norms of the law of war and peace were already known to audiences not trained in law, before they became exposed to the text of his epic.⁸¹

Autonomy of Rule and the Law

At the latest since the twelfth century, Roman law not only served as the source, from which claims for priority of the Roman Emperor as the universal ruler vis-à-vis other power holders could be derived, but also became applicable as the legal tool supporting demands for the recognition of the autonomy of those other rulers, mainly those, who were entrusted to reign over territories and population groups outside the Roman Imperium. Hence, jurist Marino da Caramanico, trained in Roman law, included into his preface to the code of laws of Frederick II for the Kingdom of Sicily a passage stating matter-of-factly that every king, who was not subordinated to the power of another ruler, was entitled to enforce laws at his own will. Caramanico insisted that the King of Sicily was in this position, as in areas under his control no laws made by another ruler were valid (in rege libero qui nullius alterius potestati subiectus est, idem dicimus scilicet ut rex ipse possit condere legem, ... qualis est rex Sicilie).⁸² In making this statement, Caramanico argued that the King of Sicily had the same legislative competence as the Roman Emperor, and implied that the King of Sicily and the Roman Emperor were equal in rank. In the case of Sicily, this statement was straightforward, because Frederick II was incumbent to both offices, that of the Roman Emperor and that of the King of Sicily. Hence, a conflict of interests between the claims of two rival rulers could not come up. However, this type of conflict over the determination of rank arose, wherever the competence of autonomous legislation of one ruler clashed with the same competence of another. This is the reason, why similar statements by cleric Stephen of Tournai (1128 – 1203) and jurist Guilelmus Durantis (1237 – 1296), working in France, carried more weight than Caramanico’s assertion. Already late in the twelfth century, Stephen made it clear that, in his view, a king could refer to him himself as *imperator* in his own kingdom and all other kings alike ([rex] in regno suo vel eundem vocat regem et imperatorem).⁸³ In this sentence, the word *imperator* does not have to represent the title of the

⁸⁰ Heinrich Wittenwiler, *Der Ring*, v. 6840, edited by Werner Röcke (Berlin and New York, 2012).

⁸¹ For a study see: Pamela Kalning, *Kriegslehren in deutschsprachigen Texten um 1400*. Seffner, Rother, Wittenwiler (Studien zum Mittelalter und zur frühen Neuzeit, 9) (Munster, 2006), pp. 154-159.

⁸² Francesco Calasso, *I glossatori e la teoria della sovranità*. *Studio di diritto commune pubblico*, third edn (Milan, 1957), p. 180 [second edn (Milan, 1951); first published (Florence, 1945)].

⁸³ Stephen of Tournai, *Summa*, chap. II/4, edited by Johann Friedrich von Schulte, *Die Summa des Stephanus Tornacensis über das Decretum Gratiani* (Gießen, 1891), p. 12.

Roman Emperor but can have been used in a non-technical sense as a term for someone capable of legitimately giving out commands. Nevertheless, Stephen articulated the theoretical views that kings had the competence of autonomous legislation over territories and population groups under their sway and that no king had the right to intervene into the territory of another king.⁸⁴ Durantis gave expression to the same view with regard to the *ius ad bellum* by restricting the right to declare war to a ruler to whom he referred to as *princeps*. In Durantis's diction, the *princeps* was the highest ranking ruler over a given territory and population group then usually bearing the royal title.⁸⁵ For Stephen of Tournai as well as for Durantis, then, the King of France appeared to be the ruler, to whom their theoretical arguments were practically applicable and who, by consequence, were subject to no one.

At this time, neither theologians nor jurists explicitly challenged the position of the Roman Emperor as the universal ruler in Latin Christendom. Rather they advocated the theoretical position that the claim for universal rule could not stand against the autonomy of legislation by other rulers. Against the background of the great tradition of the law of war and peace, this position was everything but shocking, as it placed rulers insisting upon the autonomy of their government into a hierarchy of power holders. According to the law of war and peace, the Roman Emperor could occupy the rank of the universal ruler, as long as he respected the autonomy of other rulers and did not interfere into their domestic legislation. Autonomy was then not equivalent of independence.

However, these arguments could ferment more far-reaching theories advocating the principled rejection of the supremacy of the Roman Emperor vis-à-vis all kings outside the Roman Imperium. French intellectuals applied such theories with increasing frequency during the fourteenth and fifteenth centuries. They popularised the French word *souveraineté* (sovereignty) as a term for the highest-ranking ruler, equating it with the Latin words *majestas* (majesty) and *potestas* (power holder). The ultimate root of the French word *souveraineté* was Classical Latin *suprematus*, indicating in general terms the highest rank.⁸⁶ As a technical term in this sense, *souveraineté* became applicable not only to the position of the Roman Emperor but also to the pope in relation to ecclesiastical matters as well as to any ruler with the entitlement for autonomous legislation. According to this theory, there were many sovereigns, who did not have to be legally equal.⁸⁷ The theory gave momentum to efforts by rulers, mainly outside urban communities, who sought to have their capability of autonomous legislation recognised through treaties in accordance with the law of war and peace. For one, the Duke of Burgundy received concession of the renunciation of all claims for suzerainty over Burgundy from the King of France on the occasion of the conclusion of the Treaty of Peace of Arras of 1435.⁸⁸ By stipulation of the treaty, the Duke of Burgundy was in exclusive possession of the legislative capability for the Duchy and, by virtue of this concession, *souverain*. Yet, at the same time, he remained a vassal to the King of France, thereby occupying a lower rank.

The same process of the formalisation of relations among rulers of different ranks took place within the Roman Imperium. The so-called Golden Bull of Charles IV of 1356 formed the equivalent of a basic law for the Imperium providing the framework of norms governing relations among rulers in the Imperium. Through his enforcement of the Bulla, Charles manifested his own legislative competence as Emperor. But, at the same time, he took the first step towards the transformation of the Imperium from a political community holding universal rule into a political

⁸⁴ Herbert Kalb, *Studien zur Summa Stephans von Tournai. Ein Beitrag zur kanonistischen Wissenschaftsgeschichte des späten 12. Jahrhunderts* (Forschungen zur Rechts- und Kulturgeschichte, 12) (Innsbruck, 1983), pp. 105-108.

⁸⁵ Bartolus, *Commentaria* (note 76), ad dig. 48/4, 3, 49/14, 2, 50/10,3, fol. 165^v, 221^v, 241^v. Guilelmus Durantis, *Speculum Juris*, part 1, book II, chap. I/5, nr 2 (Frankfurt, 1612), p. 487.

⁸⁶ Francesco Maiolo, *Medieval Sovereignty. Marsilius of Padua and Bartolus of Saxoferrato* (Delft, 2007), pp. 35-78. Helmut Quaritsch, *Souveränität* (Schriften zur Verfassungsgeschichte, 38) (Berlin, 1986). Michael Wilks, *The Problem of Sovereignty in the Later Middle Ages* (Cambridge Studies in Medieval Life and Thought, N. S., vol. 9) (Cambridge, 1964).

⁸⁷ Calasso, *Glossatori* (note 82), nr 1043, pp. 23-24.

⁸⁸ Treaty Charles VII., King of France – Philipp the Good, Duke of Burgundy, Arras, 21 September 1435, edited by Eugène Cosneau, *Les grandes traités de la Guerre de Cent Ans* (Collection des textes pour servir à l'étude et à l'enseignement de l'histoire, 7) (Paris, 1889), pp. 119-151.

community composed of a ranking scheme of various territorial rulers and other types of power holders. Among these stipulations was a set of norms regulating the process of the election of a new Emperor. The Bulla ruled that seven dukes, marchgraves and earls occupied the highest rank next to the Emperor within the Imperium, as they alone were entitled to participate in the imperial election and had reserved for themselves the title of “Electors”. The Golden Bulla left untouched the autonomous legislative competence of legitimate territorial rulers and urban councils within the Imperium and even issued to them the privilege of forming military alliances.⁸⁹ Rulers within the Imperium, making use of these rights, were sovereign under the Emperor by fourteenth-century standards.

Moreover, at the beginning of the fourteenth century, jurists joined hands with theologians to find answers to the question how the pluralism of manifestly existing sovereign rulers could be reconciled with the position of the Roman Imperium as the bearer of universal rule. A political theory going back to Aristotle (384 – 322 BCE) offered one answer to this question. The theory posited that humans were inclined to live in communities and that, within these communities, all kinds of legitimate rule except domination over slaves had to find consensus from among the ruled. Aristotle’s theory became known in Latin Christendom early in the fourteenth century. It opened a new perspective on factors promoting the formation of communities in general as well as political communities in particular. Abbot Engelbert of the Styrian monastery of Admont (c. 1250 – 1331) worked hard to connect the belief, he shared, that the Roman Imperium was a divinely willed institution, with the further belief that divine will had also allowed human beings to set up further political communities at their own discretion.⁹⁰ To that end, Engelbert assumed, communities of residents of the one or the other territory had to accomplish agreement about the establishment of government for their benefit. In combining the belief in the divine origin of the Roman Imperium, the rise and fall of which appeared to be beyond human control, with the admission that further political communities could result from human contractualising activity, Engelbert provided the theoretical possibility of reconciling the Christian theological demand for the recognition of the position of the Roman Imperium as the bearer of universal rule with the manifest existence of legitimately autonomous states and other political communities within and outside the Imperium. Thus, the theory of the government covenant formulated the conditions, under which legitimate institutions of government could arise from human free will.

Already at this time, the theory of the government covenant existed in two versions. One version, which Engelbert favoured, postulated that human beings could not revoke their agreement upon the covenant once government had been established. Engelbert’s contemporaries Johann Quidort, who taught at the University of Paris (c. 1255/60 – 1306),⁹¹ and the scholar Marsilius of Padua (1275/90 – 1342/3), preferred the second version, according to which the ruled could cancel their covenant, if the ruler failed to abide by it.⁹² Both versions of the theory of the government covenant had in common the underlying conviction that the pluralism of autonomous states and other political communities could be explained in terms of the law, not as the result of the use of power. According to this theory, the pluralism of states and other political communities had not resulted from revolutionary resistance against incumbent rulers nor had it come about through privileges issued by the universal ruler, but had flown from human action in accordance with divine will. The theory, at least in Engelbert’s version, left unharmed the quest for the recognition of the Roman Imperium as a political community of its own, derived directly from divine will. At the turn towards the fifteenth century, observers could even note that states, which had come into existence through government covenants, continued in a “state” (status) of “repose” (tranquillitas).⁹³

⁸⁹ Charles IV, *Bulla* (note 75), chap. XX, p. 77.

⁹⁰ Engelbert, Abbot of Admont, ‘De ortu et fine Romani imperii’, chap. 2, edited by Melchior Goldast, *Politica imperialia* (Frankfurt, 1614), pp. 753-770, at p. 755.

⁹¹ John Quidort of Paris, *De potestate regia et papali*, chap. 1, edited by Fritz Bleienstein (Frankfurter Studien zur Wissenschaft von der Politik, 4) (Stuttgart, 1969), pp. 75-78.

⁹² Marsilius of Padua, *Defensor pacis*, dictio I, chap. XX/6-7, edited by Richard Scholz, vol. 1 (Monumenta Germaniae historica. Fontes iuris Germanici antiqui, 7) (Hanover, 1932), pp. 66-68.

⁹³ Alain Chartier, ‘Premier discours de la mission d’Allemagne’, in: Chartier, *Les œuvres latines*, edited by Pascale Bourgain-Hameryck (Paris, 1977), pp. 171-190, at pp. 188-189.

The incremental acknowledgment of the pluralism of legitimate states and political communities coexisting with the Roman Imperium had important impacts on the theory and practice of the law of war and peace. With regard to the law of war, the combination of the theory of the government covenant with the denomination of certain types of rulers, notably kings, as sovereigns, widened the possibility of limiting the right to war to rulers recognised as occupying the “highest” rank within their respective states.⁹⁴ Henceforth, the *ius ad bellum* was effectively restricted to “sovereigns”, with the implication that all aristocratic rulers, when placing themselves under the sway of sovereigns, waived their entitlement to go to war at their own discretion. At the same time, all aristocratic rulers, irrespective of their titles, retained the right to war, as long as they remained autonomous. The Roman Emperor as well as other sovereign rulers then had to practically demonstrate their position as “highest” rulers by effectively denying the right to war to power holders on territories under their control. The legal instrument to implement this demand was the treaty of the renunciation of the use of force. The dukes of Burgundy and Lorraine concluded such a treaty on 15 October 1473.⁹⁵ Moreover, rulers of various ranks made out a series of agreements on keeping territorial peace since the thirteenth century. The series peaked in the conclusion of the “Perpetual Territorial Peace” in 1495 for the Roman Imperium.⁹⁶ This agreement obliged all autonomous territorial rulers and urban governments within the Imperium to settle their disputes before a court of arbitration, which was to be established for the Imperium as a whole. The court remained in existence until 1806. The attempt at imposing a general obligation to maintain peace within the Imperium did not materialise, none the least because the 1495 agreement on the “Perpetual Territorial Peace” did not bind rulers outside the Imperium. But the borders of the Roman Imperium, where they had been acknowledged at the time, were now given legal significance for the Imperium as a whole, as they demarcated the area within which the “Territorial Peace” was to be observed.

The Roman Emperor thus lacked capability of manifesting his position as the universal ruler through successful efforts to preserve peace even in Latin Christendom. This lack of capability became even further transparent from the fact that the Emperor was not approached as an arbiter in processes of the peaceful settlement of disputes among sovereign rulers. Thus, at the turn towards the fourteenth century, King Edward I of England and King Philipp IV of France (1285 – 1314) did not appeal to the Emperor but to Pope Boniface VIII (1294 – 1303) as arbiter in a legal battle over rights of territorial control. But even the pope could perform his role as arbiter only after he had consented to pronounce his verdict not as incumbent to the papal office but as a private person under his given name Benedict of Gaeta. Benedict alias Boniface VIII decided in favour of Edward I. In a subsequent case, he acted as pope.⁹⁷ The incident shows that the pope as bearer of ecclesiastical universal rule could become arbiter only under extraordinary conditions, the Roman Emperor as claimant to the position of the secular universal ruler not at all.

The factual limitation of the Roman Imperium, now completely encircled with states under the control of sovereign rulers, was reflected in its quasi-official name. The oldest record of the use of the term “holy” (*sacrum*) for the Imperium dates from 1157, while the combination of “holy” with “Roman” first appeared in 1254, producing the formula “*Sacrum Imperium Romanum*”. From the middle of the fourteenth century, this formula came to be recorded in vernacular languages, mainly in the German language. Towards the end of the fifteenth century, the specification “of the German Nation” was added, explicitly limiting the bearers of the Imperium to one single *gens*. The Classical

⁹⁴ Bartolus, *Commentaria* (note 76), ad dig. 48/4, 3, fol. 165^v. Durantis, *Speculum* (note 85), book II, chap. I/5, nr 2, p. 487.

⁹⁵ Treaty Charles the Bold, Duke of Burgundy – René, Duke of Lorraine, Nancy, 15 October 1473, in: Emile Toutey, *Charles le Téméraire et la Ligue de Constance* (Paris, 1902), pp. 433-437.

⁹⁶ Maximilian I, Roman Emperor, ‘[Mandate on the Preservation of Peace and the Law, 1495]’, in: Hanns Hubert Hofmann, ed., *Quellen zum Verfassungsorganismus des Heiligen Römischen Reiches Deutscher Nation. 1495 – 1815* (Ausgewählte Quellen zur deutschen Geschichte der Neuzeit. Freiherr-vom-Stein-Gedächtnisausgabe, 13) (Darmstadt, 1976), p. 14.

⁹⁷ Boniface VIII, Pope, ‘[Letter to the King of England and the King of France, 3 July 1298; Arbitration, 8 January 1299; Arbitration, 21 October 1300]’, in: Jean Dumont, Baron von Careels-Cron, *Corps diplomatique universel*, vol. 1 The Hague, 1726), pp. 311, 314, 326.

Latin word *gens*, however, remained in use only in some vernacular languages which had originated from Latin, mainly in vernacular versions of the *ius gentium*, such as French *droit des gens*. Other European languages abandoned the word *gens*, while opting for *natio*, which had already been current in Cicero's language next to *gens* as terms for political communities. *Natio* has remained part of the stock vocabulary of most Northern, Western and Southern European languages in addition to German *Volk* and derivatives of Latin *populus*, such as English 'people' and French *peuple*. The attribute "of the German Nation" to the official name of the Roman Imperium appears to have been conditioned by the fact that the Emperor had mostly been selected from dynasties of German speaking areas from the tenth century and had their own titles to rule in these areas. Moreover, during the fourteenth and fifteenth centuries, the lengthy process of the search for an appropriate vernacular terminology for the Imperium reached its conclusion. The Imperium was scaled down to one political community among many others. Its distinctive feature was, for the time being, that it stood under the rule of the Emperor. Hence, the Imperium was no longer defined in terms of its structure as a political community bearing universal rule, but through the title of its ruler alone.⁹⁸ Latin *imperator* gradually gave way to vernacular versions, German *Kaiser* being derived from Caesar, while continuing in Romance languages, for example as *empereur* in French, from which sprang 'emperor' in English. Nevertheless, Dante could use the title "Cesare" for the Emperor early in the fourteenth century.⁹⁹ Even though there were many political communities next to and even within the Roman Empire, only that Empire stood under the rule of an Emperor. The emperors continued to follow the practice, established through Charles I in 800, to receive the imperial crown in the city of Rome, thereby documenting their determination to keep the links of the "Empire" with Rome. However, the last imperial coronation took place in Rome in 1452 for Frederick III (1440 – 1493), the bearer of the imperial title elected from the Habsburg dynasty then ruling over scattered territories around Vienna and in Tirol. Between 1452 and 1806, the ties of the Roman Empire with the city of Rome were manifest only in the imperial title and the official name of the political community.

The theoretical allocation of the right to war to sovereigns, namely the Emperor, the several kings, all autonomous aristocratic rulers, all autonomous towns and cities as well as some monastic communities and secular orders, not only widened the gap between sovereign and non-sovereign rulers but also established a club of privileged rulers who had the competence to declare war without acting sinfully. The Catholic Church supported this process of the legalisation of war and silenced opposition. When church reformer and pacifist John Wyclif (c. 1330 – 1384), for one, contended that secular rulers were principally sinful and that, by consequence, secular rule could exist only by divine forgiveness for rulers' sins, the Council of Constance (1414 – 1418) explicitly condemned this doctrine as heretic.¹⁰⁰ The same Council also had to decide about a legal controversy between the Teutonic Order and the King of Poland. The latter denied the legitimate autonomy of rule by the Teutonic Order. At the Council, supporters of the Order argued the theory that "infidels" did not have the right of residing in areas under Christian control and drew on Hostiensis for their argument. According to Hostiensis, "infidels" had to avoid communication with Christians, as long as they refused to convert; furthermore, should "infidels" neither be willing to stay away from Christians nor to agree to conversion, Christian were entitled to just war. Hostiensis thus refuted the doctrine that the *ius gentium* provided for the general right of settlement for all humankind. According to Hostiensis's legal opinion, the Teutonic Order had conducted a just war against the Old Prussians in areas south of the Baltic Sea.¹⁰¹ This position came under sharp attack from supports of the King of Poland. Paulus Vladmiri (c. 1370 – 1435), a scholar well versed in legal and theological matters, pointed to the theory, laid down authoritatively in works by St Augustine, St Thomas Aquinas and Pope Innocent IV, that the *ius gentium* was applicable to all humankind, as all human being were divinely created irrespective of their religious beliefs.

⁹⁸ Ernst Schubert, *König und Reich* (Veröffentlichungen des Max-Planck-Instituts für Geschichte, 63) (Göttingen, 1979).

⁹⁹ Dante, 'Monarchia' (note 41), chap. II/1, Nnr 4, p. 366.

¹⁰⁰ John Wyclif, *De civili dominio*, edited by Reginald Lane Poole and Josef Loserth, vol. 1 (London, 1885), pp. 21-22. Hefele, *Histoire* (note 39), vol. 7, part 1, p. 517.

¹⁰¹ Hostiensis, *Summa* (note 66), fol. 58^v. Hostiensis, *Lectura* (note 66), fol. 124^v.

According to this theory, the war of the Teutonic Order against the Old Prussians was unjust and their control over territories illegitimate. Vladimiri did not bother to approach the Emperor as the ultimate overlord of the Teutonic Order, but appealed to the pope, whose instructions the Order appeared to have violated. Therefore, Vladimiri concluded, the pope had the task of sanctioning the Order.¹⁰² In Vladimiri's view, the Order was under papal jurisdiction, even though it acted as an autonomous legislator and was engaged in wars, thereby documenting its sovereignty. But Vladimiri did not succeed in convincing the Council to revoke the Order's sovereignty.

The controversy reflected the process of the specification of the law of war. To the fourteenth century, the law of war had been a set of norms providing the criteria for the determination of the justice of war. By contrast, by the fifteenth century, it had turned into a set of norms regulating the right to war (*ius ad bellum*) and the law in war (*ius in bello*). The most important factor provoking the shift of contents of the law of war was not the transfer of theorising competence from theologians to jurists,¹⁰³ but, conversely, the growing influence of jurists upon the formulation and implementation of the law of war was the result of the process, by which the pluralism of autonomous rulers had found legal recognition.

New Aspects of the Law of Peace: Diplomacy and the Law of Treaties

Changes in the law of peace reflected the same process. At the latest since the thirteenth century, exchanges of diplomatic plenipotentiaries among autonomous territorial rulers and urban governments became more frequent, most notably among cities in Northern Italy. Envoys moved back and forth on specific commissions. Even in the twelfth century, the regularity of special diplomatic missions contributed to the creation of keys for the coding of texts, an early case being recorded from Venice in 1145 and even to the codification of older norms of diplomatic intercourse on the basis of Isidore of Seville's *Encyclopaedia*. These norms stipulated the inviolability of diplomatic envoys and the protection of the safety of their property. By the thirteenth century, the Senate of Venice obtained from Muslim rulers the privilege of consular justice in cases involving traders under its control and other Christians, and the practice came to be applied to other European traders as well.¹⁰⁴ Likewise, in the thirteenth century, it was possible to adduce the murder of a diplomatic envoy as a cause of a just war. Thus, Great Khan Güyük of the Mongols (1246 – 1248) used the occasion of his reply of 12 November 1246 to a letter by Pope Innocent IV to justify military actions against “Magyars and Christians” by armed forces under his command with the accusation that these enemies had previously murdered his envoys.¹⁰⁵ In his letter of 1245 to the Great Khan, the Pope had demanded safe conduct (*salvus conductus*) for the envoys he had dispatch to the Mongols.¹⁰⁶ Both, the Great Khan and the Pope, assumed that inviolability of envoys and the

¹⁰² Paulus Vladimiri [Pawel Włodkowiec], ‘Tractatus de potestate papae et imperatoris respectu’ [delivered to the Council of Constance, 5 July 1415], edited by Stanislaus Franciszek Belch, *Paulus Vladimiri and His Doctrine Concerning International Law and Politics*, vol. 2 (The Hague, 1965), pp. 792-844. Vladimiri, ‘Tractatus “Opinio Hostiensis”’ [6 July 1415], *ibid.*, pp. 864-884.

¹⁰³ Ingrid Baumgärtner, *Martinus Garatus Laudensis. Ein italienischer Rechtsgelehrter des 15. Jahrhunderts* (Dissertationen zur Rechtsgeschichte, 2) (Munich, 1986), pp. 195-196.

¹⁰⁴ Gratian, *Decretum* (note 66), dist. I, canon 9, p. 3. Treaty Egypt (Mameluk Sultan) – Venice, 14 November 1238, in: Gottlieb Lukas Friedrich Tafel and Georg Martin Thomas, eds, *Urkunden zur älteren Handels- und Staatsgeschichte der Republik Venedig mit besonderer Beziehung auf Byzanz und die Levante vom neunten bis zum Ausgang des fünfzehnten Jahrhunderts*, Part 2 (Fontes rerum Austriacarum, Abteilung II, vol. 13) (Vienna, 1856), pp. 336-341, cap. [9] [reprint (Amsterdam, 1964)]. Treaty Egypt – Florence, 14 June 1422, in: Michele Amari, *I diplomati arabi del R[egale] Archivio fiorentino* (Florence, 1863), p. 333. Louis de Mas-Latrie, ed., *Traité de paix et de commerce* (Paris, 1866) [Nachdruck (Burt Franklin Research and Source Works Series, 63) (New York, 1964)], pp. 58, 62, 200, 202, 347. Shih Shun Liu, *Extraterritoriality. Its Rise and Decline* (Studies in History, Economics and Public Law, vol. 118, nr 2 = Columbia University Studies in the Social Sciences, 263) (New York, 1925), p. 58 [reprint (New York, 1969)].

¹⁰⁵ Güyük, Great Khan of the Mongols, ‘[Letter to Pope Innovent IV, November 1246], in: Christopher Dawson, ed., *Mission to Asia* (Medieval Academy Reprints for Teaching, 8) (Toronto, London and Buffalo, 1980), pp. 85-86.

¹⁰⁶ Innocent IV, Pope, *Ex Innocentii IV registro. Epistolae saeculi XIII e regestis pontificum Romanorum selectae*,

protection of the safety of their property were rights that existed among humankind without having to be legislated. At the same time, however, they recorded their anxiety that the rights of diplomats might not be enforceable. Diplomatic envoys thus operated in an arena in which the capability of governing institutions to insure the enforcement of the law of peace under all circumstances could not be taken for granted. Nevertheless, basic norms of the law of peace continued to be accepted as divinely willed and common to all humankind, as Bernard du Rosier, Archbishop of Toulouse (1400 – 1475), an early theorist of diplomacy, noted in the fifteenth century.¹⁰⁷

From the 1420s, sources began to provide records of diplomatic missions, which were not mandated by special commissions but were dispatched without a finite term and had no specific task to accomplish.¹⁰⁸ The Senate of Venice took the lead in sending out such standing missions and demanded their members to report regularly on their activities at their destination. Initially, these standing missions lacked a common terminology. In the fifteenth century, the word “Ambaxiator” was a neologism, the meaning of which Bernhard du Rosier believed to have to explain. He was convinced that “ambaxiatores” were government officials dispatched anywhere by any governing institution except by the Catholic Church, which, he knew, termed its envoys “nuncii”.¹⁰⁹ In the thirteenth century, Durantis had laid down similar observations, while using the long-established word *legatus* for the envoys. According to Durantis, anyone could become *legatus* whom someone would send to someone else (*Legatus est seu dici potest, quicumque ab alio missus est*). Jurist Martinus Garatus from Lodi, surnamed Laudensis († 1453), repeated this definition in the fifteenth century.¹¹⁰ However, diplomatic exchanges did not represent the sole type of exchange among rulers and governments during the thirteenth, fourteenth and fifteenth centuries. Instead, they merely supplemented the practice of personal meetings of rulers, of which more than two hundred have been counted between 1270 and 1440. However, much as these meetings were frequent, they did raise criticism. Critics argued that the conduct of relations among states should be entrusted to professional diplomats rather than left to the vicissitudes of personal likes and dislikes of rulers. One practicing diplomat even insisted that it was a “folly” to arrange personal meetings between rulers both of whom regarded themselves as sovereign equals.¹¹¹

At this time, the negotiation and conclusion of peace treaties and other agreements formed part of the regular agenda of standing missions. Since the twelfth century, the “composite” procedure of treaty-making¹¹² had become standardised, most notably for treaties made out between cities in Northern Italy. According to this procedure, negotiations for agreements and their drafting as preliminary legal instruments took place in separation from their validation and eventual

Nr 102 (5 March 1245), Nr 105 (13 March 1245), edited by Karl Rodenberg (*Monumenta Germaniae historica Epistolae*, 1.2. 3) (Berlin, 1894), pp. 72-73, 75.

¹⁰⁷ Bernardus de Rosergio [Bernard du Rosier], ‘Ambaxiator [1436]’, chap. XXIII, edited by Vladimir Emmanuilovič Grabar, *De legatis et legationibus tractatus varii* (Tartu, 1905), pp. 1-28, at p. 23.

¹⁰⁸ Donald Edward Queller, *Early Venetian Legislation on Ambassadors* (Geneva, 1966). Queller, *The Office of Ambassador in the Middle Ages* (Princeton, 1967).

¹⁰⁹ Rosergio, ‘Ambaxiator’ (note 107), chap. I, pp. 4-5. Stefano Infessura, [Diarium rerum Romanorum] Diario della città di Roma, edited by Oreste Tommasini (*Fonti per la storia d’Italia*, 5) (Rome, 1890), p. 288 [for 1493]: “ambasciatorem”.

¹¹⁰ Guilelmus Durantis, ‘[On Envoys]’, partly edited by Grabar, *Tractatus* (note 107), pp. 31-41, at p. 32 [first printed in: Durantis, *Speculum* (note 85)]. Martinus Garatus of Lodi [Laudensis], ‘Tractatus de legatis maxime principum’, edited by Grabar, *Tractatus* (note 107), pp. 45-52 [first printed in: Garatus, *Tractatus universi iuris* (Venice, 1584), fol. 212-213].

¹¹¹ Philipp of Comynes, *Mémoires*, edited by Joseph Calmette, vol. 1 (*Les classiques de l’histoire de France au Moyen Age*, 2. 5. 6) (Paris, 1924), p. 135 [also edited by Bernard de Mandrot (Paris, 1901-1903); first published (Strasbourg, 1545); newly edited by Joël Blanchard (*Textes littéraires français*, 585) (Geneva, 2007)]: „C’est grant folie à deux princes, qui sont comme esgaulx en puissance, de se entrevoir.“ On rulers’ meetings see: Gerald Schwedler, *Herrschartreffen des Spätmittelalters. Formen – Rituale – Wirkungen* (Mittelalter-Forschungen, 21) (Ostfildern, 2008), p. 405.

¹¹² Walter Heinemeyer, ‘Studien zur Diplomatie mittelalterlicher Verträge vornehmlich des 13. Jahrhunderts’, in: *Archiv für Urkundenforschung* 14 (1936), pp. 321-413. Heinemeyer, ‘Die Verträge zwischen dem oströmischen Reich und den italienischen Städten Genua, Pisa und Venedig vom 10. bis 13. Jahrhundert’, in: *Archiv für Diplomatie, Siegel- und Wappenkunde* 3 (1957), pp. 79-161.

enforcement. The procedure ascribed competence for the various stages of the treaty-making process to different persons or groups. It demanded the specific empowerment of envoys as plenipotentiaries, who had the entitlement to negotiate and draft treaties. It equated the beginning of the validity of negotiated draft agreements with the ratification by the governing agencies acting as signatory parties. Ratification as the formal act of validation could, but did not have to be stipulated in the texts. Within the “composite” procedure of treaty-making, diplomatic envoys as negotiators and drafters themselves could not enter into legally binding obligations, but the procedure implied that every treaty became binding upon validation not only for validating rulers or governments but also their successors.

As already in the Ancient Near East, agreements could be written out in the form of separate but correlated declarations of the wills of the signatory parties, such as the English-French Treaty of Brétigny of 8 May 1360. This treaty has been transmitted in the form of the declaration of will, which the King of France submitted to the King of England. The King of England ratified the treaty at Calais on 24 October 1360.¹¹³ The concordat as a form of legal instruments was frequent in use, because it helped parties, technically speaking for themselves, to avoid the fixing of differences of rank in one single text.¹¹⁴ Another element of tradition was the oath the swearing of which remained common practice.¹¹⁵ But next to concordats, treaties were made out in the form of a diploma as the combined expression of the wills of the signatories.

Not only monarchs as territorial rulers but also urban councils availed themselves of these traditions of treaty-making. The German Hansa, originally an alliance among merchant guilds, had transformed itself into an urban league by the turn towards the fourteenth century, comprising the councils of many towns and cities as the homes of merchant guilds. Hansa urban councils as holders of autonomous legislative power were entitled to the right of war not only against other towns and cities but also against other types of power holders. Consequently, Hansa urban councils were also capable of concluding peace treaties. Usually, these agreements did not feature the Hansa League as a signatory, but specified certain towns and cities as partners to territorial rulers. Treaties could come into existence as joint or separate declarations of wills. On the one side, the cities of Bremen, Dortmund, Groningen, Lübeck, Munster, Riga and Soest entered (concordatum et conclusum) into a peace agreement with King Henry VI of England (1422 – 1461, 1470 – 1471) on 7 June 1437. The agreement is extant in a diploma, which both sides had jointly validated.¹¹⁶ On the other side, King Edward IV of England (1461 – 1470, 1471 – 1483) promulgated his convention of Utrecht of 20 July 1474 with Lübeck, Gdansk and further unspecified towns as his own edict, into which he inserted the agreement he had validated. A variant of the same agreement is extant in the text of the jointly validated charter, preserved in the city archives of Lübeck and Wismar.¹¹⁷ The peace agreement of Stralsund of 2 July 1370 between some listed and some unspecified members of the Hansa League

¹¹³ Treaty Edward III, King of England – John, King of France, Brétigny, 8 May 1360 [ratified, Calais, 24 October 1360], edited by Eugène Cosneau, *Les grandes traités de la Guerre de Cent Ans* (Collection des textes pour servir à l'étude et à l'enseignement de l'histoire, 7) (Paris, 1889), pp. 39-69 [also in: Thomas Rymer, *Foedera, conventiones, literae et cuiuscunque generis acta publica inter reges Angliae et alios quosvis imperatores, reges, pontifices, principes vel communitates*, vol. 3, part 1 (London, 1706), pp. 202-209].

¹¹⁴ Treaty Henry V, Roman Emperor – Pope Calixt II, 23 September 1122, edited by Ludwig Weiland, *Constitutiones et acta publica imperatorum et regum inde ab a. DCCCCXI usque ad a. MCXCVII* (Monumenta Germaniae Historica Constitutiones, 1) (Hanover, 1893), pp. 159-161. Treaty Frederick I, Roman Emperor – Pope Eugene III, Constance 1152, in: *Die Urkunden der deutschen Könige und Kaiser*, vol. 10, part 1: Die Urkunden Friedrichs I., nr 51 (notes on the results of negotiations between papal and royal envoys in 1152, preserved in the volume of texts by Wibald of Stablo, Lüttich State Archives, fol. 140), nr 52 (ratification charter by Frederick, 1152 or 1153), nr 98 (renewal of the agreement towards Pope Hadrian IV, January 1155), edited by Heinrich Appelt (Monumenta Germaniae Historica, Diplomata, vol. 10, part 1) (Hanover, 1975), pp. 86, 88-89, 166-167.

¹¹⁵ Treaty Charles VII, 1435 (note 88), pp. 119-151.

¹¹⁶ Treaty Bremen, Dortmund, Groningen, Lübeck, Munster, Riga and Soest – Henry VI, King of England, 7 June 1437, in: Jean Dumont, Baron von Careels-Cron, *Corps diplomatique universel*, vol. 3, part 1 (The Hague, 1726), pp. 537-539.

¹¹⁷ Edward IV, King of England, 'Edict on the Promulgation of the Treaty of Utrecht of 28 February 1474, London 20 July 1474, in: Jean Dumont, Baron von Careels-Cron, *Corps diplomatique universel*, vol. 3, part 1 (The Hague, 1726), pp. 476-481.

on the one side and King Håkon VI of Norway (1343 – 1380) is on record in the “promise” by the involved Hansa towns and cities to keep the peace for fifty years and to guarantee safety during this period.¹¹⁸ The original of the “promise” has been preserved in the archives at Ledrabort in Norway, whence the text of the “promise” must have been entrusted to the Norwegian king. Conversely, the city archive of Lübeck keeps the original of the diploma, through which King Eric VII of Denmark (1412 – 1439), on 17 July 1435, confirmed the peace agreement of Wordingborg of 15 July 1435 with Lübeck, Hamburg, Lüneburg and Wismar. Hence, King Eric must have submitted the diploma to one of his treaty partners.¹¹⁹ The large number of treaties concluded between Hanseatic towns and cities on the one side, territorial rulers in northern and western Europe on the other, testifies to the mutual recognition of the legal equality of members of the Hanseatic League and kingdoms. The treaties portray the Hansa League as group, which did not call into question the legal autonomy of its members and, by consequence, was not drawn on a model for the structure of political communities that rivalled that of kingdoms and other types of territorial states. Likewise, they confirm that the great tradition of the law of war and peace continued to inform the practice of concluding treaties among states from Ancient Near Eastern times into the fifteenth century.

In his treatise on the theory of the law of treaties, jurist Martinus Garatus formulated the basic legal norm obliging sovereign signatory parties to honour binding agreements, specifically peace treaties.¹²⁰ This basic legal norm had already been enshrined in Roman law (*ius civile*) and found its expression in the formula *pacta sunt servanda*. Garatus specified that treaties were invalid only under the condition that they infringed upon divine law. In relation to the law of war and peace, Garatus derived the basic norm *pacta sunt servanda* from divine will, without saying anything substantially new. For the obligation to abide by treaties that had been agreed upon in accordance with divine law has been part of the great tradition of the law of war and peace. However, Garatus was the first to draw from his derivation of the basic norm from divine will the pragmatic conclusion that the pope as Christ’s vicar of earth could oblige sovereigns (*principes*) to keep treaties.¹²¹ Garatus further maintained that it was the pope’s duty to promote peace.¹²² The pope had, as Garatus knew well, no military but only ecclesiastical means to enforce peace among sovereign governments. In positioning only the pope as an agent capable of promoting peace, Garatus took issue with Dante’s expectation that the Roman Emperor could accomplish the task of bringing justice and peace to the world at large. Garatus also insisted that the basic legal norm *pacta sunt servanda* in Christendom was neither part of the tradition of Roman law (*ius civile*) nor an element of the *ius gentium* common to humankind, but perceived that basic norm as flowing from divine will by papal intermediation. Hence, in Garatus’s perspective, the law of treaties between states as part of the law of peace was no longer a given set of norms valid for all humankind but only among Christians.

Summary

From the twelfth century, the tradition of Roman law (*ius civile*) gave support to the formation and solidification of states constituted as sovereigns over specified territories, but no longer the Roman Imperium as the perceived bearer of universal rule in Latin Christendom. The claim to universal rule remained in existence and even received a new foundation in the juristic theory of Bartolo of Sassoferrato. In his *Booklet on Imperial Monarchy* of 1460, the Basle canonist Hermann Peter from Andlau (in Alsace) (c. 1420 – c. 1484) described the Sacrum Imperium Romanum (Holy Roman

¹¹⁸ Treaty various towns and cities of the Hanseatic League – King Håkon VI of Norway [peace agreement], Stralsund, 2 July 1370, in: Goswin Freiherr von Ropp, ed., *Hanserezesse*, section 1, vol. 2 (Leipzig, 1872), pp. 15-17.

¹¹⁹ Treaty Eric VII, King of Denmark – Hamburg, Lübeck, Lüneburg and Wismar, Wordingborg, 17 July 1435, in: *Urkundenbuch der Stadt Lübeck*, vol. 7 (Lübeck, 1885), pp. 624-627.

¹²⁰ Martinus Garatus of Lodi [Laudensis], ‘Tractatus de confederatione, pace et conventionibus’, quaestio V, in: Garatus, *Tractatus universi iuris* (Venice, 1584), fol. 302-303 [newly edited by Alain Wijffels, in: Randall Lesaffer, ed., *Peace Treaties and International Law in European History* (Cambridge, 2004), pp. 412-440, at p. 414].

¹²¹ *Ibid.*, quaestio XIX, p. 421.

¹²² *Ibid.*, quaestio XXXIII, p. 426.

Empire) as if it were a territorial state and could even oblige the Roman Emperor to the specific task of guaranteeing the security of travellers on public roads within the Empire only, that is, not for Christendom at large.¹²³ In doing so, Peter did indeed refer to the Imperium as the divinely willed government (*gubernaculum*) of humankind, claimed that the Emperor had to protect peace everywhere on earth, occupied a higher rank than all other sovereigns (*reges et principes*) in relation to authority and power (*auctoritate et potestate*) and that all “nations” (*naciones*) stood under him (*sub eo sunt*). Yet, Peter had to admit that already the King of France, although “*de jure*” subject to imperial overlordship, actually did not recognise the Emperor as a superior ruler.¹²⁴

By the second half of the fifteenth century, then, a substantial effort was required for theoretical arguments seeking to render the law of war and peace valid as a set of rules for all humankind. The idea that that law originated from divine will and did not require human legislative action, continued to feature in fifteenth-century legal and political theory. However, the practice of the conduct of relations among states had already transformed the law of war and peace into a set of norms regulating these relations mainly within Latin Christendom. The shrinking range of the practical application of the law of war and peace in the course of the thirteenth, fourteenth and fifteenth centuries, threatened the legitimacy of the Roman Imperium. This was so, because, under the rule of the more narrowly defined law of war and peace, the Imperium dwindled to one among many other states. At the time, when Roman imperial rule found its end in Byzantium, the Roman Imperium of the Occident stood in a shaky position. It owed its existence mainly to the persistent belief that the world could only continue to exist as long as the Imperium remained, as Peter assured his readers.¹²⁵ He thereby confirmed that some pieces of the great tradition of the law of war and peace were still effective in the later fifteenth century.

The belief that an institution of universal rule, overarching the manifold particular states and other political communities, could enhance the continuity of the world as a whole is on record in the several world maps extant till the turn towards the sixteenth century. The dominant type of world map, in Christianity as well as in Islam, retained core features of the tradition formed in Ancient Near Eastern times and representing the planet earth as a permeable land encircled by the ocean as a narrow strip of water.¹²⁶ This type of map visualised the surface of the planet earth as the triad of the intertwined continents of Africa, Asia and Europe.¹²⁷ The world appeared in some of these maps under figures such as Christ and angels, who were associated with the divine sphere, and, simultaneously, above demons the shape of dragons literally representing the underworld. Except for the reference to the Biblical myth of Gog and Magog, reportedly confined behind walls of stone, these maps did not show any human-made borders, thereby portraying the human world as an integrated legal and political space.¹²⁸ As a rule, Palestine formed the centre of the depicted triad of

¹²³ Hermann Peter, from Andlau, ‘*Libellus de Cesarea monarchia* [1460]’, title II, chap. 18, edited by Joseph Hürbin, ‘Der “*Libellus de Cesarea monarchia*” von Hermann Peter aus Andlau’, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung*, vol. 12 (1891), pp. 34-103, vol. 13 (1895), pp. 163-219; ‘Ergänzung’, vol. 16 (1895), pp. 41-62, at p. 212-214.

¹²⁴ *Ibid.*, title II, chap. 18, p. 212; title II, chap. 20, p. 217; title II, chap. 8, pp. 183-184.

¹²⁵ *Ibid.*, title II, chap. 20, p. 218.

¹²⁶ Psalter Map, c. 1250 London, British Library, Add. Ms. 28681, fol. 9.

¹²⁷ Jörg-Geerd Arentzen, *Imago mundi cartographica. Studien zur Bildlichkeit mittelalterlicher Welt- und Ökumenekarten unter besonderer Berücksichtigung des Zusammenwirkens von Text und Bild* (Münsterische Mittelalter-Schriften, 53) (Munich, 1984). Evelyn Edson, *Mapping Time and Space. How Medieval Mapmakers Viewed Their World* (London, 1997) [reprint (London, 1999)]. Brigitte Englisch, *Ordo orbis terrae. Die Weltsicht in den Mappae mundi des frühen und hohen Mittelalters* (*Ordo mediaevalis*, 4) (Berlin, 2002). Herma Kliege, *Weltbild und Darstellungspraxis hochmittelalterlicher Weltkarten* (Munster, 1991). Naomi Reed Kline, *Maps of Medieval Thought. The Hereford Paradigm* (Woodbridge, 2001). Hartmut Kugler, ‘*Imago Mundi*. Kartographische Skizze und literarische Beschreibung’, in: Wolfgang Harms and Jan-Dirk Müller, eds, *Mediävistische Komparatistik. Festschrift für Franz Josef Worstbrock zum 60. Geburtstag* (Stuttgart and Leipzig, 1997), pp. 77-93. Rudolf Simek, *Erde und Kosmos im Mittelalter* (Munich, 1992), pp. 37-54. Scott Westrem, *The Hereford Map. A Transcription and Translation of the Legends with Commentary* (*Terrarvm Orbis*, 1) (Turnhout, 2001). Jürgen Wilke, *Die Ebstorfer Weltkarte*, vol. 1 (Bielefeld, 2001) (Veröffentlichungen des Instituts für Historische Landesforschung der Universität Göttingen. 39.)

¹²⁸ [Patrick Gautier Dalché, ‘*Décrire le monde et situer les lieux au XIIe siècle [Expositio mappae mundi]*’, in:

continents, positioned on the eastern shores of the Mediterranean Sea, that is, on the lower fringes of Asia.¹²⁹ The East of Asia, that means the upper part of the map next to the divine sphere, was home to terrestrial paradise, positioned either on the easternmost margins of the continent or as an island off the continental coast. Usually, terrestrial paradise appeared in symbolic shapes, manifest through four, occasionally five rivers, two faces and the tree of knowledge.¹³⁰ According to these pictorial maps, the human world existed between heaven and hell. Thus, the maps represented the human world not only in its spatial dimension, but also in the temporal dimension of the path of humankind from its divine creation to its future end on Judgment Day.¹³¹ These maps commonly located the Roman Imperium in their lower part and thus emphasised the position of the Imperium as the last of the world empires before the end of the world. Hence, to the end of the fifteenth century, the world maps gave pictorial expression to the expectation that the human world would accomplish unity in the future while preserving the diversity of the collective identities of political communities as they were.

The same type of world map was common in Orthodox Christendom and in Islam. Muslim maps differed from the Latin Christian type by positioning the South with Africa at their top,¹³² while Byzantine Greek maps opted for the North, placing Europe at the top.¹³³ Muslim maps regularly inserted Mekka as central place and allowed for a larger space allocated to seaways than Latin and Greek maps. The latter feature was obviously derived from nautical experiences of Arab seafarers in the Indian Ocean. Arab nautical knowledge disseminated in Greek and Latin Christendom gradually from the middle of the fifteenth century. Muslim maps thus joined their Christian counterparts in representing the human world as an integrated space and the *locus* of claims for universal rule.¹³⁴

Obviously, these manifestations of universal rule were mutually exclusive, first and foremost because they became simultaneously explicit. Yet the assumption is unfounded that the ideologies informing Christian and Muslim world maps were simply reflections of crusading propaganda and Muslim *La-maqām* theory. Maps were not mere displays of ideology, because, as expressions of claims to universal rule, they existed long before the beginning of the Crusades and were not specific to West Asia, the Mediterranean area and Europe. Similar maps are on record from

Mélanges de l'Ecole Française de Rome, Moyen Age 113 (2001), pp. 343-409. Danielle Lecoq, 'La "mappemonde" du De arca noe mystica de Hugues de Saint-Victor (1128 – 1129)', in: Monique Pelletier, ed., *Géographie du monde au moyen âge et à la Renaissance* (Paris, 1989), S. 9-29.

¹²⁹ For details see: Bruno Reudenbach, 'Die Londoner Psalterkarte und ihre Rückseite', in: *Frühmittelalterliche Studien* 32 (1998), pp. 164-181.

¹³⁰ Idefonse Ayer de Vuippons, 'Ou plaça-t-on le paradis terrestre?', in *Etudes Franciscaines* 36 (1924), pp. 117-40, 37 (1925), pp. 113-45. P. G. M. Gilet, *Le paradis terrestre et son image dans la littérature de la première moitié du XIe siècle*. Ph.D. Diss., typescript (University of Melbourne, 1966). Reinhold R. Grimm, *Paradisus coelestis, paradisus terrestris. Zur Auslegungsgeschichte des Paradieses im Abendland bis um 1200* (Munich, 1977). Richard Hennig, *Wo lag das Paradies?* (Berlin, 1950). Franz Kampers, *Mittelalterliche Sagen vom Paradiese und vom Holze des Kreuzes Christi* (Vereinschriften der Görres-Gesellschaft, 1897, nr 1) (Cologne, 1897). Lars Ivar Ringbom, *Paradisus terrestris. Myt, Bild och Verklighet* (Acta Societatis Scientiarum Fennicae, Nova Series C. I/1) (Helsingfors, 1958).

¹³¹ For details see: Anna-Dorothee von den Brincken, 'Mappa mundi und Chronographia. Studien zur imago mundi des abendländischen Mittelalters', in: *Deutsches Archiv für Erforschung des Mittelalters* 24 (1963), pp. 118-186. Edson, *Mapping* (note 127), pp. 52-96.

¹³² Muhammad al-'Adlūni al-Idrīsī, *Map of the World, Twelfth Century*. Ms. Oxford, Bodleian Library, Ms Pococke 375, fol. 3^v-4^r.

¹³³ Kosmas Indikopleutēs, *Topografie chrétienne*, edited by Wanda Woska-Conus, 3 vols (Sources chrétiennes, 141, 159, 197) (Paris, 1968-2006); separate edn of the world map, edited by Konrad Kretschmer, *Die Entdeckung Amerikas* (Berlin, London and Paris, 1892) [reprint (Frankfurt, 1991)].

¹³⁴ Muhammad al-'Adlūni al-Idrīsī, *La géographie d'Idrīsī. Un atlas du monde au XII siècle*. CD-ROM (Paris, 2000) [also edited by Pierre-Amédée Jaubert, *Géographie d'Edrisi*, 2 vols (Paris, 1836-1840); reprint, edited by Fuat Sezgin (Publications of the Institute for the History of Arabic-Islamic Science, Islamic Geography 2) (Frankfurt, 1992)]. On fifteenth-century Arab seafaring in the Indian Ocean and across the Cape of Good Hope see: George Fadlo Hourani, *Arab Seafaring in the Indian Ocean* (Princeton, 1951). Gerald Randall Tibbetts, *Arab Navigation* (London, 1971). Andrew Williamson, *Sohar and Omani Seafaring in the Indian Ocean* (Muscat, 1973).

East Asia from the thirteenth, fourteenth and fifteenth centuries. These maps also featured the human world as a permeable land mass encircled with water and represented the land as a dyad of China and India, the two main Buddhist areas.¹³⁵ Buddhism was recognisable as the source of Chinese world maps, which showed Buddhist sacred places together with the itinerary of the monk Xuan Zang (603 – 664), who contributed most to the spreading of Buddhism in East Asia.¹³⁶ This type of world map like its occidental and Muslim counterparts, was, then, a manifestation of universal rule, as articulated under the early Ming Dynasty.¹³⁷

All the manifestations of universal rule coexisting in the tri-continental world of Africa, Asia and Europe between the thirteenth and the fifteenth century, albeit mutually exclusive, did not spark political or even military confrontations between the Chinese government on the one side, rulers in Islam and Christendom on the other. Apparently, in East Asia as well as in the Mediterranean area and in Europe, maps were recognised as visions of the future, as the manifestations of universal rule from each side were known by all others through travel reports by Ibn Battūta (1304 – 1368/77),¹³⁸ from stories by some Christian merchants and missionaries having reached East Asia,¹³⁹ and from narratives by Chinese navigators having traversed the Ocean perhaps

¹³⁵ Gotenjiku-zu [Map of the Five States, 1364; Hōryū-ji, Nara, Japan]; reproduced in: Matsutarō Nanba, *Old Maps in Japan* (Osaka, 1973), pp. 160, 177. Egon Klemp, *Asia in Maps from Ancient Times to the Mid-19th Century / Asien auf Karten von der Antike bis zur Mitte des 19. Jahrhunderts* (Weinheim, 1989), nr 5. Peter Whitfield, *The Image of the World* (London, 1994), pp. 22-23 [reprint (London, 1997)]. The Korea Library Science Research Institute, ed., *Old Maps of Korea* (Seoul, 1977), pp. 13-14.

¹³⁶ Xuan Zang [Hiouen-Tsang], *Histoire de la vie de Hiouen-Tsang et de ses voyages dans l'Inde depuis l'an 629 jusqu'an 645, par Hoei-li et Yen-Tsong*, edited by Stanislas Julien, *Voyages des pèlerins bouddhistes*, vol. 1 (Paris, 1853) [also edited by Samuel Beal, *The Life of Huiuen-Tsiang* (London, 1911); Jeanette Mirsky, *The Great Chinese Travellers* (Chicago, 1964); Sally H. Wriggins, *Xuanzang. A Buddhist Pilgrim on the Silk Road* (Boulder and Oxford, 1996); *Seizuki no shiruku rōdō. Xuanzang hoshi no michi. The Silk Road and the World of Xuanzang* (Tokyo, 1999)].

¹³⁷ Jan Julius Lodewijk Duyvendak, *China's Discovery of Africa* (London, 1949). Teobaldo Filesi, *China and Africa in the Middle Ages* (Cass Library of African Studies. General Studies, 144) (London, 1972) [first published (Milan, 1961)]. Claude Guillot, Denys Lombard and Roderich Ptak, eds, *From the Mediterranean to the China Sea. Miscellaneous Notes* (South China and Maritime Asia, 7) (Wiesbaden, 1998). Friedrich Irth and William Woodville Rockhill, *Chau Ju-Kua. His Work on the Chinese and Arab Trade in the Twelfth and Thirteenth Centuries, Entitled Chu-fan-chi* (St Petersburg, 1911) [reprint (Taipei, 1970)]. James Spedding Kirkman, 'Kilwa. The Cutting behind the Defensive Wall', in *Tanganyika Notes and Records* 50 (1958), pp. 94-101. Kirkman, 'Chinese', in: Kirkman, 'Topographical Notes', in: Justus Strandes, *The Portuguese Period in East Africa*, English version, edited by James Spedding Kirkman (Nairobi, 1961), pp. 331-333. Roderich Ptak, *China and the Asian Seas. Trade, Travel and Visions of the Other (1400 – 1750)* (Aldershot, 1998). Ptak, *China's Seaborne Trade with South and Southeast Asia (1200 – 1750)* (Aldershot and Brookfield, VT, 1999).; William Woodville Rockhill, 'Notes on Early Relations and Trade of China with the Eastern Archipelago and the Coasts of the Indian Ocean during the Fourteenth Century', in *T'oung Pao*, Second Series, vol. 16 (1915), pp. 61-159, 236-71, 374-92, 435-67, 604-26. *Admiral Zheng He & Southeast Asia*, edited by Leo Suryadinata (Singapore, 2005). Hiroshi Watanabe, 'An Index of Embassies and Tribute Missions from Islamic Countries to Ming China (1368 – 1644), as Recorded in the Ming Shi-lu, Classified According to Geographic Area', in *Memoirs of the Research Department of the Tōyō Bunkō* 33 (1975), pp. 285-347. Jun-Yan Zang, 'Relations between China and the Arabs', in: *Journal of Oman Studies* 6 (1993), pp. 91-109.

¹³⁸ Muhammad Ibn-'Abdallāh Ibn Battūta, *Voyages d'Ibn Batoutah*, edited by Charles François Defrémery and Beniamino Raffaello Sanguinetti (Paris, 1858) [reprint (Publications of the Institute for the History of Arabic-Islamic Science, Islamic Geography 178) (Frankfurt, 1994)].

¹³⁹ Polo, *Liber* (note 9). Giovanni Piano Carpini, 'Ystoria Mongalorum quos nos Tartaros appellamus [c. 1247]', edited by Anastasius van den Wijngaert, *Itinera et relationes Fratrum Minorum saeculi XIII et XIV* (Sinica Franciscana, 1) (Quaracchi, 1929), pp. 3-130. Marcos Jiménez de la Espada, ed., *Libro del Conocimiento de todos los reynos y tierras y señorios que son por el mundo y de las señales y armas que han cada tierra y señorío por sy de los reyes señores que los proueen escrito por un Franciscano español á mediados del siglo XIV* (Madrid, 1877). John of Marignola, 'Chronica Boemorum', edited by Jozef Emler, *Prameny dejin českých vydání Palackého péci 'Spolku Historického v Praze'* (Fontes rerum Bohemicarum, 3) (Prague, 1887). For studies see: Anna Dorothee von den Brincken, 'Die universalhistorischen Vorstellungen des Johann von Marignola OFM. Der einzige mittelalterliche Weltchronist mit Fernostkenntnis', in: *Archiv für Kulturgeschichte* 48 (1967), pp. 297-339. Xenja von Ertzdorff, 'Et transivi per principales mundi provincias. Johannes Marignoli als weitgereister Erzähler der "Böhmenchronik"', in: Joachim Heinze, L. Peter Johnson and Gisela Vollmann-Profe, eds, *Literatur im Umkreise*

even reaching the coasts of East Africa early in the fifteenth century.¹⁴⁰ The ideal that humankind should be integrated into a single community was present from the thirteenth century and formed the program for a better future against the recognisable and often awkward divisions in the empirical world of warring states.

Within Latin Christendom, the city evolved as an autonomous political community with its own legislative competence between the twelfth and the fifteenth century and became then model for legitimate, centralised and bureaucratic government. The theory of the government covenant, positioning human-willed rule as compatible with the divinely imposed order of the world, and the tradition of Roman law (*ius civile*) jointly advanced the process of the formulation of a political theory that placed government under the rule of law. On the basis of the tradition of Roman law, jurists advocated the theory that rulers entitled to autonomous legislation should be recognised as sovereigns and holders of the highest rank among autonomous governing institutions, subject to the control of the pope with regard to religious matters and to the rule of the law of war and peace with regard to secular issues. These theorists equated autonomy with legitimate legislative capability as the main feature of sovereignty. Even though, according to this theory, sovereignty could but did not necessarily imply legal equality, it became harder for theorists of the law of war and peace to provide cogent reasons why the law of war and peace should be accepted as generally valid over all humankind. The difficulty arose from the apparent paradox that sovereign rulers could only document autonomous legislative capability, as long as they were not bound by norms except those they had set for themselves. To the end of the fifteenth century, theorists retained the expectation that norms of the law of war and peace originated from divine will. But this expectation turned into a matter of belief, but was not based upon the law. Put differently: in Latin Christendom, theorists prioritised specifically Christian norms of the law of war and peace over norms overarching the bounds of religious beliefs.

des Prager Hofes der Luxemburger (Wolfram-Studien, 13) (Berlin, 1994), pp. 142-173.

¹⁴⁰ Hubert Neville Chittick, 'Kilwa. A Preliminary Report', in: *Azania* 1 (1966), pp. 1-36. Chittick, 'Discoveries in Lamu Archipelago', in: *Azania* 2 (1967), pp. 37-67. Chittick, *Kilwa. An Islamic Trading City on the East African Coast*, 2 vols (Nairobi, 1974). Chittick, *East Africa and the Orient. Cultural Synthesis in Pre-Colonial Times* (New York, 1975).