

Cuius regio, eius religio:

The ambivalent meanings of state-building in Protestant Germany, 1555-1655

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Central Europe at the turn of the sixteenth century may best be understood as a collection of three supra-national polities: the Hungarian Kingdom, the Polish-Lithuanian Confederation and the Empire of the German Nation.¹ None of these Empires survived the early modern period. The kingdom of Hungary was shattered by the Turkish victory at Mohács in 1526. Poland saw troops from Sweden and Brandenburg in Warsaw as early as 1656. Though Poland recovered afterwards, the Polish *sejm* came under the influence of noble factions paid from Moscow, Vienna and Berlin in the 1730s if not earlier. Movements to restore independence led to the first (1772) and second (1793) partitions of Poland and ultimately to the complete dissolution of a sovereign Polish state. The invasion and conquest of areas of the Empire of the German Nation by armies of the French Republic after 1793 led to the redistribution of the lands of the imperial Catholic church among more powerful dynasties, primarily in Prussia, Austria, Württemberg, Bavaria and Baden (in the *Reichsdeputationshauptschluss* of 1803), to alliances of most of them with Napoleon and to the dissolution of the empire in 1804-1806.

These facts have led many historians to conclude that the nation inevitably needed a strong centralized monarchy in order for it to survive in the highly predatory and competitive environment of early modern Europe. Reflections on the alleged corruption of the Swedish and Polish diet supported this conclusion. Such ideas, however, have a longer pedigree, for European reflections on the nature of politics

and government in the turmoil of war and crisis go back to Machiavelli and the breakdown of the Italian city-state system following the French invasion of the 1490s. Arguably, bloodshed in the sixteenth and seventeenth century encouraged further reflection on the “reason of state” by European princes, who attempted to patch together lands to assemble “dynastic agglomerations.”² Since the nineteenth century, these agglomerations were (mis-) understood as the kernel of the nation state. During the nineteenth century, even important “Whig” historians like Thomas Babington Macauley addressed the “Prussian *Monarchy*” as “the youngest of the European *states*.”³ Along this line, the territorial state within the Empire provided Protestant historians with the functional equivalent of the centralized national governments of France or England, Sweden or Portugal, while Catholic historians tended to emphasize the dissolution of the Empire.⁴ To both, however, *cuius regio, eius religio* was the factual and legal watershed between a disintegrated and chaotic late medieval Empire and the “well-ordered police state,” as Marc Raeff described it, of the later sixteenth, seventeenth and eighteenth centuries. The Peace of Augsburg of 1555 allegedly gave princes the right to determine confessional allegiance. They gained power over the church in their lands. This bolstered their rights and their authority and helped them consolidate their power in a system of territorial absolutism. According to this argument this critical transfer occurred by 1555.⁵ Leonard Krieger’s famous “German Idea of Freedom,” outlining a German *Sonderweg* of passive and inner freedom of conscience as opposed to active participatory liberty, is rooted in this notion.⁶

In his widely praised study on Luther, Roland Bainton reminds the reader that Luther in his 1523 *On Secular Authority* states that belief is a “free work” (*freies Werk um den Glauben*) that should not be enforced, and that secular authority should

leave subjects to believe as they “can and will” (*so oder so glauben lassen, wie man kann und will*). Indeed, the *limits* of what secular authority should enforce is the focus of this treatise.⁷ During the eighteenth century, enlightened Lutherans attempted to project their notion of tolerance back in time onto Luther, claiming the great man for their own cause and taking him away from their orthodox foes.⁸ In 1625 Christoph Besold, the towering legal authority of Lutheran Germany, referred in his *De iure maiestate* to Luther and to Johann Gerhard, the “father” of Lutheran orthodoxy, to assert the following point: it displeases God when we desire to make others pious (*Es gefälle Gott nicht, wenn wir ander Leut begehren fromm zu machen*). Besold additionally asserted that the law of nature gives every subject the right to a free conscience and to believe whatever he wants (*Juris naturalis est, conscientiam liberam habere, & credere quicquid velis*).⁹ By the same token, Besold reminded his readers of Luther’s earlier writings on the Jews where he advised against violence. Besold quoted Luther with his reminder that Christ was a Jew, and that if the Apostles, who also had been Jews, had treated us, the pagans, as we treat the Jews today, no pagan would ever have become Christian.¹⁰

Besold was not an outsider but a seven-time rector of the University of Tübingen and one of the most frequently cited authorities on law and politics from the 1620s to the 1650s.¹¹ Indeed, during the later 1640s and early 1650s, Hessian noblemen suing their prince at the Imperial Chamber Court frequently referred to Besold in their depositions. As should be obvious from these citations, how individuals perceived the territorial state was not uniform in this period. To start, its formation was in no way complete by 1555. Rather, from the middle of the sixteenth century juridical conflicts and academic treatises about what had actually been achieved with the Peace of Augsburg began to shape the meaning of what was to

Opmerking [HL1]: You wrote Bainton. Don't you mean Besold?

become the territorial state, a process brought to a closure in 1648 only in *some* respects. The struggles between princes and estates in places such as Hesse, Mecklenburg, Württemberg or Calenberg over the precise extent of the rights and privileges of princes, estates and subjects carried on well beyond Westphalia.¹² In particular the last twenty years have considerably changed our views on the timing and meaning of the formula, *cuius regio, eius religio*. Scholars still debate the meaning of the terms *regio* and *religio* and the relationships between faith, confession and secular power groups.

After reviewing some results of recent historiography on the timing and nature of territorial state-building, I will then present new insights into the variety of contemporary legal and political expertise on the issue, focusing on the meaning of terms like *regio* or *patria* in the course of the sixteenth century and on the treatment of princely rule in political thought during the first third of the seventeenth century. In conclusion I argue that the emerging concept of the *res publica* as legal person of public order within the Empire did by no means enshrine territorial absolutism but a highly ambivalent system of rule in which princes and their exercise of power were meant to remain constrained by legal boundaries enforceable at courts of law.

Territorial State-building: Recent Historiography

Neither the reformation of the princes¹³ nor the Peace of Westphalia are understood today as a watershed of territorial absolutism. A revision of the older narrative concerning the Empire and territorial states depends upon four points. Support for three of them has been provided by the explosion of detailed monographic research during the last 30 years, led primarily by Karl Otmar von Aretin, Thomas Brady, Heinz Duchhardt, Peter Moraw, Volker Press, Heinz Schilling, Georg Schmidt and

Eike Wolgast.¹⁴ The fourth point is the subject of research at the interface of the history of political thought and social history, conducted, among others, by myself in cooperation with legal historians.¹⁵ Regarding the first three points, the Empire was not disintegrating—neither around 1500, nor in 1555 nor even in 1648; territories were built, but in conjunction with the Empire and in subjection to it; and the building of territories was only completed during the period between the eventual dissolution of the Empire in 1804–06 and the reordering of Central Europe’s borders in 1814–15. The restructuring of legal relations between the emperor, princes and vassals was pursued during the later sixteenth and seventeenth century within the legal framework of the Empire, not independent of it. Thus, the consolidation of princely territories remained stretched across the whole early modern period and was accompanied by initiatives from subjects and vassals to secure their own privileges by seeking support from imperial courts or neighboring princes. As for the fourth point, this dynamic was also influenced by changes in political thought that in turn informed the way the law was interpreted and applied. Let us consider these issues in turn.

Recent accounts underline the independence of late medieval Central European dynasties and corporations.¹⁶ At the beginning of our period, the Empire was not primarily a constitutional unity, but a mixed political system, comprising princely dynasties, regional associations of cities and nobilities and the Imperial Church. It could be variously conceived in three overlapping yet different senses. It still claimed the transferral of the *plenitudo potestatis* from the late Roman Empire (*translatio imperii*). Second, the Empire laid claim to fiefs not only in the *regnum teutonicum*, but also for instance in upper Italy, Burgundy, Savoy and Lotharingia (*Reichslehensverband*), the elected king and Emperor remaining the feudal lord (*Reichslehensherr*). Third, beginning in the fifteenth century there was a growing

sense, mainly in the *regnum teutonicum*, the eventual center of imperial reforms, of being the *patria communis* of the German Nation, governed by common institutions, laws and procedures rather than by a single dynasty or an aristocracy of princes.

Right into the fifteenth century, the Empire in this latter sense was well understood to be composed of divergent areas, but these were not meant to be principalities, but historic regions. A document of 1422 enumerates German lands (*deutsche lande*) as lying in “Swabia, Bavaria, at the Rhine, in Alsatia, in the Wetterau, in Hesse, Thuringia, Saxonia, Maissen, Brabant, Holland, Zealand, Gelderen” and so forth.¹⁷ Neither these older lands nor the jurisdictional districts (*Reichskreise*) of Imperial Reform from 1495 were the *terrae* of the princes.

But the *terrae* that princes did possess as fiefs were not understood as spatially defined areas, either. The varieties of dynastic demography and high medieval developments had provided for huge differences in the extension of princely fiefs.¹⁸ Princely fiefs established a mutual bond of responsibilities and duties among the Roman king, (*dominus*) and the prince (*vasallus*) for the term of a natural life. They needed to be reinvested and allowed for subinfeudation, creating a complex web of lord and vassal relationships.¹⁹ Enfeoffment, although it did concern a principality, did not define a precise geographical area or legal district; rather, it granted certain general rights that the respective prince had to shape into practical politics in manifold ways. The increasing institutionalization of late medieval princely government, of councils and offices for finance, of the administration of the demesne, of taxing peasant and urban subject populations, of the negotiations with vassals consolidating themselves into a recognizable group as estates during the fifteenth century, all of that gave sharper contours to princely rule. It did not consolidate princely fiefs into spatially defined legal districts. Recent research confirms that by 1500, the small

administrative and legal districts of *Ämter*, often consisting of a small town and several villages, had achieved a relatively continuous and clear-cut spatial shape. But the princely fiefs themselves were by no means organized into such *Ämter*; rather they *consisted* of them—and of the towns and noble families beginning to form the territorial estates.²⁰

Consequently, the period from the late fifteenth to the mid-seventeenth century has been re-conceptualized as the *making* of the German Empire—in particular in terms of the implementation of the reforms of 1495 involving the Diet, an Imperial Chamber court and administrative districts— *in conjunction with* the consolidation of dynastic territorial possessions from a diverse number of corporations, families and allegiances, rather than the emergence of the territorial state from imperial ruins.²¹ In this manner, early modern German historiography is now being rewritten in terms of evolving political, social and cultural relations in the German-speaking parts of Central Europe which increasingly began to reorganize themselves as part of a meaningful political unity and a jurisdictional legal entity. Owing to the fragile relations of power and rights in the Empire, neither the Emperor nor the princes could dictate the shape of the evolving political entity of the Empire and the territories within them or their relations to each other. Because the consolidation of public power within the Empire remained in such flux during the early modern period, both within the Empire as a whole and within the evolving territories of princes, individuals and groups kept being forced to adapt their own claims for status—and thus public power—according to changing events and to changing notions of legitimacy.

Even by the later seventeenth century, families like the von Alvensleben, though legally vassals to the electors of Brandenburg, decided independently on appointing Reformed or Lutheran ministers to their parishes and had their own

Opmerking [HL2] : Am I correct here? You used the word recruiting which has a different meaning though I think you were actually referring to their appointment.

network of sub-vassals.²² As late as 1729, the nobility of the ecclesiastical electorate of Trier could still declare its independence of the prince and become imperial knights. The Catholic Emperor could still, with the help of allied Lutheran princes, restore the rights of nobility and estates in Mecklenburg against the absolutist policies of its territorial duke between 1719 and the 1755. The dukes of Württemberg could not enforce absolutism against their estates. If the Empire dissolved into a confederation of princely dynasties and their possessions—not territorial states— that happened after 1740, not before.²³

The enforcement of rule over peasant and urban subjects living within the *Ämter* was by no means at the core of what state-building meant for princes during the later sixteenth and seventeenth centuries. Indeed, focusing on the relations between princes and peasant-subjects within these *Ämter* would miss the development and strategic advantage of *superioritas territorialis*, a term signifying a new approach to the relations of princes and their vassals. Those affected by this development were primarily the noble vassals of princes and towns that had claimed some kind of right to self-administration, in particular with regard to the administration of the church. Territorialization was meant to subject these semi-independent groups in particular by transforming the myriad constellations of relationships between lord and vassals, dependant on specific verifiable rights, into a single all-encompassing subordination. With this aim in mind, around the turn of the seventeenth century, several German jurists and authors of *politicæ* embraced Jean Bodin's thesis that any political unit needed a single supreme authority. Andreas Knichen's treatise on territorial rule stands out among these works attempting to bring about this interpretative shift.²⁴

One major incentive behind this change was a desire to shift the balance in legal disputes about material burdens among lords, vassals and subjects. Rather than

the lord having to prove every single right against vassals and subjects, now subjects and vassals were meant to prove exemption from full subjection to subject-status and its burdens, including taxes and services, by specific pieces of evidence. Shifting this burden appears to be the major strategic advantage that princes' lawyers could exploit, provided their client possessed this superiority. In some cases, the issue of motivation is clear cut. At the beginning of the seventeenth century, Landgrave Maurice of Hesse-Cassel (1608-1624) claimed the existence of such a spatial district, the principality of Hesse, well beyond the range of his rural and urban subjects living in the *Ämter* of his demesne, mainly as tenants of his land, or the vassals holding fiefs including subjection in jurisdictional issues from him. He now claimed that the neighboring counties of Waldeck and those in the Wetterau were in fact geographically part of a single Hessian territory. Thus, their inhabitants were necessarily his subjects and the counts of Waldeck and of the Wetterau were his, and not imperial, vassals; occasional fifteenth-century enfeoffments were submitted as proof of subject status. He also attempted to capture one of the counties by force. But given his own limited resources he, like all other princes, relied in general not on force alone but on argument before the courts as well.²⁵

Knichen, however, had not described an accepted legal procedure or a political reality *ex post facto*, but a new legal concept. The new terms—*Landesobrigkeit, jus territorii, superioritas*—and the claims associated with them by princes thus became subject to legal and political contests with diverse outcomes. Indeed, these terms were themselves products of such strife. Neither *cuius regio, eius religio* nor *ius reformandi* were formulae to be found in the actual regulations of the 1552 Treaty of Passau or the later 1555 Peace of Augsburg. Passau established peace among emperor, king, electoral princes, princes and estates of the Empire until a solution to the religious

question was found. Similarly, the treaty of Augsburg only mentioned king and estates in paragraph 4: *Churfürsten, Fürsten und Gemeinen Ständen*. Adherents to the Augsburg Confession were to be protected under the peace of the land (*Landfrieden*) against attacks arising from their adherence to the *Augsburgische Confessions-Religion...*, *so sie aufgericht oder nochmals aufrichten möchten*.²⁶ The revolutionary aspect of this agreement was the attempt to come to terms with religious diversity by agreeing on keeping the peace without any definite limitation on the agreement—that is, without any strict connection between keeping the peace and an agreement in matters of religion. The Peace of Augsburg achieved this by establishing—in connection with the Treaty of Passau—that all sequestration of property of the Church of Rome by reforming magistrates that had occurred up until August 1552 should now also be protected under the agreement for peace. This technical approach achieved a compromise between adherents of the different faiths. While force had played and continued to play a role in reformations and counterreformations, most reformations had been accomplished within a framework of active consultation among theologians, estates and citizens. Issues of taxation and recruitment of resources for wars and feuds of princes were likewise not regulated by these agreements. Both Passau and Augsburg remained traditional in their vocabulary in that the parties involved were by no means states or territories, but princes and estates.

As Bernd Christian Schneider has recently shown, the formula *cuius regio, eius religio* did not appear in the sources before 1587. By that time, the imperial diet had just ruled (in 1582) to link representation at the diet neither to dynastic lineages nor to all noblemen given princely dignities by the emperor, but to principalities hitherto acknowledged.²⁷ Schneider found that legal specialists had to concentrate on the problem of who could actually claim the *ius reformandi*, the right to the activity

described in the Augsburg treaty as the *aufrichten oder nochmals aufrichten* of the Augsburg Confession or of Roman Catholicism. Even the precise extent of the group addressed in 1555 remained anything but clear. In conflicts about the right to reform, for instance between the count of Öttingen and a monastery (1590s) or with regard to vassals of one prince with land lying within an area claimed to be the territory of another, lawyers and legal scholars had to debate which of the various parties owned the *ius reformandi* and toward whom it could be exercised. They also struggled to establish whether the *ius reformandi* was possibly an outgrowth of some other original right or to which other privilege it was related. At the same time, contradictory formulations in **Stephanus** suggested that religion was connected to territory. Schneider argues that increasingly from the early seventeenth century onwards, authors like Christoph Besold understood the *ius reformandi* as part of territorial superiority, not least because it could not be understood to be a right devolved from the powers of bishops. Bishops plainly could not be considered to have the privilege of choosing between two confessions. By logic, one of these confessions had to be heretical. Thus, the *ius reformandi* must have been connected to another realm of legal privilege. As Schneider points out, authors such as Besold, Carpov and Engelbrecht concluded “what the Stephani Brothers around 1600 did not dare to write: that there must be a right of civil authority (*obrigkeitliches Kirchenrecht*) above and beyond the jurisdiction of bishops and its devolution to princes.”²⁸

Thus, in the course of debate and only from the 1620s onward, it became unavoidable to assume that the civil authority of territorial superiority had to be the source of the right to reform the church. At the same time, princely interest in subsuming neighboring but less powerful members of Germany’s higher nobility still subject only to the Emperor led to attempts to interpret specific single legal acts—for

Opmerking [HL3]: Please identify with a phrase.

instance an enfeoffment or the presence of such a nobleman at an earlier diet—as demonstrating their status as subject to the prince in question. In this context allegations about ancient fatherlands, when their geographical extension proved the extent of territorial rule, played a further role.²⁹

Superioritas territorialis, to be sure, was in itself a new term and had to be inferred by the existence of a varying number of existing privileges, such as higher jurisdiction, representation at a diet or *Vogtei*. The ultimate goal of this development was to infer from such scattered rights a comprehensive power over church and subjects in a defined spatial unit. From the possession of this comprehensive power, further individual rights such as taxation and jurisdiction could be derived. Subjected to *superioritas*, subjects had to prove every possible exemption, and even those could possibly be overturned by arguing that *superioritas* involved the right of extralegal measures in case of necessity.

Territorial State-building: Contemporary Legal and Political Developments

In the course of the sixteenth to the eighteenth centuries, territories in the Empire not only became the main arena of administrative reform and legal change; they also developed in the course of the political and legal battles between princes and estates distinct constitutional characteristics that distinguished Bavaria from Brandenburg, Saxony from Mecklenburg or Trier from Hesse. The gradual accumulation of territories was changing the political and legal landscape of the Empire, but it did not introduce territorial absolutism wholesale. Rather, each emerging territory acquired its own specific “historic” constitution as a result of the varying and shifting relations between princes, vassals and subjects and the consequential effect of innumerable contracts, decisions, privileges, dynastic house laws and other treaties. The changing

relevance of Roman law, the emergence of a historic fundamental and specialized public law of the Empire and of the new secular law of nature all left their stamp on the arguments made by princes and subjects in their conflicts. Political, constitutional, legal and social historians attempted to understand the interrelation of power interests, social power resources, political circumstances, and legal and political thought in tracing in detail how negotiations between princely dynasties and their estates worked, what arguments were used, and what consequences ensued.³⁰

At the core of German reasoning on public power remained the concept of the *res publica* as the institutional configuration of public order, raised above the society of citizens and subjects, and involving supreme power to rule over subjects. This development went back at least to Leonardi Bruni, the famous Florentine statesmen, who argued in his commentary on Aristotle that the society of citizens needed, to acquire permanence, the governing order of the *res publica*.³¹ The need for rule moved into the center of what was understood to be indispensable for a society to live together. In Germany, Philip Melanchthon followed this trend when he, in his 1530 commentary on Aristotle, defined any polity as a legitimate order in which some order, others obey.³² By the last fourth of the sixteenth century, Petrus Victorius even alleged in his own influential commentary on Aristotle that the existence of and unequivocal order of rule and obedience, addressed as *res publica*, was the single most important condition for the existence of any human society.³³

As these developments took place in political thought, legal scholars in Germany began to mention the geographical location of a given plaintiff as an issue in determining the validity of a claim of rule and to begin to understand the possessions of princes as consolidated administrative units under a single rule. Ulrich Zasius delineated the Roman origins of feudalism primarily in order to prove that all

magistrates, including the Emperor, remained bound by civil laws.³⁴ He argued that feudal relations had been derived from agreements between patrons and clients within Roman society that had been extended to captured and occupied areas.³⁵ The relations built on this basis, between princes and those receiving a fief, had to be understood as contracts enforceable by law.³⁶ Only the Roman Emperor - and then every *rex in regno* - could give a fief.³⁷ Zasius assumed that dukes in Germany descended from military leaders of (late Roman) imperial troops, who had probably been given territories by the Emperors to keep them loyal.³⁸ In his discussion on controversies regarding fiefs, Zasius emphasized the boundaries of a given area and thus linked princely power with a legal territorial district rather than simply bundles of varying rights. Vassals in such an area have to be assumed to be part of the estates.³⁹ Moreover, legal dictionaries referred to the provinces of the later Roman Empire and their heads, the *presides provinciarum*, to provide an example for this new meaning of *patria*. For example, Johannes Spiegel's *Lexicon Iuris Civilis* of 1549 cited among the listed meanings (*significationes*) of *patria* the *patria potestas*, i.e. the legal power of the father over his family. But it also listed *patria* as *provincia*, a spatially defined area in which all powers and administrative agencies necessary to the upkeep of political order (*ordinationes politiae*), were held by a single magistrate.⁴⁰ The influential Marburg lawyer Nicolaus Vigelius organized a further edition of this dictionary in 1577. This edition took over the article on *patria* as *provincia* from 1549, but added not only a further reference on the duty of *caritas* to the *patria* but also a reference to Johannes Oldendorp's *In Verba Legum XII Tabularum Scholia*. This work was added to various editions of the dictionary so readers could immediately check the reference. Oldendorp's commentary described the office and legal rights of various magistrates in Roman law, and in particular the *presides*

Opmerking [HL4]: May I substitute fief for feud.?

provinciarum, the heads of the provinces. These references were included in the later edition of the same dictionary, the *Lexicon Iuridicum*, of 1612.⁴¹ By that time, princes' lawyers were beginning to use the terms *provincia* and *patria* to indicate the late-medieval bundles of jurisdictions and rights held by their employers. These rights were seen as expressions of the exclusive, quasi-imperial, jurisdictional and administrative powers of princes over anyone living within a spatially defined area named by these terms.⁴²

In the ensuing conflicts between princes and estates and in the scholarly literature as well, the emerging territories were thought to bind the supreme magistrate, the prince, to specific legal procedures. The underlying understanding of relations among princes and the inferior nobilities, and sometimes even citizens, as those among lords and enfeoffed vassals was never quite entirely pushed to the margins by the political terminology of majesty, territorial superiority and subjecthood. The increasing weight of the assumption of *ius superioritatis* of the imperial estates over a more or less ill-defined group of subjects and vassals did *shape* the nature of interrelated hierarchies within the Empire, but it did not *change* it radically in favor of territorial absolutism. Some major legal scholars, like Tobias Paumeister, while maintaining the limits of imperial power, insisted that everyone physically in a territory must also be subject to the prince enfeoffed with the principality of this geographic region.⁴³ Christoph Besold, however, distinguished between *in territorium* and *de territorio*.⁴⁴ Moreover, some authors were accused of being "German monarchomachs." One of them, Johannes Althusius, was explicitly attacked with this term by Henning Arnisaeus, the major proponent of territorial absolutism.⁴⁵ These authors held not only that princes should rule according to the written laws, statutes, contracts and the *Herkommen*, but that specific groups among the subjects and vassals

of the prince could enforce princely compliance with the laws. Horst Dreitzel listed around a dozen German authors under this term, and one might add a few more. Among them were Lutheran legal scholars such as Friedrich Pruckmann, Heinrich Bruning, Valentin Forster, Bartholomaeus Volmarus, and Jakob Multz; Lutheran theologians like Johann Gerhard and Jacob Fabricius; Reformed theologians like David Pareus; Lutheran authors of *politicis* like Reinhard Koenig and Christian Liebenthal and Reformed writers of *politicis* like Hermann Kirchner and Johannes Althusius.⁴⁶ The date of their publications ranged from Mathias Cuno's *De pactis liber* in 1590 to Reinhold Condit's *Repraesentatio majestatis* from 1690.⁴⁷

For one example we can turn to Bartholomaeus Volmar's *De Iure Principum aliorum magistratum synoptica Tractatio* (Frankfurt, 1618). Chapter IX dealt with the problem of which kind of defence was appropriate against the prince. As did other authors, he denounced the killing of the father and any illicit action by the subjects; he reminded readers that Luther had warned against any war against Charles V. It remained characteristic of these considerations to approach the issue with caution, in particular with regard to single subjects. However, Volmar then reminded his readers from Scripture (I Kings 12) and the writings of Bodin and Althusius that the people had no obligation to the tyrant—whether the usurper void of title or the tyrant *ex exercitio*. Lord and vassals were obligated to the *patria* (in this context, it was typical to use this term for the territory in question) and beyond the bounds of legality the action of princes were seen as null and void (*propterea eius decreta nulla sunt*).⁴⁸ Self-defence to secure life and limb was legitimate, the defence of religion even more so (*multo magis in causa religionis*). Volmar pointed out, quoting Nehemiah 4 and a 1547 letter from Luther edited by Melanchthon, that the task of correcting and defending rested with the ephors. Volmar thus cited three different kinds of

Opmerking [HL5]: Do you think this is confusing? Luther of course dies in 1546. Might it be better to cite the original date the letter was written—not the year Melanchthon edited it?

resistance—allegiance to the *patria*, not the prince, the licit defence of one's life, and the specific privileges of groups in Germany to correct a superior magistrate—that had been developed by the 1620s as types frequently referred to, without however any clear indication of who these persons might be.⁴⁹ Moreover, some legal scholars argued that the law provided for resisting actions of a magistrate threatening not only life and limb, but also the goods of the vassal and subject.⁵⁰ Feudal law provided for intervention by the emperor or the right to resist by vassals if they were maltreated, for that meant that the fief had deteriorated in worth. Thus, Heinrich Rosenthal still insisted in his *Tractatus synopsis totius iuris feudalis* (1610) that while a vassal may never injure his lord and *dominus* (*laedere personam domini*), he could resist, and so could his own sub-vassals (*sed aliter ei vel eius subsidiaries resistat*) against illegal actions of the lord. The vassal could, as long as the body of the lord was not injured, confront his lord, in court and otherwise. In the case of an illegal interference of the lord into the enfeoffed goods, even injuring the lord in defence remained legitimate.⁵¹

Many of these authors, such as Maulius, Wesenbeck and Rosenthal, were cited by Christoph Besold on the connection of the *ius reformandi* to *superioritas territorialis*. Besold used these as examples for the argument that princes could be held accountable to some court of justice.⁵² He himself was careful not to delineate how that actually had to be brought about in matters of general principle, but rather insisted on the factual legal framework for protecting public rights and private goods.⁵³ Born in Tübingen in 1577, Besold was raised in the Lutheran household of his father, a Tübingen attorney (*Hofgerichtsadvokat*). He studied at Tübingen, came into contact with Kepler and was appointed Professor Pandectarum in 1610. Between 1614 and 1635 he served as rector of the university seven times. In 1635 he publicly announced his conversion to Catholicism although he had taken this step privately

five years earlier. Until this point, his *Thesaurus Practicus* in particular and his wide range of legal learning had made him a major authority in this area. Besold received and propagated the *maiestas realis – personalis* division to fit empirical reality with Bodin's terminology.⁵⁴ In his publications during the 1620s, Besold referred to the late medieval mystic Johannes Tauler (ca 1300-1361) and to the Lutheran Johann Arndt, who was severely criticized by Lutheran clergy as dogmatically unsound.⁵⁵ Besold himself was twice, in 1622 and 1626, charged with being unsound in faith, but weathered both allegations. In 1628 and 1629 he wrote statements on the issue of the restitution of Catholic monasteries in Württemberg, a pressing issue in light of the 1629 Edict of Restitution promulgated by Emperor Ferdinand II in the wake of early Catholic victories in the war.⁵⁶ As Württemberg had been occupied by Charles V from 1548 to 1552 and its ecclesiastical lands and institutions had been recaptured for the Church of Rome, it had secularized them again after 1552, and thus could be seen as in violation of both the Treaties of Passau and Augsburg. Christoph Besold exasperated his prince by arguing that if Catholics had to accept that the capture of their property up until August 1552 was legalized by the Treaty of Augsburg, whether legitimate or not, then the recapture of any piece of property seized after August 1552 had also to be accepted by Lutherans. Thus the preaching of the gospel by Luther and his adherents and the necessary consequences for reforming a corrupt church—by sequestration of further property of the Church of Rome in the areas of Protestant control—was described by him as a process devoid of inherent, i.e. religious, legitimacy and made legal only by the force of circumstances in 1555.⁵⁷

Besold's statements on the notion of territory and religious freedom in the 1620s show how variable the framework of the emerging territorial state and in particular the legal interpretation of *cuius regio, eius religio* actually remained. Besold

Opmerking [HL6]: Ok? You had converted.

acknowledged various meanings of the term *territorium* but emphasized one of them in particular: the territory as jurisdictional district in which a magistrate, lawfully instituted, exercised the territorial law (*jus terrendi*).⁵⁸ But in *Public Treasure* (1619), Besold himself continued to distinguish between physical location within a geographical area acknowledged to be in possession of a prince (*in eines Fürsten Land/in territorio*) and actual subjection to that prince (*unter eines Fürsten Landsobrigkeit/de territorio*), with the fact of an oath of allegiance (*Erbhuldigung*) being the major source of evidence.⁵⁹ Thus, he did *not* support the notion upheld by many princes' lawyers, including a number of his colleagues in the service of the Duke of Württemberg on the issue of the monasteries, that physical location within a territory automatically renders a person subject to a prince. Nor did he agree that princes could break the law in an emergency situation. In his 1620 *Politicorum libri duo*, he insisted that violation of the principles of nature constituted tyranny.⁶⁰ He distinguished *maiestas realis*—exercised by the Imperial diet—and *maiestas personalis*—exercised by the elected king—and referred to monarchomachs such as Althusius and Danaeus in arguing that the original source of authority remained the corporate people.⁶¹ The political unit as a whole, understood according to Roman law as *universitas* or the legal (fictitious) person of the corporate people, acting through its magistrates, had a right to prevent damage to its laws and properties and to defend itself to this end.⁶² This unit is addressed here as *territorium*. In his account of territorial law, magistrates are explained to be *syndici* or procurators administering the rights and possessions of the corporate body in question.⁶³ While this defence appertains only to the lawful magistrate, the prince remains subordinated to the republic whose majesty he administers. His subjects do have a right to resist at least in matters of religion, referring to the father of Lutheran orthodoxy, Johann Gerhard.⁶⁴

Opmerking [HL7] : For the sake of consistency, I would prefer sticking with the Latin titles.

In his 1626 *Praecognita politicae*, Besold defined several objectives of the state, among them, of course, control of religion. With references to Johann von Staupitz, Valentin Weigel and Johann Arndt, and with an emphasis on piety, Besold took not an anti-confessional but a decidedly non-confessional stance. At the core of this religion was the belief that God became human and that Christ died for us.⁶⁵ His Law of Majesty was based on these other arguments but added an emphasis on the law of nature to provide a general fundamental law protecting the exercise of religion as it must be granted in a legitimate order. Besold distinguished, as was common, the primary law of nature (procreation, self-defence) and the secondary law of nature, the law of peoples (*ius gentium*). Intelligible by reason, this also included the duty of obedience to fatherland and parents (*pietas in patriam et patres*) – but that held true not only for the subjects, but also for the prince. The famous passage in I Samuel 8, describing wide-ranging powers for kings and used for arguments in favour of absolutism, was thus understood with reference to Melancthon and to Johann Gerhard as a description of tyranny.⁶⁶ Further, Besold reminded the reader that Christ and the apostles did not proselytize with force, that the church must be without weapons, and that superiors must not compel any belief—not even the Christian one—on their subjects. He cited Luther that those who had the honour of being Christians were not God’s true people, but that God’s true people were those who were prosecuted for heresy. He underpinned this approach with the stunning allegation that the law of nature, under which all government remained, demanded freedom of conscience and that every subject could believe what he wanted.⁶⁷ He pointed to Moscow and the Netherlands as examples of the productivity of broad toleration.⁶⁸

Conclusion

Besold's use of the term *territorium* as a *universitas* under the law bound magistrates to legal procedure. His use of the term religion, essentially reduced to natural religion, restrained the legal enforcement of religion even under the Peace of Augsburg, which Besold did not wish to undermine, to a bare minimum. Bound to legal procedure, restrained by the rights of estates and subjects to defend their property and litigate against illegal encroachments by princes, and limited by Besold's curious approach to the meaning of religion, *cuius regio, eius religio* still left the princes with the *ius reformandi*, but in a very restricted sense. There is ample evidence that subjects and estates did refer to Besold when suing their princes.⁶⁹

None of this contradicts the evidence on prosecution, in particular prosecution under the Counter Reformation during the first two thirds of the seventeenth century in Austria, Bohemia, the Upper Palatinate and elsewhere. But we should make a more determined effort to distinguish specific princely and confessional politics, for instance by the Habsburgs, from the controversial process of territorial state formation as such. Territorial estates did successfully struggle for confirmation of their privileges, referring in their cases to legal scholars such as Besold and Althusius. Writers like Samuel Treuer could well adopt natural law and arguments from Locke on legal cases of territorial estates against their princes, as in the Mecklenburg affair.⁷⁰ To be sure, nowhere do we find claims here for the active political participation of mere subjects. But the claim of Leonard Krieger made half a century ago about the peculiar nature of "German freedom" is perhaps in need of revision.⁷¹ Significant sections of Lutheran jurisprudence did build, under the specific circumstances of the Empire, a strong case for the legal protection of subjects and estates, not least with regard to their consciences. With regard to the accumulation of territories, the Empire

was possibly more varied and remains less well understood than older accounts would have it.

¹ See now Dietmar Willoweit and Hans Lemberg, eds., *Reiche und Territorien in Ostmitteleuropa. Historische Beziehungen und politische Herrschaftslegitimation* (Munich, 2006).

² The term: John Morrill, “‘Uneasy lies the Head that Wears the Crown’, Dynastic Crises in Tudor and Stewart Britain” in *The Stenton Lecture*, (Reading, 2005) 11.

³ Thomas Babington, *Lord Macaulay, Critical and Historical Essays*, (Edinburgh Review, April 1842).

⁴ On Protestants see Eike Wolgast, “Die Sicht des Alten Reiches bei Treitschke und Erdmannsdörffer” in *Imperium Romanum – irregulare corpus – Teutscher Reichs-Staat*, ed. Matthias Schnettger (Mainz, 2002), 169-188; for Catholics see for instance Johannes Janssen (1829-1891), *Allgemeine Zustände des deutschen Volkes seit dem Augsburger Religionsfrieden vom Jahre 1555 bis zur Verkündigung der Concordienformel im Jahre 1580* (Freiburg, 1890), 247, on the increasing weakness of the Empire; see still Erwin Iserloh, Josef Glazik and Hubert Jedin, eds., *Reformation, Katholische Reform und Gegenreformation* (Handbuch der Kirchengeschichte, Bd. 4) (Freiburg, 1985 [1967]), (1985) pp. 311: “Mit der Aufgabe der ausschliesslichen Geltung des einen, wahren katholischen Glaubens war die Idee des Reiches zutiefst getroffen. Dieses war zum blossen Bund von Territorialstaaten herab gesunken.”

⁵ Here, Ultramontanist Catholic and modern secular historiography since the 1970s agree: see Janssen *Geschichte*, 3; Marc Raeff, *The Well Ordered Police State. Social and Institutional Change through Law in the Germanies and Russia, 1600-1800* (New

Haven, 1983).

⁶ Leonard Krieger, *The German Idea of Freedom: History of a political tradition* (Boston, 1957).

⁷ Roland Bainton, *Here I stand. A life of Martin Luther (1950)*. German translation 7th ed. (Göttingen, 1980) 212; see Martin Luther, *Von weltlicher Obrigkeit, wie weit man ihr Gehorsam schuldig sei*, WA 11, 245-281; hier Martin Luther, *Ausgewählte Schriften*, ed. By Karin Bornkamm, Gerhard Ebeling, vol. IV (Frankfurt, 1982), 36-84, 63, 38-39.

⁸ Walter Sparr, "Vernuenftiges Christentum", in *Wissenschaften im Zeitalter der Aufklaerung*, ed. Rudolf Vierhaus (Goettingen, 1985), 18-57; David Sorkin, "Reclaiming Theology for the Enlightenment: The Case of Siegmund Jacob Baumgarten (1706-1757)," *Central European History*, 36 503-530.

⁹ Christoph Besold, *De iure Magistrate, Strassburg 1625, sectio II, De Ecclesiastico Majestatis Iure, c VI*, 130, 132.

¹⁰ Bainton, *Here I stand*, 343; WA 11, 314: *Dass Christus ein geborner Jude sei* (1523), Christoph Besold, *De Iure Ordinibusque Civium, Strassburg 1626, c V De Hebraeorum*, 77

¹¹ Horst Dreitzel, *Absolutismus und ständische Verfassung in Deutschland: Ein Beitrag zur Kontinuität und Diskontinuität der politischen Theorie in der frühen Neuzeit* (Mainz 1992), 33-39.

¹² The conflict is documented extensively in Staatsarchiv Marburg, Bestand 73, no 1816. See on this conflict Robert von Friedeburg, "The Making of Patriots: Love of Fatherland and Negotiating Monarchy in Seventeenth Century Germany", in *The Journal of Modern History* 77 (2005), 881-916, 904.

¹³ See Berndt Hamm, "Reformation 'von unten' und Reformation 'von oben': Zum Problem reformhistorischer Klassifizierungen" in H. R. Guggisberg, ed., *The Reformation in Germany and Europe. Interpretations and Issues* (Heidelberg, 1993), 256-279.

¹⁴ The towering landmark of revision on the late Middle Ages remains Peter Moraw, *Von offener Verfassung zu gestalteter Verdichtung: Das Reich im späten Mittelalter 1250-1490* (Berlin, 1985); one possible starting point to enter the considerable recent scholarship is Matthias Schnettger (ed.), *Imperium romanum – irregulare corpus – Teutscher Reichsstaat. Das Alte Reich im Verständnis der Zeitgenossen und der Historiographie* (Mainz, 2002); albeit from different points of view see Heinz Schilling, "Wider den Mythos vom Sonderweg - die Bedingungen des deutschen Weges in die Neuzeit" in Paul-Joachim Heinig et al., eds., *Reich, Regionen und Europa in Mittelalter und Neuzeit. Festschrift für Peter Moraw*, (Berlin, 2000); Georg Schmidt, *Das Alte Reich. Staat und Nation in der Frühen Neuzeit 1495-1806*, (München, 1999); Schmidt, "Angst vor dem Kaiser? Die Habsburger, die Erblande und die deutsche Libertät im 17. Jahrhundert," in *Reichsständische Libertät und Habsburgisches Kaisertum*, ed. Heinz Durchhardt (Mainz, 1999), 329-348; K. O. v. Aretin, *Das Alte Reich*, 3 vols (Stuttgart, 1993-1997); and Volker Press, *Kriege und Krisen. Deutschland 1600-1715* (München, 1991).

¹⁵ Both the Johannes Althusius society, Emden/Münster and the Erasmus Center for Early Modern Studies, Rotterdam (www.erasmus.org) provide networks for this kind of cooperation.

¹⁶ See the various publications of Peter Moraw, the main figure of German late medieval history, among them Peter Moraw, "Königliche Herrschaft und Verwaltung

im spätmittelalterlichen Reich (ca. 1350-1450)” in *Das spätmittelalterliche Königtum im europäischen Vergleich*, ed. Reinhard Schneider (Sigmaringen 1987), 185-200;
Georg Schmidt, “Der Wormser Reichstag von 1495 und die Staatlichkeit im Hessischen Raum” in *Hessisches Jahrbuch für Landesgeschichte* 46 (1996), 115-136.

¹⁷ Ernst Schubert, “Der rätselhafte Begriff ‚Land‘ im späten Mittelalter und in der frühen Neuzeit”, in *Concilium medii aevi* 1 (1998), 15-27, 15-16.

¹⁸ Schubert, Ernst, *Fürstliche Herrschaft und Territorium im späten Mittelalter* (München, 1996), 1-5.

¹⁹ Karl Friedrich Krieger, *König, Reich und Reichsreform im Spätmittelalte* (München 1992), 75-77.

²⁰ Christian Hesse, *Amtsträger der Fürsten im spätmittelalterlichen Reich* (Göttingen 2005), 192): „...das Land nicht in Ämter eingeteilt war, sondern sich aus ihnen zusammengesetzt hat“.

²¹ See mainly the research of K. O. v. Aretin, *Das Alte Reich*, 3 vols, Stuttgart 1993-1997; Volker Press, *Kriege und Krisen. Deutschland 1600-1715* (München 1991); Schmidt, *Das Alte Reich*.

²² Peter Michael Hahn, *Fürstliche Territorialhoheit und lokale Adelsgewalt. Die herrschaftliche Durchdringung des ländlichen Raumes zwischen Elbe und Aller 1300-1700*, (Berlin / New York 1989).

²³ More examples, for instance the Imperial intervention in Cologne and Bavaria at the beginning of the Spanish War of Succession, could be cited. Trier: Hermann Weber, *Frankreich, Kurtrier und das Reich 1623-1635* (Bonn 1969), 20;
Mecklenburg: Robert von Friedeburg, “Natural Jurisprudence, Argument from History and Constitutional Struggle in the Early Enlightenment: The Case of Gottlieb

Samuel Treuer's Polemic against Absolutism in 1719", in Tim J. Hochstrasser and Peter Schröder, eds., *Early Modern Natural Law Theories. Contexts and Strategies in the Early Enlightenment* (Dordrecht 2003), 141-168; Württemberg: Gabriele Haug-Moritz, *Württembergischer Ständekonflikt und deutscher Dualismus. Ein Beitrag zur Geschichte des Reichsverbands in der Mitte des 18. Jahrhunderts*, (Stuttgart 1992). Summarizing on the eighteenth century: Werner Trossbach, Fürstenabsetzungen im 18. Jahrhundert, in *Zeitschrift für historische Forschung*.

²⁴ Andreas Knichen, *De sublimi et regio territorii iure synoptica tractatio, in qua principum Germaniae regalia territorii subnixa, vulgo Landesobrigkeit indigenata... luculenter explicantur*, Frankfurt 1600; the standard account on him remains Dietmar Willoweit, *Rechtsgrundlagen der Territorialgewalt* (Köln 1975).

²⁵ Gerhard Menk, *Recht und Raum in einem waldeckischen Reichskammergerichtsprozess*, in *Geschichtsblätter für Waldeck* 88 (2000), 12-47.

²⁶ Volker Henning Dreßler, ed., *Der Passauer Vertrag (1552). Einleitung und Edition* (Berlin 2000), 25, 31: while a common ground in religion was alleged by Maurice as a basis of an agreement – different from the allegation in 1555 that no compromise had been reached – the aim was already that no estate of the empire should attack another one due to the religious problems. A definite solution to the religious problem, by what way ever, was still envisaged for the nearer future, an agreement on keeping the peace until this point already a core of the political solution. On 1555 see Arno Buschmann, *Kaiser und Reich. Verfassungsgeschichte des Heiligen Römischen Reiches Deutscher Nation vom Beginn des 12. Jahrhunderts bis zum Jahre 1806 in Dokumenten*, Teil I (Baden-Baden 1994), 217, 219, 224.

²⁷ Thus, neither the multiplication nor the extinction of dynastic lineages led to more or less seats in the Diet. While there were ca. 160 cases of imperial endowments with

princely status between 1582-1806), only 19 new princes made it (between 1653-1754) into the diet. See Neuhaus, [title], 17.

²⁸ Bernd Christian Schneider, *Ius Reformandi* (Tübingen 2001), 312, 318. On the relation of this development to the crisis of religious peace in Germany from the 1580s see Ronald Asch, "No Bishop No King oder Cuius Regio eius religio. Die Deutung und Legitimation des fürstlichen Kirchenregiments und ihre Implikationen für die Genese des "Absolutismus" in England und im protestantischen Deutschland, in *Der Absolutismus – ein Mythos? Strukturwandel monarchischer Herrschaft in West- und Mitteleuropa (ca. 1550-1700)*, ed. Heinz Duchhardt (Köln 1996), 79-123.

²⁹ Willoweit, *Territorialhoheit*, 269; Gerhard Menk, "Die Chronistik als politisches Kampfinstrument - Wilhelm Dilich und Marquard Freher", in *Hessische Chroniken als Gegenstand und Mittel der Landes- und Stadtgeschichte*, ed. Menk (Marburg) (in press).

³⁰ For this interdisciplinary approach involving political thought, legal history and social history to a comparative study of European history see the recent volumes on the notion of *patria* and on analyses of monarchies in times of crisis by Robert von Friedeburg, ed., *Murder and Monarchy. Regicide in European History, 1300-1800* (Houndsmith 2004); von Friedeburg, ed., *Patria und Patrioten vor dem Patriotismus. Pflichten, Rechte und die Rekonfigurierung europäischer Gemeinwesen im 17. Jahrhundert*, (Wiesbaden 2005); von Friedeburg, *Europa in der frühen Neuzeit. Fischer Neue Weltgeschichte* (Stuttgart 2008).

³¹ Leonardo Bruni „Aristotelis libri politicorum“, in *Aristotelis opera com Averrois commentariis*, vol. 3, (Venice 1562, fol 247) on Aristoteles 1276b: Nam si civitas est societas quaedam (societas autem civium) variata reipublicae gubernandae forma, necessarium utique videretur, civitatem quoque non eandem permanere

³² Philip Melanchthon, CR 16, 435-6 : he identified *res publica* with *politia*, but also with *imperium* („res publica seu politia seu imperium“) and further argued that the *civitas* was a society of citizens through law constituted for mutual use and defence, the political order however was one in which some ruled and others obeyd („civitas est societas civium jure constituta, propter mutuam utilitatem ac maxime propter defensionem – politia est legitima ordinatio civitatis secundum quam alii praesunt, alii parent“).

³³ Petrus Victorius, *Commentarii in VIII libro Aristotelis de optimo statu civitatis* (Florence, 1576), 209. "Est autem res publica ordo civitatis, ceterorumque magistratuum, et maxime illius, qui summam potestatem habet." See for this argument Wolfgang Mager, „Republik“, in *Lexikon der geschichtlichen Grundbegriffe*, vol 5, (Stuttgart 1994), 549-569, here 568-569.

³⁴ Ulrich Zasius, *Usus Feudorum epitome, Omnia Opera IV*, 244-341.

³⁵ *Ibid.*, 244, 1: Siquidem ab urbis Rom. Initiopotentes populariucasas tuendas susceperunt, quos clientesnominabant, qui se & suain potentum ditionem commendabant... Verissimile est, cum Romani I provinciis Gallia, Germania & alibi victricia sigfna circum tulissent, bona pars militum Romanoru in provinciis remansisset, ipsos cum multum eis esset agri, vicinos pro clientulis invitasse, eisqu. Agros & fundos nomine clientelae concessiss, atque ita temporis, quod omnia variat, processu, feuda, caeterisqu. Id genus emerisse concessiones

³⁶ *Ibid.*, col. 245: "Feudum autem esse contractum nominatum, post variou opinionum fluctus obtinuit".

³⁷ *Ibid.*, col. 255, 5.

³⁸ *Ibid.*, col. 255, 6: Nos ducis originem ab exercitus Romani ducibus emanasse putamus, quos ab Romani Imperii Principibus , territoriis donatos esse verisimile

(wahrscheinlich) est[Abl Abs: Nos putamus....(that) Ducibus (ab exercitus +Gen Romani)+ Inf. Emanasse, ut tamen verisimile recognoscant.

³⁹ Ibid., col. 327, ...quo loco fieri potest, ut idem vasallus in Curia et extra Curiam diversis respectivus nominari possit."

⁴⁰ *Lexicon Iuris Civilis, ex variis autorum commentariis* (Leiden, 1549), 426.

⁴¹ Nicolaus Vigelius, *Institutiones Iuris Publici* (Basel, 1577), 2010-2011; Johannes Oldendorp, 'In Verba Legum XII Tabularum Scholia', in idem, Title II De Magistratibus, c. XV, p. 39, alleging that the rights of the *presides provinciarum* had reemerged as part of the transferral of imperium and were now the 'mandatis principum'; *Lexicon Iuridicum* (Köln, 1612); on the heads of the provinces see also Nicolaus Vigelius, *Methodus Iuris Civilis* (Basel, 1601), 32-33.

⁴² E.g. Johannes Althusius, *Dicaeologicae Libri Tres: Totum universum ius, quo utimur methodice complectentes* (Herborn, 1617), L I, c 113: 'patriae suae administratione'; idem, *Jurisprudentia Romana Methodice Digesta Libri duo* (Herborn, 1607), c IX; see for disputations works such as by Heinrich Kornmann, *Ad municipalem et de Incolis. Roma communis nostra Patria est: Commentarius* (Marburg, 1604).

⁴³ Tobias Paurmeister, *Jurisdictione Imperii romani Libri II*, (Hannover, 1608), C VIII, n 21, 31, 39, 514-58.

⁴⁴ Christoph Besold, *De Aerario publico Discursus*, (Tübingen 1619), quaestio II, 89.

⁴⁵ Henning Arnisaeus, *De Autoritate Principum in Populum semper inviolabili, commentario Politica Opposita seditiosis quorundam scriptis qui omnem Principum Majestatem sujiciunt censurae Ephorum et populi*, 1612. I used the edition Strassburg 1636.

⁴⁶ Jacob Fabricius, *Einundreissig Kriegsfragen* (Stettin 1631), comes to mind. See on

him Robert von Friedeburg, *Widerstandsrecht und Konfessionskonflikt. Notwehr und Gemeiner Mann im deutsch-britischen Vergleich 1530-1669* (Berlin 1999), 90-97.

⁴⁷ Horst Dreizel, 'Politische Philosophie', in *Grundriss der Geschichte der Philosophie. Die Philosophie des 17. Jahrhunderts*. Vol. 4: Das Heilige Römische Reich deutscher Nation. Nord- und Ostmitteleuropa. Ed. by Helmut Holzey and Wilhelm Schmidt Biggemann (Basel 2001), 609-866.

⁴⁸ See Bartholomaeus Volcmar, *De Iure Principum aliorum magistratum synoptica Tractatio* (Frankfurt 1618, c XI, 117). For other examples see Robert von Friedeburg, 'The Making of Patriots: Love of Fatherland and Negotiating Monarchy in Seventeenth Century Germany', *The Journal of Modern History* 77 (2005), 881-916.

⁴⁹ See for the gradual development of these three core forms of resistance in the Empire between the later 1520s and the 1620s Robert von Friedeburg, *Self defence and Religious Strife in Early Modern Europe. England and Germany, 1530-1680* (Aldershot 2002), chapters 2, 3 and 4, 56-156. See respectively 117, 118, 123-26.

⁵⁰ Heinrich Rosenthal, *Tractatus et synopsis totius Iuris Feudalis*, (Cologne 1610), C 10, concl. 20, 58-60, concl. 33, 125-128. See in particular p 59 *Vasallo dominum pro defensione sui cum moderamine offendere licit; Magistratum contra ius vim in bonis inferentem, etiam in persona laedere licitum.*

⁵¹ Heinrich Rosenthal, *Tractatus et synopsis totius Iuris Feudalis* (Cologne 1610), C 10, concl. 20, 58-60, concl. 33, 125-128. See in particular p 59: "Vasallo dominum pro defensione sui cum moderamine offendere licit; Magistratum contra ius vim in bonis inferentem, etiam in persona laedere licitum."

⁵² Christoph Besold, *De Republica Curanda*, in idem, *Reipublicae naturam et constituionem*, Strassburg 1626, c IX, *de Republica Curanda*, 175-176.

⁵³ On Besold: Dreitzel, *Absolutismus*; Barbara Zeller-Lorenz, *Christoph Besold (1577-*

1638) und die Klosterfrage (Tübingen 1986). His conversion (1630/35) and the unusually complicated and chaotic state of his publications have so far prevented any comprehensive formation of a state of research on him similar to other major contemporaries.

⁵⁴ On Besold: Horst Dreitzel, *Absolutismus und ständische Verfassung in Deutschland: Ein Beitrag zur Kontinuität und Diskontinuität der politischen Theorie in der frühen Neuzeit* (Mainz 1992); Barbara Zeller-Lorenz, *Christoph Besold (1577-1638) und die Klosterfrage* (Tübingen 1986). His conversion and the unusually complicated and chaotic state of his publications have so far prevented any comprehensive formation of a state of research on him similar to other major contemporaries, such as Arnisaeus or Althusius.

⁵⁵ Hans Schneider, *Der fremde Arndt: Studien zu Leben, Werk und Wirkung Johann Arndts (1555-1621)* (Göttingen, 2006).

⁵⁶ Zeller-Lorenz, *Besold*, 174-181.

⁵⁷ Zeller Lorenz, *Besold*, 204.

⁵⁸ Christoph Besold, *De iure rerum.... (6) de jure territorium*, (Strassburg 1624), 265.

⁵⁹ Christoph Besold, *De Aeraro publico* (Tübingen 1619), 89-90.

⁶⁰ Christoph Besold, *Politicorum libri duo*, (Frankfurt 1620), book I, paragraph 2, n 35 (p 39).

⁶¹ *Ibid.*, lib I, c II, n 2-4, 54-55.

⁶² Christoph Besold, *De iure rerum, ... (5) aliarumque universitatum*, (Strassburg 1624), 224-234.

⁶³ Christoph Besold, *De iure rerum, (6) ac item territorium*, (Strassburg 1624), c IV, 241-244.

⁶⁴ Besold, *Politicorum Libri duo*, lib I, c 12, n 78, 67-68: „universitas potest agere

contra injuriantem....universitas reru communiter territorio appellatur”; lib I, c IX, Paragraph 5, n 50, n 57, pp 863-864: “Tunc enim Reipublicae, major quam Regis potestas est”.

⁶⁵ Christoph Besold, *Praecognita Politices proposuit*, (Strassburg 1626), C I, 14-16.

⁶⁶ Christoph Besold, *De Iure Maiestate* (Strassburg 1625), 67-68, 78.

⁶⁷ Besold, *De Iure Maiestate*, 119, 129-30, 133: “Die sein nicht Gottes Volk, welche den Namen, Schein und Ehre davon haben. Die sein Gottes Volk die den Namen und Schein haben, dass sie Ketzer, Abtrünnige und des Teufels eigen seyn“, 132: „Juris naturalis est, conscientiam libere habere & credere quicquid velis“.

⁶⁸ Besold, *De Iure Maiestate*, 132-135.

⁶⁹ Friedeburg, “Patriots”, passim.

⁷⁰ Friedeburg, “Patriots”; Friedeburg, “Natural Jurisprudence, Argument from History and Constitutional Struggle in the Early Enlightenment.”

⁷¹ Leonard Krieger, *The German Idea of Freedom: History of a political tradition* (Boston 1957).