Chapter III

The Whole and the Parts.
Emperors, Khalifs and Other Rulers (c. 500 – c. 1000)

The Roman Empire and Its Northern Neighbours

The great tradition of the law of war and peace did not end, even when thorough political changes occurred in the Mediterranean area and in West Asia during the period between the fifth and the seventh century. Already since the end of the third century, it had become difficult to govern the entire Roman Imperium from its capital city. Thus, next to Rome, up to four centres of government came into existence. They were in charge of districts with changing boundaries. Rulers over these districts had the title Imperator like the ruler residing in Rome; this Latin title was represented by *basileus* in Greek. Next to the imperial office, the ancient republican offices continued, most notably that of the consuls, even though they had few executive competences and little political clout any longer. Still, the Roman Imperium remained intact as an integrated state (civitas), based on the municipal law of the city of Rome and overarching the several districts. The most important of the newly emerging centres of government next to Rome was Byzantium (Constantinople), established under Emperor Constantine (312 – 337) on a peninsula extending into the Bosporus which separated Asia from Europe already in contemporary perspective. Up until the fifth century, political and administrative activities gradually shifted from Rome to Byzantium.

At the same time, the Bishops of Rome, regarding themselves at successors to the Apostle Peter and using the title Pope (Papa or Pontifex maximus), expanded their control over the Christian church at large and converted the city of Rome from a secular into an ecclesiastical centre of government. When between 476 and 481 Rome ceased to serve as imperial residence, contemporaries and the immediately following generations hardly observed the transformation as a thorough change of the structure of the Roman Imperium.[1] Rome continued to give its name to the Imperium as a whole, even though its population size shrank dramatically, the lavish buildings of the central government fell into decay and the central imperial administration existed merely in Byzantium. Since the end of the fifth century, it had become possible to perceive the Roman Imperium as a state without administrative ties to the city of Rome.

Moreover, during the fourth and fifth centuries, new political communities arose, partly in certain districts of the Western parts of the Imperium, partly outside of it in areas towards the Northwest and the North. Already while the Roman Imperator was still residing in Rome, the imperial administration exercised little control over these communities, and the Basileus residing in Byzantium limited the reach of their effective rule to the Eastern Mediterranean Sea. Once Rome had been given up as a centre of residence of the Imperator, some of these newly established political communities managed to increase their autonomy, including but not limited to areas in the Iberian and Italian peninsulas. Rulers of these political communities came to be known by the title king (rex). Until then, historiographers had reserved this title for monarchs believed to have ruled the city of Rome in ancient times or for heads of the Ancient Near Eastern empires. But from the fifth century, some authors noted that these rulers exercised control in ways that differed from those that historians had reported for Rome's early history as well as for the Ancient Near Eastern empires.[2] Earlier even, the Roman historian Cornelius Tacitus (56 – 117) had written a booklet about people who lived on the European continent in areas north of the Roman Imperium and whom he called "Germans" in accordance with a tradition going back to the third century BCE. The people, Tacitus

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[1] For a review of sources see: Hans-Werner Goetz, 'Antike Tradition, römische Kontinuität und Wandel in den frühmittelalterlichen Reichen in der Wahrnehmung der frühmittelalterlichen Geschichtsschreibung. Gregor von Tours und Paulus Diaconus im Vergleich', in: Matthias Becher and Stefanie Dick eds, *Völker, Reiche und Namen im frühen Mittelalter* (Mittelalter-Studien, 22) (Munich, 2010), pp. 255-278.

[2] Specifically, Paulus Orosius, *Historiarum adversum paganos libri VII*, chap. I/19, II/2, edited by Carl Zangemeister (Corpus scriptorum ecclesiasticorum Latinorum, 5) (Vienna, 1882), pp. 71-72, 85 [reprints (New York, 1966); (Hildesheim, 1967)].

believed, took their kings (reges) from kin groups with reportedly ancient traditions (nobilitas), while selecting their military leaders (duces) according to their achievements (virtus).[3] According to this distinction, kingship was an office that could be inherited in ruling dynasties, while rulers with military competence had to qualify through acknowledged accomplishments. Tacitus thus seems to have assumed that the people, whom he called "Germans", could allocate rule not just to members of kin groups credited with a long genealogical tradition, but also to persons with a reputation of high professionalism. Tacitus described this dualism of types of rulers as a deviation from the Roman and Ancient Near Eastern patterns of government. Due to lack of contemporary sources, it remains unclear whether Tacitus's dualistic taxonomy should be regarded as a general, so to speak legally cogent institutional feature, valid for the so-called "Germans" as a whole, or merely as two different types of rule for which political communities could opt. Nevertheless, Tacitus seems to have succeeded in shaping the image that Roman intellectuals, rulers and high-ranking government officials held about these "Germans", even though their cultural unity is far from certain.[4] These "Germans" came to be identified as the core groups who overran the Roman frontier walls, the *Limes*, ever more frequently since the fourth century, and authors who reported some of these incidents, would then commonly refer to their leaders as either kings or dukes. In the course of the fifth century, it was apparently these groups in the main who settled on Roman soil as political communities in roughly demarcated districts and with some entitlements to self-government, not merely in the Iberian and Italian peninsulas, but also in Gall, Britain, the Balkans and North Africa. Authors had little difficulty calling the districts "kingdom" (regnum), when they stood under the control of *reges*. Hence, according to Late Roman Latin tradition, there were several "kingdoms" (regna) on the territory of the Roman *civitas*.[5]

The languages of the so-called "Germans" featured a word that appears to confirm the essence of Tacitus's report on their *reges*. This is the reconstructed nominal root *kunig-, that is likely to have been used for this type of rulers. The root is extant in Modern English 'king', Modern High German *König* and even in Finnish *kuningas*. The root *kunig- is correlated with the further nominal root *kuni-, meaning descent group and extant in Modern English 'kin'. As late as in the sixth century, the Roman Senator Flavius Magnus Aurelius Cassiodorus (c. 485 – c. 585), among the then most influential scholars writing in Latin, claimed that the power and legitimacy of rulers were to be measured according to the length of their ascertainable genealogies.[6] Hence, the political significance that genealogies could have, gave rise to manipulations of great scope. At least, it seems to have been common to expand short genealogies, naming only a few generations of ancestors, through additions of names from the genealogies of marriage partners in possession of longer lists.[7] A number of *duces*, having risen to power as successful military leaders, may have been able to acquire the status of *reges* through marriage affiliations with royal dynasties.[8] Hence, authors

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[3] Cornelius Tacitus, *Germania*, chap. VII, edited by Rudolf Much; third edn, edited by Wolfgang Lange and Herbert Jankuhn (Heidelberg, 1967), p. 154.

[4] Jörg Jarnut, 'Germanisch. Plädoyer für die Abschaffung eines obsoleten Zentralbegriffs der Frühmittelalterforschung', in: Walter Pohl, ed., *Die Suche nach den Ursprüngen* (Denkschriften der Österreichischen Akademie der Wissenschaften. Philos.-Hist. Kl., Bd 322 = Forschungen zur Geschichte des Frühmittelalters, 8) (Vienna, 2004), pp. 107-113. Reinhard Wenskus, 'Über die Möglichkeit eines allgemeinen interdisziplinären Germanenbegriffs', in: Heinrich Beck, ed., *Germanenprobleme in heutiger Sicht* (Ergänzungsbände zum Reallexikon der germanischen Altertumskunde, 1) (Berlin and New York, 1986), pp. 1-21.

[5] Werner Suerbaum, *Vom antiken zum frühmittelalterlichen Staatsbegriff. Über Verwendung und Bedeutung von res publica, regnum, imperium und status von Cicero bis Jordanes* (Orbis antiquus, 16/17) (Munster, 1961), p. 257.

[6] Flavius Magnus Aurelius Cassiodore, *Variarvm libri XII*, chap. XI/1, edited by Åke Jison Fridh (Corpvs Christianorvm. Series Latina, 96) (Turnhout, 1973), p. 424.

[7] On the techniques of affiliation see: Reinhard Wenskus, 'Zum Problem der Ansippung', in: Helmut Birkhan, ed, *Festgabe für Otto Höfler zum 75. Geburtstag* (Philologica germanica, 3) (Vienna, 1976), pp. 645-660 [reprinted in: ders., *Ausgewählte Aufsätze zum frühen und preußischen Mittelalter*, edited by Hans Patze (Sigmaringen, 1986), pp. 85-95]. Herwig Wolfram, 'Theogonie, Ethnogenese und ein kompromittierter Großvater im Stammbaum Theoderichs des Großen', in: Kurt-Ulrich Jäschke and Reinhard Wenskus, eds, *Festschrift für Helmut Beumann* (Sigmaringen, 1977), pp. 80-97.

[8] For examples, see: Harald Kleinschmidt, *Migration und Identität. Studien zu den Beziehungen zwischen dem Kontinent und Britannien vom 5. bis zum 8. Jahrhundert* (Schriften zur südwestdeutschen Landeskunde, 60)

writing about Non-Roman political communities on the territory of the Roman Empire during the fifth century knew the "Germanic" rulers as *reges* or *duces* and commonly described them as military leaders. These forms of rule differed from what was on record from pre-Republican Roman history, most significantly in the respect that not all of these "Germanic" rulers had residential capitals but appeared to be on the move over longer periods. By consequence, these *reges* or *duces* did not necessarily hold sway over districts that were demarcated through precise lines, but over the communities loyal to them.

The main reason for the willingness of these political communities to migrate lay in the legal base for their settlements on the territory of the Roman Imperium. They had arrived there in the course of the fourth century as mercenaries in order to fill the ranks of the regular Roman armies. Roman imperial administrators often used the legal title of the alliance (foedus) when taking these mercenaries into service. According to Roman municipal law, mercenaries as federates had the legal status of outsiders (externi).[9] From the point of view of the Roman administration, this status had the advantage that the mercenaries did not acquire the privileges of Roman citizens, as long as they remained federates. However, the legal structure of the *foedus* had the disadvantage that federates could continue to act as political communities on the territory of the Roman Imperium, with the option of obtaining certain exemptions from imperial laws. This option became a manifest political reality in the course of the fifth century. Ever more federate *reges* and *duces* began to act as rulers in their own right.

Given these shifts of the structure of rule, the translation of the political terminology from Latin into other languages met with significant difficulties. There was no word in the native languages spoken by the federates with a meaning equivalent of Latin *imperium* as the technical term for the state that had expanded from the confines of the city of Rome to wide areas around the Mediterranean Sea and even carried with it the claim for universal rule. Early in the fifth century, St Augustine had used the word *civitas* for this state.[10] In some of the so-called "Germanic" languages, such as in the early recorded language of the Goths, the word *reiki* came into use.[11] *Reiki* could mean both 'rule' and *regnum* and is correlated with the Modern High German noun *Reich* (usually meaning 'kingdom' or 'empire'). *Reiki* could thus refer to political communities of some size irrespective of the titles of their rulers. As *reiki*, the Roman Imperium was therefore a political community among many. Because *reiki* could stand for the Roman Imperium as well as for the *regna*, it became possible, for example in Latin used by Gothic authors, to speak of the Roman Imperium as a *regnum* and of the Roman Imperator as *rex*. For one, Theodoric, ruler of the Ostrogoths (493 – 526), nominally stood under the overlordship of the Emperor in Byzantium but had his residence at Ravenna. Cassiodorus transmitted a letter written in Theodoric's name and addressed to Imperator Anastasius (491 – 518). In his letter, Theodoric promised that he use Anastasius's *regnum* as the model for his rule over the Goths (regnum vestrum imitatio nostra est), and that he wished the Roman *regnum* to form a unity (Romani regni unum velle). In other words, in what must have been conceived as the manifestation of good will, the *rex* of the Ostrogoths could address the Imperator in Byzantium with the same title that he was claiming for himself.[12] Elsewhere, Theodoric explicitly subjected himself to the overlordship of the Imperator in Byzantium, referred to the political community under his control as *regnum* and to the entire Roman state as *imperium* (non minus in regno nostro quam in vestro iubeatis imperio).[13] Conversely, Jordanes († after 552), the historiographer of the Goths, could not only denote the Roman state as *imperium* but also the political communities under the control of the Goths and the Huns. Moreover, for Jordanes as well,

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(Ostfildern, 2009), pp. 137-151.

[9] *Corpus iuris civilis*. Digesta, 48. 5.4.1, edited by Paul Krüger and Theodor Mommsen, fifteenth edn (Berlin, 1928), p. 845.

[10] Augustine, Bishop of Hippo Regius, *De civitate Dei*, edited by Bernard Dombart and Alphons Kalb, 2 vols (Corpvs Christianorvm. Series Latina, 48) (Turnhout, 1955).

[11] *Ulfilas oder die uns erhaltenen Denkmäler der gotischen Sprache*, Lucas 20, 20, Röm. 8, 38, 1. Cor. 15, 24, Eph. 1, 21, 3, 10, 6, 12, Col. 1, 16, 2, 15, edited by Friedrich Ludwig Stamm, reprint (Essen, 1984), pp. 108, 149, 170, 203, 206, 218, 220 [first publication of this edn (Paderborn, 1865)].

[12] Cassiodor, *Varia* (note 6), chap. I/1, pp. 9-10.

[13] Ibid., chap. X/19, pp. 401-402.

the Roman Imperium could be a *regnum*.[14]

The official title *imperator* raised further difficulties. The so-called "Germanic" languages did not have a word for rulers with a rank higher than that of *reges*. When an *imperator* had to be referred to, the choice usually fell on the title that, since Octavian, had initially belonged to the personal names of the early emperors, had soon become an honorific title and had been derived from the name of Gaius Julius Caesar. Caesar appeared as *kaisar* in Gothic, as *cāsere* in Old English; the word is still used in Modern High German as well as in Baltic and Slavonic languages. However, in these latter languages, it replaced the Latin *imperator* only during the thirteenth and fourteenth centuries. *Imperator* remained part of the lexicon of the Romance languages and replaced *cāsere* in English.

During the sixth century, Archbishop Isidore of Seville (c. 560 – 636), who was familiar with the history of the Goths,[15] tried to pave the way out of the dilemmas of the incompatible terminologies in Latin and the various vernacular languages by interpreting the title *rex* etymologically and deriving it from the Latin adverb *recte*. He ascribed to this adverb the meaning of 'legitimate' and concluded that whoever bore the title *rex* ruled legitimately (Reges a regendo vocati. [...] Recte igitur faciendo regis nomen tenetur).[16] In creating this formula, Isidore claimed that the legitimacy of rule was the legal base for the use of the title *rex*. In doing so, Isidore allowed for *imperatores* and bearers of various vernacular ruling titles to be *reges* if and as long as their rule was legitimate. Isidore thus shifted the problem of the styling rulers from the sphere of language into the sphere of law.

The Ideology of World Rule and the Pragmatics of Diplomacy

Meanwhile, the Imperator in Byzantium continued to adhere to the traditional claim towards universal rule with which the Roman Imperium appeared to be invested. At the same time, they maintained that they were the effective rulers also over the Western hemisphere of the Imperium and launched a long-term project to restore imperial rule there. Imperator Justinianus implemented this program during the first half of the sixth century. Armies which he deployed to the Balkans, the Italian Peninsula[17] and North Africa[18], actually succeeded in restoring imperial control for the time being. In the chronicler Procopius of Caesarea (c. 500 – c. 562), Justinianus found a conscientious though often critical reporter on these campaigns. The *regnum*, which the Vandals had established North Africa, fell victim to advance of the imperial army in 534, in the north of the Italian Peninsula, Theodoric's *regnum* followed in 552 together with smaller political communities in the Balkans around the same time.

However, the Imperator in Byzantium proceeded differently with the members of the political community calling themselves Franks who had subjected to their control the largest part of the Roman province of Gall during the later part of the fifth century and were in the process of expanding their rule in areas east of the Rhine. The Frankish Rex Clovis (481 – 511), belonging to the dynasty of the Merowings, defeated the Alemans in these areas at the turn towards the sixth century and then moved against Visigoths who had established themselves in the southern part of Gall with Toulouse as their capital city. Clovis forced them to move into the Iberian Peninsula in 507, where they founded a new *regnum*. Clovis engaged in a rivalry with Theodoric, his Ostrogoth contemporary in Ravenna, but both rulers did not allow their rivalry to grow into open warfare.

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[14] Jordanes, 'De origine actibvsqve Getarvm', chap. 98, 112, 247, 248, 253, in: Jordanes, *Romana et Getica*, edited by Theodor Mommsen (Monumenta Germaniae Historica. Auctores antiquissimi, vol. 5, part 1) (Berlin, 1882), pp. 53-138, at pp. 83, 87, 121, 123.

[15] He wrote a history of the Goths in the Iberian Peninsula. See: Isidore, Archbishop of Seville, 'Historia de regibus Gothorum, Wandalorum et Suevorum', in: Jacques-Paul Migne, ed., *Patrologiae cursus completus*. Series Latina, vol. 83, col. 1057-1082.

[16] Isidore, Archibishop of Seville, *Etymologiarvm sive originvm libri XX*, book IX, chap. 3, edited by Wallace Martin Lindsay (Oxford, 1911).

[17] Procopius of Caesarea, *Wars of the Goths* [various edns].

[18] Procopius of Caesarea, *Wars of the Vandals* [various edns].

Instead, Clovis's successors turned against the *regnum* of the Burgundians in the western Alps which they subjected to a form of Frankish overlordship but kept it in existence as a political community until 737. From the point of view of the imperial administration in Byzantium, the wars and rivalries among the *regna* of the Western hemisphere were good news because it could hope that the several rulers would weaken one another, thereby playing into the hands of the Imperator and easing their bid to restore Roman rule. Given his military successes, Clovis appeared as a potentially useful partner with whom the Imperial administration seems to have been willing to remain on good terms. Clovis may have given his own support to this strategy with his conversion to Catholicism after the victory against the Alemans. Following the defeat of the Visigoths, the imperial administration dispatched a mission to Gaul. The envoys met Clovis in the Roman city of Tours that was the centre of a bishopric and had come under Frankish control. They endowed him with a diadem and a purple robe and informed him that he had been given the title of a *consul*.

Reportedly, Clovis was impressed by the gifts presented to and the title conveyed upon him. He put on the robe and diadem immediately, paraded on horseback through the city of Tours and had gold distributed among onlookers, as the late-six-century chronicler Bishop Gregory of Tours (538/9 – 594) noted.[19] Although *consul* was an empty title in Byzantium at the turn towards the sixth century, Clovis does not seem to have cared about such formalistic niceties, if he knew of them at all. Instead, what appears to have been of importance for him, was the fact that the title gave him a rank in Byzantine official hierarchy which his rival in Ravenna did not own. The imperial envoys may not have treated Clovis honestly, as his name was not entered in the official consular records kept in Byzantium. Nevertheless, the ceremony at Tours was a great success for Clovis: No war occurred between Byzantium and the Franks up until the ninth century, and the *regnum* of the Franks was among the few political communities that sprang up from the territory of the Roman Empire and remained in existence in the long term. The regnum of the Franks not only expanded to include the political communities of the Alemans, the Visigoth *regnum* at Toulouse and eventually that of the Burgundians, but from 714 also that of the Frisians outside the Roman Empire. The *regnum* of the Lombards, established only in 568 in the north of the Italian Peninsula round the city of Pavia, came under Frankish control late in the eighth century. Further *regna* came into existence in the Roman province of Britain among migrants of Continental origin, altogether fourteen of them. However, only the *regnum* of the West Saxons lasted on beyond the ninth century.

There was no scarcity of *regna* in areas north of the Roman Empire. Clovis's son Theuderic (511 – 533/4) destroyed the *regnum* of the Thuringians in 531[20] and, already in 515, repelled an attack by some Danish *rex* named Chlocilaicus[21], as Gregory of Tours recorded. The oldest versions of a poem apparently date to the later seventh century, shedding a glimpse of light on *regna* of the Sweves and the Anglia in the Jutish Peninsula.[22] Further sources contain evidence about *regna* of the Gauts and the Svear in what is Sweden today.[23]

It is not clear to what extent the imperial administration in Byzantium obtained information about these events in this rapidly changing world. However, Procopius of Caesarea did have knowledge of details of the relations which the rulers of the political community of Heruli in the area around Singedon in the Balkans kept with their relatives who had remained in Scandinavia, and he also seems to have had access to reports about events in Britain from an Anglian mission to Byzantium that occurred during the sixth century.[24] Diplomats stationed in Byzantium thus must

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[19] Gregory, Bishop of Tours, *Libri historiarum X*, book II, chap. 38, edited by Bruno Krusch and Wilhelm Levison (Monumenta Germaniae Historica. Scriptores rerum Merovingicarum, vol. 1, part 1) (Hanover, 1951), p. 89.

[20] Ibid., chap. III/7-8, pp.104-106.

[21] Ibid., chap. III/3, p. 99.

[22] *Widsith*, vv. 35-44, edited by Kemp Malone (Anglistica, 13) Copenhagen, 1962), p. 24 [first publication of this edn (Poetic Texts, 5) (London, 1936)].

[23] For details see: Pontus Fahlbeck, 'Forskninger rärande Sveriges äldsta historia', in: *Antikvarisk Tidsskrift för Sverige*, vol. 8, part 2 (1884), pp. 1-88, at pp. 37, 54-56. R. T. Farrell, „Beowulf, Swedes and Geats", in: *Saga Book of the Viking Society* 18 (1972), pp. 225-286. Gudmund Schütte, 'Geaterspørgsmaalet', in: *Danske studier* (1930), pp. 70-81. Curt Weibull, *Die Geaten des Beowulf und die dänischen Trelleburgen* (Acta Regiae Societatis Scientiarum et Litterarum Gothoburgensis. Humaniora 10) (Gothenburg, 1974), pp. 3-26.

[24] Procopius, *Wars of the Goths* (note 17), chap. II/15, IV/20.

have been quite busy, as the imperial administration also maintained intensive relations not merely with areas in the West and Northwest of Europe but also in Western and Eastern Asia. Justinianus was at war with Sāsānian rulers in Persia until 562,[25] when he entered into an agreement concluding peace for fifty years and recognising the common borders.[26] Close contemporary as well as later Latin texts gave to Sāsānian rulers the title *imperator*.[27] Byzantine contacts even with China were extensive enough to warrant the establishment of an office in charge of translations from Chinese.

The sixth-century imperial diplomatic service must thus have been a highly professional institution. It drew on the learning that had been accumulated in and around the imperial administration. Byzantine diplomats appear to have allocated two types of status to the states and political communities with which they were maintaining some form of regular intercourse. On the one side, towards the *regna* and other political communities in the Western hemisphere and in areas in the North, they claimed the prime position of the universal ruler for the Roman Imperator residing in Byzantium and continued to do so up to the eighth century, on occasions even later. They sought to manifest this claim through ceremonies, which positioned the Roman Imperator in Byzantium at the top of a hierarchy of rulers, and through the threat of the use of military force against rulers refusing to acknowledge the supremacy of the Imperator. Accordingly, if an Imperator entered into an agreement at all, diplomats drew up a treaty the ruler in a formulary which styled the agreement as an extension of imperial benevolence to the recipient.[28] Within this hierarchy, the Imperator in Byzantium appeared as the conveyor of privileges at his own discretion, positioning the recipients of benefits at a lower rank. Thus, for one, the Byzantine administration not merely granted a cheap title to Clovis but, in doing so, also proclaimed its determination to subordinate Clovis as the recipient of imperial grace to the Imperator as its giver. Clovis is likely to have understood this implication of the ceremony of Tours, but accepted it because he could now claim a higher rank than his rival Theodoric and, after all, the imperial administration was far away and had no practical possibility of interfering into the domestic affairs of the *regnum* of the Franks. By contrast, the Byzantine diplomatic service shaped its relations with the Sāsānian and other rulers further to the East pragmatically through the recognition of the legal equality of treaty partners in times of peace and enemies in times of war. The fusion of the ideology of universal rule with the pragmatic recognition of a pluralism of legally equal self-governing states, known from Ancient Near Eastern times, still determined the relations between the Roman Imperator in Byzantium and other rulers in various parts of the world.

Legal equality as well as the inequality of the rank that rulers elsewhere in the world obtained in Byzantine perspective had its bearing on the choice of titles which Byzantine diplomats applied to these rulers. In Byzantine terminology, these titles were usually derived from kinship terms. Under Baslieus Constantine VII Porphyrogennetos (913 – 959), the administration compiled a kind of address list featuring the rulers with whom Byzantine diplomats corresponded regularly. In this list, the Basileus featured as "father" and the holder of "fatherly power" (*patricia potestas*), the Emir of Egypt and rulers in South Asia were recognised as "friends", the "kings" of the Saxons, Bavarians, Italy, Germany (the land of the Alemans) and France were addressed as "brothers", while the rulers of Greater Armenia, of the Alans and Bulgarians ranked as "sons. Only the Pope, then still acknowledged as the head of the Christian Church in Byzantium, received recognition as "Spiritual Father", a term in use for priests when receiving confessions.[29] The list permitted precise

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[25] Procopius of Caesarea, *Wars of the Persians* [various edns].

[26] Katrin Schmidt, *Friede durch Vertrag. Der Friedensvertrag von Kadesh von 1270 v. Chr., der Friede von Altalkidas von 386 v. Chr. und der Friedensvertrag zwischen Byzanz und Persien von 562 n. Chr.* (Europäische Hochschulschriften. Series 2, vol. 3437) (Frankfurt, 2002), pp. 57-92.

[27] Constantine VII Porphyrogennetos, *Excerpta de legationibus*, edited by Carl de Boor, *Excerpta historica*, vol. 1 (Berlin, 1903), pp. 172-176, 179-182 [reprint (Berlin, 2003)].

[28] Franz Dölger and Johannes Karayannopoulos, *Byzantinische Urkundenlehre*, vol. 1: Die Kaiserurkunden (Handbuch der Altertumswissenschaft. Section 12, vol. 3, part 1) (Munich, 1968), p. 95.

[29] Constantine VII Porphyrogennetos, 'De cerimoniis', chap. 48, in: Jacques-Paul Migne, ed., Patrologiae cursus completus. Series Graeca, vol. 112, col. 1263-1280, at col. 1263-1265 [also edited by Albert Vogt (Paris, 1935); reprint of this edn (Paris, 1967); and by Johann Jakob Reiske (Leipzig, 1892)]. For an interpretation of the text see: Franz Dölger, 'Die Familie der Könige im Mittelalter', in: *Historisches Jahrbuch* 60 (1940), pp. 397-420.

distinctions among rulers outside Byzantium, with "friends", so to speak as members of the imperial household equal to the Basileus, as against other rulers who would not be admitted as his peers. The list was adapted to the political conditions prevailing during the tenth century but reflected the distinctions that had been developed since the sixth century.

However, this carefully knit network of diplomatic relations received its first cracks already from the 630s, when groups of local warriors launched the process of a military expansion from the Arabian Peninsula into Palestine and Mesopotamia and continuing from there into Northern Africa. In 637, these warriors subjected Jerusalem to their control, in 642 they reached Alexandria, and in 711 they crossed the Strait of Gibraltar into the Iberian Peninsula. Between 674 and 678, the warriors erected a naval blockade of Byzantium with the intention of conquering the city. But the blockade failed due to superior Byzantine weapons technology, which allowed the use of swimming devices to transmit fire over water and thereby to ignite wooden ships. The technique remained part of the literature on military technology under the name "Greek Fire".[30] Another attempt to conquer the city failed in 717/8. In the intermittent period, a treaty of peace had been in force for thirty years obliging the warriors to pay tribute to Byzantium. Thereafter, further attempts to conquer the city did not take place until the fifteenth century.

As leaders of an army then made from joint Arab and Berber forces, the warriors overcame the Visigoth *regnum* in 711, whose *reges* withdrew to the Northwestern corner of the Iberian Peninsula. The army continued their move into the southern part of the *regnum* of the Franks where a Frankish army defeated them in the battle of Tours and Poitiers in 732. The Northumbrian monk Bede (c. 672/3 – 735), who claimed to have completed his *Ecclesiastical History of the Angles* (*Historia ecclesiastica gentis Anglorum*) in 731, seems to have added a passage on the battle commenting that "Saracens" had ravaged Gall and had been "punished with dignity" (*dignas poenas*) for their alleged "lack of faith" (perfidia).[31] Between the seventh and the tenth centuries, Christian authors would commonly refer to Muslims under the name of "Saracens". In Bede's view, "Saracens" were "perfidious" simply because they were not Christians. He took to the view that there was no bond of faithfulness between Christians and Muslims and might have wanted to say, in the language of moral theology, that legal relations could not exist between believers of the two religions. However, Bede's statement came as an afterthought, apparently added quickly to an otherwise well considered text, and should thus not be regarded as the statement of a comprehensive theory of interreligious relations. In any case, neither Bede's statement nor the advance of Muslim military forces entailed any negative consequences for the practical conduct of relations, such as trade,[32] between Christians and Muslims.

Nevertheless, the Arab expansion forced the Roman Imperator in Byzantium to withdraw from Palestine and North Africa and, henceforth could no longer base their claim towards priority over the *regna* in the western hemisphere on demonstrations of superior military might. With the Arab warriors, Islam spread to Palestine, Mesopotamia, North Africa and the largest part of the Iberian Peninsula. Moreover, Arab warriors began to intervene in Central Asia already during the later seventh century, ended Sāsānian rule in Persia and further expanded their control eastwards to the western frontiers of areas under the sway of the Tang dynasty of China (618 – 907). The Tang government perceived the eastward advance of Arab Muslim forces as a threat for its own influence in the eastern part of Central Asia and prepared for a counter offensive. In 751, a battle was fought over several days on the banks of the Talas River between an Arab Muslim and a Tang army, both roughly equal in strength. On the Tang side, the Korean-born field marshal Xian-Zhi Gao († 756), had already in 747 prevented the formation of a Muslim-Tibetan alliance through his intervention in Tibet, when he had defeated the Tibetan army. At the Talas River, Gao initially received support from an allied Turkish army which, however, switched sides in the course of the battle. Gao then

[30] Marcus Graecus, *Liber ignium ad comburendos hostes*, dited by François Jean Gabriel de La Porte du Theil (Paris, 1804).

[31] Bede, *Historia ecclesiastica gentis Anglorum*, book V, chap. 3, s.a. 729, edited by Bertram Colgrave and Roger Aubrey Baskerville Mynors (Oxford, 1969), p. 556 [reprints of this edn (Oxford, 1991; 2003)].

[32] See: Georg Jacob, *Arabische Berichte von Gesandten an germanische Fürstenhöfe aus dem 9. und 10. Jahrhundert* (Quellen zur deutschen Volkskunde, 1) (Berlin and Leipzig, 1927) [reprint (Berlin and Leipzig, 2010)].

believed that the chances of a victory by the remaining Tang forces were low and, following Sun-Tsu's tactical principles, withdrew to fortified places under Tang control. The course of the battle at the Talas River confirmed the wisdom of ancient Chinese military theorists but established Muslim control over large parts of Central Asia which has since then remained beyond Chinese government control. Yet the Tang government did not seek a military solution but responded to the expansion through diplomatic means, sending an official mission to the Abbasid Khalifate in Baghdad in 785.[33]

While these dramatic changes were going on, effectively restricting the reach both of the control of the rulers in Byzantium and of the Tang government, ideologies of universal rule remained attached to the Roman Imperium as well as the Chinese system of government. In the Occident, St Augustine's theology, which had tied the hope towards the continuity of the world to the stability of the Roman Imperium as a potential world state of the future, upgraded the ideology of universal rule to the rank of a dogma that could not be contested. The Christian Church acted in accordance with Augustine's doctrine and took over from the Roman emperors the task to bring peace to the world. Early Christian prayer books made texts available through which help should be sollicited from God for security and for the preservation of the "Roman Peace" and the "Christian Faith".[34] Grounded in Augustine's claim that universal rule as vested in the Roman Imperium was divinely willed, this ideology then no longer draped secular acts such as the conclusion of alliances or the declaration of wars, but elevated Christianity into the rank of a religion that was to be followed in the world at large. Hence, to the extent that the law of war and peace was to emerge from religious beliefs, the issue came up in the Roman Imperium during the fifth century, how legal relations were to be maintained among self-governing political communities confessing to different religious faiths. This issue turned into a problem because, in the view of Christian theologians, the law of war and peace could no longer be derived from any other sources than Christian religious doctrine. Within Christian dogmatic, the law of war and peace thus became difficult to conceive in Cicero's sense as part of the law of nature. By contrast, Tang claims for universal rule remained secular and Chinese concepts of the law of war and peace could therefore retain their ties to the natural law tradition.

The Mission of the Catholic Church, War and Security

Under the leadership of the popes, the Christian Church claimed control over all Christian congregations and therefore used the name catholic, the general church. Since the end of the sixth century, it responded to the problem of determining the principles of regulating in legal terms the relations among political communities confessing to different religions, and it did so through giving support to missionary activities undertaken by clergymen, mainly ordained priests. The first target was the *regna* and other political communities which had established themselves on the territory of the Roman Imperium but whose populations had not, unlike the Franks, converted to Catholicism at that time. At the turn towards the seventh century, Pope Gregory I (591 – 604) focused on Britain in

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[33] On the background of the battle see: Christopher Beckwith, *Empires of the Silk Road* (Princeton, 2009). Stephen Morillo, Jeremy Black and Paul Lococo, *War in World History. Society, Technology and War from Ancient Times to the Present*, vol. 1 (Boston, 2009), p. 167. On the diplomatic background see: Angela Schottenhammer, *Yang Liangyaos Reise von 785 n. Chr. zum Kalifen von Bagdad. Eine Mission im Zeichen einer frühen sino-arabischen Mächte-Allianz?* (Reihe gelbe Erde, 10) (Gossenberg, 2014). Schottenhammer, 'Sino-arabische Beziehungen im 8. Jahrhundert. Eine frühe pan-asiatische Mächte-Allianz', in: Birgit Tremml-Werner and Eberhard Crailsheim, eds, *Audienzen und Allianzen. Interkulturelle Diplomatie in Asien und Europa vom 8. bis zum 18. Jahrhundert* (Expansion, Interaktion, Akkulturation, 26) (Vienna, 2015), pp. 33-52.

[34] *Sacramentarium Gelasianum*, nr 727, 729, 731, 732, edited by Henry Austin Wilson, *The Gelasian Sacramentary. Liber Sacramentorum Romanae ecclesiae* (Oxford, 1894). *Sacramentary of Gellone*, Ms. Paris, Bibliothèque nationale de France, fonds lat. 12048, fol. 231ᵛ; partly edited by Gerd Tellenbach, *Römischer und christlicher Reichsgedanke in der Liturgie des frühen Mittelalters* (Sitzungsberichte der Heidelberger Akademie der Wissenschaften, Phil.-Hist. Kl. 1934/35, vol. 25, nr 1) (Heidelberg, 1934), p. 59. *Sacramentarium Leonianum* [= Sacramentarium Veronense], nr 352, 369, 375, edited by C. L. Feltore (Rome, 1896) [Facsimile edn, edited by Franz Sauer (Codices selecti, 1) (Graz, 1960)].

the first place, where several *regna* stood under the control of non-Christian rulers. Already since the early sixth century, monks from Ireland, having remained predominantly Christian since the period of Roman rule, had taken up mission in Britain. For the Church, the Irish mission in Britain posed a difficulty as Irish Christians, though professing to the Catholic faith, would not acknowledge the authority of the Pope with regard to matters of ecclesiastical organisation. Pope Gregory I was thus not just concerned with winning non-Christian rulers in Britain over to Christianity but to subject them to papal control. In its competition against the missionary efforts of the Irish clergy, the Catholic Church had unexpected success from the turn towards the seventh century, when several of the non-Christian rulers in Britain opted for Catholicism. Newly founded monasteries for monks and nuns attracted many converts into their walls, specifically young people. The Church offered to them the possibility of pursuing education in ways that were hard to find elsewhere. This was so because inmates of monasteries had the option of learning how to read and write, thereby obtaining access to knowledge that was transmitted in writing and thus available wherever there were libraries. This body of knowledge was thus accessible irrespective of the traditions which were being passed on within kin and neighbourhood groups orally from generation to generation, yet concealed from outsiders. By contrast, learning based on book knowledge was based on communication networks that, on principle, reached as far as the Christian faith. Learned monks and nuns thus transmitted the knowledge that was laid down in written texts and adapted it to the changing needs of their present. In the Western hemisphere, the Latin language was usually used as the medium of transmission, whereas in the Eastern hemisphere, Greek was the medium. From the eighth century, Arab authors worked on Greek texts, created Arabic versions and transformed the city of Bagdad into an innovative centre of science which began to surpass Byzantium.

In the West of the Roman Imperium, Archbishop Isidore of Seville was the most influential transmitter of knowledge laid down in Latin texts. He summed up the essential contents of these texts, as they were known to him, into an encyclopedia, which he divided into twenty thematically arrayed in chapters, defined core terms and explained their origins. In his work, Isidore also dealt with the law of war and peace together with the *ius gentium*. He described peace as the result of an agreement among parties to a conflict, whereby he referred to the ancient Greek and Roman practice of concluding peace treaties. Rather matter-of-factly, Isidore expected that diplomatic envoys were inviolable. He included this expectation into his definition of the *ius gentium*, which he regarded as the law valid among all humans.[35] Following the jurist Ulpianus (pactum a pactione, inde etiam pacis nomen appellatum est),[36] he traced the Latin word for peace (pax) back to the treaty (*pactum*).[37] In doing so, Isidore formed a tradition that still impacted on seventeenth-century legal theorists.[38] Similarly, it was a matter of course to Isidore that war could only be conducted to the end of the restoration of previously suffered injustice (rebus repetitis), using Livy as his source, and added that wars could also be fought under the goal of repelling invaders.[39] Likewise, Isidore remained within the traditions in categorising the law of war and peace, together with the *ius gentium*, as part of the law of nature.[40] Hence, he regarded the law of war and peace as binding for all humankind. Consequently, his definition of war was comprehensive in the sense that it could be applied to all kinds of military conflict, and, like Cicero, derived the Latin word *bellum* from *duellum* for the duel.[41] That word and concept of the *ius gentium* were known between the sixth and the tenth century should be expected in view of the wide circulation of manuscripts containing Isidore's text. However, the formula not only seems to have been rarely used outside encyclopedic texts[42] but its meaning could even differ from that Isidore assigned to it and cover freedom rights of

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[35] Isidore, *Etymologiarum* (note 16), chap. V/6.

[36] *Digesta* (note 9), 2.14.1.1-2, p. 56.

[37] Isidore, *Etymologiarum* (note 16), chap. XVIII/1.

[38] Hermann Conring [praes.] and Johann Dreiling [resp.], *Disputatio politica de bello et pace*, § XXXV. LLD Thesis (University of Helmstedt, 1663), fol. D [1]ʳ.

[39] Isidore, *Etymologiarum* (note 16), chap. XVIII/1.

[40] Isidore, *Etymologiarum* (note 16), chap. V/4.

[41] Isidore, *Etymologiarum* (note 16), chap. XVIII/1.

[42] This has been noted by Heinhard Steiger, *Die Ordnung der Welt. Eine Völkerrechtsgeschichte des karolingischen Zeitalters (741 – 840)* (Cologne, 2010), pp. 17-18.

political communities. For one, Notker Labeo (c, 950 – 1022), teacher at the school of the monastery of St Gall, glossed the formula with "peoples' law" (tiet recht) as the law which he juxtaposed against patterns of customary action, as late as in the early eleventh century.[43]

Authors of sixth-, seventh- and eighth-century Latin texts were, as a rule, clerics who could amply complain about what appeared to them as the disreputable craving for war among their contemporary rulers. These rulers did then not receive praise for heroism in war which seemed incompatible with rulers' duties to care for the well-being of their subjects.[44] In the perception of these authors, war had thus few if any heroic features but was, as for Isidore, the regulated conduct of a conflict. An archaeological find, uncovered in 2009 near Hammerwich in Staffordshire, appears to confirm that not only clerical authors adhered to this perception in their written statements but views of clergymen also determined the practical action of at least some warriors. The find consists of the planned deposit of a large number of precious items, mainly parts of weapons that were purposefully destroyed before they were entrusted to the soil. The items date from a period between the fifth and the seventh centuries and may have been deposited around 700. Many of them were made from gold. They were removed from daily use, but were not melted for the reuse of the metal. They were also not hoarded at a time of crisis and not recovered later, but preserved in the soil as a good that was not supposed to come into use again. The location of the find in the West Midlands is close to Lichfield, the centre of the bishopric closely associated with the Kingdom of Mercia.[45]

Written testimony suggests that the group that may have been associated with the deposit had close connections with the Mercian royal dynasty or was even a part of it. One of the destroyed items, a strip of gold, bears a Latin inscription incised in uncials. The inscription prays for divine support against enemies (Surge Domine disepentur inimici tui et fugent qui oderunt te a facie tua). It is a quote from Psalm 67, 1 in the Vulgate version. The same verse is on record in the early eighth-century *Life of Saint Guthlac* (673 – 714) who was a member of a branch of the Mercian royal dynasty. According to the *Life*, Guthlac cut the ties with his kin group because he was ashamed of the cruelties that some of its members had committed, and withdrew as a hermit into Lindsey, then under Mercian overlordship.[46] The *Life* features the same verse in the context of a story according to which Guthlac was besieged by some Britons and recited the verse. Then, the Britons disappeared and leaving Guthlac unharmed. Only very few authors quoted this verse prior to the ninth century.[47] Hence only a few people can have considered this verse as relevant in Mercia at the turn towards the eighth century. It seems that, at this time, withdrawal from the military profession and secular ways of life appear to have been practiced by at least some members of ruling dynasties

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[43] Notker Labeo [the German], 'De arte rhetorica [c. 1015]', in: *Die Schriften Notkers und seiner Schüler*, vol. 1, edited by Paul Piper (Freiburg and Tübingen, 1882), pp. 523-684 [newly edited by James C. King, in: Notker der Deutsche, *Die kleineren Schriften*, edited by King and Petrus W. Tax (Die Werke Notkers des Deutschen. Neue Ausgabe, 7) (Tübingen, 1996), pp. 105-187, at p. 117].

[44] *The Anglo-Saxon Chronicle*, Bd 3: MS A, s.a. 757, edited by Janet Margaret Bately (Cambridge, 1986), pp. 36-37. For studies see: Walter André Goffart, 'Conspicuously Absent. Martial Heroism in the Histories of Gregory of Tours and Its Likes', in: Kathleen Mitchell and Ian Nicholas Wood, eds, *The World of Gregory of Tours* (Cultures, Beliefs and Traditions, 8) (Leiden, 2002), pp. 365-393. John Leyerle, 'Beowulf the Hero and the King', in: *Medium Aevum* 34 (1965), pp. 89-102.

[45] On the hoard see: Nicholas Brooks, 'The Staffordshire Hoard and the Mercian Royal Court', in: Papers from the Staffordshire Hoard Symposium, edited by Helen Geake (London: British Museum, 2010) [http://finds.org.uk/staffshoardsymposium]. Stephen Dean, Della Hooke and R. Alex Jones, 'The Staffordshire Hoard', in: *Antiquaries Journal* 90 (2010), pp. 139-152; John Hines, 'Units of Account in Gold and Silver in Seventh Century England', in: *ibid.*, pp. 153-173. Harald Kleinschmidt, 'Der Fund von Staffordshire und die Krise der merzischen Königsherrschaft um 700', in: *Frühmittelalterliche Studien* 43 (2014), pp. 1-52. Mike Pitts, 'Staffordshire Gold Hoard', in: *British Archaeology* 109 (2009), pp. 14-21; Justin Pollard, 'What Does the Staffordshire Hoard Mean to Historians?', in: *History Today*, vol. 59, issue 11 (2009), pp. 3-4. Kevin Leahy, Roger Bland, Della Hooke, Alex Jones and Elisabeth Okasha, 'The Staffordshire (Ogley Hay) Hoard. Recovery of a Treasure', in: *Antiquity* 85 (2011), pp. 202-220; Leslie Webster, Christopher Sparey-Green, Patrick Périn and Catherine Hills, 'The Staffordshire (Ogley Hay) Hoard. Problems of Interpretation', in: *ibid.*, pp. 221-229.

[46] Felix, *Life of Saint Guthlac*, edited by Bertram Colgrave (Cambridge, 1956), p. 110 [reprint (Cambridge, 1985)].

[47] Among them: Hrabanus Maurus, 'De universo libri XXII', book XVI, chap. 3, in: Jacques-Paul Migne, ed., *Patrologiae cursus completus*. Series Latina, vol. 111, col. 446.

when the legitimacy of positions of rule could not be derived only through military professionalism, for several rulers in Britain abdicated and withdrew into monasteries in Rome where they died. Bede dedicated a praise poem to King Cædwalla of Wessex (685 – 688)[48] and with respect reported of King Offa of Essex, who withdrew to Rome in 709.[49] Bede remained silent about King Ine of Wessex (688 – 726), who did the same and was his contemporary.[50]

Further close contemporary sources confirm the perception of warriors as people exposed to mortal dangers and in need of support from superhuman powers as a condition of survival. For one, an inlay of the purse lid of the Sutton Hoo boat grave (London, British Museum), perhaps from the early seventh century, shows a human figure framed by two towering bear-like animals ready to devour the human figure. The human figure does not exhibit any capability of confronting these animals or at least defending itself against them.[51] The lid was part of the lavish equipment of what may have been built as a mausoleum for a high-ranking personality. Although the mausoleum did contain weapons, it also featured items that displayed the weakness of human actors when exposed to evil forces in their environment.

In this respect, the find from the mausoleum at Sutton Hoo joins evidence from near contemporary pictures, such as the patrice for a helmet plate from Torslunda in Öland (Stockholm, Statens Historiska Museum), the Loveden plate from Hough-on-the-Hill (Lincolnshire), the stone sculpture from Niederdollendorf (Rheinisches Museum für Vorgeschichte, Bonn) and the miniature showing Christ being taken prisoner in the Book of Kells (Dublin, Trinity College, Ms 58, fol. 114[r]).[52] All three pictures display solitary persons in positions of weakness who appear helpless against threats emanating from their physical and social environments. The persons, warriors among them, appear exposed to these threats without being capable of defending themselves successfully without integration in groups. The pictures place individuals in situations where they cannot expect help from other humans. Warriors, in these situations, are defenceless, even if they carry weapons.

Like other professionals, warriors seem to have experienced their profession as an existential threat to their own security, as long as they could not be integrated in groups of kin, neighbours or companions tied to them through contractual obligations. Not only warriors but also diplomatic envoys and traders seem to have shared these perceptions. Sending and receiving diplomatic envoys, as a part of the law of war and peace, were not the exclusive privileges of the imperial administration in Byzantium but were taken over by the Catholic Church. According to tradition, already Pope Leo I (440 – 461) sent an envoy with the title *Responsalis* to the Archbishopric of Ravenna on an indefinite mission. Since Pope Gregory I, the Church applied the law of diplomatic envoys to the missionaries dispatched to distant *regna*, ranked them as plenipotentiaries with special executive powers and placed them under special protection.[53] However, the guarantee of the security for papal emissaries in *regna* outside the Roman Imperium remained difficult because, after the collapse of imperial administration in Rome, the envoys had to rely on themselves when they travelled on church missions at papal request and were not allowed to carry weapons themselves. Yet also the protection of traders, usually unarmed like the missionaries, turned into a difficulty as offences against traders could not be prevented by the threat of the use of

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[48] Bede, *Historia* (note 31), chap. V/7, pp. 468-472.

[49] Bede, *Historia* (note 31), chap. V/19, p. 516.

[50] *Anglo-Saxon Chronicle* (note 44), s.a. 726, p. 34. On royal abdications and pilgrimages to Rome see: Clare Stancliffe, 'Kings Who Opted Out', in: Donald Anthony Bullough and Patrick Wormald, eds, *Ideal and Reality in Frankish and Anglo-Saxon Society. Studies Presented to John Michael Wallace-Hadrill* (Oxford 1983), pp. 154-176.

[51] For summaries of the results of recent excavations see: Martin Oswald Hugh Carver, *Sutton Hoo. Burial Ground of Kings?* (London, 1998). Carver, 'Why That? Why There? Why Then? The Politics of Early Medieval Monumentality', in: Helena F. Hamerow and Arthur MacGregor, eds, *Image and Power in the Archaeology of Early Medieval Britain. Essays in Honour of Rosemary Cramp* (Oxford, 2001), pp. 1-22. Carver, *Sutton Hoo. A Seventh-Century Princely Burial Ground and Its Context* (London, 2005).

[52] K. R. Fennel, 'The Loveden Man', in: *Frühmittelalterliche Studien* 3 (1969), pp. 211-215. Farrell, 'Beowulf' (note 23), Figure 8, Plate 9. On the iconography of peace see: Stephan Kubisch, *Quia nihil Deo sine pace placet. Friedensdarstellungen in der Kunst des Mittelalters* (Kunstgeschichte, 9) (Munster and Hamburg, 1992), pp. 44-45.

[53] Bede, *Historia* (note 31), chap. I/23, p. 70.

imperial military force in retaliation. Traders overcame the difficulty by uniting into groups and armed themselves when they travelled across the sea.[54] Early eighth-century authors referred to these groups as "Northern People", others straightforwardly referred to them as pirates and robbers.[55] There was, thus a great deal of suspicion about these people. A law promulgated by Rex Ine of Wessex, probably from 694, ruled that outsiders engaged in trading activities in the *regnum* of Wessex, should buy items in the presence of witnesses if they wanted to avoid accusations of theft and robbery.[56] Traders thus operated in areas with limited law enforcement in between political communities.

Thus the written record, primarily Isidorian texts, in articulating the claim that the law of war and peace overarched existing political communities and constituted war and peace as two mutually irreconcilable patterns of activity, stood in contradiction against evidence of daily practice according to which the use of force and the peaceful exchange of goods could be combined in given situations. The lexicon of vernacular languages spoken in political communities outside the Roman Empire confirms that these situations actually existed. One of the oldest words for peace, on record in any of these vernacular languages, is Old English *sib*, which was original a kinship term.[57] The word seems to indicate that in legal spaces between *regna*, where law enforcement capability was reduced, it was not primarily rulers, let alone the Roman Imperator, who guaranteed peace, but kin and other types of groups. As late as in the early eleventh century, the household law of Bishop Burchard of Worms (c. 965 – 1025) gave testimony that local kin groups acted as blood revengers. The bishop, then ruler of the city, took measures to stop killings by blood revengers, as he was concerned about the large number of victims of blood revenge. Hence, at this time, the activities of kin groups appeared to jeopardise the local peace, demanding countermeasures from church authorities.[58]

By contrast, crimes against close relatives were heavily sanctioned by both secular and church criminal law. Thus, the penitential of Theodore of Tarsus, Archbishop of Canterbury (602 – 690), ruled that men raping their mother or a sister should be sentenced to fifteen years of penance, while the highest church punishment for murder was ten years.[59] Security was thus significant in an immediately practical context, as it defined the conditions under which persons could be entitled to use their rights without fear of restrictions or sanctions. These conditions were of effect as long as persons remained integrated in groups and could avail themselves of support from powerful providers of security and protection. Consequently, insecurity and death from secretly inflicted violent crimes together with war were results of sinful action with the perpetrators falling victim to their own unreasonableness.[60]

Nevertheless, even when the consequences of the loss of protection from kin and other types of groups could be serious for persons, who were expelled from groups, they still had the option of joining other groups or establishing a new group under their own leadership. Therefore, there were few people who were left completely alone. Moreover, rulers' competence to expel persons according to public law appears to have been limited up until the eleventh century. Contrary

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[54] For a comprehensive analysis of the relevant sources see: Stéphane Lebecq, *Marchands et navigateurs frisons du Haut Moyen Age*, 2 vols (Lille, 1983).

[55] Einhard [Eginhard], *Vita Karoli Magni*, chap. 14, edited by Oswald Holder-Egger (Scriptores rerum Germanicarum in usum scholarum separatim editi, 25) (Hanover, 1911), p. 17.

[56] Ine, King of Wessex [Laws], §§ 25, 25, 1, edited by Felix Liebermann, *Die Gesetze der Angelsachsen*, vol. 1 (Halle, 1903), pp. 89-123, at p. 101 [reprint (Aalen, 1960)].

[57] On peace terminology see: Klaus Weimann, *Der Friede im Altenglischen. Eine bezeichnungsgeschichtliche Untersuchung*, Ph D Thesis, typescript (University of Bonn, 1966), pp. 230-241.

[58] Burchard, Bishop of Worms, 'Lex familiae Wormatiensis ecclesiae', chap. 30, edited by Heinrich Boos, *Urkundenbuch der Stadt Worms*, vol. 1 (Worms, 1886), pp. 40-45, at pp. 43-44.

[59] 'Penitential of Theodore', book II, chap. 16-17; book IV, chap. 2, edited by Friedrich Wilhelm Hermann Wasserschleben, *Die Bußordnungen der abendländischen Kirche nebst einer rechtsgeschichtlichen Einleitung* (Halle, 1851), pp. 182-219, at pp. 186, 188 [reprint (Graz, 1958)].

[60] Chlothar II, 'Edictum [18 October 614]', edited by Alfred Boretius, *Capitularia regum Francorum*, Nr 9, vol. 1 (Monumenta Germaniae Historica. Capitularia, 1) (Hanover, 1883), pp. 20-23. *De XII abusivis saeculi*, edited by Siegmund Hellmann (Texte und Untersuchungen zur Geschichte der altchristlichen Literatur, 34) (Leipzig, 1909), pp. 43-44, 47. Ine, *Laws* (note 56), §§ 12; 13, 1; 14; 15; 15, 2; 16, pp. 94-97.

to kin groups,[61] rulers could expel only persons who were related to them by kin, neighbourhood or friendship, or persons who were outsiders and were found to be committed to some form of deviant behaviour.[62] Consequently, the Modern English word 'outlaw' for a lawless person came into use only in the course of the eleventh century,[63] while words such as Modern English 'foreigner' or Modern High German *Ausländer* for outsiders appeared only in the fifteenth and sixteenth centuries respectively. People who were living alone somewhere in the woods were classed as "friends of wolves", meaning that they had only dangerous animals as their friends at whose mercy they were.[64] Life outside regular human settlements thus was equivalent of social death. Only under extraordinarily powerful rulers, who were perceived as having acquired competence to provide security at large, could travellers consider zones in between human settlements as safe. Therefore, a rare praise formula, applied to a few rulers, could claim that in their times security had been so high as to allow a woman with her newly-born baby to travel on the roads without molestation.[65]

Conceiving Rule as Office

At the same time, rule consolidated in those *regna* which continued beyond the eighth century. Their external borders remained subject to frequent changes which could result in dramatically expanding or shrinking the retention of rule. However, at the turn towards the eighth century, some indications convey the impression that the rule of *reges* was no longer considered as the command of a power holder who was legitimised either through the length of the genealogical tradition of a kin group or through a record of military success. By contrast, rule came to be institutionalised as incumbency to an office in pursuit of the preservation of peace and, in this respect, could be abstracted both from the specific traditional rights and privileges of ruling dynasties and from the personal achievements of a certain ruler. Rule by a *rex* thus appears to have become conceivable as control in the specific terms of "public" law, equivalent of the way in which the ancient Roman state had been perceived as the "public matter" (res publica). An Old English law of King Ine of Wessex provides one of these indications, ruling that every group of weapons bearers with more than 35 members should be called "an army" (here, exercitus). By contrast, all groups comprising between seven and 34 members were to be called "robber bands" (hlōð, satellites), while smaller groups up to seven members were to be classed as "thieves" (Þeofas, furtes).[66] In the first place, the law confirms that relatively small numbers of combatants were led into battle. Even though the law does not state an upper limit for the number of members of an "army", it must have been based upon the assumption that battles could be fought with armies numbering no more than 35 warriors. Archaeological evidence from weapons finds in battle contexts confirms that, as a rule, armies comprised between 200 and 300 men.[67]

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[61] 'The Wife's Lament', edited by George Krapp and Elliott van Kirk Dobbie, *The Exeter Book* (Anglo-Saxon Poetic Records, 3) (New York and London, 1936), pp. 210-211. 'Wulf and Eadwacer', in: *ibid*., pp. 17-18.

[62] Wihtred, King of Kent: [*Laws*], §§ 4, 28, edited by Felix Liebermann, *Die Gesetze der Angelsachsen*, vol. 1 (Halle, 1903), pp. 12-14, at pp. 12, 14 [reprint (Aalen, 1960)]. Ine, *Laws* (note 56), § 20, p. 98.

[63] Canute, King of Denmark and England, [*Laws*] 'Consiliatio Cnuti / Instituta Cnuti', part II, § 31, section 2, edited by Felix Liebermann, *Die Gesetze der Angelsachsen*, vol. 1 (Halle, 1903), pp. 279-371 , at p. 338 [reprint (Aalen, 1960)].

[64] 'Maxims I', vv. 146-147, 173, edited by George Krapp and Elliott van Kirk Dobbie, *The Exeter Book* (Anglo-Saxon Poetic Records, 3) (New York and London, 1936), pp. 156-163, at pp. 161, 162. 'Old English Riddles', nr. 55, v. 12, *ibid*., pp. 180-210, at p. 208.

[65] Bede, *Historia* (note 31), chap. II/16, p. 192.

[66] Ine, *Laws* (note 56), § 13, 1, p. 94.

[67] Michael Gebühr, *Nydam und Thorsberg. Opferplätze der Eisenzeit* (Schleswig, 2000), p. 37, assumes that a "minimum number of 500 warriors" was common for armies in Northern Europea between the second and thre fifth century. Jørgen Ilkjær, *Illerup Ådal. Die Lanzen und Speere*, vol. 1 (Jutland Archaeological Society Publications 25, 1) (Aarhus, 1990), pp. 336-337, lists 780 lances and 651 spears at four excavation sites in the area. Mogens Ørsnes, 'Der Moorfund von Ejsbøl bei Hadersleben und die Deutungsprobleme der großen nordgermanischen Waffenopferfunde', in: Herbert Jankuhn, ed., *Vorgeschichtliche Heiligtümer und Opferfunde in Mittel- und Nordeuropa* (Abhandlungen der Akademie der Wissenschaften in Göttingen, Philol.-Hist. Kl., 3. Series, vol. 74) (Göttingen, 1970), pp. 172-187, assumes numbers between 200 and 300 as the standard army size during

What is more important in this context is the logic on which Ine's law drew. The legal rule that it made explicit could be considered enforceable solely under the condition that the law-giver could expect to be able to control the numbers of members of warrior groups. Ine must therefore have expected that all groups of weapons bearers with more than 35 members acted legally in the *regnum* of Wessex. He thus had to be in a position to expect that there could not be robber bands in the *regnum* numbering more than 35 people. In other words, wherever groups of weapons bearers with more than 35 people operated in the *regnum*, they did so in accordance with the "public" law of the *regnum*, neither as Ine's private followers nor in pursuit of their own private interests. Ine thus seems to have intended to restrict the legal use of weapons by limiting the size of groups of weapons bearers. Only warriors acting in the service to the king could form groups with more than 35 members legally. All other weapons bearers were not allowed to form large groups.

As, according to the law, armies were acting in pursuit of "public" interest, war must have been perceived as a "public" conflict with martial arms among political communities, if not states. Ine's law thus enforced a core principle of the law of war in West Saxon perspective. Stating this principle made sense only if Ine as the lawgiver could anticipate that the numbers of combatants of other armies would not be significantly different from the numbers he had fixed in the law. The law of war in Britain at the turn towards the eighth century was thus based on the expectation that wars were conducted with limited means and in accordance with general rules.

The transformation of rule into some form of a "public" office soon had implications for the conceptualisation of the types of groups that ranked as *gentes* in the sense of the *ius gentium*. The word *gens* had many meanings and may, in early Classical Latin, have denoted in general terms the believed commonality of descent. The word appears to have preserved the ambivalence of its meanings up until the eighth century and even acquired some new meanings under the impact of Christian religious doctrine. Thus, the word came in use as a term for people living not in cities as Christians but out in the countryside. Then *gentes* meant simply pagans.

However, at least with regard to Britain, Bede limited the range of meanings of the word *gens* and, as a rule, used it for groups living in a roughly demarcated area under the control of a *rex*.[68] For Bede, rule by a *rex* over a *gens* meant control of land and the people settling on it. According to this definition, rule could be separated conceptually from the person of the ruler, thus becoming identified as an office that could be entrusted to a ruler. In the same vein, Paul the Deacon (725/37 – 797/9) could, the late eighth-century historian of the Lombards, could, while modifying Isidore's formula, believe that a *rex* should govern a *regnum* usefully, thereby juxtaposing the *regnum* as an object against the *rex* as a subject.[69] Along the same lines, Archbishop Ado of Vienne (799 – 875) could demand during the 870s that in the first place the title *rex* should be given to a person who was in control of the *res publica* (regem potius illum debere vocari qui rempublicam regeret).[70] Furthermore, Raban Maur, Abbot of Fulda and Archbishop of Mainz (c. 780 – 856), one of the most influential scholars of the ninth century, could again quote Isidore's formula and conclude from it that *rex* was somebody who ruled in the right way and whoever would not do so, was not a *rex*. Like other ninth-century theorists, Raban listed the preservation of justice and piety as the prime virtues of a *rex* (Rex eris si recte facias; si non facis non eris. Regiae virtutes praecipue

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the fourth and fifth centuries, similarly: Ørsnes, Ejsbøl I. Waffenopferfunde des 4. – 5. Jahrhundert nach Christus (Copenhagen, 1988), pp. 180-181. Claus von Carnap-Bornheim and Jørgen Ilkjær, *Illerup Ådal. Die Prachtausrüstungen*, vol. 1 (Jutland Archaeological Society Publications 25, 5) (Aarhus, 1996), pp. 365-368, discusses the significance of items made from gold among weapons finds. On further weapons fins see: Güde Bemmann and Jan Bemmann, Der Opferplatz von Nydam. *Die Funde aus den älteren Grabungen Nydam I und Nydam II*, 2 vols (Neumünster, 1998); Bertil Helgesson, 'Tributes to Be Spoken of. Sacrifice and Warriors at Uppåkra', in: Lars Larsson, ed., *Continuity for Centuries. A Ceremonial Building and Its Context at Uppåkra* (Acta Archaeologica Lundensia 48) (Lund, 2004), pp. 223-239; Lars Larsson, 'The Iron Age Ritual Building at Uppåkra, Southern Sweden', in: *Antiquity* 81 (2007), pp. 11-25.

[68] Bede, *Historia* (note 31), chap. I/15, p. 50.

[69] Paul the Deacon, *Historia Langobardorum*, chap. III/35, edited by Georg Waitz (Monumenta Germaniae Historica, Scriptores rerum Langobardicarum et Italicarum Saec[ulorum] VI – IX) (Hanover, 1878), p. 113.

[70] Ado, Archibishop of Vienne, 'Chronicon', in: Jacques-Paul Migne, ed., *Patrologiae cursus completus*. Series Latina, vol. 123, col. 23-144, at col. 123.

justitia et pietas).[71] Hence, these theorists emphasised the demand for the legitimacy of rule, specifically of *reges* who were to maintain justice.[72] Therefore, eighth- and ninth-century theorists conceived of rule as an office bound by the law in control of the state as the *res publica*.

During the same time, a variant of the hierarchy among ruling offices within political communities continued that had already existed since the time of the Roman republic. A kind of textbook listing the levels of offices from the dean as the lowest in rank to the *rex* and Imperator as the highest is extant in a late tenth-century manuscript but may date back to eighth century. A *rex*, the text says, could rule over one *gens* or several *gentes*, but the Imperator ruled the entire world or at least should be the most powerful ruler in it (Rex qui super unam gentem vel multas. Imperator qui super totum mundum auf qui precellit in eo).[73] Thus, according to the text, the rule by the same *rex* could still be imposed upon several *gentes*, that means, groups of subjects with different collective identities. By contrast, there could be only one Imperator in the world at large, as only *imperium* could, in Isisodre's thought, bring about liberty among humans.[74] On the basis of the traditions of legal and political thought, which they inherited from ancient Roman authors, eighth- and ninth-century theorists assembled elements for the concept of the state which increased in significance during the subsequent centuries.

Bede's notion of the *gens* came close to that of a nation, although he did not take the view that each *gens* had to have its own *rex*. A *gens* could even exist without a *rex*, as Bede explained on the occasion of the Continental Saxons.[75] But the political world, as writers of Latin perceived it during the eighth and ninth centuries, appeared to consist of *gentes* as relatively large groups, each with its own distinct collective identity. This new concept of the *gens* formed the basis on which the law of war and peace could become equated with the *ius gentium* during the subsequent centuries.

The King of the Franks as Imperator

The *regnum* of the Franks rose to the strongest military power in the Western hemisphere during the eighth century. The area under the control of the *reges* of the Franks could even be equated with

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[71] Raban Maur, Archbishop of Mainz, 'De universo libri viginti duo', chap. XVI/ 3, in: Jacques-Paul Migne, ed., *Patrologiae cursus completus*. Series Latina, vol. 111, col. 9-614, at col. 446. Sedulius Scottus, 'Liber de rectoribus Christianis', edited by Siegmund Hellmann, *Sedulius Scottus* (Quellen und Untersuchungen zur lateinischen Philologie des Mittelalters, Bd 1, Heft 1) (Munich, 1906), pp. 1-91, at p. 63. Hinkmar of Rheims, De divortio Lotharii regis et Theutbergae reginae, edited by Letha Böhringer (Monumenta Germaniae historica, Concilia, Supplement 1). Hanover 1992, S. 259. For a study see: Mathias Schmoeckel, 'Rex erit qui recte facciet. Die Entstehung der Idee von der Gerechtigkeit des Königs als Grundlage der Gesellschaft', in: Matthias Becher and Yitzhak Hen, eds, *Wilhelm Levison (1876 – 1947). Ein jüdisches Forscherleben zwischen wissenschaftlicher Anerkennung und politischem Exil* (Bonner Historische Forschungen, 63) (Siegburg, 2010), pp. 55-92.

[72] Cathwulf, Bishop, '[Admonition to Charles I, King of the Franks, 774 x 775]', in: Monumenta Germaniae historica, *Epistolae*, vol. 4, edited by Ernst Dümmler (Berlin, 1895), pp. 501-505, at p. 504. On the concept of rule see: Roman Deutinger, *Königsherrschaft im Ostfränkischen Reich. Eine pragmatische Verfassungsgeschichte der späten Karolingerzeit* (Beiträge zur Geschichte und Quellenkunde des Mittelalters, 20) (Ostfildern, 2006), pp. 24-51. Walter Pohl, 'Staat und Herrschaft im frühen Mittelalter. Überlegungen zum Forschungsstand', in: Pohl, Stuart Airlie and Helmut Reimitz, eds, *Staat im frühen Mittelalter* (Denkschriften der Österreichischen Akademie der Wissenschaften. Philos.-Hist. Kl., 334 = Forschungen zur Geschichte des Mittelalters, 11) (Vienna, 2006), pp. 9-38.

[73] Max Conrat [-Cohn], 'Ein Traktat über romanisch-fränkisches Ämterwesen [Cod. Vat. Lat reg. 1050 (Va), Handschrift um 1000]', chap. I/19, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*. Germanistische Abteilung 29 (1908), pp. 239-260, at p. 248. Likewise: Hinkmar, Archbishop of Reims, 'De regis persona et regio ministerio ad Carolem Calvum Regem', in: Jacques-Paul Migne, ed., *Patrologiae cursus completus*. Series Latina, vol. 125, col. 833-856, at col. 835.

[74] Isidore, *Etymologiae* (note 16), book II, chap. 21/4: "ex innocentia nascitur dignitas, ex dignitate honor, ex honore imperium, ex imperio libertas" [Isidore gave this phrase out as a quote from Scipio Aemilianus].

[75] Bede, *Historia* (note 31), chap. V/10, p. 480. For a sudy see: Ian Nicholas Wood, 'Beyond Satraps and Ostriches. Political and Social Structurtes of the Saxons in the Early Carolingian Period', in; Dennis Howard Green and Frank Siegmund, eds, *The Continental Saxons from the Migration Age to the Tenth Century* (Studies in Historical Archaeoethnology, 6) (Woodbridge and San Marino, 2003), pp. 271-289.

"Europe" at this time.[76] However, the power to rule was no longer vested in the royal dynasty of the Merowings, as at the time of Clovis, but in members of the kin group who had served the Merowings as mayors of the palace (*maiores domus*) since the seventh century. In this capacity, they not merely directed the political affairs of the *regnum* but also acted as military commanders. In 732, Charles, one of their members nicknames Martel (the Hammer, c. 688 – 741) had commanded the defence against the invading Arab-Berber forces. In a kind of palace revolution, Charles's son and successor Pepin (741 – 768) forced the then reigning Merowing to abdicate in 751, had him tonsured, sent him to a monastery and let himself be acclaimed as *rex* of the Franks. He sought to compensate for the lack of legitimacy of his own kin group by solliciting in-advance agreement from Pope Zachary (741 – 752) in 749.[77] Allegedly, Pepin supported his claim for the position of the *rex* by using Isidore's formula, arguing that the person having the power of a *rex* should also have the title *rex*. He received papal approval in the form of the ritual unction of his head by the papal legate Boniface (c. 673 – 754), while having to "promise" that he would protect Rome and the Catholic Church in his capacity as the "Patricius of the Romans".[78] This title had been given to Pepin on the occasion of his unction. Subsequently, in 754, he renewed his "promise" towards Pope Stephen II (752 – 757). As rulers of the city of Rome, the popes thus quickly responded to power shifts that had emerged from the expansion of Muslim rule in North Africa and most of the Iberian Peninsula and restricted the influence of the Basileus in Byzantium to the Eastern hemisphere of the Roman Imperium. While the Basileus in Byzantium continued to acknowledge the ecclesiastical leadership of the popes, the latter looked out for other rulers who could provide protection in military terms for the city of Rome. Against this change of policy, the papal curia, already during the second half of the eighth century, might have worked on a forgery through which Imperator Constantine appeared to have transferred rule over the city of Rome to Pope Sylvester I (314 – 335). On the basis of this forgery, the papal curia advanced its claim that the popes were secular rulers over the city of Rome.[79]

Elsewhere as well, rulers played with traditions of Roman rule. The mausoleum of Sutton Hoo contained several elements of a magnificent ruler's garment modelled upon the military vestments of the Roman Imperator.[80] This style appears to have been chosen in order to document the priority in rank of the ruler to whose memory the mausoleum was dedicated. Even Bede proceeded similarly when he compiled a list with the names of seven *reges* in Britain and ascribed to them some kind of priority. Bede suggested that these seven *reges* were holders of some *imperium*, which may have meant either 'command' or 'empire'. However, he did not specify what this *imperium* should have consisted in, but only vaguely noted that the areas under control of these *reges* had been extensive. Yet, Bede thus conspicuously avoided the use of the title *imperator* for these *reges*.[81]

Under Pepin's son Charles I (768 – 814), who received the honorific "the Great" already in the ninth century, [82] the use of traditions of the Roman Imperium had repercussions in high politics even in Byzantium. Charles expanded the borders of the *regnum* of the Franks towards the east and the south since the 770s. Against the Saxons, he was engaged in wars that he fought with considerable persistence over the unusually long period of thirty-three years and won them eventually. The military successes of the armies under his command raised him to a position of

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[76] For a study see: Jürgen Fischer, *Oriens – Occidens – Europa. Begriff und Gedanke „Europa" in der späten Antike und im frühen Mittelalter* (Veröffentlichungen des Instituts für Europäische Geschichte Mainz. Abteilung Universalgeschichte, 15) (Wiesbaden, 1957).

[77] *Annales regni Francorum*, edited by Friedrich Kurze (Monumenta Germaniae Historica. Scriptores rerum Germanicarum in usum scholarum separatim editi, 6) (Hanover, 1895), p. 8.

[78] On the palace revolt see: Jörg Jarnut and Matthias Becher, eds, *Der Dynastiewechsel von 751* (Munster, 2004).

[79] Horst Fuhrmann, ed., *Das Constitutum Constantini (Konstantinische Schenkung)* (Monumenta Germaniae Historica. Fontes Juris Germanici Antiqui, 10) (Hanover, 1968).

[80] William Filmer-Sankey, 'The "Roman" Emperor in the Sutton Hoo Ship-Burial', in: *Journal of the British Archaeological Association* 149 (1996), pp. 1-9. Howard M. R. Williams, 'Death, Memory and Time. A Consideration of the Mortuary Practice at Sutton Hoo', in: Chris Humphrey and W. M. Ormrod, eds, *Time in the Medieval World* (York, 2001), pp. 35-71.

[81] Bede, *Historia* (note 31), chap. II/5, pp. 148-50.

[82] Sedulius, Liber (note 71), p. 47.

superiority over other *reges* at the turn towards the ninth century. Reportedly, Charles requested that an equestrian statue of Theodoric the Ostrogoth should be moved from Ravenna to Aix-la-Chapelle which he frequently visited. Allegedly, Charles's court was powerful enough to attract, among other animals, lions, bears, panthers, elephants, rhinoceroses and even tame dragons, mocked the learned Benedictine monk Walahfrid Strabo (c. 808 – 849) in 829.[83] At the latest in the 790s, there seems to have been a group in Charles's entourage whose members were no longer satisfied with raising claims towards imperial rule but wished to have Charles crowned as Imperator. An imperial coronation appeared possible in their view as Charles held the office of "patricius of the Romans". Hence, Charles had himself described not merely as a Frankish but also as a Roman warrior and a ruler at that who gave to select fellow Franks the privilege of enjoying Roman ways of life, not in Rome but in the centre of the *regnum* of the Franks. The monk Einhard (c. 770 – 840), who belonged to Charles's entourage and wrote one of extremely rare biographies of rulers of this time, praised the *rex* of the Franks for training his body through swimming and, on occasions, invited some of his relatives and friends to join him in a bath, apparently in Aix-la-Chapelle.[84] In this passage of his biography of Charles, Einhard used words which he seems to have borrowed from the military manual of the fourth-century Roman author Flavius Vegetius Renatus. In this manual, Vegetius recommended the use of swimming as a method of drilling soldiers.[85] At the same time, however, displays of swimming prowess belonged to the standard formulae of praises of rulers in Northwestern and Northern Europe.[86] But Einhard did not confine himself to praising Charles as a model Roman and as a model Frank but even allowed Charles to be taller even than Octavian Augustus, the first Roman Imperator. Of course, Einhard was not so crude as to directly compare the sizes of the bodies of both rulers. Augustus's biographer Suetonius (* c. 70 CE) had already admitted that Augustus, though endowed with a shapely body, had been rather short.[87] Einhard, who used Suetonius, described Charles as a person of unusual height and then quoted Suetonius's passage on the shapeliness of the body of the first Imperator.[88] Thus, anyone capable of the close reading of texts could realise immediately that Charles was not just an able-bodied person but also an imposing figure.

The court party striving to raise Charles to the rank of Imperator grabbed an opportunity that came up, seemingly suddenly, in 799. Having been forced to be leave Rome in consequence of some controversy, Pope Leo III (795 – 816), reportedly gravely mutilated, visited Charles's court in Paderborn, while the latter was engaged in one of his wars against the Saxons. A close contemporary poem recorded the meeting between Charles and the Pope. It suggests that Charles and the court party present in Paderborn as well as the pope were inclined to support the plan of Charles's coronation as Imperator in Rome.[89]

Charles and Leo seemed to have agreed upon a deal, according to which Charles would lead a Frankish army to Rome in his capacity as "Patricius of the Romans", restore the pope to full powers and receive the imperial crown. A contingency advanced the plan. After a palace revolution in Byzantium, Irene (797 – 802), mother of the reigning Basileus Constantine VI (780 – 797), had had her son blinded in 797 and had herself proclaimed as Basileus. The court party in Charles's entourage used the incident, claiming that a woman could not occupy the imperial throne and

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[83] Walahfrid Strabo, 'Versus in Aquisgrani Palatie editi anno Hludowici Imperatoris XVI de imagine Tetrici [Theodorici] [829]', vv. 121-127, in: *Poetae Latini Aevi Carolini*, vol. 2, edited by Ernst Dümmler (Monumenta Germaniae historica. Poetae Latini, 2) (Berlin, 1884), pp. 370-378, at p. 370.

[84] Einhard, *Vita* (note 55), chap. 22, p. 27.

[85] Publius Flavius Vegetius Renatus, *Epitoma rei militaris*, book I, chap. 10, edited by Alf Önnerfors (Stuttgart and Leipzig, 1995), p. 24.

[86] *Beowulf and the Fight at Finnsburh*, vv. 506-558, edited by Friedrich Klaeber, third edn (Boston, 1950), pp. 20-21 [first publication of this edn (London, 1922)].

[87] Suetonius, *De vita Caesarum* [various edns], Divus Augustus, chap. 79, 2.

[88] Einhard, *Vita* (note 55), chap. 22, pp. 26-27.

[89] *Carolus Magnus et Leo papa. Ein Paderborner Epos vom Jahr 799*, edited by Joseph Boockmann (Studien und Quellen zur westfälischen Geschichte, 8) (Paderborn, 1966) [newly edited by Wilhelm Hentze, *De Karolo rege et Leone papa* (Studien und Quellen zur westfälischen Geschichte, 36) (Paderborn, Munich, Vienna and Zurich, 1999)].

concluded that, following Irene's coup d'état, the office of the Roman Imperator was vacant. As the Imperium could not be left without a head, Charles would take over the office and do so in Rome. Charles, the court party and the pope acted quickly. On Christmas Day 800, by contemporary chronology the first day of the year 801, Charles received the imperial crown from Pope Leo in the Church of St Peter in Rome, and the Romans present in the church acclaimed Charles as "Imperator of the Romans".[90] After the ceremony, Charles returned the title of "Patricius of the Romans" and took the title "Imperator and Augustus". This is the report on the act of installing Charles from the point of view of the court party.

However, well-informed circles in Charles's entourage took a different view. Einhard, who knew Charles's imperial ambitions well, noted that Charles detested the title "Imperator and Augustus" and would never have visited the church of St Peter, had he known of the pope's intention to place a crown on his head.[91] Hence, there was opposition against the imperial coronation not only in Byzantium but also within Charles's entourage itself. The rite, through which Charles became Imperator, was not Roman at all, as the core feature of the coronation, had been taken from the Christian tradition. The Basileus in Byzantium did not receive a coronation. Instead, following ancient Roman military style, the Basileus was placed on a shield, after having been chosen, and wore a diadem. In a word, Charles left the church of St Peter in a new-fangled costume. Draped in this costume, he could hardly convince intellectuals who, such as Einhard, were well versed in the history of the Roman Empire. Still less acceptance could he find in Byzantium, even though he tried hard to present himself as a ruler of the same rank as the Roman Baslieus in Byzantium. Thus Einhard reported that Charles wrote several letters to Byzantium addressing the Basileus as his "brother". Einhard even argued that the style Charles had chosen in his letters reflected his magnanimity to the emperor in Byzantium and chasticed as feeble bureaucratism Byzantine opposition against Charles's coronation. Apparently, Charles's letters had triggered no more than a shake of the head in Byzantium. Charles could not base the claim for the legitimacy of his title "Imperator and Augustus" on any rules of succession to office, but only on the administration of ecclesiastical rites and the acclamation of a few inhabitants of the city of Rome. Einhard himself seems to have been aware of the vanity of Charles's title, while he blamed the rulers in Byzantium for lack of moral qualification for the imperial office rather than doubting the legitimacy of their rule.

The imperial administration in Byzantium eventually responded harshly towards the Roman coronation ceremony. Irene was deposed already in 802 and her successor Nikephoros I (802 – 811) did not allow any doubt towards his conviction that Charles was a usurper and would have to face resistance from Byzantium. Indeed, Charles stepped back. In 802, he started to use a new formula circumscribing his office. Charters made out in Charles's name began to feature a phrase according to which Charles was the steersman of the Roman Empire (Romanum gubernans Imperium). This was a variant of Bede's formula for *reges* whom he wished to identify as the "bearers of some *imperium*", supplemented by the ancient literary metaphor of the steersman. According to this formula, Charles was no longer Roman Imperator but the person at the helm of the Imperium. However, the Byzantine administration was not impressed from these nice-sounding words but remained determined to enforce its position of superiority over the *rex* of the Franks, even risking a major war against Charles. But, after Nikephoros's sudden death in 811, Charles agreed on a compromise with the new Imperator Michael I (811 – 813). The compromise was laid down in an agreement in 812 which confirmed the precedence of the Roman Imperator in Byzantium over Charles, while acknowledging the position that Charles had acquired in 800. According to the agreement, Michael I granted to Charles the right to use the title "Imperator" in Latin and "Basileus" in Greek,[92] while the rulers in Byzantium reserved for themselves the title "Imperator of the Romans".[93] In other words, there was no opposition in Byzantium against some *rex* in the far West

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[90] *Annales* (note 77), p. 112.
[91] Einhard, *Vita* (note 55), chap. 28, pp. 32-33.
[92] *Annales* (note 77), p. 136.
[93] For a review of the discussion see: Peter Classen, *Karl der Grosse, das Papsttum und Byzanz. Die Begründung des karolingischen Kaisertums*, second edn, edited by Horst Fuhrmann (Beiträge zur Geschichte und Quellenkunde des Mittelalters, 9) (Sigmaringen, 1985) [reprint of this edn (Sigmaringen, 1988); first published as a monograph

who claimed to be Imperator, as long as this title was not explicitly linked to the Roman Imperium. The Byzantine imperial chancellery anyway wrote about Charles only under the grecianised title Rex (Ρήξ).[94] There was thus no structural transformation of the Roman Imperium around 800. Because or even despite Charles's coronation in Rome, only one Roman Imperator existed, residing in Byzantium. The *reges* of the Franks, acting as protectors of Rome and the Church, were even useful to the Basileus in Byzantium, as the *reges* of the Franks relieved the Imperator of the duties towards the Church. Clerics, monks and nuns had to pray for the salvation of the *reges* of the Franks, so to speak as a reward for the protection provided to them.[95] The Byzantine-Frankish compromise remained in force until the second half of the tenth century.

Rulers' Promises as Binding Obligations according to the Law of War and Peace in Latin Christendom

Around the Mediterranean as well as in areas north and west of the Alps, the law of war and peace featured not merely as some "law in between powers" from the sixth to the ninth centuries, seemingly no more than a set of rules apt to regulate relations among political communities and states when there was a need to do so. Instead, the long-established conflict between the pluralism of several centres of rule, each limited in reach, vis-à-vis ideologies of universal rule, known already from the Ancient Near East, continued and even exacerbated. Although waiving actual control over the Western hemisphere of the Roman Empire, the Basileus in Byzantium succeeded in solidifying the position as the sole legitimate ruler of the Imperium as a whole. Rulers of *regna* within and beyond the boundaries of the Western hemisphere of the Imperium continued to respect the imperial position even after processes of state formation had already begun. Often, these processes entailed changes of names for the newly established states. For one, in Britain south of the Firth of Forth and east of Wales there was only the *regnum* of Wessex left at the turn towards the tenth century. At this time, the new name of the "land of the Angles" (*Engla lond*) came into use for this *regnum* and has remained in use as the name England until today. Clerical authors in the entourage of the *reges* of the "Angles" supported the claim that the position of these rulers was elevated above other *reges* and gave expression to their claim by styling rulers not merely as *reges* but also borrowed the Latin form *imperator* as well as its Greek parallel *basileus*. The novel titles "Imperator of the Angles" or "Basileus of the Angles" raised no concerns in Byzantium during the tenth century, as their focus on Britain, together with the lack of connection with Rome, was immediately evident. These titles did not call into question the claim of the Imperator in Byzantium towards priority over other rulers. As already in the Ancient Near East, the law of war and peace had to be derived from sources other than imperial legislation.

That such sources existed becomes clear from re-enforcements of the "promises" that Pepin had given as *rex* of the Franks in the 750s. Pepin's "promises" are not extant in their original form, as they are merely recorded in close contemporary historiography. Whether they ever existed in a written form, is therefore unclear. Through his intervention in Roman local politics as well as through the coronation act of 800, Pepin's son Charles put on record that he was acting in fulfillment of the "promises" his father had given, after they had become confirmed already in 774.[96] For Charles's son and successor Louis the Pious (814 – 840), however, the need arose to certify his determination the he was still willing to honour the given "promises" and to do so not just through manifest military action but through a written commitment. In contradistinction against procedures

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(Düsseldorf, 1968); first published in: Helmut Beumann, ed., *Karl der Große*, vol. 1 (Düssedorf, 1965)].

[94] Michel de Taube, 'L'apport de Byzance au développement du droit international occidental', in: *Recueil des cours* 67 (1939, Part I), pp. 233-339, at p. 270.

[95] Louis the Pious, Emperor, 'Notitia de servitio monasteriorum [817]', edited by Alfred Boretius, *Capitularia regum Francorum*, vol. 1 (Monumenta Germaniae Historica Capitularia, 1) (Hanover, 1883), pp. 349-352, at pp. 351-352.

[96] The evidence has been reviewed by: Percy Ernst Schramm, 'Das Versprechen Pippins und Karls des Großen für die Römische Kirche (754 und 774)', in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*. Kanonistische Abteilung 27 (1938), pp. 180-217 [reprinted in: Schramm, *Kaiser, Könige und Päpste*, vol. 1 (Stuttgart, 1968), pp. 149-192].

that his father and grandfather had opted for, Louis preferred a written charter in the form of a diploma to restate his "promise" towards the Pope and the Church. However, for this purpose, Louis's chancellery did not use the charter formulary that had been common for instruments written in the name of the *rex* under Pepin and Charles. The formulary of these instruments was derived from that in use for the ancient Roman Imperator. Following the ancient Roman imperial tradtion, the royal charters would usually record legal acts which the rulers named in the charters were executing or had executed. These legal acts, therefore, followed from the declared will of the rulers in whose names the charters were issued. As documents of the will of rulers these charters were valid, as a rule, when they agreed with the formularies that the chancellery used, were authenticated through the implementation stroke of the ruler and countersigned by the chief of the chancellery. In 817, however, Louis the Pious had a different formulary employed for the charter through which he renewed his "promise" of the protection of Rome towards Pope Paschalis II (817 – 824). Louis's chancellery derived this specific formulary from the tradition of ancient Roman private charters. These instruments documented legal acts which one private person executed vis-à-vis another private person.[97] According to the formulary of the private charters, already in ancient Roman times, private charters required the contracting parties to have the validity of their agreements certified by a public notary, in service to the Roman Imperator, whence private charters remained invalid without certification by a public notary. Thus, the public notary declared these instruments valid under imperial law, so that these instruments could be enforced through institutions of adjudication under the imperial control. Lombard *reges* in the North of the Italian Peninsula had used this formulary for their charters up until the eighth century, as long as they were autonomous rulers. Under Lombard rule, the position of the public notaries had become defunct, and high-ranking clerics, replacing public notaries, appeared as witnesses. Lists of witnesses were attached to these charters.[98] Because the imperial administration in Byzantium did not exercise any control over Lombard *reges*, it was unable to enforce their acts willed. Consequently, private charters issued in the names of *reges* or even an Imperator had no human enforcement agency to watch over the implementation of their stipulations. As Charles I had been *rex* of the Lombards since 774, the Frankish chancellery was familiar with this charter formulary.

Louis the Pious's chancellery had witnesses certify the "promise" towards the Church and thereby gave expression to their view that this "promise" was not valid as a mere declaration of the ruler's will but had to receive its validity through some legal framework existing above the *rex*. The text of the "promise" left this legal framework unspecified in the same way as the Lombard charters. That divine omniscience was considered to be the framework, from which the validity of Louis's "promise" flew, is unlikely. This is so because, according to Christian dogmatic, God had the capability of judging the faithfulness of human action through omniscience, not because a charter had been certified by witnesses. Hence, the choice of a formulary demanding witnesses excluded the view that the enforceability of the imperial "promise" given in the charter would be guaranteed through divine wisdom. Moreover, Louis's chancellery is extremely unlikely to have expected, given the Byzantine-Frankish compromise of 812, that the Basileus in Byzantium was in a position to oblige the *rex* of the Franks to honour his "promise". Hence, the only remaining assumption is that Louis's chancellery, like the chancellery of the Lombard *reges*, derived the binding force of a "promise" from the general, unwritten law of war and peace, existing by divine will. The choice of the formulary of the private deeds for rulers' "promises" turned into a habit. Lothair, son and successor to Louis the Pious (840 – 855), used the same formulary for his "promise" to recognise the autonomy of Venice in 840.[99] Even during the tenth and eleventh centuries, Imperator Otto I (936 –

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[97] Louis the Pious, 'Pactum Hludowici Pii cum Paschali Pontifice [817]', edited by Alfred Boretius, *Capitularia regum Francorum*, vol. 1 (Monumenta Germaniae historica Capitularia, 1) (Hanover, 1883), pp. 352-355.

[98] On Lombard charter formularies see: Jörg Jarnut, 'Gens, rex and regnum of the Lombards', in: Hans-Werner Goetz, Jörg Jarnut and Walter Pohl, eds, *Regna and Gentes. The Relationship between Late Antique and Early Medieval Peoples and Kingdoms in the Transformation of the Roman World* (The Transformation of the Roman World. 13) (Leiden, Boston and Cologne, 2003), pp. 409-428. William Henry Stevenson, *Anglo-Saxon Chancery*. Ms. Oxford: St John's College, c. 1924.

[99] Lothair I, Emperor, 'Pactum [Venetianum, 840]', edited by Alfred Boretius, *Capitularia regum Francorum*, vol. 1 (Monumenta Germaniae Historica Capitularia, 1) (Hanover, 1883), pp. 130-135.

973)[100] and, again, Imperator Henry II (1002 – 1024)[101] confirmed Louis's "promise" to the popes, whereby Otto gave his "promise" in conjunction with his imperial coronation in Rome in 962.[102]

"Promises" also found their way into the law of treaties between rulers even when the Church was not involved. For one, Rex Henry I (919 – 936), who ruled in areas East of the Rhine, and the Rex Charles of the Franks, nicknamed "the Simple" already contemporarily (898 – 923), vowed mutual support in an agreement which they made in the middle of the river Rhine near Bonn on 7 November 921. The texts of the agreement, which they concluded under witnesses on the border between the areas under their respective control, are not extant in a handwritten original but have been preserved only in a seventeenth-century print. However, the record shows that each ruler issued his "promise" in a text of his own, although in agreement with the other, rather than in a single charter combining both "promises", and each of them swore an oath.[103] The two rulers can only have considered their "promises" enforceable by the overarching law of war and peace.

Theorists specifically of the ninth century confirmed that, in their view, actions of rulers were to be placed under the rule of law.[104] In making this demand, they could rely on Bishop Ambrose of Milan (339 – 397), who had already formulated the rule that "promises" and treaties were to remain binding among parties even while they were at war.[105] Theorists further requested that rulers should fulfill their obligation to provide security and peace to the *gentes* under their control.[106] Also in the ninth century, Bishop Jonas of Orleans (c. 780 – c. 843), probably in 842 or 843, admonished the *reges* of the Franks to care not only for the preservation of justice and equality but also for peace and harmony among the *gentes* under their sway.[107] Jonas argued that the *rex* had received the office from and should therefore be responsible to God.[108] Previously, the acts of the Synod of Paris of 829, which Jonas compiled, had obliged *reges* to provide justice for the ruled so that peace and harmony could prevail.[109] For this argument, Jonas relied on Isidore of Seville.[110] A little later, the Irish scholar Sedulius Scottus (c. 850) extended the duties for rulers in accordance

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[100] Otto, I, Emperor, '[Ottonianum = Charter for Pope John XII, 13 February 962]', edited by Theodor Sickel, *Die Urkunden der deutschen Könige und Kaiser*, vol. 1, nr 235 (Monumenta Germaniae Historica. Diplomata regum et imperatorum Germanicorum, 1) (Hannover, 1884), pp. 322-327.

[101] Henry II, Emperor, '[Charter for Pope Benedict VIII, Confirmation of the Charter of Otto I of 13 February 962]', edited by Harry Bresslau, *Die Urkunden der deutschen Könige und Kaiser*, vol. 3, nr 235 (Monumenta Germaniae Historica. Diplomata regum et imperatorum Germanicorum, 3) (Hannover, 1900-1903), pp. 542-548.

[102] On the formulary of the "promises" see: Anna Maria Drabek, *Die Verträge der fränkischen und deutschen Herrscher mit dem Papsttum von 754 bis 1020* (Veröffentlichungen des Instituts für Österreichische Geschichtsschreibung, 22) (Vienna and Cologne, 1976), pp. 35-43. Adelheid Hahn, 'Das Hludowicianum. Die Urkunde Ludwigs d[es] Fr[ommen] für die römische Kirche von 817 [Ph. D. Thesis, University of Tübingen, 1974]', in: *Archiv für Diplomatik, Schriftgeschichte, Siegel- und Wappenkunde* 21 (1975), pp. 15-135, at pp. 40-45. Mark Mersiowsky, *Die Urkunde in der Karolingerzeit. Originale, Urkundenpraxis und politische Kommunikation*, 2 vols (Monumenta Germaniae historica, Schriften 60) (Wiesbaden, 2015), vol. 1, pp. 117-119. Theodor Sickel, *Das Privilegium Ottos I. für die römische Kirche vom Jahr 962* (Innsbruck, 1883), pp. 84-91.

[103] Treaty Henry I, East Frankonian King – Charles the Simple, King of the Franks, Bonn, 7 November 921, 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. 1-2. [first recorded in: Jacques Sirmond, *Caroli Calvi et successorum aliquot Franciae regum capitula* (Paris, 1623), p. 480].

[104] On the subjection of rulers to the law see: Hans Hubert Anton, *Fürstenspiegel und Herrschethos in der Karolingerzeit* (Bonner Historische Forschungen, 32) (Bonn, 1968), pp. 46-98, 100-148.

[105] Ambrose, Bishop of Milan, 'De officiis', book I, chap. 29, in: Jacques-Paul Migne, ed., *Patrologiae cursus completus. Series Latina*, vol. 16, col. 25-194, at col. 68-70 [newly edited by Maurice Testard (Corpus Christanorum. Series Latina, 15. Turnhout 2000; also edited by Ivor J. Davidson (Oxford, 2001)].

[106] *De XII abusivis saeculi*, edited by Siegmund Hellmann (Texte und Untersuchungen zur Geschichte der altchristlichen Literatur, 34) (Leipzig, 1909), pp. 43-44.

[107] Jonas, Bishop of Orléans, 'De institutione regia', chap. 4, edited by Jean Reviron, *Les idées politico-religieuses d'un évèque du IXe siècle* (L'Eglise et l'état au Moyen Age, 1) (Paris, 1930), p. 145.

[108] Ibid., chap. 7, p. 155.

[109] 'Synod of Paris, 829', in: Monumenta Germaniae Historica, *Concilia*, vol. 2, nr 50, book II, chap. V, VIII (Monumenta Germaniae Historica, Legum Sectio III, vol. 2, part 2) (Hanover and Leipzig, 1907), pp. 605-680, at pp. 655, 659-660.

[110] Ibid., chap. II/1, pp. 649-651

with Christian doctrine. In a booklet written for Lothair II, *rex* of the Franks (855 – 869), Sedulius demanded that the *rex* of the Franks should maintain peace not just for the *gentes* under his direct control but also among his enemies and, by consequence, in the world at large.[111] This, Sedulius argued, was a necessary duty because the Holy Scriptures as well as the history books appeared to confirm the principle that the use of the word as a weapon was no less effective against enemies than the use of weapons and should therefore be given priority.[112] Abbot Smaragd of Saint-Mihiel († c. 830) was even more explicit in the theory of government he seems to have written for Louis the Pious. In this book, he referred to the words of Christ "I give you my peace (pacem meam do vobis, Gospel of John XIV, 27) and concluded from this sentence that peace came from God, that all Christian believers were followers of Christ and had to maintain peace.[113] Rulers as defenders of faith and protectors of Rome were foremost obliged to maintain peace. Hence the doctrine that peace and the law were divinely willed could not find a more straightforward expression among Christian theologians. In the course of the ninth century, the doctrine stood next to the expectation that kin groups should provide security and peace for their members.

The Law of War and Peace in Islam

What may have been perceived as the law of war and peace among the *regna* of the Western hemisphere of the Roman Imperium and North of it between the fifth and the tenth centuries, can be reconstructed with some efforts from pragmatic writings of the period, while an explicit theory of the law of war and peace was lacking. By contrast, in areas under Arabic rule explicit records came into existence during the same time featuring a theory of the law of war and peace.[114] The beginnings of this theory go back to the eighth century, soon after the expansion of Arab rule to Palestine, Mesopotamia, North Africa, the Iberian Peninsula and Persia. The starting point of the theory was the experience that several groups of believers of different religions existed next to one another. The theory drew on Islam and thus distinguished between the House of Islam (Dār al Islam) and the House of War (Dār al harb), set the lasting peace as the basis for relations among Muslims while also regulating the relations between Muslims and Non-Muslims in legal terms. The latter category of relations included communications between Muslims and Non-Muslims in the *Dār al Islam* as well as the obligation to pay tribute for Non-Muslims under Muslim rule.[115] Whereas the differentiation between *Dār al Islam* and *Dār al harb* arose from the practical conduct of policy among rulers during the period of the expansion of Arab rule, that is, has not been derived directly from the *Qur'an*, the *Qur'an* determines the relations between Muslims and Non-Muslims to be a state of war (ǧihād).

Between the seventh and the tenth centuries, relations between Christians and Muslims were usually free from the military hostility between the two religions. The Arab Muslim conquest of Jerusalem raised little concern in Latin Christendom before the eleventh century, and occasional attempts at conquests such as that of the *regnum* of the Franks in 732 or of Byzantium between 674/8 and 717/8 did not impact negatively on relations between Christian and Muslim rulers in the long term. Thus Charles I, grandson of the Frankish military leader in the battle of Tours and Poitiers, had friendly relations with Muslims in Mesopotamia, exactly at the time when he was struggling

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[111] Sedulius, *Liber* (note 71), chap. XVII, p. 77.

[112] Ibid., chap. XV, p. 68-71.

[113] Smaragd of Saint-Mihiel: 'Via regia', chap. XVII, in: Jacques-Paul Migne, ed., *Patrologiae cursus completus. Series Latina*, vol. 102, col. 933-970, at col. 957.

[114] On these texts in general see: Carl Brockelmann, *Geschichte der arabischen Literatur*, vol. 1, second edn (Leiden, 1943), pp. 176-184, 459-479, 507-515 [first printing of the second edn (Leipzig, 1909); first published (Berlin, 1902); reprint (Leiden, 1996)]; Supplementbd 1 (Leiden, 1937), pp. 284-297, 312-327. Fuat Sezgin, *Geschichte des arabischen Schrifttums*, vol. 1 (Leiden, 1967), pp. 391-586. Ameur Zemmali, *Combattants et prisonniers de guerre en droit islamique et en droit international humanitaire* (Paris, 1997), pp. 20-29 [LLD Thesis, typescript (University of Geneva, 1994)].

[115] Abu Yussof, Ya'qūb Ibn Ibrahim Ibn Habib al-Kūfi al-Ansāri, *Kitab al-Kharadj. Le livre de l'impôt* foncier (Paris, 1921), pp. 94-95.

with the Roman Imperator in Byzantium about the recognition of his imperial title. Charles and Harun-al-Rashid, Khalif of Bagdad (766 – 809) exchanged gifts, putting on record that they recognised each other as equals, even though there appears to have been a lack of knowledge in the *regnum* of the Franks about areas under Muslim control. When, in 802, Charles received an elephant as a gift from Harun-al-Rashid, Frankish official records styled the ruler, who had sent the elephant, variously *rex* of the Persians and *rex* of the Saracens. Upon arrival in the *regnum*, the elephant received the name "Abul Abaz" and lived somewhere on the banks of the Rhine. News of its death in 810 found their way into Frankish official records.[116]

In the course of the ninth and tenth centuries, Muslim Arab traders were present on Christian markets, for example at Mainz, and did business there without restrictions.[117] In the same way as traders from Scandinavia travelled to Bagdad and did business there. Arab coins were deposited as grave goods in Scandinavia, and swords of Scandinavian origin found high appreciation in Bagdad.[118] The trade took place in accordance with the general principles of the law of hospitality which seemed to be valid across the boundaries of religious beliefs and did not, at this time, require the enforcement mechanisms of the imperial bureaucracy. Diplomatic relations existed at times between Khalif Abd ar-Rahman III of Córdoba (929 – 961) and Emperor Otto I. They were due to efforts of Abbot John of Gorze who visited Córdoba between 950 and 953. In 973, Otto received a Muslim legation from "Africa", whereby Andalusia may have been meant.[119] Christians undertook pilgrimages to Palestine where Christian religious institutions continued to exist. These pilgrimages are well documented from the seventh and eighth centuries for St Willibald, Bishop of Eichstätt (c. 700 – 787/8)[120] and by Adamnán, Abbot of Iona (679 – 704), for a bishop named Arculf.[121]

The state of war (ǧihād) was a technical term denoting the relations between Muslims and believers of other religions; hence it was neither equivalent of the condition of the absence of legal commitments nor of a general law of war.[122] Muslim law of war and peace differentiated among various types of military conflicts and did thus not provide for a general definition of war.[123] It had binding effects on the legal relations between Muslims and believers of other religions,[124] and, specifically through Sure XVII, 16 of the *Qur'an* included the obligation to declare war. In the main, Muslim law of war and peace consisted of norms for procedures warriors were bound to follow. In legal diction, the technical term for these procedures was *siyar*.[125] The *siyar* were derived from Sure

[116] *Annales* (note 77), pp. 117, 131.

[117] Qazwîni, *Âthâr al-bilâd* (records of states, the geographical pat of his cosmography), edited by Ferdinand Wüstenfeld, *Kosmographie. Zakarija Ben Muhammed Ben Mahmud el-Cazwini's Kosmographie. Aus den Handschriften der Bibliotheken zu Berlin, Gotha, Desden und Hamburg*, vol. 2 (Göttingen, 1849), p. 410 [reprints (Wiesbaden, 1967); (Publications of the Institute for the History of Arabic-Islamic Science, 198) (Frankfurt, 1994)]. Jacob, *Berichte* (note 32), p. 31.

[118] Thomas S. Noonan, *The Islamic World, Russia and the Vikings. 750 – 900* (Aldershot, 1998).

[119] 'Vita Johannis Gorziensis', edited by Georg Heinrich Pertz, in: Monumenta Germaniae Historica, *Scriptores*, vol. 4 (Hanover, 1841), pp. 344-350. On the mission see: Fernando Valdés Fernández, ,Die Gesandtschaft des Johannes von Gorze nach Cordoba', in: Matthias Puhle, ed., *Otto der Große, Magdeburg und Europa*, vol. 1 (Mainz, 2001), pp. 525-536. Widukind of Corvey, *Die Sachsengeschichte des Widukind von Korvei*, edited by Hans-Eberhard Lohmann and Paul Hirsch (Monumenta Germaniae historica, Scriptores rerum Germanicarum in usum scholarum separatim editi, N. S., 60) (Hanover, 1935), book III, chap. 75, pp. 151-152. On the meaning of the name "Africa" including the Muslim part of the Iberian Peninsula in tenth-century Occidental diction see: Helmut G. Walther, 'Der gescheiterte Dialog. Das ottonische Reich und der Islam', in: Albert Zimmermann, ed., *Orientalische Kultur und europäisches Mittelalter* (Miscellenea mediaevalia, 17) (Berlin and New York, 1985), pp. 20-44, at p. 40.

[120] Hugeburc, 'Hodoeporicon Sancti Willibaldi', edited by Oswald Holder-Egger, in: Monumenta Germaniae Historiae, *Scriptores*, vol. 15 (Hanover, 1888), pp. 80-117.

[121] Adamnán, *De locis sanctis*, edited by Denis Meehan (Scriptores Latini Hiberniae, 3) (Dublin, 1958).

[122] Hans Kruse, *Islamische Völkerrechtslehre*, second edn (Bochum, 1979), p. 33 [first published as LLD Thesis, typescript s. t.: *Der Staatsvertrag bei den Hanefiten des 5./6. Jahrhunderts d. H. (11./12. Jh. n. Chr.)* (University of Göttingen, 1953)].

[123] Ahmed Rechid, 'L'Islam et le droit des gens', in: *Recueil des cours* 60 (1937, Part II), pp. 371-506, at p. 442.

[124] Karl-Heinz Allmendinger, *Die Beziehungen zwischen den Kommune Pisa und Ägypten im hohen Mittelalter* (Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte. Beihefte, 54) (Wiesbaden, 1967), p. 36.

[125] Kruse, *Völkerrechtslehre* (note 122), p. 24.

LX, 8 of the *Qur'an* stating the desire for security shared by all human beings, not just the believers of a certain religion.[126] Already the legal scholar Abu Yussof (731 – 798) postulated that inhabitants of the *Dār al harb* would convert to Islam in search for security and that the life of every convert was sacred.[127] Soon after Abu Yussof, the jurist aš-Saibani (749/50 – 805) established a detailed casuistry for the law of war and peace on the basis of the *siyar*. Specifically, he formulated rules for army action in enemy areas, for the communications between the *Dār al Islam* and the *Dār al harb* as well as for peace treaties between Muslims and rulers of other religions as well as their subjects.[128] aš-Saibani derived the *siyar* from divine will, thereby positioning the law of war and peace above the communities of believers of different religions. Sure IX, 4 of the *Qur'an* established the principles that treaties between Muslims and believers of other religions were binding and that, by consequence, the law of treaties between political communities was part of the divinely willed law of war and peace. Hence, God was witness and guarantor of treaties.[129] According to aš-Saibani, persons could act as subjects of the law of war and peace.[130]

In his guideline for good government, the scholar al-Māwardi (974 – 1058) prescribed a series of detailed rules for the conduct of war on the basis of the *siyar*, among them the prohibition of the surprise attack, of the killing of non-combatants, of the destruction of property and of the killing of hostages.[131] Already Sure IX, 2, 4, 5, 6 of the *Qur'an* imposed the principal conceptual distinction between combatants and non-combatants and protected the latter. Furthermore, al-Māwardi obliged military leaders to protect warriors under their command against enemy surprise attacks, conclude peace agreements against the payment of tribute and to arrange truces with superior enemies.[132]

Next to *Qur'an*, Muslim legal scholars drew on rules by the Prophet (*sunna*), on procedures which could be derived from the life of the Prophet (*ijtihād*) and on general principles of the law, that appeared to be applied among all human beings (*ijmā*).[133] Early descriptions of the life of the Prophet provided for a procedure establishing rules for the conclusion of peace treaties. Accordingly, the partners to the treaty had to produce two written versions of the agreement, which witnesses had to confirm. One version was to be deposited in Mekka so as to make the contents of the agreement publicly accessible.[134] Subsequently, al-Māwardi added the request that treaties should be solidified through the exchange of hostages.[135] In accordance with the principle of the *ğihād*, treaties between Muslims and believers of other religions had to expire, even though there was no need to explicitly state the terms of the expiration in the treaties. Treaties could be made out either as separate declarations of the wills of the concluding partners (concordats) or as joint acts combining the wills of all treaty partners (diplomas).[136]

The Law of War and Peace in Byzantine Perspective

There is no record of an explicit theory of the law of war and peace from Byzantium, even though a

[126] Zemmali, *Combattants* (note 114), pp. 96-97.

[127] Abu Yussof, *Kitab* (note 115), p. 94.

[128] *Majid Khadduri*, The Islamic Law of Nations. Shaybani's Siyar (Baltimore, 1966), pp. 95-105, 130-41, 142-57.

[129] Khadduri, *Law* (note 128), pp. 152-157. Najib Armanazi, *L'Islam et le droit international* (Paris, 1929), pp. 118-119.

[130] Khadduri, *Law* (note 128), pp. 6-7.

[131] 'Alī Ibn Muhammad al-Māwardī, *The Ordinances of Government. A Translation of al-Ahkām al-sultāniyya w' al-wikāyātal-dīniyya* (Reading, 1996), pp. 40, 56.

[132] Ibid., p. 56.

[133] Mohammad Talaat al-Ghunaimi, *The Muslim Conception of International Law and the Western Approach* (The Hague, 1968), pp. 106-22.

[134] Armanazi, *Islam* (note 129), pp. 118-119. Miklos Muranyi, 'Die Auslieferungsklausel des Vertrages von al-Hudaibiya und ihre Folgen', in: *Arabica* 23 (1976), pp. 275-295.

[135] al-Māwardī, *Ordinances* (note 131), p. 42.

[136] Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore, 1955), p. 220. Jörg Manfred Mössner, *Die Völkerrechtspersönlicheit und die Völkerrechtspraxis der Barbareskenstaaten (Algier, Tripolis, Tunis, 1518 – 1830)* (Neue Kölner rechtswissenschaftliche Abhandlungen, 58) (Berlin, 1968), pp. 109, 146-147.

summary of the principles of the conduct of diplomatic relations exists from the tenth century.[137] Moreover, there was a continuing process of the transmission of Imperator Justinianus's *Corpus iuris civilis*, of which a Greek version came into existence under the title *Basiliska* in the ninth century. Yet this collection of legal rules did not in the main concern the law of war and peace and, above all, the Byzantine practice of the conclusion of treaties is difficult to reconstruct due to the lack of original versions of treaties. Thus, neither the Byzantine-Sāsānian agreement of 562 nor the Byzantine-Frankish compromise of 812 is extant as an original text. Nevertheless, versions of some treaties that were concluded between the Basileus and the rulers of Kiev between 911 and 971 found their way into an Old Russian chronicle and a Greek historical account, giving some hints about the practice of treaty-making.[138] The extant versions of the agreements show that they were made out as unilateral declarations of the will of the issuing Basileus in Byzantium in the form of manifestations of imperial grace. Apparently, the extant versions of the agreements came in succession to reciprocal "promises".[139] The Basileus used the formulary of these treaties to demonstrate the priority of their rank vis-à-vis the rulers of Kiev.

The same idea that the Basileus had a superior rank over other rulers lay behind the conviction that just wars could not be fought against the Basileus but that, vice versa, every war was by definition just that a Basileus fought against some other ruler. By consequence, military resistance against the imperial rule took the form of rebellion in Byzantine perspective.[140] Therefore, the use of military force against rebels could be regulated by the law of war and peace. The Byzantine theory of the just war was irreconcilable with the contemporary Muslim law of war and peace.

When, against Byzantine theory of war, the Basileus did interact with other rulers on the basis of the recognition of legal equality and gave expression to their recognition by addressing their partners as brothers, this practice could not result from any legal commitment but from expediency as judged by the Byzantine administration. Therefore, diplomatic missions that rulers in the Western hemisphere dispatched to Byzantium, could involve difficulties of determining rank. One tenth-century source recorded a case. Bishop Liudprand of Cremona (920 – 972), a confidant of Otto I, travelled to Byzantium at the latter's request in 968. Liudprand had been assigned the task of ending a dispute that had emerged over the southern Italian Peninsula, where both Otto and the Basileus at Byzantium rivalled over control. Liudprand was also to determine the prospects for further cooperation between the emperors in both hemispheres of the Roman Empire. The Byzantine administration received Liudprand with honours, while making it undoubtedly clear to him that he would have to subject himself to the imperial ceremonial as applied in Byzantium. Consequently, Liudprand would not be entitled to follow his own habits while present at the imperial court. He soon developed the impression, probably on good reason, that the Imperial administration was seeking to apply ceremonies to him which placed rulers in the western hemisphere at a lower rank compared to that of the Basileus. This impression outraged him to the degree that he broke off his mission and returned home empty-handed.[141]

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[137] Constantine VII, *Excerpta* (note 27).

[138] Treaty Roman Empire (Byzantium) – Prince Oleg of Kiev, 8 / 14 September 911, in: Laurentius-Chronicle s.a. 6420, 32; regest in: Franz Dölger, *Regesten der Kaiserurkunden des oströmischen Reiches von 565 bis 1453*, nr 549, vol. 1 (Munich, 1924), p. 32 [second edn, edited by Andreas E. Müller (Corpus der griechischen Urkunden des Mittelalters und der Neuzeit, Reihe A, Abt. 1) (Munich, 2009)]; translation in: Manfred Hellmann, 'Die Handelsverträge des 10. Jahrhunderts zwischen Kiev und Byzanz', in: Klaus Düwel, Herbert Jankuhn, Harald Siems and Dieter Timpe, eds, *Untersuchungen zu Handel und Verkehr der vor- und frühgeschichtlichen Zeit in Mittel- und Nordeuropa* (Abhandlungen der Akademie der Wissenschaften zu Göttingen. Philol.-Hist. Kl., 3. F., Bd 156) (Göttingen, 1987), pp. 656-666. Treaty Roman Empire (Byzantium) – Prince Igor of Kiev, before 16 / 20 Dezember 944, in: Laurentius-Chronicle s.a. 6453, 46; regest in: Dölger (as above), pp. 81-82; translation in: Hellmann (as above). Treaty Roman Empire (Byzantium) – Prince Svjatoslav of Kiev, July 971, in: Leon Diakonos, *Historiai*, book IX, chap. 10, 155; regest in: Dölger (as above), p. 144 translation in: Hellmann (as above).

[139] Hellmann, 'Handelsverträge' (note 138), p. 646.

[140] Taube, 'Apport' (note 95), pp. 316-328.

[141] Liudprand, Bishop of Cremona, *Die Werke Liudprands von Cremona*, Chap. XI, edited by Joseph Becker (Monumenta Germaniae Historica Scriptores rerum Germanicarum in usum scholarum separatim editi, 41) (Hanover, 1915), pp. 181-182.

However, Otto I himself remained unimpressed by Liudprand's failure and, already in 972, arranged for the marriage between his son and heir apparent Otto II   (973 – 983) and Princess Theophanu († 991). In accepting the marriage agreement, the Byzantine administration signalled its readiness to cooperate with the Imperator in the West, even though it remained reluctant to grant Imperial rank to the two Ottos. Instead, the administration imposed a distinction of rank through the choice of the marriage partner on the Byzantine side. Although Theophanu was a member of the imperial dynasty, she was not "born in purple", that is, not the daughter of a reigning Basileus, but his niece. In the West, neither Otto I nor Otto II was concerned about this subtle, though recognisable distinction. Instead, Otto II presented his wife with a rich dowry, which he had confirmed in a lavish charter made out in purple.[142] Theophanu appears to have cherished the charter which was entrusted to the Ottonian family monastery at Gandersheim and was still kept there in the seventeenth century. When Otto II succeeded to his father, he started to use for himself the full title of "Imperator of the Romans", without protest emerging from Byzantium. The Basileus in the Eastern and the Imperator in the Western hemisphere of the Roman Imperium began to conduct relations on the basis of the mutual recognition of their equality. The practice continued until the thirteenth century. It did not affect the perception of the Roman Imperium as one single political and legal entity.

The Imperator and the World

At the turn of the millennium, Otto III (983 – 1002), son of Otto II and Theophanu, gave expression to the ideology of world rule as attached to the Roman Imperium through the ceremonial. Until 995, first his mother and, upon her death, his grandmother Adelheid of Burgundy (931 – 999) acted as regents for the Imperator who was born in 980. In 996, soon after Otto started to reign in his own name, imperial diplomas were produced in which the use of the combined title Imperator and Augustus was restored from the time of Charles I. Yet Otto did not only take up charter usages from Frankish times but also established, as it were, a personal relationship with his predecessor who had long passed away. Otto chose a path for that end, of which already contemporaries felt appalled. On the occasion of the visit to Aix-la-Chapelle, he ordered Charles's grave to be opened who had been buried in the Cathedral Church of St Mary in the town. He studied the Charles's bodily remains, reportedly even removed some small parts from the carcass and took them with him.[143] He also richly endowed the church with gifts, explicitly with the mandate to commemorate the Imperator Charles.[144] Later, he tried to act as the supporter of the Catholic mission, exactly in the year 1000 travelled for negotiations with the Polish "Duke" Boleslaw Chrobry (967 – 1025) to Gniezno, where

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[142] Otto II, Emperor, '[Charter for Theophanu, 14 April 972]', edited by Theodor Sickel, *Die Urkunden der deutschen Könige und Kaiser*, vol. 2, nr 21 (Monumenta Germaniae Historica. Diplomata regum et imperatorum Germanicorum, 2) (Hanover, 1893), pp. 28-30; also edited by Dieter Matthes, *Die Heiratsurkunde der Kaiserin Theophanu 972 April 14. Facsimile Ausgabe nach dem Original im Niedersächsischen Staatsarchiv Wolfenbüttel (6 Urk 11). Kommentar, Transkription und Übersetzung* (Stuttgart, 1980); newly edited by Matthes, *Die Heiratsurkunde der Theophanu 972 April 14* (Wolfenbüttel, 1984).

[143] Thietmar, Bishop of Merseburg, *Chronicon*, book IV, chap. 47, edited by Robert Holtzmann (Monumenta Germaniae Historica, Scriptores in rerum Germanicarum in usum scholarum separatim editi, N. S., vol. 9) (Berlin, 1935), pp. 185-186. Ademar of Chabannes [Ademarus Cabannensis]: *Chronique*, book III, chap. 31, edited by Pascale Bourgain (Corpus Christianorum Continuatio mediaevalis, 129) (Turnhout, 1999), pp. 153-154 [first edited by Jules Chavanon (Paris, 1897)].

[144] Otto III, Imperator: [Privileges for Donations to the Cathedral Church of St Mary at Aix-la-Chapelle, 12 October 997, 12 October 997, 6 February 1000], edited by Theodor Sickel, *Die Urkunden der deutschen Könige und Kaiser*, vol. 2, part 2, nr 257, 258, 347 (Monumenta Germaniae historica, Diplomata regum et imperatorum Germaniae, 2, 2) (Hanover, 1893), pp. 674-675, 675-676, 776-777. Adalbold, Bishop of Utrecht, 'Vita Henrici imperatoris', chap. 4, in: Monumenta Germaniae Historica, *Scriptores*, vol. 4 (Hanover, 1841), pp. 683-695, at p. 684. On these texts see: Clemens M. M. Bayer, Harald Müller and Max Kerner, 'Schriftquellen zur Geschichte der Marienkirche bis ca. 1000', in: Harald Müller, Clemens M. M. Bayer and Max Kerner, eds, *Die Aachener Marienkirche. Aspekte ihrer Archäologie und frühen Geschichte* (Der Aachener Dom in seiner Geschichte, Quellen und Forschungen, 1) (Ratisbon, 2014), pp. 113-189.

he established an archbishopric.[145] Moreover, at the dismay of many of his close followers, he employed the Byzantine model for the introduction of a new court ceremonial. Followers felt particularly offended by Otto's decision to dine at a table that was positioned in separation from them and at an elevated level.[146] Until then, it had been customary that rulers and the ruled had maintained mutual relations in the bases of kinship (consanguinitas), neighbourhood (familiaritas) and contractual friendship (amicitia),[147] whereby the latter type was explicitly defined as a relationship among equals.[148] Instead of treating his followers as equals, Otto used Byzantine court ceremonial to mark the social distance between himself, at his rank and status as Roman Imperator, and the rest of humankind even in his own entourage.

Otto III even had the solemnity of his position be represented in book miniatures featuring him as the world emperor. Artists in the monastery of Reichenau in Lake Constance created one of these pictures and inserted it into a manuscript of the work by the Jewish historian Flavius Josephus (c. 37 – c, 100). The picture shows Otto sitting on the throne with a crown on his head, holding in his hands the *sphaira* (sphere), later known as the Imperial Apple, and the staff as symbols of the Empire. The *sphaira* is decorated with a cross and can therefore be identified as the symbol of the world as the Christian globe to come.

The Imperator, as shown in this picture, was thus the bearer of the globe. Later images featured the *sphaira* no longer with a cross but with a capital T. This letter often served as a schematic means to divide the world into the three continents of Africa, Asia and Europe, most frequently in manuscripts containing Isidore's *Encyclopaedia*. Usually in this style of pictures, Asia comprised half of the world and came to be located in the upper part, while Africa and Europe made up one quarter of the globe each and appeared in the lower half.[149] The shaft of the T stood for the Mediterranean Sea, while the bar represented the Nile and the combined river system of the Volga, Don and Dnepr separating Africa from Asia and Asia from Europe.

Occidental T-O-maps, presenting the east at the top, displayed all humankind as living in a world without human-made borders, that is, as an entity that might come under the sway of the world emperor. Byzantine scholars used the same type used the same type of map, while positioning the North at the top, not the East.[150] Already Caesar had used the *sphaira* as a material representation of the globe, it reappeared as part of the ninth-century statuette showing Charles I holding it in his left hand. Hence, as a document of the claim for universal rule, the *sphaira* could not only appear in pictures but also as a material object.[151] The use of the *sphaira* thus shows that Otto III did in fact try to act as descendant from the Eastern as well as the Western Roman Imperator,

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[145] Thietmar, *Chronicon* (note 143), chap. IV/45, pp. 182-184.

[146] Thietmar, *Chronicon* (note 143), chap. IV/47, pp. 185-186.

[147] 'Conventus in villa Colonia' [Treaty of Coulaines, 843], edited by Alfred Boretius and Viktor Krause, *Capitularia regum Francorum*, nr 254, vol. 2 (Monumenta Germaniae historica, Capitularia, 2) (Hannover, 1897), pp. 253-255 [newly edited by Wilfried Hartmann, *Die Konzilien der karolingischen Teilreiche* (Monumenta Germaniae historica, Concilia, 2) (Hanover, 1984), pp. 14-17].

[148] Alcuin [Alchwine, Albinus], Abbot von St Martin in Tours, 'Pippini regalis et nobillissimi juvenis disputatio cum Albino scholastico', Jacques-Paul Migne, ed., *Patrologiae cursus completus*. Series Latina.101, col. 975-80, at col. 979.

[149] Ms. Bamberg: Staatsbibliothek, Class. 79, fol. 1a [c. 996x1000]. For a similar-styled miniature featuring the continental names see: Lambert of Saint Omer, Liber floridus', Ms. Ghent: Universitetsbibliotheek, BHSL., HS. 0092, fol. 138ᵛ. For a description see: Versus de Asia et de universi mundi rota', edited by Georg Heinrich Pertz, *Über eine fränkische Kosmographie des siebten Jahrhunderts* (Abhandlungen der Königlichen Akademie der Wissenschaften zu Berlin. Philologische und historische Abhandlungen, 8) (Berlin, 1845), pp. 264-270, at pp. 264-269. For analyses of the world picture see: Brigitte Englisch, *Ordo orbis terrae. Die Weltsicht in den Mappae mundi des frühen und hohen Mittelalters* (Ordo mediaevalis, 4) (Berlin, 2002). Naomi Reed Kline, *Maps of Medieval Thought. The Hereford Paradigm* (Woodbridge, 2001). Scott Westrem, *The Hereford Map. A Transcription and Translation of the Legends with Commentary* (Terrarvm Orbis, 1) (Turnhout, 2001).

[150] Kosmas Indikopleutés, *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)].

[151] Percy Ernst Schramm, *Sphaira – Globus – Reichsapfel* (Stuttgart, 1958). Sylvia Sumira, *The Art and History of Globes* (London, 2014).

uniting both hemisphere in his hand and thereby renewing the claim towards world rule.[152] Otto's effort remained unaccomplished, as the Emperor died at the age of twenty-two.

Summary

The great tradition of the law of war and peace continued beyond the fifth century, not only in the Mediterranean areas but also in East Asia. In China, Li Jing drew on the classical tradition of military theory in his war manual of the seventh century.[153] During the Sung Period (960 – 1279), the canon of the seventh classics of military theory was formed extant from the "Spring-and-Autumn Period" and even earlier times. The canon remained in use until the twentieth century as a collection of rules of the law of war as well as of principles of strategy and tactics.[154] Also to the Sung period dates the reception of Confucian writings casting the relations among political communities into the terms of the ceremonial.

Generations of the nineteenth and twentieth centuries looked back on the period between the sixth and the eleventh century as the "Dark Ages", a term that has remained current.[155] Labelling the period as the "Dark Ages" reflected the retrospective image which displayed these centuries as seemingly shaped by war, insecurity and the lack of stability. Numerous *gentes* appeared to have wandered into and through the Roman Imperium like populous nations, scholars assumed already in the sixteenth century. One of them, the Viennese physician Wolfgang Lazius (1514 – 1565), in 1555, coined the term "Migration of nations" (migratio gentium), the German rendering of which (Völkerwanderung) has remained in use.[156] These purportedly migrating nations were held responsible for the collapse of imperial rule in the Western hemisphere of the Imperium, for even annihilating the entire Ancient World and launching an entirely new period of history for which the term "Middle Ages" became popular already in the sixteenth century.[157] The alleged mass migrations appeared as the main cause for the seeming war-proneness of the period.[158]

The history of the law of war and peace puts on record that there was no collapse of Roman imperial rule after Rome ceased to be the residential capital of the Imperium during the years between 476 and 481. There is no indication for a specifically intense readiness to go to war in the entire period between the sixth and the eleventh centuries. There were indeed numerous *gentes* and many of them could migrate across wider areas and over long periods of time. But these *gentes* had varying structures, ranging from kin groups of rulers to the entirety of the population of the Roman Imperium.[159] Most of the migrating *gentes* appear to have been relatively small groups. Only from the eighth century did a more uniform notion of *gens* come into existence which then seems to have comprised the population of settlers in a roughly demarcated area and under the control of a ruler. Put differently, the *gentes* turned into nations at the very time when they no longer migrated across

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[152] As has recently been argued by: Heinrich Dormeier, 'Die Renovatio Imperii Romani und die „Außenpolitik" Ottos III. und seiner Berater', in: Michael Borgolte, ed., *Polen und Deutsche vor 1000 Jahren* (Europa im Mittelalter, 5) (Berlin, 2002), pp. 163-191.

[153] On this text see: David Andrew Graff, *Medieval Chinese Warfare. 300 – 900* (London, 2002), pp. 192-195.

[154] On these collections see: Ralph D. Sawyer, *The Art of the Warrior. Leadership and Strategy from the Chinese Military Classics* (Boston and London, 1996), p. 17.

[155] Among others, see: Richard Hodges, *Dark Age Economics* (London, 1982) [second edn (London, 1989); reprint (Bristol, 2012)].

[156] Wolfgang Lazius, *De gentivm aliquot migrationibus* (Frankfurt, 1600) [first published (Basle, 1555); microfiche edn of the print (Basle, 1557) (Bibliotheca Palatina, H1791/H1799) (Munich, 1994)].

[157] The evidence has been surveyed by: Uwe Neddermeyer, *Das Mittelalter in der deutschen Historiographie vom 15. bis zum 18. Jahrhundert* (Kölner Historische Abhandlungen, 34) (Cologne, 1988).

[158] As argued by: Norbert Ohler, *Krieg und Frieden im Mittelalter* (Munich, 1997), pp. 160-177.

[159] For a survey of recent research see: Walter Pohl, 'The Construction of Communities and the Persistence of Paradox', in: Richard Corradini, Max Diesenberger and Helmut Reimitz, eds, *The Construction of Communities in the Early Middle Ages* (The Transformation of the Roman World, 12) (Leiden, Boston and Cologne, 2003), pp. 1-15 Susan Reynolds, 'Our Forefathers? Tribes, Peoples and Nations in the Historiography of the Age of Migrations', in: Alexander Callander Murray, ed., *After Rome's Fall. Narrators and Sources of Early Medieval History. Essays Presented to Walter André Goffart* (Toronto, Buffalo and London, 1998), pp. 17-36.

wide areas and over long periods. Neither is there evidence to the effect that these migrations always took place peacefully, nor did near contemporary sources provide records of a distinct lust to war among the migrating *gentes*.

During the period between the sixth and the eleventh century, the law of war and peace came to be laid down in a formal written theory only in the Arab Muslim world, where scholars discussed it in their academic debates already in the eighth century. The *Qur'an* became the major source of legal norms which tied the law of war and peace to religious beliefs in the same way as already in the Ancient Near East as well as Ancient Greek and Roman times. Yet these ties did not preclude that legal obligations could be regarded as binding among groups adhering to different religious beliefs, neither in Ancient times nor in the Arab Muslim world. Thus Muslim theory of the law of war and peace could principally categorise as warlike the relations between Muslims and believers of other religions. But it could also provide a doctrine of obligations for warriors which, among others, prescribed rules for the beginning of a war between Muslims and believers of other religions and provided for the protection of non-combatants on all sides regardless of religious belief. According to this theory, war was not a state of lawlessness and could not free anyone from the obligation to honour existing treaties. Hence, the law of war and peace was, according to Muslim theory, valid for all humankind. Thus, early on, there existed in Islam a legal framework for the conduct of relations among political communities under conditions of conflicts among religions, even though major religious conflicts did not occur between Christians and Muslims up to the tenth century. On the contrary, boundaries of religion were not everywhere boundaries of cultures and did not prevent the maintenance of a wide variety of relations among Christian and Muslim political communities

On the Christian side, no formal theory of the law of war and peace emerged beyond the foundations that had been laid in writings by Cicero and Roman jurists. Therefore, Christian norms of the law of war and peace must be reconstructed from pragmatic writings concerning war and peace. Reconstructions of these legal norms featured few differences from the norms that Isidore of Seville had already recorded. The law of war and peace retained its main purpose of regulating the relations among different political communities within and across the boundaries of religion. By consequence, it was not just some "inter-power law" coming into use, so to speak, on demand.[160] Instead, the law of war and peace was valid as *ius cogens*, even though the potential of its enforcement was limited. Even though the imperial administration in Byzantium claimed that only a war fought by the Basileus could be a just war, the law of war and peace as a legal framework tied to religious beliefs, remained positioned above the political communities in the entire period between the sixth and the eleventh century. While human actors might engage in controversy and conduct wars, the law of war and peace remained part of the great tradition and applicable to humankind at large, even though considering its general applicability was more difficult for Christian theologians than for their Muslim counterparts.

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[160] As was assumed by: Heinhard Steiger, 'Zum fränkischen Kriegsrecht des karolingischen Großreiches (741 – 840)', in: Wilhelm Fiedler, ed., *Verfassungsrecht und Völkerrecht. Gedächtnisschrift für Wilhelm Karl Geck* (Cologne, 1989), pp. 803-829. Steiger, *Ordnung* (note 42). Steiger, 'Zwischen-Mächte-Recht im Frühmittelalter', in: Michael Jucker and Martin Kintzinger, eds, *Rechtsformen internationaler Politik* (Zeitschrift für Historische Forschung, Beiheft 45) (Berlin, 2011), pp. 47-74.