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Christoph Besold on confederation rights and duties of esteem in diplomatic relations

Andreas Blank

Alpen-Adria-Universität Klagenfurt, Austria

ABSTRACT

The self-worth of political communities is often understood to be an expression of their position in a hierarchy of power; if so, then the desire for self-worth is a source of competition and conflict in international relations. In early modern German natural law theories, one finds the alternative view, according to which duties of esteem toward political communities should reflect the degree to which they fulfill the functions of civil government. The present article offers a case study, examining the views concerning confederation rights and the resulting duties of esteem in diplomatic relations developed by Christoph Besold (1577–1638). Besold defends the view that confederations including dependent communities—such as the Hanseatic League—could fulfill a stabilizing political function. He also uses sixteenth-century conceptions concerning the acquisition of sovereignty rights through prescription of immemorial time. Both strands of argument lead to the conclusion that the envoys of dependent communities can have the right to be recognized as ambassadors, with all the duties of esteem that follow from this recognition.

KEYWORDS

natural law; sovereignty; prescription in international law; ambassadorial rights; imperial cities; conflict resolution

1. Introduction

The self-worth of political communities is often understood to be an expression of their position in a hierarchy of power. There is growing literature in contemporary political theory that explores the role of the desire for esteem and self-worth in international politics; and one of the most fascinating aspects of this literature are the insights that it has given into how strongly international conflicts and, in particular, decisions about warfare are motivated by the competition for status (understood as the position in a social hierarchy) and status insecurity (following from the fact that a position in a social hierarchy can be contested).¹ Is it inevitable to think about esteem between political communities in this manner? In early modern German natural law theories, one finds an alternative view of thinking about these matters; a view according to which duties of esteem toward political communities should reflect the degree to which they fulfill the functions of the law of nations, such as just warfare, peace keeping, and forming confederations.

CONTACT Andreas Blank  andreasblank@hotmail.com  Alpen-Adria-Universität Klagenfurt, Austria

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One of the most detailed early seventeenth-century discussions of the question of confederation rights and its relevance for the question of esteem between political communities can be found in the juridical writings of Christoph Besold (1577–1638). Besold was a widely cited authority on public law and its natural law foundations, and was a professor at the University of Tübingen and an advisor to the dukes of Württemberg; after he made his secret conversion to Catholicism public, he took up a professorship at the University of Ingolstadt.² According to Besold, being a subject of the *ius gentium* results from fulfilling the functions of the *ius gentium*, such as the ability to form confederations. Thereby, Besold disentangles the question of sovereignty in a crucial respect from the question of power as he includes detailed considerations concerning the confederation rights of dependent political communities.

By separating questions of sovereignty from the question of independence, he draws attention to the problem that a deficit in expressing esteem in relations between political communities may be seen as a violation of the natural right of being treated as subjects of the *ius gentium*; that is, as communities that possess sovereignty rights (*jura majestatis*, *jura regalia*). Central examples of sovereignty rights mentioned by Besold include legislative rights, administrative rights, judicative rights, fiscal rights, the right of granting dispensations and pardons, the right of engaging in warfare, the right of being active in international conflict resolution (arbitration and mediation), and the right of participating in confederations.³ If the capacity of forming legitimate confederations implies possessing sovereignty rights, Besold argues, then envoys have the right to receive the signs of honor due to ambassadors; that is, the signs of honor due to representatives of sovereign political communities. Besold thus develops a conception of duties of esteem between political communities that are not a function of relations of power and can thereby also apply to the representatives of dependent political communities.

Besold describes this conception as a counter-blast against theoreticians of absolutism—the “court politicians” (*aulico-politici*)—who, in his view, try to “turn subjects into slaves” (*ex subditis facere servos*), especially to the detriment of the reformed religion. This is why he takes the defense of the confederation rights of cities that do not belong to the Imperial Cities to be a defense of the liberty of religion.⁴ By defending the confederation rights of dependent communities, Besold diverges from the medieval conceptions of the inalienability of sovereignty that had influenced the conception of sovereignty as independence from external influences as articulated by Jean Bodin.⁵ Without going into the intricate questions concerning Bodin’s motivations for adopting this concept in *Six livres de la République*, one concern that he may have had in mind is that distributing sovereignty rights to dependent communities was one of the causes that turned religious dissent into civil war.⁶ Bodin became highly influential in late sixteenth- and early seventeenth-century political theory in Germany. One of the most prominent early absolutist thinkers in this field was the Lutheran philosopher Henning Arnisaeus,⁷ and, in Besold, one finds numerous critical remarks about Bodin and Arnisaeus.⁸

Against nascent absolutist conceptions of territorial dominion (*Landesfürstliche Oberkeit*), Besold maintains that that sovereignty (*majestas*) does not coincide with the right over a territory (*ius territorii*).⁹ On the contrary, he takes up the Ciceronian view that sovereignty resides in the entire Roman people or in any other people that has no superior. In this sense, sovereignty rights belong to an entire political community and can be delegated to representatives on various levels.¹⁰ Besold here draws on the work

of Hermann Kirchner, a professor of poetics and history at the Calvinist University of Marburg and one of Bodin's earliest German critics, who developed the distinction between real sovereignty (*majestas realis*), which constitutes the state (*res publica*), and personal sovereignty (*majestas personalis*), which serves for the administration and governance of a state.¹¹ Besold finds support for the concept of real sovereignty in two aspects of Roman law: the view that the Roman people in some way always retains sovereignty, and the view that high treason (*crimen majestatis*) is a crime against the people and the state and therefore can be committed by the prince himself.¹² From this perspective, Besold accepts the view of the Calvinist jurist and theologian Lambert Daneau, who took real sovereignty to be defined by the fundamental laws that are constitutive of a state.¹³ This is why Besold takes a differentiated attitude toward another Calvinist theoretician of popular sovereignty, Johannes Althusius: the two thinkers agree in taking fundamental laws to be binding for those in power when such laws exist; but Besold disagrees with Althusius's view that real sovereignty, in the absence of fundamental laws, could consist in mere dominion.¹⁴

Within this general framework, two lines of argument set Besold apart from the early absolutists' way of thinking about the right of confederation and the duties of esteem toward envoys of dependent communities. He argues that separating sovereignty rights from the question of dependence could be a stabilizing rather than a destabilizing factor in politics; this will be the topic of section 2. Moreover, he applies a concept from the Roman law tradition—prescription of immemorial time (*praescriptio immemoriali temporis*)—to analyze the sense in which even dependent communities could acquire sovereignty rights such as the right of confederation; this will be the topic of section 3.

2. Duties of esteem, diplomatic rank, and confederation rights

One may ask whether it is not an anachronism to use concepts such as self-worth and esteem to analyze aspects of early modern political thought. Some strands in Besold's thought suggest that it is not an anachronism. Besold is aware that esteem as a political factor was discussed in the Italian reason-of-state tradition. With respect to the sovereignty of a prince, he notes that, according to Giovanni Botero and Traiano Boccalini, being held in high esteem or reputation (*existimatio, seu reputatio*) is a crucial factor for the internal stability of a state.¹⁵ As Botero and Boccalini argue, this is so because a decline in esteem brings with it contempt and reluctance to realize the political goals of the prince, while high esteem for perceived virtues causes positive emotions that support the political goals of the prince.¹⁶ Besold also notes that, in the reason-of-state tradition, the desire for esteem is seen as a factor that shapes international relations. For instance, he refers to Machiavelli's observation that some alliances between geographically remote states are mainly formed for the sake of the "name and esteem" (*nominis & existimationis*) of the allies.¹⁷

Besold also draws on the literature on the political role of ambassadors—Alberico Gentili's *De legationibus*, Francois Hotman's *L'ambassadeur*, Konrad Braun's *De legationibus*, and Hermann Kirchner's *Legatus*¹⁸—to emphasize the importance of esteem-related duties in international relations. For instance, he notes that the size, material equipment, and salaries for the staff accompanying an ambassador should reflect both the dignity (*dignitas*) of the sovereign who sends ambassadors and the esteem

(*existimatio*) in which the sovereign is held to whom they are sent.¹⁹ Because ambassadors represent the sovereigns who have sent them, all peoples have developed customs that regulate the duties of honor that are owed to ambassadors. One of these duties (not only recommended by considerations of prudence) is the duty of princes to hear ambassadors in person.²⁰ Another duty is to assign to an ambassador the same rank in matters of protocol as the rank due to their sovereign.²¹ But ambassadors have to fulfill duties of esteem, too. For instance, they must neither arrogantly praise their sovereign—which would either irritate or infuriate their hosts—nor speak of their sovereign with contempt.²²

Like many of his contemporaries, Besold thus distinguishes two dimensions of duties of esteem in diplomatic relations. The first dimension is comparative and competitive in the sense that diplomatic relations are shaped by questions of dignity; this is the dimension of questions of precedence (*praecedentia*) or preeminence (*praeeminentia*). The second dimension is non-comparative and non-competitive in the sense that it applies to relations between all sovereign communities and rulers; this dimension shapes the legal standing of ambassadors, including the duties of esteem that are owed to them.

Among the factors that have an influence on precedence, Besold mentions the age of the political community, or of the dominion over it, or of the dynasty or family.²³ Power is a further factor, but Besold notes that many do not accept the inference from greater power to greater dignity; positions of dignity and their corresponding titles also play a role.²⁴ Evidently, all these considerations can lead to endless controversies; for instance, determining the age of a family is rather uncertain and offers many possibilities for historians to flatter their rulers, and often historical beginnings of dynasties are surrounded by fictions.²⁵ Still, no matter how difficult some of these claims will be to decide, Besold takes questions of precedence to be *legal* questions. As he notes, Emperor Charles IV defined the precedence of the electors over the other *Reichsstände* in the *Bulla Aurea* (1361), one of the fundamental laws of the German Empire.²⁶ Likewise, questions concerning precedence are decided in a legally binding form by the *Reichstag* and ecumenical and provincial synods.²⁷ This is why it is not easy not to insist on one's rights with respect to precedence: "Such a contention cannot be evaded without an injury to honor and reputation, such that nothing happens against the laws, if someone tries to vindicate the preeminence that is owed to him."²⁸ In this sense, the question of precedence belongs to distributive justice; consequently, the conservation of the order of hierarchy is an instance of the conservation of justice.²⁹ As in other instances of distributive justice, fulfilling duties of esteem arising from precedence not only fulfills laws but is also a factor that contributes to the peace and harmony of a society. This is why Besold takes status, dignity, and honor to be more important in human life than the objects of commutative justice.³⁰

Duties of esteem in diplomatic relations, however, are more complex. Evidently, questions of precedence play a role there. For instance, if there is a fear that ambassadors are not honored as they should be, or that they would be unduly outranked by others, one solution is to send agents without the ceremonial forms suitable for ambassadors.³¹ At the same time, Besold is clear that there exist duties of esteem toward ambassadors that are unaffected by questions of precedence. The political relevance of protecting the honor of ambassadors derives from the function of an ambassador to protect the rights and the sovereignty of the ruler who sends him.³² In order to be able to fulfill

this function, not only must the physical security of ambassadors be guaranteed but also their security from violations of honor:

Ambassadors are violated through words, deeds, and both at the same time. By words, if they are addressed less gently. How huge, frequent, and forceful are the stings of pain that arise from this! Through detraction in words alone, empires are bitterly infuriated to take revenge.³³

As Besold explains, this holds primarily for acts of detraction committed by officials; but even acts of detraction committed by private persons could gain political relevance: “Because ambassadors have been injured by private citizens, in no way are we licensed to declare war; unless the people, by whose member the violation has been committed, disregards the administration of justice.”³⁴ Clearly, then, violating duties of esteem toward ambassadors plays a destabilizing role in international politics, and it does so independently of position in a hierarchy of precedence.

Again, insisting on the ambassador’s right to be treated honorably is a common element in the early modern works on embassy rights that Besold cites. For instance, Konrad Braun (1491–1563), member of the *Reichskammergericht* and author of the most extended sixteenth-century work on diplomatic rights,³⁵ maintains that it belongs to the task of an ambassador to protect the honor (*honor*), reputation (*fama*), and esteem (*existimatio*) of the ruler whom he represents; both by abstaining from participating in any activities that could be detrimental to the esteem in which their ruler is held and by opposing any activities of others that could lead to this effect.³⁶ This is also why ambassadors must not choose assistants whom they suspect would not care much about the esteem in which their superior is held.³⁷ These matters are an important factor in politics because both the honor and the detraction (*contumelia*) shown to an ambassador are wholly directed at the one who has sent him.³⁸ Rulers have the obligation to seek redress for all injuries done to their ambassadors, because every injury inflicted upon ambassadors is interpreted as having been inflicted upon the ruler who has sent them; and Braun provides a long list of historical instances, from biblical times onwards, in which the detraction inflicted upon ambassadors has been the cause of wars.³⁹

Evidently, duties of esteem based on order of precedence are highly relevant for the politics of dependent communities, but does the same hold with respect to duties of esteem that are independent from the hierarchy of precedence? In fact, there was no agreement over the question of whether dependent communities have the right of sending ambassadors. Braun ascribes embassy rights to all of those political agents that fulfill functions of public administration (*administratio publica*). He is clear that this applies not only to kings and princes but also to provinces and cities. This is why he ascribes a legitimate function to municipal ambassadors (*legati municipales*).⁴⁰ However, he never addresses the question of whether those of the Hanseatic cities that are not Imperial Cities can send such ambassadors. Kirchner fills this lacuna and maintains that the Imperial Cities have embassy rights, whereas communities that depend on other territorial powers should be excluded from the realm of these rights.⁴¹

Kirchner’s position reflects a long-standing controversy concerning the question of whether independence from other *Reichsstände* or, rather, the capacity of forming confederations should be counted to be a criterion for the possession of sovereignty rights. Perhaps the most prominent legal document in this respect was the *Bulla Aurea* of

Emperor Charles IV. One of the clauses prohibits the *Reichsstände* to participate in conspiracies against the Empire; but at the same time, this clause makes an exception for “confederations which princes and cities and other *Reichsstände* form for the sake of the general peace in the provinces and territories. These we reserve for our particular decision and determine that they shall stay in force, until we make contrary provisions.”⁴² The interpretation of the passage from the *Bulla Aurea* was controversial, and opposing stances can be found in two thinkers whom Besold mentions more than once. Eberhard von Weyhe (Waremundus de Erenberg, 1553–1637), a jurist in the service of the Elector of Saxony,⁴³ maintains that only those *Reichsstände* that have “the right of sovereignty either through a concession from a prince or out of a contract, or out of a privilege, can rightly form confederations.”⁴⁴ In his view, the alliance of the Hanseatic cities should be called a conspiracy, because several allies were subject to the rule of other princes and were not tributary to the Emperor but to provinces, and therefore cannot acquire such rights against the will of princes.⁴⁵ By contrast, Dominik Arumaeus (1579–1673), a professor of law at the University of Jena and a diplomat in the service of the court of Weimar,⁴⁶ holds that confederations such as those between the Hanseatic cities are legitimate as long as they fulfill the purpose of preserving peace in the provinces.⁴⁷

As Arumaeus argues, this is so because, even if not all of the Hanseatic cities belong to the Imperial Cities, there are degrees of dependence on territorial powers. Arumaeus here uses the distinction between provincial cities (*civitates municipales*), which are under the dominion of a territorial power in every respect, and cities that have accepted certain legal conditions (*civitates conditionatae*) and thereby have contractually acknowledged the dominion of electors or princes in certain respects.⁴⁸ Arumaeus concedes that municipal cities could not join the Hanseatic League against the will of the power on which they depend; but he holds that the same limitation does not hold for the cities living under certain legal conditions.⁴⁹ Arumaeus draws attention to an argument developed by Andreas von Gail (1526–1587), who, as an assessor at the *Reichskammergericht* and a member of the *Reichshofrat* under Emperors Maximilian II and Rudolf II, was a member of the highest legal and political institutions of the Empire.⁵⁰ In the context of a discussion of the legal nature of confederations between allies of significantly different means of power, Gail remarks:

A castle or a community that is dependent, on the basis of certain contracts and conditions, on some prince or another community should be considered to be dependent only with respect to these contracts and explicit conditions and to remain free in other respects.⁵¹

Besold, too, takes up Gail’s argument and uses it to support the view that “it is probable that communities of this kind can form confederations, following the example of Imperial Cities; and this the famous confederation of Hanseatic cities, maritime cities and other German cities can teach.”⁵² As he explains, “a vassal is not a subject with respect to his person.”⁵³ Rather, feudal dependence is constituted by obligations to provide services and to preserve fidelity to the more powerful ally, while the more powerful ally is obliged to offer protection and support; but, as Besold observes, this does not imply subjection with respect to jurisdiction.⁵⁴ More precisely, feudal dominion involves jurisdiction over the vassal only with respect to the establishment, preservation, and end of the feudal rights.⁵⁵ Besold is clear that duties of fidelity include duties of esteem.

However, “reverential words, words of honor and courtliness are understood to be more an expression of flattery than of subjection.”⁵⁶

From this perspective, Besold understands feudal dependence as being akin to confederation between allies of unequal power. In his view, such confederations involve contract-based mutual obligations; and some of these obligations consist in duties of esteem that follow the hierarchy of precedence.⁵⁷ He is quick to point out that his analysis of confederations between allies of unequal power is fully consistent with Bodin’s views concerning the nature of such alliances.⁵⁸ For Bodin, confederation between allies of unequal power does not imply a loss of sovereignty for the less powerful ally; rather, the less powerful ally can be said to have the duty to protect loyally the sovereignty of the other ally, in exchange for protection and advice from the more powerful ally.⁵⁹ Besold suggests to subsume constellations in which free cities sought the protection of neighboring territorial powers under Bodin’s concept of equitable confederation.⁶⁰ If feudal dependence can be understood as being akin to such confederation between unequal allies, then feudal dependence does not exclude the possibility of holding confederation rights.

Yet, saying that feudal dependence does not *exclude* the possibility of holding confederation rights is not enough for defending the claim that dependent communities in fact have acquired these rights. Besold gives detailed consideration to the question of how cities—both those that depend immediately on the Emperor and those that depend also on other powers within the Empire—could acquire confederation rights. To begin with, he characterizes the concept of confederation as follows:

A confederation can be defined as a public contract between two or more communities about mutual assistance or some similar mutual offices. In order to avoid a wide understanding of this definition, according to which it would comprise any contract whatsoever between princes or communities, those offices must relate to the nature of a confederation, which is something that comes into being due to necessity or for the sake of public well-being.⁶¹

The distinction between necessity and public well-being corresponds to the distinction between two types of alliances: on the one hand, defensive city alliances, such as the League of Rhenish Cities (1254), the League of Wendish Cities (1259), and the League of Swabian Cities (1376), which were founded to ward off brigands and other external enemies in situations in which the imperial power was weak;⁶² and, on the other hand, economic city alliances, most prominently the Hanseatic League, which had its origin in agreements between merchants with the purpose of securing exclusive access to trade around the Baltic Sea.⁶³

As Besold notes, the legal status of cities in the German Empire derives from more than one source. One source of the rights of the Imperial Cities are privileges granted by the Emperor, such as the exemption of cities from imperial taxes,⁶⁴ and the granting of rights of jurisdiction, of rights of taxation,⁶⁵ and of rights of free return from journeys to other territories.⁶⁶ One source of the rights of the cities that stand in feudal relations to other *Reichsstände* are analogous privileges obtained from the territorial sovereigns. Confusingly, there are some cities, such as the Hanseatic cities of Braunschweig and Hamburg, that are dependent on other minor powers and at the same time hold imperial privileges.⁶⁷ Not all municipal rights derive from privileges, however; as Besold notes, a further source of municipal rights is the tacit extension (*latenter incrementa*) of privilege-based rights that takes place over long periods of time.⁶⁸

One such tacit extension of rights derives from fulfilling functions grounded in natural law and the law of nations. With respect to alliances of the defensive type, Besold considers the right of confederation to be a natural right: “In the same way that nature seems to search for support of society and community [...] the most appropriate to meet common enemies that are stronger is through societies and confederations.”⁶⁹ In Besold’s view, confederations between political communities cannot be superseded by anything like a utopian natural confederation (*foedus naturale*) between all humans based on universal benevolence (an idea that Besold ascribes to Thomas More).⁷⁰ As Besold argues, this is so because only in limited circumstances is one individual obliged to defend another individual against attacks: “by the force of this natural necessity, no one is bound to defend another at the risk of his own life or well-being.”⁷¹ When only confederations can provide security in situations of necessity, then it does not matter whether the allies are princes or cities. Rather, if cities are defended neither by the forces of the Emperor nor by the forces of the princes and counts, then forming confederations of their own is an expression of their natural rights of self-defense. Clearly, Besold regards forming confederations as a default option that becomes relevant only in situations in which a central power turns out to be insufficient to fulfill the functions of peace-keeping; but such situations do occur in the real world, and for such situations the natural law-based functions of confederations are legitimate.

In support of this view, Besold refers several times to an anonymous tract published by the Hanseatic cities, *Der Vereinigten Teutschen Hanse-Staedte Kurtze Nothwendige Verantwortung* (1609). The authors of this tract argue that the Hanseatic cities received immunities and other trade privileges from their trade partners in the Nordic countries, which implies that the Hanseatic League was a means to defend immunities and other rights against violence and injustice. This is why the *Kurtze Nothwendige Verantwortung* claims that one of the functions of their League is described as the protection of right and equity in commerce.⁷² A further legal argument for the legitimacy of the Hanseatic League derives from the consideration that the League served as a protection of trade rights against piracy. The *Kurtze Nothwendige Verantwortung* gives as a concrete example the confederation that the Hanseatic League formed with Denmark against piracy;⁷³ an example that shows that the Hanseatic cities were also able to form alliances with powers outside the German Empire. A further line of defense that can be found in the *Kurtze Nothwendige Verantwortung* emphasizes the peace-keeping of the Hanseatic cities in European politics. For example, Hanseatic cities acted as intermediaries in negotiations over the release of the captive King Albrecht of Sweden and Queen Margarethe of Denmark and Norway in 1395; they acted as arbitrators between King Erich of Denmark, Sweden, and Norway and Duke Heinrich of Schleswig in 1418; and they acted as mediators between King Christian of Denmark and King Karl of Sweden in 1456.⁷⁴ Also, the authors of the tract point out that the planned expedition of the Counts of Hessen against the city of Eimbeck was averted through the announcement of military support for Eimbeck through the Hanseatic cities.⁷⁵ If one considers these functions of the Hanseatic League, then it would seem that their confederation is fully legitimized by the measures of the *Bulla Aurea*.

Recall, however, that the *Bulla Aurea* reserved the right of the Emperor to dissolve confederations that he judged to be contrary to the interests of the Empire. The constitution of the Empire thereby regarded confederations that fulfill functions of the type

pursued by the Hanseatic League to be legitimate in a provisional way; they are legitimate until and unless the Emperor decides otherwise. In the case of the Hanseatic League, such a decision never took place. Does the passage of a long time without opposition from the Emperor have any legal relevance?

3. Confederation rights and immemorial prescription

Besold takes the legal figure of prescription of time immemorial (*praescriptio immemoriali temporis*) to be decisive here.⁷⁶ This sets him clearly apart from Bodin, who held that regalian rights cannot be alienated, be it through contracts, usurpation, or prescription. As Bodin argues, if public finances cannot be alienated—a point that he took to be uncontroversial⁷⁷—then the same must hold for all regalian rights.⁷⁸ At first sight, Besold's opposition to Bodin on this issue may appear to be deeply problematic. One of the tracts published by the opponents of the Hanseatic cities—*Gründlicher Bericht auff der Teutschen HanseStedte Verantwortung* (1609)—documents that claims based on immemorial prescription were regarded as a threat to the constitution of the Empire. The authors of this tract argue that, even if the confederation of Nuremberg with the Bishops of Bamberg and Würzburg for the defense against Markgraf Albrecht Alcibiades, formed in 1553, was legitimate, this consideration cannot be generalized to the legitimacy of the Hanseatic League: “If such connections, confederations and conspiracies were allowed to the Hanseatic cities, and everything were regarded to be a right, one would delegate to them, as time goes by, the regiment in the Empire of the German Nation [...] and make them the head.”⁷⁹ Thus, the concern about assigning sovereignty rights to allied cities was that doing so would overturn the structure of sovereignty in the Empire.

Arnisaeus, too, doubts that sovereignty rights of subordinate *Reichsstände* could be derived from prescription: “The one who says that his right is founded [on the prescription of sovereignty] is forced to confess that he uses an entirely unstable and uncertain foundation.”⁸⁰ In support of his concern, Arnisaeus adduces a battery of legal authorities who agreed that the very notion of highest jurisdiction implies that this form of jurisdiction cannot be acquired through prescription by subordinate powers.⁸¹ In support of this view, he draws an analogy between the necessary conditions for donation and the necessary conditions for prescription: as something can only be donated to someone capable of possessing the good in question, so can something be acquired by prescription only by someone capable of possessing the good in question. For instance, a layperson cannot acquire church taxes through prescription because a layperson cannot possess revenues of this kind. Likewise, Arnisaeus reasons, “it is impossible to separate sovereignty rights from sovereignty, if the force and role of sovereignty is to be preserved.”⁸² He also maintains that prescription of sovereignty rights cannot contribute to the well-being of a political community because it is an instance of iniquity if the disobedience of a part of the community is more profitable for this part than obedience.⁸³ He also contests that the good faith required for prescription could ever be presumed with respect to sovereignty rights:

It is not probable that a prince or a city do not know that they are subordinate to and comprised within the dominion of someone else, both because in them greater care for justice

and greater knowledge is presumed, and because they use to record their acts in public annals, which they can consult to get certainty about their status and liberty.⁸⁴

Evidently, more has to be said about how sovereignty rights could be acquired through prescription. Besold offers the following, somewhat opaque, explanation:

A German prince who acquires regalian rights through prescription does not have them as sovereignty but rather as perpetual privileges. It therefore hardly differs from investiture, except for the fact that it cannot return to the Emperor at the time of death. In this way, cities have regalian rights on the basis of prescription, but in their kind or substance they are not other than those that differ from investiture only through the way of acquisition and expiration. In this way, those who acquire regalian rights in the Roman Empire, for that reason are not free; but they acquire only the exercise of regalian rights; and for them prescription replaces concession, and nevertheless the highest authority of the republic remains intact. Therefore, having sovereignty through grace (that is, privilege, investiture, or prescription) is not having sovereignty itself, but only some participation in it.⁸⁵

Of course, the sense of participation that Besold has in mind needs further explanation. For this purpose, Besold invokes the legal distinction between “privative” and “accumulative” prescription:

Here this common doctrine of the legal experts has to be noted: no matter how the concession of regal rights takes place, nevertheless this highest and sovereign rule is never understood to be comprised within this bequest; but rather, a larger power that the one conceded is always understood to be reserved and retained [...] The Emperor concedes to the *Reichsstände* regal rights in a privative way, and promises through a contract that he will not make use of them: but he bestows them in an accumulative way with respect to ownership and the right of inspection.⁸⁶

What does the “common doctrine of the legal experts” amount to? Besold refers more than once to an influential work, first published in 1511, by the Italian jurist Giovanni Francesco Balbo;⁸⁷ a reference worth pursuing further because a comparison with Balbo will make it clear what is distinctive about Besold’s use of prescription. Balbo explains that prescription does not come about through the mere passing of time. In addition, there must be either a legal title or another effective cause (*causa efficax*).⁸⁸ Such a cause may lie in the consent that is presumed to have been given due to long toleration.⁸⁹ The legal effect of long-lasting acquiescence is that the existence of a title is presumed.⁹⁰ In this way, the presumption that a title exists is based on another presumption; namely, that long-standing toleration exists. However, all presumptions that have arisen from the passage of a long time are not *praesumptiones iuris et de iure*, which do not permit proof to the contrary. Rather, various factors can count as counter-evidence: the admission that there is no legal title, and the admission that the action was taken for the wrong reasons.⁹¹ There is an important limitation here: the existence of a legal title is only presumed from long-lasting toleration if no great damage is caused to the other party;⁹² for in such a case, another presumption has more weight, namely the presumption that no-one wants to give up one’s own possessions.⁹³ As Balbo points out, this is a *praesumptio iuris*; that is, a presumption which is already laid down in Roman law and which receives its validity from the law.⁹⁴ Therefore, an exception in favor of the presumption of toleration can only be made if 30 or 40 years have elapsed.⁹⁵ But then, Balbo argues, an accepted practice acquires the character of a privilege.⁹⁶

Balbo notes that the extent of sovereignty rights that is subject to prescription vis-à-vis subjects was controversial in medieval legal theory. According to Panormitano (Niccolò de Tudeschis, 1396–1445), taxation rights are similar to public functions in the sense that those rights and functions that are a sign of sovereignty are not amenable to prescription.⁹⁷ According to Bartolus of Sassoferrato (1313–1357), prescription includes full liberty that does not depend on the dominion of the Emperor.⁹⁸ The sense in which, according to Bartolus, sovereignty rights can be acquired through prescription is closely connected with his concept of *civitas sibi princeps*.⁹⁹ Bartolus argues that a city that does not recognize any superior can exert functions that otherwise a prince would have exerted, for instance dispensing from infamy—a function that Bartolus explicitly ascribes to the cities of Tuscany¹⁰⁰—or conceding to minors the right to manage their own business affairs.¹⁰¹ Bartolus in the latter case refers to his commentary on *Digest* 49.15.24, in which he argues that the cities of Tuscany and Lombardy are still part of the Roman people, for three reasons: (1) they still acknowledge the Emperor in the role of a universal ruler, (2) they still use some the laws of the Empire, and (3) even if there are fields in which they do not obey the commands of the Empire, there are still some fields in which they do.¹⁰² Even Venice, in which points (2) and (3) do not apply, Bartolus argues, is still part of the Roman people because the city claims to possess this liberty due to an imperial privilege, which in principle could be revoked.¹⁰³ In his view, something analogous holds for communities that have acquired independence from commands from the Emperor either through a privilege or prescription.¹⁰⁴ Balbo interprets this to amount to the view that, because the Emperor can transfer all rights of sovereignty to the people through a privilege, the same rights can be the object of prescription.¹⁰⁵ Certainly, drawing the analogy in the way suggested by Bartolus implies that prescription leads to a situation in which independence from commands from the outside is compatible with the conception that the rights of independent cities still have an origin in the Emperor.

Following Bartolus, Balbo holds that what cannot take place is a prescription of rights of the Emperor in the sense of a complete exemption from imperial jurisdiction.¹⁰⁶ To analyze the relation between the rights retained by the Emperor and the rights that are subject to prescription, Balbo invokes the distinction between privative and accumulative prescription (*praescribi privative* vs. *praescribi cumulative*). Only in the case of privative prescription can the right exercised by the subject no longer be exercised by the Emperor.¹⁰⁷ In Balbo's view, sovereignty rights always fall under the category of privative prescription. This is certainly plausible for the exercise of judicial rights, which cannot meaningfully lie with more than one authority on the same instance level.¹⁰⁸ However, if the assumption that sovereignty rights can only be the subject of privative prescription is abandoned, the possibility arises that subjects could share sovereignty rights without questioning the sovereignty of the Emperor.

This is exactly the strategy that Besold pursues. In his discussion of the right of confederation of the German cities, he takes the view that “the passage of such a long time will receive the force of a law and a special granting of rights.”¹⁰⁹ For instance, Besold points to the alliance between Lübeck and Denmark; an alliance whose legitimacy had never been questioned.¹¹⁰ Here, he takes up the idea that tacit acquiescence is the decisive factor for prescription. In this respect, his references to Dominik Arumaeus's commentary on the *Bulla Aurea* of Emperor Charles IV are significant. Arumaeus offers several

historical observations that indicate that the Hanseatic League can invoke immemorial prescription, and Besold takes up all of these observations. For instance, both Arumaeus and Besold point out that, after the exclusion of Braunschweig from the Hanseatic League (1377), Emperor Charles IV promoted the readmission of the city to the League, which implied that the Hanseatic League could not have been formed against the will and without the knowledge of the Emperor.¹¹¹ Similarly, Cologne was excluded during the reign of Emperor Frederick III and readmitted with the support of Charles V; Bremen was expelled in 1562 and readmitted on the advice of Ferdinand I and Maximilian II.¹¹² Arumaeus and Besold also note that the Hanseatic League was subject to the Turk tax, which, again, implied that it was regarded as a legitimate legal person, because to accept economic advantages from an illegitimate conspiracy would itself be illegitimate.¹¹³ Arumaeus and Besold thereby provide the grounds for accepting the idea that the Hanseatic cities had, after such a long time, also acquired sovereignty rights through prescription.

In particular, Besold takes the cities of the Hanseatic League to be suitable bearers of confederation rights acquired through prescription of immemorial time.¹¹⁴ This holds in particular for dependent communities, even if they could not seek admission to the Hanse now:

[I]f a municipal community that obeys a prince in each and every respect would try this now, and if it were accepted by the Hanseatic League, this would probably happen against the intention of the law. But that some communities that are not dissimilar to such communities are found among the members is valid due to longtime membership [...] And it is probable that the consent of their lords had taken place in the past: in past times, lords certainly did not strive for domination to such an extent.¹¹⁵

In support, Besold adduces the example of Ezard, the Count of East-Frisia, who demanded that the city of Emden, over which he had dominion, become a member of the Hanseatic League in 1579; and from this observation, Besold conjectures that in earlier times other princes gave similar, albeit tacit, approvals.¹¹⁶

Using the terminology of “privative” and “accumulative” prescription, one could say that Besold describes the situation characteristic both of Imperial Cities and Hanseatic cities as a case of accumulative rather than privative prescription. Such an interpretation is supported by the fact that Besold maintains that the prescription of rights of confederation in no way impairs the sovereignty (*summa superioritas*) of the Empire. As he argues, this is the case because all sovereignty rights have their origin in the whole community.¹¹⁷ Therefore, both the Emperor and the *Reichsstände* can only participate in sovereignty rights but cannot own them as a property. In this sense, the sovereignty rights themselves are not subject to prescription, but only the exercise of these rights, and acquiring the right of forming confederations does not take this right away from other *Reichsstände* and the Emperor.¹¹⁸

Is this line of argument based only on a contingent development within the Roman law tradition or does it also have a natural law foundation? Besold never addresses this question. However, a look into the work of Balbo will be helpful. Balbo notes that a widely used argument *against* the compatibility of prescription with natural law was the rule of law according to which “it is equitable according to natural law that no-one should be made richer to the detriment and injury of someone else.”¹¹⁹ Balbo

objects that the one against whom prescription works suffers damage due to his negligence: it is someone who did not make use of his right and did not reclaim it; and these omissions are something that can be imputed to him.¹²⁰ Again, Balbo refers to a medieval authority, this time to the canonist Giovanni d'Andrea (c. 1270–1348). As d'Andrea argues in his commentary on *The Rules of Law*, prescription in civil law is one of the cases in which positive law follows the standards of rightness that are found in natural law, but specifies these standards by determining certain periods of time after which prescription takes place.¹²¹ The relevant standard of rightness derives from the consideration that “the one who neglects to reclaim his possessions gives occasion for conflicts and quarrels, and consequently preference is given to the common good, which consists in the peaceful living-together of a community.”¹²² Balbo accepts this line of argument and adds that prescription is also not contrary to the mental well-being of the one who profits from it, as long as this person acts in good faith; and, in order to have good faith, it is enough to presume that the previous rights-holder tacitly agrees with the acquisition of those rights that he has not reclaimed for a long time.¹²³ In particular, Balbo argues that good faith usually does not create any problems in the case of the prescription of sovereignty rights because, after a long time, knowledge concerning the use of sovereignty rights will be widespread and therefore gives rise to the presumption of the tacit consent of the previous holder of these rights.¹²⁴ For these reasons, he concludes that prescription of immemorial time is not contrary to natural equity (*naturalis aequitas*).¹²⁵

Balbo's line of argument thus indicates how accepting the sovereignty rights of dependent communities could be justified by natural law considerations. If so, then grounding duties of esteem on the acceptance of such rights becomes a persuasive alternative to a power-oriented conception of esteem for political communities. In fact, Besold argues that the acquisition of confederation rights gives rise to the right that envoys be recognized as ambassadors. In his view, this connection exemplifies a more general idea that he sees already at work in the political practice of his time. As an example, he mentions the historical conflict between Burgundy and the Electors over the hierarchy of their ambassadors. In this dispute, Burgundy argued that its ambassadors should have precedence because they represent a territory that has more power than any other single territory in France and Germany. The Electors countered by emphasizing that their constitutional function was not shared by Burgundy. As Besold notes, the Electors were successful in defending the esteem (*existimatio*) in which they were held.¹²⁶ Besold here documents a conception of duties of esteem that is not oriented toward territorial power but rather toward the fulfillment of certain political functions.

Something analogous can be seen in Besold's treatment of the envoys of Imperial Cities. Because Imperial Cities, given their independence from other territories, and given their natural rights of self-defense, possess confederation rights, he argues, their envoys have the right to be recognized as ambassadors.¹²⁷ Likewise, Besold argues, because those Hanseatic cities that are not Imperial Cities have acquired confederation rights through prescription of immemorial time, they, too, have acquired the right to send envoys with the rank of ambassadors: “For once a goal has been accepted, it would lose the name of a goal if the means for achieving it were not accepted at the same time.”¹²⁸ The idea that sovereignty rights can be acquired accumulatively through prescription of immemorial time thus provides the foundation for duties of

esteem toward dependent communities: those expressions of esteem that symbolize the recognition of sovereignty rights are owed even to dependent communities because these expressions of esteem belong to the circumstances that enable them to fulfill functions under the law of nations.

4. Conclusion

In Besold's political writings, there are thus two strands of thought that complement the intuition that duties of esteem between political communities should be a function of power through a non-comparative and non-competitive conception of duties of esteem toward the envoys of communities with sovereignty rights. Besold understands duties of esteem in diplomatic relations not only as a function of the different degrees of dignity that different communities have acquired through factors such as age and power, but also as a function of the confederation rights that communities have acquired. In his view, even dependent communities can acquire confederation rights when the alliances they form play an effective role in peace keeping and in the defense of rights. Acquiring confederation rights thus does not depend on the willingness of greater powers to grant these rights. Rather, Besold holds that these rights can be acquired through long-standing, widely accepted practice; and he holds that acquiring confederation rights does not detract anything from the sovereignty rights of other political communities. Moreover, in the sources that he adduces for his account of prescription of immemorial time, the idea that there is a natural law foundation for prescription, including the prescription of sovereignty rights, is clearly articulated.

What, from Bodin's perspective, must look like a dissolution of sovereignty may bring serious advantages in political practice because it allows recognizing the functions of smaller political communities under the law of nations. Also, fulfilling the ensuing duties of esteem toward the representatives of smaller political communities is instrumental in fulfilling these functions. For this reason, if the signs of esteem that are due to independent nations are denied to political communities that do not possess independence but nevertheless are able to fulfill functions under the law of nations, then this may violate natural rights to esteem; and violating the duties of esteem toward envoys of communities that possess sovereignty rights is itself a source of political instability. Besold's way of thinking about duties of esteem in diplomatic relations reduces the status insecurity experienced by dependent communities; thereby, it lowers the potential for conflicts over status and it facilitates the functioning of envoys of dependent communities in diplomatic conflict resolution.

Notes

1. For an overview of the recent debate, see Friedrichs, "An Intercultural Theory of International Relations."
2. On Besold's biography, see Pohlig, "Gelehrter Fömmigkeitsstil"; Friedeburg, "Between Scylla and Charybdis?" On the theological implications of Besold's natural law theory, see Friedeburg, "The Juridification of Natural Law."
3. For detailed discussion of the scope of sovereignty rights, see Besold, *De iuribus majestatis*.
4. Besold, *De foederum iure*, 25–6.

5. Bodin, *Six livres de la république*, I, 7. On medieval antecedents, see Riesenbergh, *Inalienability*.
6. See Engster, “Jean Bodin”; Nicholls, “Sovereignty and Government.”
7. On Arnisaeus’s conception of sovereignty, see Dreitzel, *Protestantischer Aristotelismus und absoluter Staat*, 212–44; Brett, *Changes of State*, 131–6.
8. On Besold’s critique of absolutism, see Franklin, “Sovereignty and the Mixed Constitution,” 323–8.
9. Besold, *De maiestate in genere*, 4–5.
10. *Ibid.*, 5.
11. *Ibid.*; see Kirchner, *Respublica*, 22–3.
12. Besold, *De maiestate in genere*, 6.
13. *Ibid.*; see Daneau, *Politices Christianae libri septem*, 43–4.
14. Besold, *De maiestate in genere*, 6; see Althusius, *Politica*, 58. On Althusius’s conception of sovereignty, see Scattola, “Von der maiestas zur symbiosis”; Brett, *Changes of State*, 128–33.
15. Besold, *De arcanis rerumpublicarum*, 190.
16. Botero, *Ragion di stato*, 17–18; Boccacini, *Ragguagli*, 109–11. On Boccacini’s political thought, see d’Alessio, “Le parole e le cose.”
17. Besold, *De foederum jure*, 41.
18. On Besold’s reception of this literature, see Fedele, *Naissance de la diplomatie moderne*, 415–27.
19. Besold, *De legatis*, 38.
20. *Ibid.*, 46.
21. *Ibid.*, 47.
22. *Ibid.*, 74.
23. Besold, *De praecedentia*, 118.
24. *Ibid.*
25. *Ibid.*
26. *Ibid.*
27. *Ibid.*, 124.
28. *Ibid.*: “Nec potest haec contentio praetermitti sine honoris ac famae laesione, quodque nil contra jura fiat, si quis praeeminentiam sibi debitam vindicare contendat.”
29. *Ibid.*
30. *Ibid.*
31. Besold, *De legatis*, 14.
32. Besold, *De legationibus*, 35.
33. Besold, *De legatis*, 58: “Laeduntur vero Legati, dictis, factis, & utroque. Dictis, si inclementius adpellentur. Inde enim, immane, quot qualesque surgant dolorum aculei. Ob solam contumeliam verborum, Imperia ad ultionem acerrime exardent.”
34. *Ibid.*, 60: “Ob Legatos autem a privatis violatos, nequaquam bellum inferri permittimus; nisi populus, a cujus inquilinis violatio fuit facta, Justitiae detrectet administrationem.”
35. On Braun’s biography, see Freudenberger, “Braun, Konrad.”
36. Braun, *De legationibus*, 93.
37. *Ibid.*, 96.
38. *Ibid.*, 239.
39. *Ibid.*, 152.
40. *Ibid.*, 13.
41. Kirchner, *Legatus*, 29–30.
42. *Bulla Aurea*, Cap. XV, § 1, in Goldast, *Collectio constitutionum imperialium*, vol. 1: 361: “illis confoederationibus [. . .] exceptis, quas Principes, & Civitates, ac alii super generali pace provinciarum atque terrarum inter se firmasse noscuntur. Illas enim nostrae declarationi specialiter reservantes, in suo decernimus vigore manere, donec de his aliud duxerimus ordinandum.”
43. On Wehye’s position in the development of German law of peoples, see Stolleis, *Geschichte des öffentlichen Rechts*, 189–90.

44. Wehye, *Meditamenta pro foederibus*, 135: “ius maiestatis habentes, vel ex concessione Principis, vel ex contractu, vel ex privilegio, recte foedera iungere.”
45. *Ibid.*, 150–1.
46. On Arumaeus’s biography, see Muther, “Arumaeus, Dominicus.”
47. Arumaeus, *Discursus academici*, 290.
48. *Ibid.*, 287–8.
49. *Ibid.*, 292.
50. On Gail’s biography, see Gschließer, “Gail, Andreas von.”
51. Gail, *Practicarum observationum libri*, 395 [2.54.10]: “Castrum vel Civitatem, certis pactis & conditionibus, alicui Principi, vel alteri civitati subjectam; solum subditam censi, quo ad illa pacta, & expressas condiciones; in reliquos liberam permanere.”
52. Besold, *De foederum jure*, 24: “Hasce ergo civitates, foedera contrahere posse, ad instar Imperialium civitatum, probabile est: idque edocere potest celebre civitatum Hanseaticarum; maritimarum, & aliarum Teutonicarum foedus.”
53. Besold, *De statu reipublicae subalterno*, 72: “Vasallum quo ad personam subditum non esse.”
54. *Ibid.*, 73.
55. *Ibid.*, 74.
56. *Ibid.*, 75: “Verba [...] reverentialia, verba honoris & curialitatis, magis adulatoria, quam subjectoria intelliguntur.”
57. Besold, *De foederum jure*, 14.
58. *Ibid.*
59. Bodin, *Six livres de la république*, 75–6.
60. Besold, *De foederum jure*, 57.
61. Besold, *De foederum jure*, 11: “Foedus ita definiri posse videtur, ut sit pactio publica, duarum, vel plurium rerumpublicarum; de mutuis auxiliis, aut consimili re quapiam sibi mutuo praestanda. Etenim, ne definitio haec ita late accipi possit, ut etiam contractum quemcunque comprehendat, quem principes vel respúblicae iniverunt; praestatio illa referri debet ad foederis naturam: ut scilicet fiat, necessitatis, vel salutis publicae causa.”
62. For an analysis of the legal standing of these alliances, see Distler, *Städtebünde*.
63. On the structure and development of the Hanseatic League, see Selzer, *Die mittelalterliche Hanse*; Wubs-Mrozewicz and Jenks, *The Hanse*; Harreld, *A Companion to the Hanseatic League*.
64. Besold, *De iuribus maiestatis*, 104.
65. *Ibid.*, 100.
66. *Ibid.*, 172.
67. Besold, *De iure universitatum*, 258–60.
68. Besold, *De iuribus maiestatis*, 100–1.
69. Besold, *De foederum jure*, 7: “Quemadmodum natura, societatis & auxilia communia conquirere videtur [...] Sic pariter communibus, iisque potentioribus hostibus, nulla commodiori ratione, quam societatibus, foederibusque occurri potest.”
70. *Ibid.*, 7–8; for More’s rejection of political alliances, see More, *Utopia*, 83–5.
71. Besold, *De foederum jure*, 8: “naturalis illius necessitatis vigore, nemo alterum, propriae cum vitae, salutisque periculo, defendere tenetur.”
72. [Anonymous], *Kurtze Verantwortung*, 8.
73. *Ibid.*, 10.
74. *Ibid.*
75. *Ibid.*, 11.
76. Besold, *De iuribus maiestatis*, 172. On this concept, see Partsch, *Die longi temporis praescriptio im klassischen römischen Rechte*.
77. Bodin, *Six livres de la république*, 619.
78. *Ibid.*, 217.
79. [Anonymous], *Gründlicher Bericht*, 128: “Denn wann den HanseStaedten solche Colligationes, Confoederationes und Conspirationes erlaubt, unnd alles vor Recht angesehen

- werden solte, wuerde man ihnen mit der Zeit das Regiment im Reich Teutscher Nation [...] gar aufftragen unnd Sie zum Oberhaupt machen muessen.”
80. Arnisaeus, *De jure majestatis*, 180: “si qui super eo jus suum fundatum dicat, instabili prorsus & incerto fundamento se niti confiteri cogatur.”
 81. Ibid.
 82. Ibid., 181: “impossible est, ut jura summa maiestatis possint separari a majestate, ut tamen ipsa maiestatis vim & locum retineat.”
 83. Ibid.
 84. Ibid., 182: “[V]erosimilem non est principem vel civitatem ignorare se esse subditos & contineri imperio alterius, tum quia in iis major justitiae cura & cognitio praesumitur [...] tum quia acta sua in publicos annales referre solent, ex quibus de statu & libertate sua certi fieri possunt.”
 85. Besold, *De majestate in genere*, 208: “Germaniae Princeps praescribens regalia, non habet ea, ut majestatem, sed ut privilegia perpetua. Ergo haud differt ab investitura, nisi ut non possit ad Imperatorem redire morte. Sic civitates habent praescripta regalia, sed specie vel substantia non alia sunt ab iis, quae per investituram tantum ratione modi perveniendi & finiendi differunt. Sicque regalia in Imperio Romano praescribentes, non ideo liberi sunt; sed exercitium tantum regalium jurium, praescriptione acquirunt: ipsisque praescriptio est loco concessionis, & summa superioritas nihilominus reipublicae salva manet. Ergo habere majestatem per gratiam (puta, privilegium, investituram, praescriptionem) non est habere illa ipsam majestatem: sed quondam ejus participationem.”
 86. Ibid.: “Hic notanda est communis illa theoria doctorum: quocunque modo regalium concessio fiat, quod nihilominus superius illud & majesticum Imperium, ea largitione nunquam censeatur comprehensum, sed potius major semper, quam est concessa, reservata & retenta putetur potestas [...] Imperator statibus privative regalia concedit, & per contractum eoque promittit, se ea ipsis non adempturum: sed cumulative ipsis ea largiur ratione proprietatis & inspectionis.”
 87. Besold, *De juribus majestatis*, 172.
 88. Balbo, *De praescriptionibus*, 73.
 89. Ibid., 80.
 90. Ibid., 88.
 91. Ibid., 87.
 92. Ibid., 88.
 93. Ibid., 85. On early modern uses of presumptions, see Blank, *Arguing from Presumptions*.
 94. Ibid.
 95. Ibid., 88.
 96. Ibid., 118.
 97. Ibid., 400.
 98. Ibid., 402.
 99. On Bartolus’s analysis of the status of Italian city states, see Canning, “Ideas of the State”; Ryan, “Bartolus of Sassoferrato and Free Cities.”
 100. Bartolus, *In II. partem Digesti Novi*, 423 (commentary on *Digest* 48.1.7.14).
 101. Bartolus, *In Digestum Vetus*, fol. 166r (commentary on *Digest* 4.4.3.1).
 102. Bartolus, *In II. partem Digesti Novi*, 637.
 103. Ibid.
 104. Ibid.
 105. Balbo, *De praescriptionibus*, 403.
 106. Ibid., 401–2.
 107. Ibid., 407.
 108. Ibid., 424.
 109. Besold, *De foederum jure*, 23: “Tempus autem tam prolixum, totque aetatum decursu munium; obtinet vim legis, specialisque concessionis.”
 110. Ibid., 20.
 111. Arumaeus, *Discursus academici*, 261; Besold, *De foederum jure*, 22.

112. Arumaeus, *Discursus academici*, 261; Besold, *De foederum jure*, 23.
113. Arumaeus, *Discursus academici*, 263; Besold, *De foederum jure*, 23.
114. Besold, *De foederum jure*, 26.
115. Ibid.: “[S]i quae civitas municipalis, in omnibus, & per omnia principi parens, id nunc tentaret, & ab Ansa reciperetur, fieret id forsitan contra Juris rationem: Quod autem nonnullae, iis non admodum dissimiles, inibi reperiuntur; valet id utique propter vetustatem receptionis [...] Et probabile est, Dominorum consensum tum intervenisse: qui certe quondam non ita dominationi studebant.”
116. Ibid., 26–7.
117. Besold, *De iure imperialium civitatum*, 172.
118. Ibid., 172.
119. *Digest* 50.17, lex 206: “jure naturae aequum est, neminem cum alterius detrimento et injuria fieri locupletioem.”
120. Balbo, *De praescriptionibus*, 16.
121. Giovanni d’Andrea, *In titul. De reg. iur. commentarii* (Lyon: Iunta, 1550), fol. 148r. On d’Andrea and his context, see Orazio Condorelli, “Giovanni d’Andrea e dintorni.”
122. d’Andrea, *In titul. De reg. iur. commentarii*, fol. 149r.
123. Balbo, *De praescriptionibus*, 18.
124. Ibid., 121–2.
125. Ibid., 18.
126. Besold, *De praecedentia et sessionis praerogativa*, 139–40.
127. Besold, *De legatis*, 27.
128. Ibid., 28: “Finis enim concessus, nomen suum dimittit, si non simul quoque media ad illum deducenda concedantur.”

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Andreas Blank holds a research position at Alpen-Adria-Universität Klagenfurt, funded by the Austrian Science Fund (FWF). He was Visiting Fellow at the Center for Philosophy of Science (University of Pittsburgh), the Cohn Institute for the History and Philosophy of Science and Ideas (Tel Aviv University) and Istituto per il Lessico Intellettuale Europeo e Storia delle Idee (ILIESI - CNR, Rome), and held Visiting Associate Professorships at the University of Hamburg and Bard College Berlin. He is the author of some 80 articles in edited volumes and journals such as *Annals of Science*, *British Journal for the History of Philosophy*, *European Journal of Philosophy*, *History of European Ideas*, *Journal of Early Modern Studies*, *Journal of the History of Ideas*, *Journal of Modern Philosophy*, *The Monist*, *Perspectives on Science*, and *Science in Context*.

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