***“Das Recht kann nicht ungerecht sein …” Beiträge zu Leibniz’ Philosophie der Gerechtigkeit*.**

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Leibniz and the Early Modern Controversy over the Right of International

Mediation

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1. Introduction

Since Roman times, legal theorists have distinguished between two kinds of extra-juridical conflict resolution: arbitration and mediation. While the basic structure of arbitration consists in the agreement between the parties in conflict to accept the verdict of an impartial intermediary, the role of the mediator was seen not in passing a binding verdict but rather in facilitating the interaction between the parties in conflict—be it by carrying messages or by presiding over negotiations between delegates of the parties—or in shaping the content of an agreement—be it by collecting relevant information, by offering interpretations of previous agreements, or by providing admonition and giving advice. The distinction between the person charged with arbitration (*arbiter*) and the person charged with mediation (*arbitrator*, *mediator*, *intercessor* or *conciliator*) was extensively applied both in the practice of medieval civil law and in the practices of medieval *ius gentium*.[[1]](#footnote-1) Moreover, it is well documented that both arbitration and mediation continued to play a significant role both in the practice of early modern civil law and in early modern international relations.[[2]](#footnote-2) On a theoretical level, however, the idea of extra-juridical intermediaries in civil law came to be questioned because both arbitration and mediation, unlike regular juridical proceedings, do not necessarily derive their legitimacy and effectiveness from acts of the sovereign. For this reason, they were seen as institutions in tension with the principles of the emerging theory of absolutism that tended to regard all juridical power as derivate upon the legislative and sanctioning power of the sovereign.[[3]](#footnote-3) Likewise, the thought that conflict resolution derives its legitimacy and effectiveness from an authority superior to the parties in conflict gave rise to a lively early modern debate about the legitimacy and effectiveness of arbitration and mediation in the law of nations.

 Late Scholastic thinkers such as Francisco de Vitoria, Robert Bellarmin and Francisco Suárez ascribed to secular powers the duty to seek papal arbitration when military conflicts imply a danger to the Christian faith.[[4]](#footnote-4) But during the sixteenth century, the idea of papal arbitration lost much of its influence. Alternatively, Jean Bodin advocated that international arbitration be carried out by a sovereign who is more powerful than the parties of the conflict.[[5]](#footnote-5) Bodin’s more abstract proposal was soon followed by an extensive tract literature advocating that the French take on the role of arbiter, and later that the English monarch also take on the role.[[6]](#footnote-6) By contrast, Hugo Grotius argued that court-like decisions can be binding only when there is a subordination relation between a ruler and his subjects, so that between equally strong powers the decisions of arbiters cannot acquire, for theoretical reasons, the binding force of court decisions.[[7]](#footnote-7) One solution to this problem was a revival of an older type of treaty-based arbitration—a type of arbitration where the binding power of the decision did not derive from the superior power of the arbiter but rather from mutual consent of the parties in conflict.[[8]](#footnote-8) Another solution was to resort to mediation instead of resorting to arbitration because mediation does not presuppose any superiority of power on the side of the mediator. While the theory and the practices of early modern international arbitration are well researched by now, relatively little work has been done about the theory and practices of early modern international mediation.

Leibniz’s political thought is no exception to this. While his views on arbitration in religious and political matters, thanks to pioneering work by Marcelo Dascal, are well documented and well understood by now,[[9]](#footnote-9) Leibniz’s views on international mediation have not found much attention. This is hardly surprising: his writings concerning arbitration are numerous and detailed, whereas there are only some thematically connected, but scattered remarks on international mediation.[[10]](#footnote-10) Still, this article will show that something interesting can be gathered from these scattered remarks. This is so because Leibniz’s remarks about international mediation are connected to two central issues in political theory (1) the question of the nature of sovereignty, and (2) the question of the demands of international justice. Moreover, these connections turn out to offer some previously neglected insights both when read within their early modern context and when read within the context of contemporary debates about the structure of international mediation. Substantiating these claims evidently will require detailed consideration of two contexts—one historical, one contemporary—that display some notable similarities but also some notable differences. I will outline the contextual matters in section 2 and, subsequently, discuss how Leibniz’s remarks may provide some insightful alternatives to both early modern and contemporary ways of thinking about international mediation in section 3.

2. Three Types of Mediation

Thomas Princen, one of the most influential contemporary thinkers on intermediaries in international conflict, distinguishes two types of mediators: “neutral mediators” and “principal mediators”.[[11]](#footnote-11) Put in a nutshell, neutral mediators are those who do not have any interest in the disputed issue itself, while principal mediators are those whose interests—such as security interests, strategic interests, or interests in propagating political ideas—are influenced by the existence and outcome of the conflict. As Princen suggests, there are several reasons why mediation by neutral mediators can be successful: such mediators can facilitate communication, provide expert advice, and pool relevant information. Still, if they are successful, the resulting agreement will always be an agreement between the parties in conflict.[[12]](#footnote-12) By contrast, principal mediators are motivated to protect their own interests by promising rewards for readiness to reach agreements and threatening sanctions for refusal to reach agreements. This is why Princen argues that the efficacy of the agency of principal mediators mainly depends on their capacity to change the incentive structure of the conflict parties. Consequently, the agreements that can be reached include not only agreements between the parties in conflict but also agreements between the principal mediator and one (or more) of the parties in conflict. In particular, the possibility of circular deals opens up the possibility of finding a solution to a conflict because, due to tradeoffs, all parties, the principal mediator included, can regard themselves as winners.[[13]](#footnote-13)

Princen regards the distinction between neutral mediators and principal mediators to be dichotomous. On first sight, this seems to be highly plausible. After all, either the interests of a mediator are touched by the existence and possible outcome of a conflict, or they are not. Still, thinking in dichotomies here may be misleading in important respects. One of the concepts that are perspicuously absent from Princen’s sophisticated analysis of the workings of political interests in the two types of mediation is the notion of justice. But may not the procedural function of neutral mediators at least raise questions of procedural justice? And may not the pursuit of their own interests implicit in the role of principal mediators raise even more substantial questions of justice? If so, focusing one-sidedly on the notion of interests may explain why so many real-world initiatives at providing mediation in international conflict miserably fail. One of the reasons why examining early modern conceptions of international mediation is so interesting is that issues of justice play a crucial role there. And this may cast doubt on the adequacy of thinking about types of international mediation in terms of a dichotomy.

To be sure, as far as the role of the neutral mediators goes, there are wide-ranging parallels between Princen’s account and early modern treatments. One of the leading early modern theoreticians of diplomacy, Abraham van Wicquefort (1606-1682)[[14]](#footnote-14) points out that a common understanding explicitly stated in diplomatic documents of the time was that it is not the role of mediators to judge the contents of the proposals of the parties in conflict or to make proposals of their own. Rather, the task of mediators was seen as being restricted to reporting faithfully the positions of the parties and admonishing the parties to stick to what is just and reasonable.[[15]](#footnote-15) Also, Wicquefort notes that, according to such an understanding, the mediators are not allowed to establish direct channels of communication with the heads of the parties in conflict but are bound to accept the channels of communication through their emissaries.[[16]](#footnote-16) One of the advantages of such a restricted role of the mediators was seen in procedural issues: for example, using an intermediary allows parties to make their proposals at the same time, thereby avoiding giving indications of weakness by making the first move. Another advantage of such indirect communication was seen to be the possibility of rendering the positions of the parties in conflict clearer than they would be in direct negotiations fraught with emotional tension.[[17]](#footnote-17) But Wicquefort is also very much aware of the pragmatic limitations of this kind of mediation: “[T]he mediators had a lot of trouble in Münster but little success and even less honor. [...] On can truly say: it is not the mediators who bring it about that treaties are made; rather it is only the good will of the parties […].”[[18]](#footnote-18)

However, according to a diverging line of early modern thought, the requirement of impartiality cannot be transferred from the role of arbiter to the role of mediator. On first sight, this line of argument may seem to correspond to the principal mediator as understood by Princen. However, on closer examination some substantial divergence will become evident. The question of how the effectiveness of external threat can be integrated with the demands of justice can be seen as the central problem connected with the early modern theory of the “armed mediator” (*mediator armatus*) that remained influential throughout the seventeenth and eighteenth centuries. While any person was seen as being capable of acting as a neutral mediator in international conflict, the function of the armed mediator required military power. The relevant line of thought can be found already in Bodin:

“One of the things that are most necessary for the security of treaties of peace and alliance is to nominate someone greater and more powerful as a judge and arbiter for the case of infringement; such that one can have recourse to him as a guarantor and that he mediates the agreement between those who, because they are equal cannot honestly refuse war nor demand peace.”[[19]](#footnote-19)

Samuel Pufendorf takes up this line of thought and develops it in greater detail. This is the argument that he offers for why impartiality cannot be a necessary condition for international mediation:

“Since [the mediators] undertake so holy a task, it would be the height of inhumanity to sternly repulse them, even on the claim that they seem to have some special connection with one of the parties. For it is within my power to accept what I will of their offering, and it is recognized as the chief service of friends that, when they will not themselves join with me in the quarrel, they will endeavour to bring it to an amicable conclusion.”[[20]](#footnote-20)

Moreover, Pufendorf is clear that the mediator may be motivated by his own interests: “[I]t is often much to the interest of the others that there be no war between two peoples, either because some sparks from a neighboring fire may be carried to them as well, or because it may be prejudicial to them for one or both of the parties to be destroyed.”[[21]](#footnote-21) Consequently, the figure of the *mediator armatus* is tied to a sense in which natural law can justify military intervention:

“It is certain that several who are especially interested in having the quarrel settled can enter a pact to co-operate in bringing together the combatants, and prescribe to one another how far each of them may join in the war. In which case it is required that no one of them is bound by a special treaty to give aid to either of the combatants in case of war. […] Two or more whose interest it is for the war to cease, upon weighing the cases of both sides, may agree on what terms they feel peace can be most fairly secured; and then they can offer these terms to the warring parties with a threat against him who refuses peace on those terms, that they are ready to join arms with him who accepts them […]. [S]ince by natural law a man is able to join arms with him who feels that an injury is being done him, especially when such an injury will entail some damage to himself as well, by such a method he openly declares the he is desirous of equity and peace, because he himself wants others to come to fair terms, and is unwilling to go to war before the other has rejected a friendly way of compromising in the quarrel.”[[22]](#footnote-22)

A second prominent argument for the right of armed mediation is found in a group of seventeenth-century peace treaties. Here, the complex relation between mediation and peace guarantees becomes relevant. Clearly, mediation and peace guarantees were seen as separate institutions of the law of nations, as documented by the fact that the duties of a mediator were not necessarily tied to the duties of a peace guarantor. For example, the treaties of Nijmegen (1678/79) and Rijswijk (1697) explicitly left it to the discretion of the powers acting as mediators to back up or not to back up the peace treaty with a peace guarantee.[[23]](#footnote-23) Still, although the institution of a guarantor is independent of the institution of a mediator, accepting the duties of a guarantor also has legal consequences with respect to the role of mediation.

This connection is spelled out in two early modern tracts about peace brokering. For example, a dissertation *On Peace Guarantee* defended by Daniel von Stephani under the direction of the prominent jurist Heinrich von Cocceji (1644-1719)[[24]](#footnote-24) puts it as follows: “Another question is whether a mediator can provide a guarantee? I answer: He cannot do this according to the law of peace but he can do it according to the law of war […].”[[25]](#footnote-25) As the authors argue, this is so because the violation of the peace contract gives a just cause of war.[[26]](#footnote-26) Similarly, a dissertation on *On Prudence with Respect to the Office of the Peacemaker between Nations* defended by Friedrich Wilhelm von Walrave and Johannes Christophorus von Schleinitz under the direction of Gottlieb Samuel Treuer (1683-1743)[[27]](#footnote-27) explains:

“The justice of such armed mediation rests on the right defined by previous contracts to resume arms on the occasion of a breach of peace and to protect oneself and one’s allies against damages that arise from the misuse of warfare by one party against the other.”[[28]](#footnote-28)

These passages indicate that, once a peace guarantee was given, a new legal connection with mediation was understood to arise. This is so because typically the sanctions announced by peace guarantors was not simply military intervention against those parties who breach the treaty but rather a commitment to act as a mediator in the newly arising conflict, with the threat of military intervention as a last resort. In this sense, giving a peace guarantee typically involved the consent to acting as a *mediator armatus* in the case of the breach of the peace treaty. Hence, having given a peace guarantee is the second circumstance that gives rise to the right of acting as an armed mediator in cases of violations of a peace contract. This is the second sense in which the “justice of armed mediation” becomes relevant.

 Some historical documents indicate that armed mediation based on a former peace guarantee was understood to be bound in this way to criteria of justice. For example, Treuer points out that the peace guarantee that formed part of the Peace of Oliva (1660) formulated the following obligation:

“But if it should happen that one party is subject to a grave injustice, apart from armed force, from one or more than one of the other parties, it is not allowed to the party that is injured in this way to have recourse to armed force immediately; rather, in the first instance an amicable solution of the controversy has to be sought, in such a way that, if the injured party cannot reach an agreement with the violating party immediately, it admonishes the other parties of the peace to establish a general commission in the name of all parties […], in which the matter is discussed by the deputies of all sides and, if possible, brought to conclusion within four or, at most, some more months. But if the injuring party obstinately rejects the equitable means that are proposed, then it is allowed to the injured party to preserve its right by force of arms and, after a legitimate declaration of war, to wage […] war against the injuring party.”[[29]](#footnote-29)

The role of the armed mediator clearly differs from the role of the neutral mediator as understood by Princen because the very function of armed mediation is to protect the treaty-based rights of one of the parties in conflict. At the same time, the role of the armed mediator differs also from the role of principal mediator as understood by Princen. To be sure, both the threat of just military defense of the injured party and the threat of military intervention through the armed mediator after failed mediation have the aim of changing the incentive structure of one (or more) of the parties in conflict—avoiding military action will play a part in their calculus of interests. But the role of the armed mediator cannot be reduced to such a calculus of interest. This is so for two reasons: (1) the threat of military intervention has to be bound to the criteria of just war—be it the defense of one’s own interests or those of one’s allies against unjust damage, or be it the enforcement of a peace contract. (2) Before resorting to warfare, the armed mediator is bound to pursue mediation which, in turn, has to respect standards of justice or equity. The early modern conception of armed mediation, hence, seems to characterize a third type of mediation in international conflicts that is entirely overlooked in contemporary treatments of international conflict resolution.

3. Mediation, Justice, and Sovereignty

Leibniz never discusses the tasks of mediators in international conflicts in much detail but rather seems to presuppose, and rightly so, that the institution is well-established and well-understood in his time. Still, his remarks about the role of German princes as mediators do add some crucial aspects to the early modern controversy over the right of international mediation. These remarks are found in his discussion of the question of whether the minor German princes have the right to emit ambassadors, a topic to which Leibniz devoted one of his early political works, *Caesarinus Fürstenerius de jure suprematus* (1677). The importance that the early moderns conferred to this question—documented by a long series of publications, some of which Leibniz consulted[[30]](#footnote-30), and some of which responded to Leibniz’s work[[31]](#footnote-31)—may easily elude present-day readers. After all, the practical consequences of the distinction between ambassadors and lower-level envoys were restricted to matters of protocol, i.e., to ceremonial matters and titles. This limited range of practical consequences, as Leibniz makes clear, is due to the fact that other relevant distinctions of diplomatic function—for example, the distinction between holding a permanent office and being sent for a particular negotiation, or the distinction between having full power to sign agreements and being obliged to consult the prince before signing agreements—do not coincide with the distinction between being an ambassador and being a lower-level envoy.[[32]](#footnote-32) Still, the difference between the different types of emissaries was seen as significant. As Leibniz explains, only ambassadors were regarded as having “representative character” (*character repraesentatitium*).[[33]](#footnote-33) That is to say that they not only fulfil a certain function in the process of negotiation but are also regarded as placeholders who have the right to be treated, within the limits of custom, as if the persons whose place they hold were present.[[34]](#footnote-34) This is why matters of protocol became so important: they were regarded as external indications of whether the emissary was regarded as the representative of a sovereign or not. No wonder, then, that smaller powers were very sensitive to the question of whether or not their emissaries were accepted as ambassadors.

Leibniz makes it clear that the question of whether the German estates have the right of sending ambassadors is at the same time a question of honor and a question of justice. In his work on the election of the King of Poland, he spells out the political implications of honor in detail. He has formulated three slightly different versions of the argument,[[35]](#footnote-35) and the following is perhaps the clearest version of the three:

“Everything dishonest diminishes *honor*.

*Honor is the reputation for power*.

Who has a lower reputation concerning power is taken to be capable of being *injured more easily*.

What is taken to be easier is taken to be done with less inconvenience.

That means that someone who likes to injure us is dangerous.”[[36]](#footnote-36)

In this way, considerations concerning honor are deductively linked with considerations concerning political risks. This is why there is a specifically political dimension to questions of honor. What is more, in *Caesarinus Fürstenerius* Leibniz casts the role of honor in terms of justice. More specifically, he treats the question of the diplomatic rank of the envoys of the German princes as a matter of “distributive justice with respect to honor and rewards.”[[37]](#footnote-37) In particular, he treats the right of sending ambassadors as a matter of treating like cases in like manner:

“[T]he same signs of honor have to be shown toward him and to his envoys that are shown to all those who use the same right of weapons, for the law of nature does not permit that these are treated differently due to lack of respect who have in hand the same cause as the others by means of which they vindicate from themselves the privileges of the law of nations […].”[[38]](#footnote-38)

Consequently, “whatever is conceded to many on the basis of some ordinary rights, such that it is also demanded by them, cannot be denied without injustice to those others who possess the same dignity.”[[39]](#footnote-39)

To defend this line of thought, Leibniz considers an objection according to which matters of honor and rewards, very much like alms to the poor, should be regarded as matters of generosity rather than justice, such that neglecting duties of providing honor and rewards does not give rise to legal action.[[40]](#footnote-40) He responds: “[T]his is not so when honor is paid to princes […]. For someone who shows reverence to someone in a position of great dignity, does not give something that is owed out of generosity but does what is his duty.”[[41]](#footnote-41) As he argues, this is so because refusing to show the external signs of honor expresses “contempt for the offended and an almost hostile attitude. From whence arises resentment, the desire for vengeance and at last war which the task of the law nations is to avoid.”[[42]](#footnote-42) Here a second specifically political aspect of honor comes into play: refusing to respect the signs of honor is perceived as an insult, with all the conflict potential that the passions triggered in this way bring with them. This is why matters of honor are part of the law of nations. As he points out: “The highest rationale of the law of nations is the avoidance of wars […].”[[43]](#footnote-43) Because matters of honor are related to the origin of international conflicts, justice regarding matters of honor belongs to the law of nations. This is why for the more cultivated nations of Europe, also “the care for dignity forms part of the law of nations.”[[44]](#footnote-44) Three interrelated requirements, thus, are essential in peace negotiations: (1) that the dignity of the parties in conflict be respected; (2) that some way be found in which the passions of the parties in conflict can be made innocuous for the course of negotiations; and (3) that as far as honor is concerned, interests do not matter but rather justice.[[45]](#footnote-45) Recognizing the dignity of envoys certainly contributes to handling passions, and will do so only if it is done not out of arbitrary interest but with the intention of recognizing the rights of the envoys and of the powers that they represent. This is why Leibniz emphasizes that “we not talking about matters of fact but about matters of right.”[[46]](#footnote-46)

Still, the entire line of argument rests on the assumption that the German princes have the same diplomatic rights as the great European powers and, on first sight, this assumption seems to disregard the enormous power differences between the great European monarchies and the smaller principalities. To dispel this impression, the main argumentative thrust of *Caesarinus Fürstenerius* goes in the direction of establishing the relevant sense of likeness between the great monarchies and the smaller territories that bestows the same diplomatic rights to all of them. In order to establish that the authorities of smaller territories possess sovereignty and, hence, the right of sending ambassadors as a matter of distributive justice with respect to honor, Leibniz provides a detailed analysis of the role of the smaller powers in international relations. And it is in this context that Leibniz’s considerations concerning international mediation come into play.

To begin with, Leibniz notes that both offering and accepting mediation can be motivated by a variety of political interests. For instance, in a piece from December 1672, Leibniz mentions among the reasons for the King of England to accept the mediation of the Emperor the interest in thereby receiving a peace guarantee.[[47]](#footnote-47) He also mentions economic interests in using the Rhine as traffic route in order to obtain privileged access to the German markets for exporting goods from England and for importing other goods from Germany.[[48]](#footnote-48) Here a crucial aspect of the role of a mediator in international conflicts becomes visible: In addition to facilitating communication between parties in conflict, a mediator may offer to one (or more) of the parties concrete economic advantages conditional on reaching a peace agreement; and a mediator may back the peace agreement with a peace guarantee. This is why the capacity of international mediation becomes important for Leibniz’s discussion of whether the German princes possess sovereignty, and, therefore, the right to send ambassadors.

 Leibniz rejects a conception of sovereignty as merely factual, independent power since then a leader of a powerful band of brigands would have to be regarded as a sovereign.[[49]](#footnote-49) Rather, he suggests that sovereignty must consist in a combination of two elements: (1) the demands of justice, and (2) the capability of using military force. Much of what he has to say about the function of the right to send ambassadors can be understood as an explication of the consequences of this thought.[[50]](#footnote-50) As we have seen, both elements are also crucial for early modern conceptions of the armed mediator. And, as I would like to suggest, Leibniz’s usage of the practices of international mediation and peace guarantees as an argument for the sovereign nature of the powers involved in these practices could be best understood against the background of this theoretical development.

 This first question that Leibniz’s conception of sovereignty raises, of course, is the question concerning the relevant senses of ‘law’ and ‘justice’. Leibniz is clear that having dominion over justice within a given territory does not yet amount to either territorial dominion (*superioritas territorialis*) or to sovereignty (*suprematus*).[[51]](#footnote-51) What territorial dominion adds to dominion over jurisdiction is the capability to suppress revolts of one’s subjects through the use of military power.[[52]](#footnote-52) What sovereignty adds to both forms of dominion is the capability of affecting other commonwealths in a variety of ways: by using military means, by using non-military sanctions, and by playing a role in international negotiations.[[53]](#footnote-53) And what these means have in common is that they are regulated by the law of nations. Sovereignty, thus, is characterized as the capability of shaping international relations according to the demands of the law of nations. And it is from this perspective that Leibniz asks whether the German princes possess sovereignty.

Famously, Bodin holds that the mark of sovereign power is not to depend on any other power (besides God).[[54]](#footnote-54) Independence from other powers, in Bodin’s view, is compatible with the existence of obligations arising from natural and divine law.[[55]](#footnote-55) In particular, Bodin argues that the sovereign is bound to fulfil his promises, for two reasons: (1) natural equity demands the fulfillment of agreements, and (2) the prince’s good faith is what Bodin calls the “formal guarantor” of the good faith that the citizens have with respect to each other.[[56]](#footnote-56) The contrast between Bodin and Leibniz, therefore, should not simply be described as a contrast between embracing absolutism and rejecting it. In fact, a certain degree of independence matters also for Leibniz’s conception of sovereignty. This becomes clear when he denies that the capability of the free cities of the Hanse to jointly set up an army to combat the Swedish forces is sufficient to count as a mark of sovereignty of these cities.[[57]](#footnote-57) At the same time, Leibniz regards the capability of smaller princes to effectively influence the course of international affairs through negotiations as a sign of sovereignty, even if these princes lack independence from the political structure of the Holy Roman Empire of the German Nation. This seems to be the crucial juncture at which Leibniz’s conception of sovereignty departs from Bodin’s. And since Leibniz discusses Bodin’s views and also the historical material presented by Bodin at many places in *Caesarinus Fürstenerius*, it will be useful to highlight some points in Bodin’s thought that make clear the novelty of Leibniz’s conception of sovereignty.

Bodin’s views concerning arbitration are closely connected with an analysis of the nature of sovereignty. He does not restrict the role of arbiters to the princes but ties the origin of the authority of arbiters to princes. Thus, in the case of controversies between aristocrats, the prince can nominate arbiters, under the condition that the parties involved agree with his choice. In such situations, delegating the task of arbitration is, in Bodin’s view, what is demanded by political prudence because thereby the prince is able to avoid any appearance of partiality.[[58]](#footnote-58) Generally, he holds that natural equity “lies in the arbitration of those who know how to handle the affairs of the state, and to balance wisely the individual profit against to public profit, according to the differences of time, place, and persons […].”[[59]](#footnote-59) The connection between sovereignty and arbitration is reinforced by Bodin’s reluctance to allow any function in arbitration to magistrates. Generally, he believes that arbitration is outside the power of magistrates because it is the task of the judge to pass judgment only about facts, not about the law itself.[[60]](#footnote-60) Bodin’s position reflects a real tension between the demands of central powers and the customary right of regional magistrates to function in arbitration and mediation. Bodin recalls the following controversy:

“[A]fter King François I had acquired Savoy, the new governors and magistrates quite often judged against custom and written law, with a view to equity. Subsequently, the estates of the country sent their deputies to the king to obtain patents containing the interdiction to the magistrate to continue to judge according to equity […].”[[61]](#footnote-61)

The only occasion for magistrates to use equity, in Bodin’s view, are cases which the strict application of the law lead to counterintuitive harshness or mildness, or cases that have been forgotten by the law while equity in the sense of explicating or correcting the law should be reserved to the prince.[[62]](#footnote-62) Consequently, Bodin holds that the power to judge according to equity comes in several degrees.[[63]](#footnote-63) This idea follows from the view that the origin of this power always resides in the prince, who can delegate it to other powers. It does not reside by itself in magistrates and, hence, also cannot be delegated by magistrates to someone else.[[64]](#footnote-64) This is why Bodin maintains that even when it is held by a delegate of the prince, the power of arbitration is “almost an absolute power” (*presque une puissance absolue*).[[65]](#footnote-65) This is why the standards of natural equity to which the prince is bound is also constitutive for the role of the delegates charged with arbitration: “[I]n any case, it is certain that the power is limited to the arbitration of a good person and to the terms of equity, to which even the prince must relate his judgments.”[[66]](#footnote-66)

As Bodin argues, the difference between the Swiss Cantons and the estates of the Empire is that the cities can be subject to the imperial ban and the Emperor be dethroned.[[67]](#footnote-67) Hence, the sovereignty lies not in any single prince or free city of the Empire, nor does it lie in the Emperor but rather in the *Reichstag*:

“Isn’t it the case that the estates of the Empire, comprising some 300 or 400 persons […], have the sovereign power—thereby depriving the emperor and all other princes and cities taken separately—to give laws to all subjects of the Emperor, to decide about peace and war, to levy taxes and dues, to appoint ordinary and extraordinary judges, to judge about the possessions, the honor and the life of the Emperor, of princes and of imperial cities: which are the true signs of sovereignty.”[[68]](#footnote-68)

In Bodin’s view, the lack of sovereignty of estates taken singularly is confirmed by the practices of the Imperial Circles to direct their requests and complaints to the *Reichstag* and through the role of the *Reichskammergericht* to adjudicate controversies between princes—an institution based on the authority of the estates.[[69]](#footnote-69) Bodin also argues that the Emperor is not a sovereign because he is elected by the Electors and therefore depends on their power.[[70]](#footnote-70) Bodin concedes that the Emperor can function as an arbiter in controversies between princes, but points out that even this function depends on the consent of the parties and that, in such a situation, the Emperor acts in the quality of a placeholder for the Empire, equivalent to the role an Imperial Vicar.[[71]](#footnote-71) Bodin takes this to be insufficient for constituting sovereignty because, in controversies between estates and the Emperor, the Emperor himself is subject to arbitration by the Elector of Saxony or the Count Palatine acting as Imperial Vicars.[[72]](#footnote-72) Taken together with Bodin’s view that arbitration is “almost an absolute power” that can be exerted only by sovereigns or their delegates, his claim that, unless they act as Imperial Vicars, the German princes cannot exert functions bound to sovereignty would imply that these princes could, by definition, never act as intermediaries in international conflicts.

Leibniz disagrees with the consequences that Bodin derives from the mutual dependence between the Emperor and the single estates. With a view to the German princes, he develops two lines of argument that are meant to show that some of them possess sovereignty. The first line of argument emphasizes the function of the *Reichstag*. The content of the decisions reached there is limited to the shape of the relations between the Empire and commonwealths that are outside the Empire and to the shape of the relations between estates that are relevant for the well-being of the Empire.[[73]](#footnote-73) Although Leibniz is clear that such decisions create obligations for the estates, he points out that participating in the *Reichstag* means participating in sovereignty (*summa in Imperio potestas*).[[74]](#footnote-74) This claim seems to follow from two premises: (1) As Leibniz points out, even if the princes do not have more votes than other estates, the feudal relations of benefits and interests and regional affinities make it easy to win over some of the smaller estates, such that the voting power of the princes can balance the voting power of the electors.[[75]](#footnote-75) (2) Thereby, the princes have influence on international affairs: “To be powerful in the *Reichstag* is […] no small thing. For it means being powerful in some general conference of so many big princes whose consensus can do much to change the face of Europe […].”[[76]](#footnote-76) Hence, having real influence on the decisions of the *Reichstag* is one way in which the German princes can act according to the law of nations. But Leibniz takes this line of argument further, when he emphasizes that matters that concern only the relations between rulers and subjects within a single estate are not the proper object of decisions of the *Reichstag*.[[77]](#footnote-77) Moreover, as far as no negative consequences are to be feared for the Empire, the estates are free to build up their own relations with commonwealths outside the Empire, be it by trade, alliances, warfare or involvement in international negotiations.[[78]](#footnote-78) And, as Leibniz points out, Bodin provides ample documentation of alliances between German princes and other sovereigns, such as the kings of Denmark, Sweden and Poland.[[79]](#footnote-79) Hence, the limits of the scope of the decisions of the *Reichstag* allow the princes to pursue their own foreign policy.

The second line of argument draws on the implications of the German princes being involved in international negotiations. Among the international activities that the German princes develop on their own initiative there belong their activities in international arbitration and mediation as well as their function as peace guarantors:

“The rights of princes that relate to others and beyond the territory are the right of war and peace, the right of alliances, the right of entertaining an army, […] the right of sanctions against those who are not members of the Empire, […] the right of demanding the innocuous transit through foreign territory, the right of intervening in general treaties and councils, through which the *Respublica Christianorum* is governed, the right to offer mediation, to accept arbitration, to promise guarantees, the right to assist the oppressed even if they are foreigners […].”[[80]](#footnote-80)

Leibniz is clear that these activities complement the quasi-international relations within the Empire. As to the latter, he points out that the Empire has the task of offering arbitration and mediation between the estates since these are matters that are relevant for the well-being of the Empire.[[81]](#footnote-81) These relations of arbitration and mediation render the relations between the Empire and the Estates and the relations between Estates akin to international relations.[[82]](#footnote-82) But Leibniz goes beyond these quasi-international relations within the Empire when he uses the capacity of fulfilling the function of mediation involving powers outside the Empire as an argument in favor of the sovereignty of the German princes. Such mediation provides an instance in which the German princes can effectively intervene in international conflict resolution, and because this is an instance of an activity that combines the capacity of using military force with the obligation to respect demands of justice, these activities count as examples of the political agency of sovereigns, even if the actors are not independent from the institutions of the Empire in other respects.

Leibniz uses these considerations to argue that there is a kind of “fraternity” or “society” among sovereigns—a society that also comprises the German princes.[[83]](#footnote-83) What is common to the members of this fraternity or society is that each member “holds high jurisdiction and can bring about large effects with respect to war and peace and big politics.”[[84]](#footnote-84) Moreover, the right of fraternity or society among sovereigns derives, among other circumstances, from their role as arbiters, mediators, and guarantors: “It is now also certain that the princes of Germany can be mediators […] or peace brokers between kings at war; and also that they rightly provide to the parties of a peace agreement guarantee or security.”[[85]](#footnote-85) For example, Leibniz mentions that Duke Johann Frederick of Brunswick and Lüneburg has been entrusted with mediation by the Elector of Brandenburg and the bishop of Münster in their war with the Swedes (1675-1679).[[86]](#footnote-86) Also, Leibniz reminds us that the ambassador of King Henri IV accepted envoys of the German princes as ambassadors in the group of mediators in the peace negotiations at Den Haag (1607-1609) and even reaffirmed their status against the opposition of the Spanish ambassador.[[87]](#footnote-87) This is why Leibniz sees a place for the envoys of the German princes among the other European powers, “for example in councils, expeditions against the infidels, general peace treaties, alliances, mediations (as they are called) and guarantees.”[[88]](#footnote-88) In particular, Leibniz draws an analogy between how the German princes can form part of a kind of political community and the *Respublica Christiana* as represented in the general councils:

“If some assembly of the highest powers in Europe would be called together, our princes would intervene with full right, very much as in tournaments the knights. Assemblies of this kind […] have been the councils, the crusades and today they could be congresses brought together to negotiate a general peace […].”[[89]](#footnote-89)

In the context of such councils, the right of the German princes to send envoys who fully participate in deliberation and decision-making has a long-standing tradition. Moreover, Leibniz suggests that in the realm of secular politics a general peace conference could fulfill an analogous function. If so, the right of the princes to actively intervene in the proceedings of such a peace conference functions as the basis for the right of their envoys to play an active part in the negotiations:

“The society, or, so to speak, the fraternity of those who are called sovereigns, is represented in some grand council or universal peace negotiation, and to the envoys who possess the right of intervention due to the authority of their master, the full honor of their [representative] character is owed.”[[90]](#footnote-90)

Clearly, such a body would constitute a kind of political association between the participating sovereigns because it would pursue some specific political goal. This seems to be a plausible view because the sameness of diplomatic rights and obligations of those participating in such more particular negotiations has a specifically political function in reaching peace agreements through arbitration or mediation. Thus, it is the conflict-solving power of the shared rights to actively take part in international negotiations that is constitutive of the political association between sovereigns. This may be why Leibniz argues that peace treaties, mediations, peace guarantees fulfil the same function that such a political association would fulfil more efficiently.[[91]](#footnote-91)

Taken together, the implications of the capacity of acting according to the law of nations, including the capacity of providing services in international arbitration and mediation, in Leibniz’s view, thus include a bundle of strict rights: (1) The envoys of sovereigns have a right to represent the sovereign who sent them out (*jus repraesentationis*).[[92]](#footnote-92) (2) Envoys of sovereigns have a right (within the limits of custom) to the same ceremonial forms as the one whom they represent (*jus fruendi iisdem honoribus*).[[93]](#footnote-93) (3) Envoys of sovereigns have a right to intervene in international negotiation because they represent sovereigns who have this right (*jus interveniendi*).[[94]](#footnote-94) (4) Sovereigns have among each other a right of fraternity or society (*jus fraternitatis seu societatis*).[[95]](#footnote-95)

4. Conclusion

At the beginning of this article, I suggested that contextualizing Leibniz’s scattered remarks about the role played by German princes as mediators between European powers in the context of the early modern debate about international mediation may indicate that these remarks are more interesting than may be obvious at first sight. By now it should be easy to substantiate this suggestion. Consider first the early modern context. What Leibniz has in common with Bodin is the view that armed mediation has to follow the demands of the law of nations and, hence, demands that political actors act according to the law of nations—that is, sovereigns. However, his conception of sovereignty departs from Bodin’s. While Bodin regards independence from external interference as the central criterion of sovereignty, Leibniz takes the capability of acting according to the law of nations to be the central criterion. This is why he allows for nested structures of sovereignty—sovereignty that is subject to higher sovereignty in some respects such as high jurisdiction or political decisions of the *Reichstag*, as long as these relations of dependency allow effective international agency in arbitration, mediation, forming and participating in international agreements and warfare. The figure of the armed mediator unites several aspects of acting according to the law of nations—resolution of international conflicts, the combination between mediation and the agreement to act as guarantor, and the threat of military intervention. Leibniz’s argument from the right of armed mediation to the right of sovereignty substantially goes beyond what is found in any other early modern contribution to the theory of international mediation.

From a contemporary perspective, both the early modern conception of armed mediation and Leibniz’s development of this conception may shed light on some neglected aspects of the structure of international mediation. Neither the category of neutral mediator nor the category of principal mediator, as understood by Princen, seems to fit the role of the armed mediator. This is so because the armed mediator shares with the principal mediator a stake in defending self-interests that may be adversely affected by a conflict and the willingness to change the incentive structure of one (or more) conflict parties because of the threat of military intervention. At the same time, neither Leibniz nor his predecessors and contemporaries regard the role of the armed mediator as being reducible to an interplay of interests or the art of reaching circular deals. Rather, they bind the conditions under which an armed mediator can become active to the case in which there is a *just* cause of war: Either a case in which the interests of the mediator are threatened by injury—i.e., *unjust* damage—to a party in conflict; or a case in which a peace agreement for which the mediator has accepted a request to act as guarantor is violated. Moreover, the early moderns were very clear that, before resorting to military force, the armed mediator is obliged to suggest a solution to the conflict that itself has to be shaped by considerations of justice or equity. Thus, although interests and military capabilities are constitutive of the role of armed mediator, the armed mediator shares with the neutral mediator the duty to observe the demands of justice and equity. This is why the early modern figure of the armed mediator may indicate some reasons why we would do good to de-dichotomize our conception of types of international mediation. Using such a strategy of de-dichotomization may prove useful for integrating the notions of justice and equity into our accounts of how mediators in international conflicts could act in a persuasive and effective manner.

Finally, the specific turn that Leibniz gives to these considerations may indicate a further sense in which the early debate about international mediation may shed light on a justice-related issue that is overlooked in contemporary debates. As we have seen, Leibniz uses international mediation as one of the activities that shows that a certain ruler is capable of acting according to the law of nations. This has the wider consequence that the right of sending ambassadors should be based on a conception of sovereignty that neither excludes relations of political dependence nor even demands anything like a closed national territory. But Leibniz is clear that participating in international mediation is not the only criterion that counts in this respect. For example, the capacity of entering international contracts and alliances also could fulfill the same function. This tells us something about distributive justice concerning the standing of those envoys who represent parties in international negotiations (including international mediation provided by some other power). Leibniz is very clear why such matters of rank and ceremony can be politically highly relevant: they are not only symbolic matters; rather, by symbolizing reputation, they express very concrete political judgments concerning the ease or difficulty of violating the rights and interests of the power represented by the envoys. This is why Leibniz believes that recognizing envoys as ambassadors is a matter of justice towards all powers that, according to his conception of divided and overlapping sovereignty, are sovereigns. And because all international mediation will involve negotiations with delegates of the parties in conflict, this brings in a further aspect of international justice: International mediators, be they neutral mediators, armed mediators, or principal mediators, have the duty to recognize the envoys of those powers that possess sovereignty as ambassadors since otherwise they would violate the demands of distributive justice with respect to honor. And the idea that matters of honor imply specific duties of justice may resonate with some contemporary political cultures more strongly than interest-based models of international mediation may be ready to recognize.[[96]](#footnote-96)

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1. On arbitration and mediation in Roman and medieval civil law, see L. Martone, *Arbiter—Arbitrator. Forme di giustizia privata nell’età del diritto comune* (Naples, 1984); on mediation in Canon law, see K. S. Bader, “Arbiter arbitrator seu amicabilis compositor”, in *Zeitschrift für Rechtsgeschichte, Kanonistische Abteilung* 46 (1960), pp. 239-276. [↑](#footnote-ref-1)
2. On mediation in early modern civil law, see R. L. Kagan, *Lawsuits and Litigants in Castile, 1500-1700* (Chapel Hill, 1981); J. Bossy (ed.), *Disputes and Settlements. Law and Human Relations in the West* (Cambridge, 1983). On mediation in the early modern *ius gentium*, see H. Duchhardt, “‘Friedensvermittlung’ im Völkerrecht des 17. und 18. Jahrhunderts: Von Grotius zu Vattel”, in H. Duchhardt, *Studien zur Friedensvermittlung in der Frühen Neuzeit* (Wiesbaden, 1979), pp. 89-117; J. Bossy, *Peace in the Post-Reformation. The Birkbeck Lectures 1995* (Cambridge, 1998);P. Broggio, “I Gesuiti come pacificatori in età moderna: Dalle guerre di frontiera nel nuovo mondo Americano alle lotte fazionarie nell’Europa mediterranea”, *Rivista di Storia e Letteratura Religiosa* 39 (2003), 249-290. [↑](#footnote-ref-2)
3. See V. I. Comparato, “Mediazione politica e Teoria dello stato. Note su Bodin e Hobbes”, *Archivio Storico Italiano* 144 (1986), pp. 2-33, especially pp.22-23, 26-27. [↑](#footnote-ref-3)
4. F. de Vitoria, *Relectio de potestate ecclesiae I*, in U. Horst, H.-G. Justenhoven and J. Stüben (eds.), *Francisco de Vitoria, Vorlesungen*, vol. 1 (Stuttgart, 1995), pp. 162-277, pp. 250-251; R. Bellarmin, *De potestate Summi Pontificis in temporalibus*, in R. Bellarmin, *Opera omnia*, ed. J. Fèvre, vol. 12 (Paris, 1874), pp. 1-113, pp. 59-60; F. Suárez, *Defensio fidei*, *Opera omnia*, vol. 24, (Paris, 1859), pp. 310-311. On the medieval background of these ideas, see J. Gaudemet, “Le role de la papauté dans le règlement des conflits entre Etats aux XIIIe et XIVe siècles”, in *La Paix II* (Recueils de la Société Jean Bodin, 15) (Bruxelles, 1961), pp. 79-106; J. Engel, “Zum Problem der Schlichtung von Streitigkeiten im Mittelalter”, in *XIIe Congrès International des Sciences Historiques 1965*, vol. 4 (Horn/Wien, 1965), pp. 111-129. [↑](#footnote-ref-4)
5. J. Bodin, *Les Six Livres de la République* (Lyon: Gabriel Cartier, 1593), pp. 182; 792; 795. [↑](#footnote-ref-5)
6. For a detailed analysis of this material, see C. Kampmann, *Arbiter und Friedensstiftung. Die Auseinandersetzung um den politischen Schiedsrichter im Europa der frühen Neuzeit* (Paderborn, 2001), ch. 3-6. [↑](#footnote-ref-6)
7. H. Grotius, *De iure belli ac pacis libri tres*, ed. B. J. A. de Kanter and V. Hettinga Tromp (Leiden: Brill, 1939), pp. 15-16. On Grotius’s views on peace negotiations, see P. Foriers, “L’organisation de la paix chez Grotius et l’école de droit naturel”, in *La Paix II* (see note 4), pp. 275-376. [↑](#footnote-ref-7)
8. See E. Usteri, *Das öffentlich-rechtliche Schiedsgericht in der schweizerischen Eidgenossenschaft des 13.-15. Jahrhunderts* (Zürich, 1925). K.-H. Lingens, *Internationale Schiedsgerichtsbarkeit und Jus Publicum Europaeum 1648-1794* (Berlin, 1988); A. Blank, “Johannes von Felden on Usucaption, Justice, and the Society of States”, *Journal of the History of Ideas* 74 (2013), pp. 403-423. The most impressive example in this respect is possibly the agreement between Emperor and King Johann III Sobieski of Poland, 1677. On this agreement, see Lingens, *Internationale Schiedsgerichtsbarkeit*, pp. 31-33. The text of the agreement is in C. Parry (ed.), *The Consolidated Treaty Series*, vol. 14 (Dobbs Ferry, 1969), pp. 209-218. [↑](#footnote-ref-8)
9. See Dascal’s introduction to G. W. Leibniz, *The Art of Controversies*, ed. M. Dascal with A. Cardoso and Q. Racionero (Dordrecht, 2007); see also A. Blank, “Leibniz on Usucaption, Presumption, and International Justice.” *Studia Leibnitiana* 43 (2011): 70–86. [↑](#footnote-ref-9)
10. In fact, the detailed subject index to *The Art of Controversies* does not enlist the term ‘mediation’ a single time. [↑](#footnote-ref-10)
11. T. Princen, *Intermediaries in International Conflict* (Princeton, 2014), chapter 2. [↑](#footnote-ref-11)
12. Ibid., pp. 25-27. [↑](#footnote-ref-12)
13. Ibid., pp. 23-25 [↑](#footnote-ref-13)
14. On Wicquefort and the diplomatic practices of France, see W. J. Roosen, “The Functioning of Ambassadors under Louis XIV”, *French Historical Studies* 6 (1970), pp. 311-332. [↑](#footnote-ref-14)
15. A. van Wicquefort, *L’ambassadeur et ses fonctions. Seconde partie* (Cologne, 1690), p. 122. [↑](#footnote-ref-15)
16. Ibid. [↑](#footnote-ref-16)
17. Ibid., p. 121. [↑](#footnote-ref-17)
18. Ibid., p. 117: “[L]es Mediateurs eurent beaucoup de peine à Munster, mais peu de succés, & encore moins d’honneur. [...] On peut dire avec verité: que ce ne sont pas les Mediateurs qui font faire les traités, & que c’est la bonne disposition des parties qui les fait conclurre.” On the role of mediation in the negotiations at Münster, see B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law* (Oxford, 2012), pp. 641-642, 823-824. Except where otherwise noted, translations are my own. [↑](#footnote-ref-18)
19. J. Bodin, *Les Six Livres de la République* (see note 5), p. 796: “Et l’une des choses qui est la plus necessaire pour la seureté des traittez de paix & d’alliance, est de nommer quelque plus grand & puissant prince pour iuge & arbitre en cas de contravention: afin d’y avoir recours comme au garand: & qu’il movenne l’accord entre ceux qui pour estre egaux ne peuvent honnestement refuser la guerre, ny demander la paix.” [↑](#footnote-ref-19)
20. S. Pufendorf, *De iure naturae et gentium*. Vol. 2: *The Translation of the Edition of 1688* (Oxford, 1934), V, 13, § 7, pp. 830-831. [↑](#footnote-ref-20)
21. Ibid., p. 831. [↑](#footnote-ref-21)
22. Ibid. For the Latin text, see S. Pufendorf, *Gesammelte Werke*. Vol. 4.2: *De iure naturae et gentium (Liber quintus-Liber octavus*), ed. F. Böhling (Berlin, 1998). [↑](#footnote-ref-22)
23. Cited in Heinrich von Cocceji, Daniel von Stephani, *Disputatio Iuris Gentium Publici De Guarantia Pacis* (Frankfurt an der Oder, 1703), § VIII. On the peace of Rijswijk, see H. Duchhardt, *Der Friede von Rijwijk 1697* (Mainz, 1998). [↑](#footnote-ref-23)
24. On Cocceji, see F. A. Trendelenburg, *Friedrich der Große und sein Großkanzler Samuel von Cocceji. Ein Beitrag zur Geschichte der ersten Justizreform und des Naturrechts* (Berlin, 1864). [↑](#footnote-ref-24)
25. Cocceji/ von Stephani, *Disputatio Iuris Gentium Publici De Guarantia Pacis* (note 23),§ XIV: “Alia quaestio est, an Mediator possit saltem Guarantiam praestare? Resp. Non posse jure Pacis, sed jure belli […].” [↑](#footnote-ref-25)
26. Ibid. [↑](#footnote-ref-26)
27. On Treuer, see C. G. Jöcher, *Allgemeines Gelehrten-Lexicon* (Leipzig, 1751), vol. 4, col. 1305-1306. An incomplete version of this work, which breaks off after § XVII, was published as G. S. Treuer, F. W. von Walrave, *De Prudentia circa officium pacificatoris inter gentes* (Helmstedt 1727); the complete version was published (without mentioning Treuer, but with identical text in §§ I-XVI) as J. C. von Schleinitz, *Commentatio de negotio pacificationis inter gentes* (Helmstedt, 1731). Jöcher ascribes the authorship of this work to Treuer. The following references are to the complete version of the text. [↑](#footnote-ref-27)
28. Ibid., p. 129: “Iustitia […] eiusmodi mediationis armatae residet vel in iure per pacta pristina quaesito ad pacem abruptam denuo armis reducendam & tuendam vel in iure se suaque defendendi contra damna, quae ex abusu belli ab una vel altera parte in se proficiscuntur.” [↑](#footnote-ref-28)
29. Ibid., p. 148, note c: “Si vero contingat unam partem ab altera vel plures a pluribus gravi aliqua iniuria citra tamen vim armorum vexari, non licebit ideo laeso ad arma subito recurrere, sed ante amicabilis componendarum huiusmodi controversiarum ratio ineunda erit, videlicet ut laesus accepta iniuria, si immediate cum laedente convenire nequeat, alios paciscentes moneat, & comissio generalis omnium paciscentium nomine instituatur […], in quo inter deputatos utrinque commissarios negotium discutiatur, & si possible erit intra quatuor, ad summum alios menses terminatur. Si vero laedentem refractarium ad aequa quae proponentur media deprehenderit, tum laesis licebit, facta tamen prius legitima belli denunciatione, ius suum armis prosequi, & bellum […] laedenti inferre.” [↑](#footnote-ref-29)
30. See J. A. Crusius, *Tractatus politico-juridico-historicus de praeeminentia, sessione, praecedentia, lib. IV.* (Bremen 1666); [Anonymous], *Lettre d’un Desinteressé à un sien Amy, touchant le titre d’Ambassadeur, avec lequel les Princes d’Allemagne desirent d’envoyer leur ministres au Congrés de Nimweguen, Et les differences, que quelques uns tachent de susciter entre les Electeurs de l’Empire et les susdits Princes. Avec une pièce en latin de la mesme matiere* (Aix la Chapelle, 1677); [Anonymous], *Deduction de raisons en vertu desquelles le droit de donner le Caractere d’Ambassadeur appartient aux Princes de l’Empire joint* (Cologne, 1677). [↑](#footnote-ref-30)
31. See H. Henniges, *Discursus de suprematu adversus Caesarinum Furstenerium* (Hyetopoli ad Istrum, 1687); Justinus Presbeuta [H. Henniges], *De jure legationis statuum imperii* (Halle, 1701); [G. v. Jena], *Notae et animadversiones in Caesarini Furstenerii Tractatum . . . inter legendum quinque abhinc annis jam anno 1667 . . . nunc vero in lucem editae* (Coloniae Allobrogum 1682); M. Jungker, *De legationibus summorum imperiorum libellus* (Frankfurt, 1688); J. G. Kulpis, *Commentatio de Legationibus statuum imperii* (Giessen, 1678). [↑](#footnote-ref-31)
32. A IV, 2, 40. [↑](#footnote-ref-32)
33. A IV, 2, 42. [↑](#footnote-ref-33)
34. A IV, 2, 43. [↑](#footnote-ref-34)
35. One in A IV, 1, 13 (Propositio XIV) and two in A IV, 1, 5. [↑](#footnote-ref-35)
36. A IV, 1, 5. [↑](#footnote-ref-36)
37. A IV, 2, 141. [↑](#footnote-ref-37)
38. A IV, 2, 140. [↑](#footnote-ref-38)
39. A IV, 2, 141. [↑](#footnote-ref-39)
40. A IV, 2, 141-142. [↑](#footnote-ref-40)
41. A IV, 2, 142. [↑](#footnote-ref-41)
42. Ibid. [↑](#footnote-ref-42)
43. A IV, 2, 140. [↑](#footnote-ref-43)
44. A IV, 2, 142. [↑](#footnote-ref-44)
45. A IV, 2, 144. [↑](#footnote-ref-45)
46. Ibid. [↑](#footnote-ref-46)
47. A IV, 1, 512. [↑](#footnote-ref-47)
48. A IV, 1, 512-513. [↑](#footnote-ref-48)
49. A IV, 2, 17-18. [↑](#footnote-ref-49)
50. Ibid. [↑](#footnote-ref-50)
51. A IV, 2, 18; 54-56. [↑](#footnote-ref-51)
52. A IV, 2 18; 56 [↑](#footnote-ref-52)
53. A IV, 2, 18; 56-57. [↑](#footnote-ref-53)
54. Bodin, *Six Livres de la Republique* (see note 5), pp. 161; 183; 321. [↑](#footnote-ref-54)
55. Ibid., pp. 249. [↑](#footnote-ref-55)
56. Ibid., p. 152. [↑](#footnote-ref-56)
57. A IV, 2, 98-99. [↑](#footnote-ref-57)
58. Bodin, *Six Livres de la Republique* (see note 5),p. 641. [↑](#footnote-ref-58)
59. Ibid., 309: “equite naturelle, qui gist en l’arbitrage de ceux qui sçavent manier les affaires d’estat, & balancer sagement le profit particulier au contrepoix du public, selon la varieté des temps, des lieux & personnes […].” [↑](#footnote-ref-59)
60. Ibid., p. 439. [↑](#footnote-ref-60)
61. Ibid., p. 1019: “[A]pres que le Roy François I eut assugetty la Savoye, les Gouverneurs & Magistrats nouveaux iugeoient bien souvent contre les coustumes & doict escript, ayant esgard à l’equité. Alors les estats du pays envoyerent leurs deputez au Roy, pour obtenir lettres patentes, portant deffenses aux Magistrats de plus iuger d’equité […].” [↑](#footnote-ref-61)
62. Ibid., pp. 1020-1021. [↑](#footnote-ref-62)
63. Ibid., p. 1025. [↑](#footnote-ref-63)
64. Ibid., p. 1021. [↑](#footnote-ref-64)
65. Ibid., p. 1026. [↑](#footnote-ref-65)
66. Ibid.: “[E]n tous cas il est certain que la puissance est limitee à l’arbitrage d’un homme de bien, & aux termes d’equité à laquelle le prince mesme doit rapporter ses iugemens.“ [↑](#footnote-ref-66)
67. Ibid., p. 321. [↑](#footnote-ref-67)
68. Ibid., p. 320: “Or est il que les estats de l’Empire, composez de trois à quatre cens hommes […] ont la puissance souveraine, privativement à l’Empereur, & à tous autres princes & villes en particulier, de donner la loy à tous les sugets de l’Empereur, decerner la paix ou la guerre, mettre tailles & impotst, establir iuges ordinaires & extraordinaires, pour iuger des biens, de l’honneur, & de la vie de l’Empereur, des princes, & des villes Imperiales; qui sont les vrayes marques de souveraineté.” [↑](#footnote-ref-68)
69. Ibid., pp. 183-184; 322. [↑](#footnote-ref-69)
70. Ibid., p. 322. [↑](#footnote-ref-70)
71. Ibid., p. 324. [↑](#footnote-ref-71)
72. Ibid., pp. 186-187. [↑](#footnote-ref-72)
73. A IV, 2, 26; 164-165. [↑](#footnote-ref-73)
74. A IV, 2, 94. [↑](#footnote-ref-74)
75. A IV, 2, 95. [↑](#footnote-ref-75)
76. Ibid. [↑](#footnote-ref-76)
77. A IV, 2, 165. [↑](#footnote-ref-77)
78. Ibid. [↑](#footnote-ref-78)
79. A IV, 2, 101. Leibniz refers to Bodin, *Six Livres de la Republique* (see note 5), book I, chapter 7. [↑](#footnote-ref-79)
80. A IV, 2, 94. [↑](#footnote-ref-80)
81. A IV, 2, 94-95; 165. [↑](#footnote-ref-81)
82. On the international aspects of the relations between the estates, see Albert Randelzhofer, *Völkerrechtliche Aspekte des Heiligen Römischen Reiches nach 1648* (Berlin, 1967). [↑](#footnote-ref-82)
83. A IV, 2, 62; 102-105. [↑](#footnote-ref-83)
84. A IV, 2, 64. [↑](#footnote-ref-84)
85. A IV, 2, 103. [↑](#footnote-ref-85)
86. A IV, 2, 104. [↑](#footnote-ref-86)
87. Ibid. [↑](#footnote-ref-87)
88. A IV, 2, 19. [↑](#footnote-ref-88)
89. A IV, 2, 106. [↑](#footnote-ref-89)
90. A IV, 2, 64. [↑](#footnote-ref-90)
91. A IV, 2, 16-17. [↑](#footnote-ref-91)
92. A IV, 2, 43. [↑](#footnote-ref-92)
93. Ibid. [↑](#footnote-ref-93)
94. A IV, 2, 64. [↑](#footnote-ref-94)
95. A IV, 2, 102. [↑](#footnote-ref-95)
96. Heartfelt thanks to Luca Basso for his extremely helpful comments on an earlier version of this article. [↑](#footnote-ref-96)