Kenneth Pennington

Henry VII and Robert of Naples

In his privilege for the scholars of Bologna, Frederick Barbarossa observed that “their knowledge [of Roman law] illuminates the world, leading men to obey God and us, his ministers”¹. A fractious dispute of the early fourteenth century between Henry VII, the German emperor, and Robert, the king of Naples, put Frederick’s trust in Roman law to the test. Walter Ullmann wrote that the core of this controversy was whether “the emperor was in reality the ‘dominus mundi’ as the law books clamorously maintained”². Ullmann may not, as I shall argue, have gotten the importance of the dispute right. But, as so often in Ullmann’s work, even when he is wrong in detail, he is right about the essence of the matter. The controversy did focus the question of what authority the emperor had over other Christian kings more precisely than any earlier confrontation between emperor or king, and pope. The contentious issues forced the jurists to define large questions: Could the emperor bring a treasonous vassal to trial who was an independent king? Was the emperor truly lord of the world? Could he exercise jurisdiction over kings? This clash of imperial and royal prerogatives led contemporary jurists to clarify questions that went to the heart of procedural norms: Did the emperor have to observe the rules of judicial procedure, what in American and English law is called “due process”, before he rendered sentence on a contumacious vassal?

The story of the conflict is well-known and I shall sketch only the most important details. After Henry, Count of Luxemburg, became emperor-elect in 1309, he con-

¹ *H. Koeppler*, Frederick Barbarossa and the Schools of Bologna: Some Remarks on the ‘Authentica Habita’, in: EHR 54 (1939) 577–607, at 607: “quorum scientia mundus illuminatur, ad obediendum deo et nobis, ministris eius”.

² *Walter Ullmann*, The Development of the Medieval Idea of Sovereignty, in: EHR 64 (1949) 1–33, at p. 1. Ullmann returned to this topic in his essay: Zur Entwicklung des Souveränitätsbegriffs im Spätmittelalter, in: Festschrift Nikolaus Grass zum 60. Geburtstag, Bd. 1 (Innsbruck 1974–1975) 9–27, reprinted in: *Ullmann*, Scholarship and Politics in the Middle Ages (Collected Studies Series, London 1978). On the idea of “Weltherrschaft” in the later Middle Ages see *Friedrich Heer*, Zur Kontinuität des Reichsgedankens im Spätmittelalter, in: *MIÖG* 58 (1950) 336–350; *Friedrich Baethgen*, Zur Geschichte der Weltherrschaftsidee im späteren Mittelalter, in: Festschrift Percy Ernst Schramm zu seinem 70. Geburtstag, Bd. 1 (Wiesbaden 1964) 189–203; *Kurt-Ulrich Jäschke*, Zu universalen und regionalen Reichskonzeptionen beim Tode Kaiser Heinrichs VII., in: Festschrift für Berent Schwineköper (Sigmaringen 1982) 415–435; und *Othmar Hageneder*, Weltherrschaft im Mittelalter, in: *MIÖG* 93 (1985) 271–278.

tacted Pope Clement V and arranged for an imperial coronation in Rome³. The king of the Angevin kingdom of Sicily, Robert of Naples, presented a major obstacle to the carrying out of Henry's plans. Robert was a recognized leader of the Guelf party in Florence and other northern city-states. Henry had much to gain from an alliance with Robert; what the advantages were for Robert are harder to discern.

From the moment Henry touched Italian soil, Robert feigned loyalty, but his actions belied his devotion to Henry. Henry reached Rome in the spring of 1312. His reception was not pleasant. Robert had sent his brother, John of Gravina, to Rome with a sizable army. After bloody street fighting Henry realized that he would not be crowned in St. Peter's. John's troops held Castel Sant'Angelo and the area between it and the Capitoline. Reluctantly, because their mandate specified St. Peter's, the cardinals sent by Clement V crowned Henry in the Basilica of St. John in Lateran on June 29, 1312⁴. After the coronation Clement V demanded that Henry promise not to invade the Regno and asked Henry to submit his dispute with Robert to papal arbitration. He asked both to observe a year's truce⁵.

One can draw parallels between Boniface VIII and Henry VII. Both were faced with opponents and situations they did not understand. Both hoped to breathe new life into an institution that claimed universal jurisdiction over all Christians. Henry's personal and political position was, like Boniface's, delicate. Like Boniface, patience was not Henry's most conspicuous virtue. Instead of retreating from what had become a quagmire, he issued a solemn proclamation directed against Robert of Naples at Arezzo on 12 September, 1312, and had it posted on the door of the cathedral. He accused Robert of treason⁶, summoning him to appear within three months. At this early stage of the dispute Henry already knew that he was on shaky legal ground. He claimed that he could not have the proclamation delivered because the roads were too dangerous and that his messengers would have been seized and killed. Henry an-

³ *William M. Bowsky*, *Henry VII in Italy: The Conflict of Empire and City-State, 1310–1313* (Lincoln, Nebraska 1960) 17–23. *Friedrich Schneider*, *Kaiser Heinrich VII.*, 3 Bde. (Greiz-Leipzig 1924–1928). *G. Sommerfeldt*, *König Heinrich VII. und die lombardischen Städte in den Jahren 1310–1312*, in: *Deutsche Zeitschrift für Geschichtswissenschaft* 2 (1889) 97–155. *W. Israel*, *König Robert von Neapel und Kaiser Heinrich VII. Die Ereignisse bis zur Krönung in Rom* (Berlin 1903). *Georg Irmer*, *Die Romfahrt Kaiser Heinrichs VII. im Bildercyclus des Codex Balduini Treverensis* (Berlin 1881); *Franz-Josef Heyen*, *Kaiser Heinrichs Romfahrt. Die Bilderchronik von Kaiser Heinrich VII. und Kurfürst Balduin von Luxemburg (1308–1313)* (Boppard am Rhein 1965); *Carl Wenck*, *Clemens V. und Heinrich VII. Die Anfänge des französischen Papsttums. Ein Beitrag zur Geschichte des 14. Jahrhunderts* (Halle 1882). *Manfred Hellmann*, *Kaiser Heinrich VII. und Venedig*, in: *HJb* 76 (1957) 15–33. *Karl Leopold Hitzfeld*, *Die letzte Gesandtschaft Heinrichs VII. nach Avignon und ihre Folgen*, in: *HJb* 83 (1964) 43–53.

⁴ *Bowsky*, *Henry VII* 54–167.

⁵ *Bowsky*, *Henry VII* 168–169; *Martin Thilo*, *Das Recht der Entscheidung über Krieg und Frieden im Streite Kaiser Heinrichs VII. mit der römischen Kurie. Ein Beitrag zur Geschichte des Verhältnisses von sacerdotium und imperium und des Wandels vom Weltimperium zum nationalen Königtum* (Historische Studien 343, Berlin 1938) 68–115, esp. 90–103.

⁶ *MGH Constitutiones et acta publica imperatorum et regum* 4,2, ed. *Jakob Schwald* (1911) 823–824.

nounced that he was determined to proceed against Robert even if he did not appear at his court in person⁷.

Then, in the middle of March, Henry returned to Pisa and promulgated two laws. They provided the legal justification for the assertions in his decrees of condemnation. The first, "Ad reprimendum", was a general constitution in which the emperor declared that whoever committed the crime of treason against the emperor or king of the Romans could be condemned "in absentia" in summary judicial proceedings⁸. Echoing Boniface VIII's decretal "Unam sanctam", he maintained that every soul was subject to the Roman prince⁹. The second law, "Quoniam nuper est", defined the rebellious vassal who would be subject to "Ad reprimendum"¹⁰. Both laws were incorporated into the *Corpus iuris civilis* by the schools. Finally, on April 26, 1313 Henry issued his definitive condemnation of Robert of Naples¹¹. Robert's crimes were "public and notorious", declared Henry, "and we, who are not subject to the laws, could have proceeded against him even if he had not been cited"¹².

The struggle between Henry and Robert is an event of the first rank in legal history. It generated a significant amount of polemical literature, most of it in the form of 'consilia', and also produced papal and imperial legislation that dealt with the issues of imperial jurisdiction, the relationship between the church and the state, and the rules governing the judicial process. The dispute is a splendid example of politics and legal theory mixing together; it is also an illustration of how rapidly the issues of a political controversy could become common coin in the law schools. Henry's chancery produced "Ad reprimendum" and "Quoniam nuper est". Pope Clement V issued three constitutions: (1) "Pastoralis cura"¹³, in which he reacted directly to "Ad reprimendum"; (2) "Romani principes", that argued for Henry's duty to observe the oaths that he had sworn to the pope¹⁴; and, a little later, (3) "Saepe", in which he clarified the rules of judicial procedure that had arisen over the meaning of the Latin clause, "sim-

⁷ Const. 4,2, 854–856, at 856: "hec citatio ad eius possit pervenire notitiam, et quia litteras et nuntios ad eum transmittere non valemus propter viarum discrimina (...), quod nulli nostri nuntii ad eum possint accedere (...), ipso per contumaciam absente nichilominus procedere tam ad sententiam quam ad alia, prout de iure facere debemus et poterimus, eius absentia non obstante".

⁸ Const. 4,2, 965–966: "in quocunque lese maiestatis crimine et maxime ubi contra Romanorum imperatores vel reges aliquid quod dictum crimen tangat asseratur commissum, possit procedi per accusationem vel inquisitionem seu denuntiationem summarie et de plano sine strepitu et figura iudicii". The incipit of the original decree was "Ad reprimenda", but was changed after having been incorporated into the *Corpus iuris civilis*.

⁹ Const. 4, 2, 965: "verum etiam divina precepta, quibus iubetur quod omnis anima Romano principi sit subiecta".

¹⁰ Const. 4, 2, 966–67.

¹¹ Const. 4, 2, 985–990

¹² Const. 4, 2, 987: "Hec siquidem ad nos deferente clamore notorio et in pluribus etiam rerum experientia edocente, licet ipsa tam publica et notoria essent, quod nulla possent tergiversatione celari, et nos qui legibus subiecti non sumus contra dictum Robertum propter premissa ipso inrequisito potuissemus procedere".

¹³ Clem. 2.11.2, issued at Carpentras, March, 1314 on the same day as "Romani principes". See the text printed by *Wilhelm Dönniges*, *Acta Henrici VII imperatoris Romanorum et monumenta quaedam alia Medii Aevi* 2 (Berlin 1839) 241–243.

¹⁴ Clem. 2.9.1.

pliciter et de plano, ac sine strepitu et figura iudicii" ("simply and plainly, without clamor and the <normal> forms of procedure"). This phrase had been used in Henry's letters condemning Robert and was a common fixture of papal letters to judges-delegate in certain cases¹⁵.

The legislation had a long-lasting influence. Stephan Kuttner has called "Saepe" "the most important single piece of medieval legislation in the history of summary judicial procedure"¹⁶. "Pastoralis cura" became a locus classicus in medieval law for discussing the rules of judicial procedure. But behind this legislation was a large body of literature. A survey of this material will illustrate its richness and the means by which political thought became known to a much wider audience in the early fourteenth century. Papal, imperial, and royal chanceries sought legal advice. The earliest tracts were written by imperial jurists. An anonymous jurist wrote the first consilium that defended Henry from papal interference in his Italian affairs¹⁷. Quite likely he composed it in Sicily, sometime in late 1312 or early 1313, before Henry had promulgated "Ad reprimendum". A civilian, Johannes de Calvoruso, has been proposed as the author of the consilium, but the evidence is very weak¹⁸. The author dealt with three major questions: (1) Could the pope impose a truce on the emperor? (2) Did the emperor have jurisdiction over all kings, including the king of Sicily (was he "dominus mundi")? (3) Could the emperor condemn his enemies without observing the normal rules of judicial procedure?

If the jurist was a civilian, nevertheless he based most of his conclusions on canon rather than Roman law¹⁹. Although he referred to Roman law texts²⁰ to justify his claim that the emperor was the "lord of the world", the glosses of Johannes Teutonicus and Bernardus Parmensis to Gratian's Decretum and Innocent III's decretal "Venerabilem" were his center pieces for justifying the emperor's universal authority²¹. It is not a little ironic that, by the beginning of the fourteenth century, this jurist had to turn to the jurisprudence of canon law to defend the emperor from the pope.

¹⁵ Clem. 5.11.2. *Stephan Kuttner* dates the text between 6 May, 1312 and 21 March, 1314, "probably closer to the later date": The Date of the Constitution 'Saepe': The Vatican Manuscripts and the Roman Edition of the Clementines, in: *Mélanges Eugène Tisserant* (Studi e Testi 234, Città del Vaticano 1964) 427–452, at p. 432; reprinted in: *Kuttner, Medieval Councils, Decretals, and Collections of Canon Law* (Collected Studies Series, London 1980).

¹⁶ The Date of the Constitution 'Saepe' 427. On the doctrine of summary judicial procedure, see *Charles Lefebvre*, Les origines romaines de la procédure sommaire aux XII et XIII s., in: *Ephemerides iuris canonici* 12 (1956) 149–197.

¹⁷ Const. 4, 2, 1308–17.

¹⁸ *Thilo*, Das Recht der Entscheidung 8–15, who based his conclusions on a suggestion first made by *Karl Leopold Hitzfeld*, Studien zu den religiösen und politischen Anschauungen Friedrichs III. von Sizilien (Historische Studien 193, Berlin 1930) 76–125, at 124. Hitzfeld dated the consilium in August, 1312 (p. 94–95).

¹⁹ He cited canon law 35 times; Roman law 30. But a count of citations does not fully demonstrate the extent to which he depended on canon law.

²⁰ Dig. 14.2.9 and Cod. 7.37.3.

²¹ *Johannes Teutonicus* to D.63 c.22 and 3 Comp. 1.6.19 and *Bernardus Parmensis* to X 1.6.34.

Some of the literature was more propaganda and political than legal. Milano, who was one of Henry's imperial judges, wrote a tract that justified Henry's actions²². Henry's punishment of Robert was just, and he could also render judgments against Bologna and the cities of Romagna for their treasonous crimes against Padua and Treviso²³. A learned jurist he was not. His main argument was that since Robert had been condemned, his lands in La Romagna had been confiscated by the imperial treasury. Therefore Henry could judge these cities²⁴.

But Henry needed legal advice, not unenforceable claims. A jurist from Pavia, Johannes Branchazolus, sent Henry a treatise on the "Powers of the Pope and the Emperor", in which he justified imperial authority²⁵. Relying on the glosses of the canonists, Johannes wrote that the emperor was the lord of the world and all nations were under him. The emperor rules in temporal and spiritual matters, because he is the king of all things and the head of the Church²⁶.

It is within the context of this outpouring of literature in defense of Henry VII that Dante Alighieri's defense of imperial authority, "Monarchia", must be seen. Dante probably wrote his tract ca. 1316²⁷. He made most of the same general points as Johannes Branchazolus, but in the end Dante's was a literary and theological justification of imperial authority²⁸.

To the winners belongs the written word. Robert of Naples and Clement V were triumphant in the final confrontation between the two medieval institutions that claimed universal jurisdiction. Of the surviving materials the tracts defending Robert and the papacy far outnumber those supporting Henry VII²⁹. Two treatises that pre-

²² Const. 4, 2, 1015–17; first printed by *Wilhelm Dönniges*, *Acta Henrici VII* 2, 79–81. See also *Dönniges*, *Kritik der Quellen für die Geschichte Heinrichs des VII. des Luxemburgers* (Berlin 1841), who critically examined the historical sources.

²³ Const. 4, 2, 1015: "Si ergo lata est sententia contra Robertum et feratur, sicut de iure ferri potest, contra comune et homines de Bononia, contra comunitates et homines de Romaniola propter delicta et crimina lese maiestatis comissa super territorio imperii et contra comune et homines civitatis Padue et contra comune et homines civitatis Trivisii (...)."

²⁴ Const. 4,2, 1016: "quia civitas Bononie et civitates Romaniolae et comunitates ipsarum terrarum per sententiam latam contra Robertum olim regem Sicilie sunt incorporati in fiscum imperii pro eo tempore". See *Bowsky*, *Henry VII* 183.

²⁵ *Edmund E. Stengel* (Ed.), *Nova Alamanniae*, Vol. 1,1 (Berlin 1921) 44–52. Also *Bowsky*, *Henry VII* 185.

²⁶ *Stengel*, *Nova Alamanniae* 49: "Dominatur in spiritualibus et divinis quoniam rex est omnium rerum, etiam divinarum, ut ff. de legibus l.ii. cum capud sit ecclesie".

²⁷ The date of his treatise has been disputed. Some date it as late as 1317. For a short summary of opinion see *Robert Hollander*, *Dante Alighieri*, in: *Dictionary of the Middle Ages* 4 (1984) 94–105, at 102–103.

²⁸ *Bowsky*, *Henry VII* 187–189; *Charles T. Davis*, *Dante and the Idea of Rome* (Oxford 1957) 263–269; *Michele Maccarrone*, *Il terzo libro della 'Monarchia'*, in: *Studi Danteschi* 33 (1955) 5–142; and *Ernst Kantorowicz*, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton 1957) 451–495.

²⁹ See *Bowsky*, *Henry VII* 189–192; *Davis*, *Dante and the Idea of Rome* (Oxford 1957) 180–185.

date Henry's death answer ten questions arising from the dispute³⁰. The first is a juridical analysis, the second is theological. Although the second is incomplete, it probably dealt with all the questions disputed in the first. The authors are unknown, but they both reflect "official" papal thinking. They very likely wrote the tracts in Avignon at the papal court, since the manuscripts containing them were originally in the papal library³¹. The focus of the questions is entirely on the issues of feudal law and of "church and state": (1) Could Henry's oath to Clement be considered an oath of fealty? (2) Could the pope impose a truce on Robert and Henry without having summoned them? (3) Could the pope demand an oath from Henry not to damage the Regno? (4) Could Henry deprive Robert of his royal office that he held immediately from the pope? – The answers to all the questions supported the Neapolitan. Only a few years earlier during his dispute with Philip IV of France, Pope Boniface VIII had endorsed the universality of the empire and the *de iure* subordination of all princes to the emperor, but changing political circumstances created a radical metamorphosis of papal ideology³². The arguments of the anonymous theologian were crudely hierocratic. In his answer to the question whether the pope could impose a truce without having cited Henry and Robert, he simply argued that the pope had both swords, the temporal and the spiritual. He delegated the exercise of the temporal sword to the emperor, but retained "plenitudo potestatis" over him in temporal affairs³³.

The jurists played an unprecedented role in the final outcome. In a fragmentary consilium, an anonymous jurist argued that the universality of the Roman empire had long since disappeared³⁴. He noted that the city of Rome, which had preeminence over the whole world, is no longer that commonwealth (*res publica*) spoken of in the law books. It has been completely dissolved. Hence, since that Rome no longer exists,

³⁰ Const. 4,2, 1317–1362 [1.] no. 1249–50 and [2.] no. 1251, lacking the beginning and end of the tract, answers questions 2–6 (beginning).

³¹ Const. 4,2, 1317 and 1342. The legal consilium is contained in Archives départ. de la Lozère, Série G nr. 1036; the theological in Paris, B. N. lat. 4113, fol. 7r–17r. See *P. Gachon*, Etude sur le manuscrit G. 1036 des Archives départementales de la Lozère: Pièces relatives au débat du pape Clément V avec l'empereur Henri VII, in: Mémoires de la Société archéologique de Montpellier (Montpellier 1894).

³² *Francesco Calasso*, I Glossatori e la teoria della sovranità: Studio di diritto comune pubblico (Milano 1957) 80–81. Boniface wrote of French claims: "regem Romanorum qui est promovendus in imperatorem et monarcham omnium regum et principum terrenorum. Nec insurgat hic superbia gallicana: quae dicit quod non recognoscit superiorem. Mentiuntur, quia de iure sunt et esse debent sub rege romano et imperatore" (Const. 4,2, 139). See *Helmuth G. Walther*, Imperiales Königtum, Konziliarismus und Volkssouveränität. Studien zu den Grenzen des mittelalterlichen Souveränitätsgedankens (München 1976) 148–49, 213.

³³ Const. 4,2, 1346.

³⁴ *Walther*, Imperiales Königtum 102–103 attributes this consilium to Robert's Protonotary and Logothete, Bartholomeus of Capua.

one cannot commit treason against it. Today that republic resides in the Roman pontiff, who has great power and both swords³⁵.

Even after Henry's death, Clement V still felt compelled to answer the legal challenge posed by Henry's legislation and his condemnation of Robert. His first step was to ask one of the most distinguished jurists at Avignon, Oldradus de Ponte, for two consilia (numbers 43 and 69 in the standard printed edition of his work) on the legal issues involved in the affair³⁶. Gachon discovered a manuscript containing one of Oldradus's consilia and two others that had formerly been in the papal library at Avignon³⁷. It must have been a dossier put together at the papal court to provide juristic arguments for the legislation that Clement planned. One of the consilia was written after Henry's death, but before Clement promulgated "Pastoralis cura"³⁸. Oldradus composed consilium number 43 at the request of the cardinals at Avignon³⁹. Gachon's manuscript may contain a draft of this consilium. After it had served its purpose in the

³⁵ Acta imperii Angliae et Franciae ab a. 1267 ad a. 1313: Dokumente vornehmlich zur Geschichte der auswärtigen Beziehungen Deutschlands, ed. Fritz Kern (Tübingen 1911) 244–47, at 244: "et ubicumque notorium est per mundum, nec (om. ?) ipsa Romana civitas que olim communiter quasi preerat toti mundo, aliquarum provinciarum aut terrarum habet sub se gubernationem, regimen vel administrationem (...) reges et diversos principes orbis terre in (MS. ñ) sui tantum districtus satis tenuerit coartari, constat hodie non esse rem publicam illam de qua leges predictae locuntur, sed fore penitus addissolutam, unde nec contra ipsam committi potest crimen predictum, quod vocatur perduellionis". Kern noted in his edition that this passage is corrupt; I have telescoped it to make its meaning clearer. A subject of Robert wrote it (p. 245: "noster dominus rex"), and a corrupt text is preserved in Paris, B. N. lat. 4046, fol. 218v–219v. See Carl Müller, Der Kampf Ludwigs des Baiern mit der römischen Curie. Ein Beitrag zur kirchlichen Geschichte des 14. Jahrhunderts, Bd. 1 (Tübingen 1879) 393–405. Davis, Dante and the Idea of Rome 184–185.

³⁶ Oldradus died after 1343, not ca. 1335 as most reference works state; see Consilium 333 (Rome 1478) unfol., (Venice 1571) fol. 166v: "et quod confessus est tortus et non questioni positus, non uidetur ei obesse, quia de uulgaribus tantum confessus est, et quia nullis indiciis precedentibus confessus fuit et contra priuilegium concessum Hebreis per reginam". The queen to whom he referred is Giovanna I (1343–1381). See Attilio Milano, Storia degli ebrei in Italia (Torino 1963) 186. The privilege is printed by Nunzio Federigo Faraglia, Codice diplomatico sulmunese (Lanciano 1888) 263. Also Faraglia, Storia della regina Giovanna II d'Angio (Lanciano 1904) 334.

³⁷ Oldradus de Ponte (not identified by Schwalm), Const. 4,2 nr. 1254, 1373–78; nr. 1255, 1378–98, and the consilium already discussed above, nr. 1249–50, 1317–41. See the still valuable study of Eduard Will, Die Gutachten des Oldradus de Ponte zum Prozeß Heinrichs VII. gegen Robert von Neapel. Nebst der Biographie des Oldradus (Abhandlungen zur Mittleren und Neueren Geschichte 65, Berlin – Leipzig 1917) 20–21.

³⁸ Const. 4,2, 1378: "ab imperatore nunc mortuo".

³⁹ Oldradus de Ponte, Consilia (Rome 1472) (unfoliated) nr. 43, Clm 3638, fol. 26r–27r nr. 43, Clm 5463, fol. 43r–44r nr. 81 (olim 87): "predicta conscripsi cupiens super his scire a maioribus dominis meis cardinalibus ueritatem". Will, Die Gutachten 20–62, was the first to point out the relationship of the decretal and Oldradus's consilia, and he compared the consilia and the decretal in detail.

Curia, he included it in his collection of consilia⁴⁰. Number 69 cannot be dated, but is undoubtedly connected with the controversy between Henry and Robert⁴¹.

In consilium 43, Oldradus dealt almost exclusively with the question of proper judicial procedure. He posed a series of questions about the legitimacy of Henry's summons of Robert to his court. Is a summons invalid to a place where a defendant has notorious enemies? If so, is a subsequent trial and judgment also invalid?⁴² Oldradus argued that there were two kinds of summons, the "execution of intent" and the manner through which the summons is brought⁴³. The execution of intent is the defendant's knowledge of the summons and his ability to defend himself. This cannot be omitted⁴⁴. Oldradus argued that just as the right of self-defense is granted to everyone in extrajudicial matters by natural law, so too in court a person has the right to defend himself by natural law⁴⁵. There can be no defense without knowledge. If the prince would render a judgment without all necessary knowledge, he would take a defense away from a man that is granted by natural law. This, concluded Oldradus, the prince

⁴⁰ The textual tradition of Oldradus's consilia needs to be explored. There are at least three different collections of his consilia in the manuscripts: one contains 220 consilia (Munich, Staatsbibl., Clm 5463), the other 264 (Clm 3638). The first incunabula edition printed the text containing 264 consilia (Rome 1472), but a second Roman edition (1478) expanded this number to 333. This edition added consilia 265–274 that were not Oldradus's, but were often added to manuscripts of his consilia (e.g. Clm 3638), and then printed consilia 275–333 from an unknown source. I have not found a manuscript containing these consilia, but they seem to be authentic. Gero Dolezalek has examined a manuscript owned by Antiquariat Keip, Frankfurt am Main, that contains 264 consilia, but in a different order from the vulgate. A thorough examination of the textual tradition may help to date the different stages of their composition and, consequently, the individual consilia.

⁴¹ Ed. Rome 1472 (unfoliated) nr. 69, Clm 3638 nr. 69, Clm 5463 nr. 186; *Will*, Die Gutachten 51–62.

⁴² Ed. Rome 1472 (unfoliated) nr. 43, Clm 3638, fol. 26r–27r nr. 43, Clm 5463, fol. 43r–44r nr. 81 (olim 87): "Queritur utrum citatio facta in loco ubi communiter habitant inimici notorii citati absente longe ipso citato ex hoc reddatur nulla, et per consequens processus et sententia subsequuta".

⁴³ Ibid.: "Pro examinatione eorum de quibus queritur primo illud puto uidendum utrum citatio, si sit de esse iudicii ita quod pretermisita per principem sententiam nullam reddat et potissime criminalem? Circa quod dicendum uidetur quod in citatione considerantur duo, scilicet effectus intentus et ad ipsum perueniendi modus".

⁴⁴ Ibid.: "Effectus intentus est scientia citati et facultas defendendi. Et hoc non uidetur posse obmitti quin ueniat uere uel interpretatiue, ut in c. Nos in quemquam (C. q.1 c.1)."

⁴⁵ Ibid.: "Sicut enim iure nature permissa est unicuique defensio contra extrajudicialem uiolentiam, ut ff. de iust. et iur. l. Vt uim (Dig. 1.1.3) et ad leg. Aquil. l. Scientiam § Qui cum aliter (Dig. 9.2.45(46).4) Adeoque in brutis uidet huius permissio, ut ff. si quad. paup. fec. dicatur l.i. § Cum arietes (Dig. 9.1.1.11), sic et aduersus uiolentiam iudicialem, ut ff. de iniuriis l. Nec magistratibus (Dig. 47.10.32) extra de rest. spol. Conquerente (X 2.13.7) et ff. ad leg. Aquil. l. Quemadmodum § Magistratus (Dig. 9.2.29.7) et C. de iure fisci l. Facultas et l. Prohibitum (Cod. 10.1.7 et 5). Verum quia omnis licitus defendendi modus debet commensurari modo offendendi qui intenditur, ut C. unde ui l. Si quis in tantam (Cod. 8.4.7) et C. de iureiur. l.i. (Cod. 2.58(59).1) et ibi not. idcirco in iudicialibus licet iure nature cuilibet se defendere iudicialiter, non iniuriis et obprobriis, ut C. de postul. l. Quisquis (Cod. 2.6.6)."

may not do⁴⁶. A summons is the means by which knowledge is brought to the court⁴⁷. The means by which a summons is delivered is not established by natural law. A summons can be delivered by a nuncio, letter, or edict. The means are regulated by positive law, and the prince can, therefore, summon anyone as he wishes⁴⁸.

Oldradus did not cite his sources. But, although I cannot delve into the origins of Oldradus's thought in this essay, Oldradus brought together strands of legal thought about the rules of judicial procedure that had evolved since the middle of the thirteenth century⁴⁹.

In Consilium 69, Oldradus grappled with the other issue raised by the dispute: Did the emperor exercise jurisdiction over other kings or over the king of Sicily? He decisively rejected imperial claims to be "dominus mundi".

In these consilia Oldradus put forward two arguments to justify Robert of Naples's position. The prince could not deny a subject his right of a proper trial and the basic elements of judicial procedure, because this right was grounded in natural law. These were not new or original ideas of Oldradus, but he and Clement's legislation gave them immediate currency. The second argument was much older. The emperor was not "dominus mundi" and did not exercise jurisdiction outside the borders of the German Reich.

The anonymous jurist who wrote another consilium contained in the Avignonese dossier discovered by Gachon provided an even more detailed defense of judicial procedure than Oldradus⁵⁰. He wrote a long disquisition on the duty of a judge to give a defendant an opportunity to defend himself. The issue had also been raised in Robert's protest that was possibly written by Bartholomeus of Capua⁵¹. His points repeat

⁴⁶ Ibid.: "sed quia defensio sine scientia esse non potest, necessaria est omnino scientia uera uel interpretiua, et cum princeps hac non precedente iudicat, subtrahit homini defensionem iure nature concessam. Set hoc non potest princeps, ut inst. de iure nat. gen. et ciu. § Set naturalia (Inst. 1.2.11) et not. Compos. in c.p. Sicut extra de elect. (et not. — elect. om. Clm 3638) ergo etc."

⁴⁷ Ibid.: "Modus autem inducendi hanc scientiam uere uel interpretiue est citatio, et ideo cum inchoatur modus offendendi, statim datur possibilitas defendendi per citationem, et hoc est quod textus dicit 'omnium autem actionum instituendarum principium ab ea parte edicti proficiscitur quam pretor edicit de in ius uocandi'."

⁴⁸ Ibid.: "Set citationes habent suos modos quia aliquando per nuncium et aliquando per epistolas et aliquando per edicta (...) et est quidam modus citationum in ipsarum iteratione consistens (...) et ad hunc modum non uidetur princeps artari, arg. expressum ff. de manu. l. Apud eum (Dig. 40.1.14) quia isti non sunt modi de iure nature, set de iure simpliciter positio cui princeps non est necessario alligatus, ut ff. de leg. et sent. consul. l. Princeps (Dig. 1.3.31(30)) et C. eodem titulo l. Digna (Cod. 1.14(17).4)."

⁴⁹ For details see chapter four of my forthcoming book: *The Prince and the Law 1200 to 1550*.

⁵⁰ Archives départ. de la Lozère, Série G nr. 1036, fol. 18 r–29 v, Const. 4,2, 1378–1398.

⁵¹ Const. 4,2, 1362–1369, at 1365: "Constat enim quod defensionem personarum et rerum eciam tam iuris quam facti omnes leges omniaque iura permittunt, sive quis loquatur de iure diuino sive naturali eciam brutis indito." *Gennaro Maria Monti*, La dottrina anti-imperiale degli Angioini di Napoli: I loro vicariati imperiali e Bartolomeo de Capua, in: *Studi di storia del diritto in onore di Arrigo Solmi*, Vol. 2 (Milano 1941) 11–54, attributes this text to Bartholomeus (p. 23), and *August Nitschke*, Die Reden des Logotheten Bartholomäus von Capua, in: *QFIAB* 35 (1955) 226–274, at 254, inclines, carefully, to agree; *Walthert*, Imperiales Königtum 102, assigns authorship to him; *Calasso*, Glossatori 136–138, has his doubts.

those of Oldradus but add some important nuances. A judge who would summon a person to a place infested with enemies would violate natural reason and equity⁵². A summons had as its purpose the notification of a defendant so that a defense be not denied to him. If a summons is not properly carried out and as a consequence a person has his defense taken away from him, such a summons is contrary to natural reason and divine and human law⁵³. One may not object that the emperor is "legibus solutus" and can therefore, particularly for the crime of treason, omit a summons and proceed to a judgment. "We say that a defense, and consequently a summons, is established by natural law, not only by civil law"⁵⁴. If these rules were not followed, he continued, "there would be no difference between guilty and innocent persons. The prince could wilfully condemn whom he wished. The power of life and death over his subjects would be entirely in his hands. There would not be civil or royal power, but only tyrannical. Natural reason concedes a defense not only to men, but also to animals"⁵⁵.

He noted that a summons is made in order that a judge might examine the truth and render a just sentence. Reason required that he hear the defense of the defendant in court. A judge could not have "full knowledge" of a case if a defense given to the defendant by natural and divine law would be omitted⁵⁶. Resorting to biblical justifications, he argued that even God, who knows all things, called Adam, Cain, and the Sodomites to him before he rendered a sentence on them. In notorious crimes a summons must be made according to natural reason. Many things might be alleged for the defendant that would be hidden from the judge⁵⁷.

⁵² Const. 4,2, 1387.

⁵³ Const. 4,2, 1389: "Habet enim citatio modum suum ad effectum et finem certum ordinatum, effectum quidem et finem habet, ut in citati noticiam perveniat, ut sibi sua defensio non negetur, sed concedatur (...). Unde si citatio fiat taliter, quod citatus nesciat vel verisimiliter scire non possit, cum per consequens sibi defensio subtrahatur, citatio talis contra rationem naturalem et divinam et humana iura non valet nec lata sententia virtute ipsius."

⁵⁴ Const. 4,2, 1390: "Nec obstat si dicatur, quod imperator legibus est solutus et ideo obmissa citatione legitima ad diffinitivam, maxime in crimine lese maiestatis, potuit secundum legem suam quam super hoc edidit procedere. Dicimus enim quod defensio et per consequens citatio est de iure naturali, non solum de iure civili, ff. de iust. et iure l. Vt vim (Dig. 1.1.3)."

⁵⁵ Const. 4,2, 1390: "Alias non esset differentia inter nocentes et innocentes, sed posset princeps pro voluntate condemnare quem vellet, et esset penes eum potestas in subditis vite et necis nec esset regia nec civilis, sed tyrannica potestas in eo contra rationem naturalem, que nedum hominibus, sed etiam brutis defensionem adversus periculum concedit."

⁵⁶ Const. 4,2, 1390: "Ad hoc enim fit citatio, ut iudex veritatem examinet et recte iudicare possit defensionibus rei auditis et ab eo presente queratur ratio, aliter non posset examinari negotium vel recte sententia ferri (...). Hoc autem, scilicet cognitio plena iudicis et defensio reo naturali et divino iure permissa non fieret, si citatio obmitteretur et posset omitti."

⁵⁷ Const. 4,2, 1390: "Hoc etiam divino probatur exemplo, ut patet in Genesi de Adam, Caym et Sodomitis, quos requisivit et vovavit Dominus, antequam sententiam ferret in eos, ut sciret eis presentibus, si res sic se habebat, et excusationes si quas haberent audiret, licet omnia essent sibi notoria sicut Deo (...). In notoriis etiam est citatio facienda ratione naturali, cum multe possint esse defensiones pro reo, que iudici latent."

Although the emperor is "living civil law on earth", he cannot dispense with or change these laws. He is not loosed from natural law⁵⁸. One may not object that the emperor may proceed against an absent defendant according to his own legislation "Ad reprimendum", because that law does not extend to non-subjects and because even that law requires a legitimate summons⁵⁹. Therefore, Henry's trial and condemnation of Robert was not valid⁶⁰.

Historians have focused on the issue of the emperor's relationship to other kings in this dispute. They have missed the weightiness of Oldradus's and the jurists' defense of Robert on procedural grounds because they were not fully aware of the juristic background⁶¹. I would emphasize that the dispute between Robert of Naples and Henry VII was important because it introduced a sensitivity to judicial procedure and the relationship of natural law to judicial procedure into a wider political arena in the early fourteenth century. The question of the emperor's universal power was not nearly as important, weighty, or as difficult to decide. The Roman lawyers had never seriously considered the emperor to be "dominus mundi" in the sense that he exercised universal jurisdiction over all men and their property. Henry VII's jurists could only call upon canonists of the early thirteenth century to bolster their claims against Robert and Pope Clement. Later jurists did continue to attribute universal lordship to the emperor. Bartolus of Sassoferrato and Baldus de Ubaldis claimed that the emperor was *de iure* "dominus mundi", but their claims are hedged with *de facto* exceptions of every sort. It is difficult to determine what either jurist might have seen as the practical implications of the emperor's *de iure* universal sovereignty. In the end, the historian must conclude that they argued only for a theoretical overlordship with few if any concrete consequences⁶².

To sum up, finally, the importance of this dispute, I would emphasize the following points:

(1) Although a number of theologians, publicists, officials, and jurists took part in the debate surrounding Robert of Naples' condemnation, the jurists were the most influential at the time and subsequently.

⁵⁸ Const. 4,2, 1391: "Imperator igitur, qui est lex animata civilis in terris (...), iura talia tollere vel mutare non potest (...). Unde ipse imperator a tali lege non est solutus, Instit. de iure nat. gen. et civ. § Sed naturalia."

⁵⁹ Const. 4,2, 1391: "Non obstat etiam lex, quam imperator predictus editit, que incipit 'Ad reprimenda', quod in talibus procedi possit etiam contra absentem (...). Item ad non subditos extendi non potest (...). Item lex illa requirit citationem legitimam, que hic non processit, ut ex premissis apparet, nec ipse illam tollere potuit."

⁶⁰ Const. 4,2, 1391: "Ex hiis igitur patet nullam fuisse sententiam, quod citatio legitima non processit, nec ille contra quem fuit lata sententia potuit contumax reputari."

⁶¹ E. g. *Walther*, *Imperiales Königtum* 215, claims that Oldradus did not deal with the substance of the case in consilium 43, but only with "formale Einwände".

⁶² *C. N. S. Woolf*, *Bartolus of Sassoferrato: His Position in the History of Medieval Political Thought* (Cambridge 1913) 21–28, 37–53; *Joseph Canning*, *The Political Thought of Baldus de Ubaldis* 64–70, 113–27, 211–13; *Walther*, *Imperiales Königtum* 85–111; *Michael Wilks*, *The Problem of Sovereignty in the Later Middle Ages: The Papal Monarchy with Augustinus Triumphus and the Publicists* (Cambridge 1964) 433–51.

(2) Oldradus de Ponte was, because of his position in the papal curia, and because of the creativity of his thought, a key figure in the literature. Oldradus's consilia were not only crucial in helping the papal curia draft "Pastoralis cura", but his work also marks the beginning of a juristic literary genre, consilia dealing with actual legal cases, that would rapidly become one of the most important in the late Middle Ages. Jurists had composed consilia that gave practical advice to judges since the twelfth century. In the twelfth and thirteenth centuries, the jurists collected their more abstract "quaestiones", but first Oldradus and then later jurists put together collections of consilia that rendered opinions on contemporary court cases⁶³. Oldradus seems to have been the first major collector of his consilia and one of the originators of this new genre. Certainly his collection was one of the best known.

(3) Oldradus's consilia and the papal and imperial decrees represented two ways in which the political ideas generated by this controversy were disseminated in the fourteenth and fifteenth centuries. Bartolus of Sassoferrato, for example, glossed Henry VII's decrees. They and his gloss became a part of the vulgate text of the Corpus iuris civilis. His commentary still exists in over sixty manuscripts and was often printed. What is of particular interest to us is that Bartolus reinterpreted "Ad reprimendum" to bring its provisions into concord with "Pastoralis cura". Bartolus guaranteed that Henry VII's legislation would not be forgotten and would become a crucial part of the basic legislation governing the rules of procedure in late medieval Europe.

⁶³ See *Peter Weimar* and *Norbert Horn*, *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, ed. *Helmut Coing*, Vol. 1 (München 1973) 241–50 and 336–41. On Oldradus's consilia see *Baldwin Aistermann*, *Beiträge zum Konflikt Johanns XXII. mit dem deutschen Königtum* (Diss. Freiburg im Breisgau, Bonn 1909): consilia 180, 191; *Joshua Starr*, *Jewish Life in Crete under the Rule of Venice*, in: *Proceedings of the American Academy for Jewish Research* 12 (1942) 59–114, at 64–65 (reprinted in: *Medieval Jewish Life. Studies from the Proceedings of the American Academy for Jewish Research*, New York 1976): consilium 36; *Guido Kisch*, *The Jews in Medieval Germany: A Study of Their Legal and Social Status* (New York 1970) 559 n. 52: consilium 87, and 466–67 nn. 105, 108: consilium 333; *Kenneth Pennington*, *Bartolomé de Las Casas and the Tradition of Medieval Law*, in: *Church History* 39 (1970) 149–161, and *James Muldoon*, *Popes, Lawyers, and Infidels: The Church and the Non-Christian World 1250–1550* (Philadelphia 1979) 20–21: consilium 264; *Karl Mommsen*, *Oldradus de Ponte als Gutachter für das Kloster Allerheiligen*, in: *ZRG Kan. Abt.* 62 (1976) 173–193.