PART I

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INTERNATIONAL LAW IN
RENAISSANCE EUROPE
(1492–1660)

I

The Law of Nations in Renaissance Europe

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The Abdication of Charles V

On 25 October 1555, the Emperor Charles V (1500–58), leaning on the shoulder of the young Prince William of Orange (1533–84), appeared at the Coudenberg Palace in Brussels before the representatives of the estates of the XVII Provinces of the Habsburg Netherlands.* He had called the assembly to witness the transfer of the rule over these lands to his son and major heir, Philip II (1527–98). It was a first step in a process whereby the old emperor divested himself of the rule over all his lands and territories. In January 1556, still at Brussels, he signed the necessary documents for the transfer of Castile and Aragon, as well as their dependencies in Italy, North Africa and the New World. Shortly after, he also abdicated the imperial title to his brother Ferdinand I (1506–64), who had ruled the Habsburg hereditary lands in and around Austria for decades and had already been elected king of Germany in 1530. This particular abdication had, however, to be held secret pending the acceptance of the transfer of the emperorship by the German electors, which would only be obtained in 1558. In the meantime, Charles appointed his son to the office of imperial vicar-general for the kingdom of Italy – that is Italy north of Rome – over which the emperor held feudal suzerainty, in order to strengthen his hold over the strategically situated Duchy of Milan and to fortify Spanish control over the smaller principalities in the region.[1] In early 1556, the old emperor travelled

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[1] Since the imperial coronation of Otto the Great (r. 936–73) by the pope in 962, the emperorship belonged to the king of Germany (generally known as king of the Romans). The king-emperor of what became known as the Holy Roman Empire also

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to Castile, where he lived out the remainder of his life at the cloister of San Jeronimo de Yuste.[2]

The emperor's decision to abdicate was as much an acknowledgement of the failure of his European policies as it was born from the desire to make his peace with God before he died. The timing of the abdication had at first been dictated by Charles' wish not to ratify the Peace of Augsburg of 25 September 1555 in person. This agreement, which his brother Ferdinand had negotiated with the estates of the Holy Roman Empire, conceded to Catholic as well as Lutheran princes of Germany alike the right to impose their own confession within their territories (*cujus regio, ejus religio*). Under pressure of his brother and son, Charles had, however, not escaped ratification and had been forced formally to underwrite in his own hand the collapse of his policies to uphold and restore the religious unity of the Empire, and by extension the whole Christian Commonwealth (*respublica Christiana*).[3] The process of abdication, and the negotiations about the division of the inheritance between Philip, Ferdinand and the latter's son Maximilian II (r. 1564–76), also put an end to Charles' hopes to pass on the imperial title to his son after Ferdinand's death, and thus keep a link between the most important lands of the Habsburg Monarchy, the Spanish kingdoms and the elective emperorship. With this, any aspirations to 'universal monarchy' over Latin Christianity that Spanish kings might entertain were severely jeopardised in advance. Once Ferdinand was effectively raised to the imperial dignity in 1558, Philip II of Spain had to release his pretences to the position of imperial vicar-general or deputy for Italy.[4]

The context and manner of Charles' relinquishment of the reins of power were a far cry from the hopes and acclamation with which his ascendancy as the foremost prince of Europe, about thirty-five years earlier, had been met.

held claim to the kingdom of Italy, the region north of the Papal States, and was the feudal suzerain of the principalities and city-republics there. Since the 1440s, the kingship had been held by the Habsburg ancestors of Charles V. Like Charles, some of his successors would have their intended successors elected as king of Germany; Peter H. Wilson, *The Holy Roman Empire. A Thousand Years of Europe's History* (London: Allen Lane 2016).

[2] Alfred Kohler, *Karl V. 1500–1558. Eine Biographie* (Munich: C. H. Beck 2000) 342–55; Geoffrey Parker, *Emperor. A New Life of Charles V* (New Haven and London: Yale University Press 2019) 460–90; M. J. Rodriguez-Salgado, *The Changing Face of Empire. Charles V, Philip II and Habsburg Authority, 1551–1559* (Cambridge: Cambridge University Press 1988) 126–31.

[3] Mark Greengrass, *Christendom Destroyed: Europe 1517–1648* (London: Allen Lane 2014) 261–2.

[4] Rodriguez-Salgado, *Changing Face of Empire*, 165–7.

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As a young man, Charles of Habsburg had fallen heir to an extraordinary set of lands, territories and titles, making him the most powerful ruler within the Christian Commonwealth since Charlemagne (r. 768–814). To the Netherlands, which he inherited from his father Philip the Fair (r. 1482–1506) in 1506, came the rule over the kingdoms of Castile and Aragon, at the death of his maternal grandfather Ferdinand the Catholic (r. 1479–1516) ten years later. The kingdoms of the Baleares, Sardinia, Sicily and Naples were attached in personal union to the Crown of Aragon, as were the title to the defunct crusader Kingdom of Jerusalem, Ferdinand's claims to the likewise bygone Byzantine empire of Constantinople, his conquests on the coasts of North Africa and his hopes and dreams to launch an eastwards crusade and reconquer both Jerusalem and Constantinople.[5] The death of Charles' paternal grandfather, Emperor Maximilian I (r. 1493–1519) opened the door to his election as Roman-German king and delivered the imperial title into his hands in 1519. The rule of Maximilian's Austrian lands was left to his brother Ferdinand, who would later add the kingdom of Bohemia and what remained of the kingdom of Hungary after the death of their previous king at the battle of Mohacs (1526) against the troops of the Ottoman Sultan Suleiman the Magnificent (r. 1520–66). In the year 1519, the Spanish conquest of Mexico against the Aztec and Maya began. In the early 1530s, other expeditions would lead to the destruction and subjection of the Quecha empire of the Inca in the central Andes.[6]

Charles' rise to prominence among the Christian rulers was hailed by some as the work of divine providence at a time of peril for the Christian Commonwealth. His accumulation of lands and power, and his acquisition of the imperial title were seen as an assignment by God to unite Christianity in the face of the Ottoman threat. The offence launched by Sultan Selim I (r. 1512–20) against the Persians and the Mamluks had led to the conquest of Syria, Mesopotamia and Egypt by 1517 and had left the Ottomans as the dominant land and maritime power in the eastern Mediterranean, ready to strike at Italy and the western Mediterranean. The fall of Belgrade (1521), Rhodes (the basis of the order of Saint John, 1522) and Hungary (1526)

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[5] Andrew W. Devereux, *The Other Side of Empire. Just War in the Mediterranean and the Rise of Early Modern Spain* (Ithaca, NY and London: Cornell University Press 2020); John Headley, 'Rhetoric and reality: messianic, humanist, and civilian themes in the imperial ethos of Gattinara' in Marjorie Reeves (ed.), *Prophetic Rome in the High Renaissance Period* (Oxford: Clarendon Press 1992) 241–69, at 255.

[6] Hugh Thomas, *The Golden Age. The Spanish Empire of Charles V* (London: Allen Lane 2010).

brought the Habsburg lands in Austria into the line of fire, with the siege of Vienna (1529) as dramatic proof of the vulnerability of the very heartlands of the West. To the threat of the Ottomans, soon the affliction of religious division, of heresy in the eyes of the Catholic Habsburgs and their supporters, was added with the rise of first Lutheranism and then other Protestant confessions.[7] At a time when the old order of the Christian Commonwealth had to face the double threat of internal and external destruction, God seemed to have provided an instrument of reform, restoration and reconquest through the young Emperor Charles V.

The Ottoman threat led to the revival of old late medieval ideas about the unity of the Latin West and the necessity of internal peace to launch a counteroffensive against the Ottomans. For this, one natural strategy was to look for a guiding role to the traditional heads of the Christian Commonwealth, its spiritual head, the pope, and its secular head, the emperor. In answer to the Ottoman advances in the east, Pope Leo X (r. 1513–21) had twice promulgated a five-year truce among all Christian princes and called for the crusade. In 1518, the initiative had been wrested from his hands by Cardinal Thomas Wolsey (1473–1530), chancellor of England, who brokered a permanent and 'universal' peace treaty among the leading powers of Europe.[8] The election of Charles V in June 1519 seemed to some to give Christian Europe a natural, secular leader. For the first time in centuries, the imperial crown was resting on the head of a man who, thanks to his rule of Spain, parts of Italy and the Netherlands, had the power and resources to fulfil the old universalist aspiration of the emperorship.

None was more vocal or prominent in the government of Charles V among the spokesmen for the resurrection of the old idea of the emperor as the 'universal monarch' of the Latin West than Mercurino di Gattinara (1465–1530). Gattinara was a civil lawyer from Northern Italy who had previously served Charles' aunt and governor-general of the Netherlands,

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[7] G. R. Elton, *Reformation Europe 1517–1559* (London: Fontana 1963); Greengrass, *Christendom Destroyed*, 259–351; Diarmaid MacCulloch, *Reformation. Europe's House Divided 1490 –1700* (London: Allen Lane 2003) 106–269.

[8] Treaty of London, 2 October 1518, Thomas Rymer, *Foedera, conventiones, literae et cujuscunque generis acta publica, inter reges Angliae et alios quosvis imperatores, reges, pontifices, principes, vel communitates, ab ineunte saeculo duodecimo, viz. ab anno 1101, ad nostra usque tempora, habita aut tractata* [. . .] (3rd edn, Hague Comitis: apud Joannem Neaulme 1739–45), vol. 13, 624. On these initiatives, see Chapter 7, 'Peacemaking in Renaissance Europe', in this volume, and references therein. On the Ottoman threat and the revival of the crusading ideal, see Norman Housley, *The Later Crusades from Lyons to Alcazar 1274–1580* (Oxford: Oxford University Press 1992) 80–150; Norman Houseley, *Crusading and the Ottoman Threat 1453–1505* (Oxford: Oxford University Press 2012).

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Margaret of Austria (1480–1530). In 1516, he had penned an oration about universal monarchy, which he dedicated to the young Charles. In late 1518, Gattinara was raised to the office of grand chancellor of Charles for all his lands, and put at the head of the small central bureaucracy that had to aid Charles in overseeing and ruling his vast collection of lands.

For the occasion of the reception of the German delegation to Spain that came to affirm Charles' election in late 1519, Gattinara composed an oration in which he stated that Charles' elevation was a sign that he was God's instrument to reform and restore Christianity and overcome its enemies. For this, the chancellor drew on both medieval eschatological ideas about the coming of a last empire that would bring peace and prepare for the second coming of Christ, as well as on the secular Roman law tradition of the emperor as 'lord of the world' (*dominus mundi*). The latter tradition had found a powerful articulation in *De monarchia* by the poet Dante Alighieri (1265–1321) and had been worked out in its legal intricacies by Italian commentators of civil law of the fourteenth century, foremost among them Bartolus of Saxoferrato (*c.* 1313/14–57) and Baldus de Ubaldis (1327–1400), as part of their discussions on public authority, jurisdiction and empire.[9]

Late medieval civil as well as canon lawyers had struggled with aligning the idea of the emperor as universal monarch with the reality of the Holy Roman Empire's geographical limitation to the kingdoms of Germany and Italy. By the fourteenth century, the independence of the rulers of the realms outside of the Empire as 'superiorem non-recognoscentes' (those who do not recognise any superior) was commonly accepted. The notion of the independence of the kings of France, and others, had found powerful support through the decree of Pope Innocent III (r. 1198–1216) *Per venerabilem* (1202). In the fourteenth century, it was widely acknowledged that the kings of the realms outside the Empire held similar, supreme jurisdiction, or powers of lawmaking and law enforcement, as the emperor ('rex imperator in regno suo'; the king is emperor in his own realm). The solution to bridge the gap between the reality of several independent kingdoms and the claim about the emperor as 'lord of the world'[10] was to distinguish the *de facto* independence of Christian rulers from the *de jure* universal

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[9] Eva Botella-Ordinas, 'Exempt from time and from its fatal change: Spanish imperial ideology, 1450–1700', *Renaissance Studies*, 26 (2012) 580–604; Rebecca Boone, 'Empire and medieval simulacrum: a political project of Mercurino di Gattinara, grand chancellor of Charles V', *Sixteenth Century Journal*, 42 (2011) 1027–49; Rebecca Boone, *Mercurino di Gattinara and the Creation of the Spanish Empire* (London and New York: Routledge 2014) 25–58; Headley, 'Rhetoric and reality'.

[10] From the *lex Rhodia*, D. 14.2.9.

authority of the emperor. This solution was embraced and given powerful authority by the leading commentators of civil law, Bartolus and Baldus. Bartolus stated that those who rejected the universal authority of the emperor *de jure* were heretics, thus equating 'universal empire' with the community of Christians. Under the *de facto/de jure* distinction, factual independence amounted to more than usurpation and was considered legitimate if it was acquired through legally valid means such as consent or prescription. The princes of the realms outside Germany and Italy thus enjoyed full and supreme jurisdiction over their domains – at least in secular matters – without interference from the emperor. The polities and princes of the kingdom of Italy held far-reaching autonomy and wide jurisdiction, albeit within the framework of the feudal overlordship of the emperor as suzerain, when available. The emperor, as *de jure* 'lord of the world', retained, however, sole secular jurisdiction over the Christian world as a whole. This assigned certain tasks and powers to him. He was the primary defender of Christianity against its external enemies, held responsibility for protecting the faith and correcting the Church hierarchy when necessary, and was the heir to the Roman emperors as promulgator and guarantor of Roman law.[11] The distinction fitted the Aristotelian–Thomistic theory that each entity, including polities, drew legitimacy from its own ends, but at the same time participated in the higher ends of the entities it was part of, and ultimately of the Christian community, which was to approach God. The emperor stood as the secular head of a multi-layered hierarchy wherein many members enjoyed original and supreme jurisdiction, but wherein he held responsibility and power over some aspects of the governance of the whole. As 'lord of the world', he held jurisdiction over the whole, but no superior jurisdiction over its composing parts.[12]

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[11] Hence some constitutions and a treaty, the Peace of Konstanz (1183), of Emperor Frederick I Barbarossa (r. 1152–90), had found their way into the medieval collation of the Justinianic codification: Mario Ascheri, 'La pace di Costanza: da Odofredo a Baldo e oltre' in Mario Ascheri, Martin Heckel, Antonio Padoa-Schioppa *et al.* (eds.), *'Ins Wasser geworden und Ozeane durchquert'. Festschrift für Knut Wolfgang Nörr* (Cologne, Weimar and Vienna: Böhlau 2003) 1–9; Mario Ascheri, 'La "pace" di Costanza, fondamento delle autonomie municipali, e il suo uso nelle opera dei giuristi' in Giancarlo Andenna (ed.), *I giorni che hanno fatto la Lombardia* (Legnano: Banca di Legnano 2007) 347–66; Gero Dolezalek, 'I commentary di Odofredo e Baldo alla pace die Constanza' in *La pace di Costanza 1183* (Bologna: Cappelli 1984) 59–75, at 59–61 and 67; Gero Dolezalek, 'Der Friede von Konstanz in der Literatur des Jus Commune' in Dolezalek and Diego Quaglioni (eds.), *Gli inizi del diritto pubblico, vol. II: Da Federico I a Federico II* (Bologna and Berlin: Il Mulino/Duncker & Humblot 2008) 277–307; Hermann Lange, *Römisches Recht im Mittelalter*, vol. I (Munich: Beck 1997) 92–3.

[12] Joseph Canning, *The Political Thought of Baldus de Ubaldis* (Cambridge: Cambridge University Press 1987); Joseph Canning, *Ideas of Power in the Late Middle Ages 1296–1417* (Cambridge: Cambridge University Press 2011) 60–80 and 133–64; Joseph Canning, 'Ideas of empire in the thought of the late medieval Roman law jurists' in

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In their writings and actions, Gattinara and his supporters rehearsed these ideas and moulded them into policies to serve their agenda both for the internal governance of Charles' empire and for its foreign relations. On the internal level, the discourse of universal empire suited Gattinara to strengthen his position as grand chancellor over the different bureaucracies in the composing parts of the empire. The idea of Charles as the divinely appointed vindicator of the unity of Christianity allowed Gattinara to detach the emperorship from its historic moorings in Germany and thus counter the potential opposition by the German-imperial chancery to his centralising policies. It allowed him to cater to the sensitivities of the Castilian elite. Thus, Gattinara contributed to later ideas about the transfer of the seat of empire to Castile, which gained force after the abdication of Charles.[13] With regards to external policy, Gattinara applied the language of universal empire both to the outer-European world and, most significantly, to the Christian Commonwealth. As Gattinara indicated in his oration of 1519, the election of Charles to the imperial dignity gave him a right to conquer the whole, non-Christian world. Thus, he endorsed Spanish expansion in the New World. With regard to the Christian Commonwealth, he employed the idea of universal monarchy in the Bartolist sense. For Gattinara, this had three major practical implications: the creation of a lasting peace among Christian princes under the guidance of the emperor, the hegemony over Italy as the basis for this peace and as a stepping stone towards leading a crusade against the

Edward Cavanagh (ed.), *Empire and Legal Thought. Ideas and Institutions from Antiquity to Modernity* (Leiden and Boston: Brill/Nijhoff 2020) 280–99; Constantin Fasolt, *The Limits of History* (Chicago and London: University of Chicago Press 2004) 156–95; Dante Fedele, *The Medieval Foundations of International Law. Baldus de Ubaldis (1327–1400), Doctrine and Practice of the Ius Gentium* (Leiden and Boston: Brill/Nijhoff 2021) 32–58 and 107–15; Maurice H. Keen, 'The political thought of the fourteenth-century lawyers' in *Trends in Medieval Political Thought* (Oxford: Basil Blackwell 1965) 105–26; Martti Koskenniemi, *To the Uttermost Parts of the Earth. Legal Imagination and International Power, 1300–1870* (Cambridge: Cambridge University Press 2021) 19–116; Jacques Krynen, *L'empire du roi Idées et croyances politiques en France XIIIe–XVe siècle* (Paris: Gallimard 1993); James Muldoon, *Empire and Order. The Concept of Empire, 800–1800* (Basingstoke and London: Macmillan 1999) 64–113; Brian Tierney, '"The prince is not bound by the law": Accursius and the origins of the modern state', *Comparative Studies in Society and History*, 5 (1963) 378–400.

[13] John M. Headley, 'Gemany, the empire and monarchia in the thought and policy of Gattinara' in Heinrich Lutz (ed.), *Das römisch-deutsche Reich im politischen System Karls V.* (Munich: De Gruyter Oldenbourg 1982) 15–33; John M. Headley, *The Emperor and His Chancellor. A Study of the Imperial Chancellery under Gattinara* (Cambridge: Cambridge University Press 1983); Kohler, *Karl V.*, 121–2.

Ottomans and the reform and restoration of the Church, through the convocation of a general Church Council.[14]

Charles V himself never fully embraced the universalist programme of Gattinara and his faction at court. For him, the concerns about the preservation of his inheritance and dynastic rights came first. However, he also took his role as defender of the faith and Christianity against its internal and external enemies to heart and, when the opportunity arose, did not stop Gattinara from pressing claims to a special role for the emperor in the governance of the Christian Commonwealth. The high watermark for Charles' claim to universal monarchy came after the victory of his armies at the Battle of Pavia (1525), where his nemesis, the French King Francis I (r. 1515–47) was taken captive. The discussions for what became the Peace Treaty of Madrid (1526), led to a clash between the emperor and his chancellor, and the latter's refusal to attach his chancellor's seal to the treaty. Whereas Charles chose to make peace with Francis in order to pursue his dynastic claims to full sovereignty over his French fiefs in the Netherlands as well as to the duchies of Burgundy and Milan, Gattinara preferred a more stable alliance with the Italian principalities against France under the emperor's benign hegemony. The repudiation by Francis of his commitment to restore Burgundy upon his release and the ensuing formation of the anti-imperial League of Cognac with the French king and the pope restored the unity between Charles and his grand chancellor. After imperial troops had captured and sacked Rome (1527), the anti-Habsburg coalition broke and the imperial government could roll out a successful policy towards Spanish hegemony in Italy, attain a renewed peace with France (Peace of Cambrai, 1529) and ensure the coronation of Charles by the pope (1530).[15]

Charles V's government made the most blatant affirmations of universal monarchy in the treaties of Madrid with Francis I and of Barcelona with the pope (1529). Article 23 of the Peace of Madrid imposed an obligation on Francis I to aid a military expedition of Charles to Italy with troops, ships and money. Under Article 25, both princes committed to ask the pope to call a general council that would work for universal peace and deal with both the

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[14] Boone, *Gattinara*, 45–58; John M. Headley, 'The Habsburg world empire and the revival of Ghibellinism', *Journal of Medieval and Renaissance Studies*, 7 (1978) 93–127; Boone, 'Rhetoric and reality', 256–67; Randall Lesaffer, 'Charles V, *monarchia universalis* and the law of nations (1515–1530)', *Legal History Review*, 71 (2003) 79–124, at 84–9.

[15] Boone, *Gattinara*, 59–63; Kohler, *Biographie*, 99–102; Anthony Pagden, *Lords of All the World. Ideologies of Empire in Spain, Britain and France c. 1500–c. 1800* (New Haven and London: Yale University Press 1995) 40–7; Parker, *Emperor*, 149–202.

'Turks' and heretics, as well as to request the pope to grant them the most extensive privileges – including privileges on church taxes – for a crusade for three years. In case the crusade could not be launched in time and an Ottoman attack against Christianity or Italy occurred, Charles would, as 'head of the secular princes of Christianity, to whom the defence thereof falls in first order', assume the defence with the aid of France, the knights of Saint John and Genoa. All troops would be put under the command of an imperial general.[16] The Barcelona Treaty, which Gattinara had negotiated himself, called the emperor 'protector and defender of the Holy Roman Church and the Apostolic See, and head of the Christian Commonwealth'.[17] At the Peace of Cambrai, the imperialist faction already had to climb down from the lofty heights of these universalist claims. The emperor was no longer named as 'head of the secular princes of Christianity' and the article on joining a crusade under the leadership of the emperor was barred. The article on French aid for an Italian expedition by Charles was less open-ended now (Article 29), and went along with the undertaking by France not to interfere in the affairs of the Empire and Italy (Article 27). With the Peace of Cambrai, France had to relinquish its dynastic claims to territories in Italy (mainly Milan and Naples) and accept the factual hegemony of Charles over the peninsula, but without any references to the discourse of universal monarchy.[18]

After the coronation of Charles V at Bologna and the death of Gattinara, both in 1530, the discourse and policies of universal monarchy receded into the background. The final decade of Charles' reign, however, was marked by a revived focus on his role as defender and restorer of the faith, with regards to both crusading and Protestantism.[19] However, the discourse of universal monarchy was operated less, or in more subdued manners. Under the Peace of Crépy with Francis I (1544), which opened the way for Charles to confront the growing power of the Protestants in Germany, Charles and Francis promised to engage, jointly albeit not equally, in a crusade. Francis committed himself one-sidedly to send a given number of troops for the planned expedition against the Ottomans to Hungary.[20] A day after the treaty was signed, the French king promised the same aid for an offensive against the

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[16] Peace Treaty of Madrid of 14 January 1526, 4.1 CUD 412.
[17] Treaty of Barcelona of 29 June 1529, Preamble, see also Arts. 1 and 7, 4.2 CUD 1.
[18] Peace Treaty of Cambrai of 5 August 1529 between the emperor and France, 4.2 CUD 7; Lesaffer, 'Charles V', 115–19.
[19] Kohler, *Biographie*, 295–347; Parker, *Emperor*, 308–41 and 395–459.
[20] Peace Treaty of Crépy, 18 September 1544, Art. 7, 4.2 CUD 279.