



THE UNIVERSITY *of* EDINBURGH

Edinburgh Research Explorer

When the emperor submitted to his rebellious subjects

Citation for published version:

Raccagni, G 2016, 'When the emperor submitted to his rebellious subjects: A neglected and innovative legal account of the 1183-Peace of Constance', *English Historical Review*, vol. 131, no. 550, pp. 519-39.
<https://doi.org/10.1093/ehr/cew173>

Digital Object Identifier (DOI):

[10.1093/ehr/cew173](https://doi.org/10.1093/ehr/cew173)

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Peer reviewed version

Published In:

English Historical Review

Publisher Rights Statement:

This is a pre-copyedited, author-produced version of an article accepted for publication in The English Historical Review following peer review. The version of record [Gianluca Raccagni, When the Emperor Submitted to his Rebellious Subjects: A Neglected and Innovative Legal Account of the Peace of Constance, 1183, The English Historical Review, Volume 131, Issue 550, June 2016, Pages 519–539,] is available online at:
<https://doi.org/10.1093/ehr/cew173>

General rights

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact openaccess@ed.ac.uk providing details, and we will remove access to the work immediately and investigate your claim.



When the emperor submitted to his rebellious subjects: a neglected and innovative legal account of the 1183-Peace of Constance*

The settlement reached at Constance in 1183 between the Lombard League and the Holy Roman Emperor Frederick I Barbarossa is generally considered the formal foundation of the Italian city republics and thus a landmark in medieval European history.¹ Furthermore, it overturned the effects of the Diet of Roncaglia of 1158, whose definition of royal/imperial prerogatives (*iura regalia*) is commonly regarded as a milestone in the conceptualisation and growth of royal authority and public law in Western Europe.² At Roncaglia Barbarossa was assisted by the leading Bolognese lawyers of the time, who were reviving jurisprudence through the study of Roman law.³ Those *iura regalia* were not under imperial control, and Barbarossa proceeded to claim them back from the city republics that by then dominated northern Italy. The rebellion of the cities that coalesced into the League eventually forced him, at Constance, to grant most of the *iura regalia* to them, including the free election of their consuls, civil and criminal jurisdiction, the right to have armies and to build fortifications, and their holding of what had been recognised as public assets, such as public routes and waterways, within and outside the city, and the emperor also entitled the members of the League to keep their association and renew it whenever they wished.⁴

* I would like to thank Joseph Canning and Guido Rossi for their comments and suggestions.

¹ Among others: Q. Skinner, *The Foundation of Modern Political Thought* (2 vols., Cambridge, 1978), i. 5.

² Ibid. See also: K. Pennington, *The Prince and the Law, 1200–1600: Sovereignty and Rights in the Western Legal Tradition* (Berkeley, CA, 1993), 12–21.

³ G. Dilcher and D. Quaglioni, eds., *Gli inizi del diritto pubblico: l'età di Federico Barbarossa: legislazione e scienza del diritto* (Bologna, 2006); E. Conte, 'Federico I Barbarossa e il diritto pubblico giustiniano', *Bullettino dell'Istituto storico italiano per il medio evo e Archivio muratoniano*, 95 (1990), 237–59.

⁴ *Friderici I Diplomata. 1181–1190*, in *M[onumenta] G[ermaniae] H[istorica], Diplomata regum et imperatorum Germaniae*, 10/ pt. iv, ed. H. Appelt (Hannover, 1990), no. 848. For an account and

Scholarship, however, has ordinarily overlooked the fact that the Diet of Roncaglia and the Peace of Constance shared certain features.⁵ The Peace of Constance, for example, is usually portrayed as a capitulation, but in reality it was a compromise which, echoing Roncaglia, also recognized that the *iura regalia* were the emperor's to bestow and defined a set of reserved prerogatives embodying the enduring superiority of the emperor, such as the appellate jurisdiction or the duty of city consuls to take an oath of fealty to the emperor, among others.⁶ Scholarship has neglected that side of the Peace of Constance largely because, with hindsight, it has perceived the role of the empire in Italy as a lost cause. Yet no such privilege of hindsight belonged to the people who lived in the Middle Ages, or even the early modern period, when imperial authority continued to loom over Italy, and especially for those who lived in the thirteenth century, when, as we shall see, the Peace of Constance was bitterly fought over and the emperor came close to winning—not to mention that the contents of the Peace of

analysis of the conflict between Barbarossa and the Lombard cities as well as its outcomes: G. Raccagni, *The Lombard League* (Oxford, 2010), 147–88.

⁵ See notes 1–3 above.

⁶ *Friderici I Diplomata. 1181–1190*, no. 848. Residual imperial prerogatives also included the duty of the city consuls to seek imperial investiture; the duty of the members of the League to provide customary military services and help the emperor protecting his rights and possessions in Lombardy; the application of the *fodrum*, a tax paid when the emperor was in Italy, usually during his coronation journey to Rome, during which time the cities had to ensure the availability of provisions and the maintenance of roads and bridges; finally, the existence of residual local *regalia* belonging to the emperor was envisaged (the Peace of Constance only bestowed to the cities those *regalia* they had held since before the war), which were to be identified by local commissions; city communes could avoid those enquiries by paying a yearly flat but negotiable rate of two thousand silver marks. Those imperial prerogatives were enforced in the following years, but they were steadily eroded after the death of Emperor Henry VI: A. Haverkamp, *Herrschaftsformen der Frühstauffer in Reichsitalien* (2 vols., Stuttgart, 1970–1).

Constance, including its imperial prerogatives, nominally persisted and were evoked time and again over the centuries.

Indeed, the enduring relevance of the Peace of Constance in the medium and long term is another greatly neglected feature of that remarkable document. It has attracted such little attention, and this has been fragmented and niche at best, that it is virtually unknown to wider scholarship. Yet a preliminary assessment of that legacy of the Peace of Constance as a whole reveals that a great wealth of references to it can be found in documentary sources as well as historical, rhetorical, political, and legal works through the centuries and well beyond Italy, all of which suggests that it enjoyed a remarkably long and influential legacy and calls for a more thorough investigation. After all, apart from being considered a functioning document for centuries, and, as we shall see, igniting a bitter argument in Italy and Germany in the thirteenth century, several leading medieval and early modern scholars from across Europe took it into full account, from the Italians Azo, Odofredus, and Accursius in the thirteenth century, Bartulus and Baldus in the fourteenth, to the French Jean Bodin and Charles Dumoulin, the Dutch Pierre Goudelin, and the Scot Thomas Craig in the late sixteenth–early seventeenth centuries, to mention just a few.⁷ Goudelin, in particular, mentioned the Peace of Constance in one of the earliest works on peace treaties, which is essentially a commentary of the Peace of Constance itself (the 1628 Louvain edition was entitled *De jure pacis commentarius ad constitutionem Frederici de pace Constantiense*) and therefore shows exceptionally well how it was

⁷ For a far from exhaustive but illuminating series of examples (Azo, Accursius, Jean Bodin, and Goudelin are not cited, for example.): G. Dolezalek, ‘Der Friede von Konstanz 1183 in der Literatur des “Jus Commune”’, in G. Dilcher and D. Quaglioni, eds., *Gli inizi del diritto pubblico europeo, II. Da Federico I a Federico II*, ed. (Bologna, 2008), 277–308; G. Raccagni, ‘The teaching of rhetoric and the Magna Carta of the Lombard cities: the Peace of Constance, the empire and the papacy in the works of Guido Faba and his leading contemporary colleagues’, *Journal of Medieval History*, 39 (2013), 61–79. More on Azo, Accursius, Jean Bodin later.

still considered a prime example in the early modern period.⁸ The fortune of the Peace of Constance probably reached a peak with its little-known incorporation in the printed editions of such a fundamental work for the development of medieval and modern European legal and political thought as the *Corpus Iuris Civilis*, but, it was already mentioned in the *glossa ordinaria* since the thirteenth century.⁹

In fact, the above-mentioned preliminary assessment of the legacy of the Peace of Constance also reveals that, contrary to current practice, the imperial prerogatives that it established were the side of the settlement that frequently attracted most attention in the medieval and early modern period. Just to cite a few examples: in the 1220s the German Premonstratensian Burchard von Ursberg wrote that at Constance Barbarossa had reached an agreement with the Lombards regarding what they owed him, and that since then the Lombards had been refusing to do more than prescribed in the written settlement.¹⁰ The late medieval lords of Milan claimed that the titles they obtained from the emperors came with the imperial prerogatives of the Peace of Constance.¹¹ Those prerogatives played a significant role in Bodin's *Les six livres de la république*, one of the key works of political philosophy of the sixteenth century.¹²

This article aims to tackle those neglected sides of the Peace of Constance by focusing on an even more neglected testimony left by one of the leading Bolognese jurists of the thirteenth century, Odofredus Denari (d. c.1265), which not only focuses on the imperial prerogatives, but also offers an

⁸ R. Lesaffer, 'An early treatise on peace treaties: Petrus Gudelinus between Roman law and modern practice', *Journal of Legal History*, 23 (2002), 223–52.

⁹ Dolezalek, 'Der Friede', 277–308.

¹⁰ *Burchardi praepositi urspergensis chonicon*, ed. O. Holder-Hegger and B. von Simon (MGH, *Scriptores separatim editi*, 16; Hannover, 1916), 57.

¹¹ J. Black, *Absolutism in Renaissance Milan: Plenitude of Power and the Visconti and the Sforza 1329–1535* (Oxford, 2009), 54, 57–8, 71, 200.

¹² Jean Bodin, *Les six livres de la république* (1583), I.ix. 183, 243. On the significance of Bodin's work: Skinner, *The Foundation*, 208.

account of how they were established that sharply differs from the way scholarship conventionally depicts that settlement.¹³ Furthermore, the examination of Odofredus' testimony is a fundamental stepping-stone for assessing the subsequent legacy of the Peace of Constance because it played a fundamental role in shaping it. Odofredus glossed the Peace of Constance and mentioned it in his academic lectures (both unedited), and, while secondary literature portrays it as a charter resulting from an agreement, he astoundingly stated that Barbarossa submitted himself, for the definition of his own prerogatives, to the ruling of the rectors of the League.

Odofredus' reconstruction bursts with major conceptual and political implications, whose significance is further enhanced by the very wide and long-term influence of his account, but scholarship has ignored it or, at best, dismissed it as a purely academic exercise marred by eccentric mistakes.¹⁴ Various testimonies left by Odofredus on other very significant historical topics have attracted considerable interest, from his account of the origins of the Bolognese schools to famous anecdotes, loosely based on the Diet of Roncaglia, regarding exchanges between Bolognese lawyers and emperors on the limits of imperial authority.¹⁵ Regarding the Peace of Constance, scholarship has rather considered how the existence of Odofredus' glosses influenced its inclusion in collections of feudal law, or how one of the most famous late medieval lawyers, Baldus de Ubaldis, expanded those glosses for a new commentary at the end of the fourteenth century.¹⁶ The emphasis in those works is

¹³ For the biography of Odofredus: E. Spagnesi, 'Odofredo Denari', in *Dizionario biografico dei giuristi italiani* (Bologna, 2013), 1450–52. For the scholarship on the Peace of Constance see notes 1 to 3.

¹⁴ Dolezalek, 'Der Friede', 277–308; N. Tamassia, 'Odofredo. Studio storico-giuridico', in *Scritti di storia giuridica* (3 vols., Padua, 1967), ii. 335–464.

¹⁵ Pennington, *The Prince*, 8–37.

¹⁶ M. Ascheri, 'La "pace" di Costanza (1183), fondamento delle libertà cittadine nel regno d'Italia, e i suoi giuristi', *Initium. Revista catalana d'història del dret*, 15 (2010), 215–36; J. Canning, *The Political Thought of Baldus de Ubaldis* (Cambridge, 1987), 9, 94, 115, 118; Dolezalek, 'Der Friede',

overwhelmingly on Baldus, however, rather than Odofredus, which also led them to consider only Odofredus' glosses, ignoring his lectures. That is probably one of the reasons why his account of the Peace of Constance has been ignored as an eccentric mistake, because the glosses alone do not add up, and, as we shall see, it is the lectures that provide the interpretative key to Odofredus' testimony. More generally, Odofredus' comments on the Peace of Constance have not been touched by the recent decline of the tendency to distinguish legal theory and practice and to consider medieval jurists in isolation from the social and political context in which they lived.¹⁷

In order to evaluate Odofredus' account it will first be necessary to reconstruct it in full for the first time by comparing his glosses with his lectures. The resulting evidence will then be judged against other historical sources and possible sources of inspiration. The second half of the article will contextualise the account in its historical background, highlighting links with the conflict that was fought between the League and Emperor Frederick II (Barbarossa's grandson) from 1226 to 1250, which primary sources called *Negotium Lombardie*, as well as with the impact of that conflict on the Bolognese schools and their output.

It will be argued that Odofredus' testimony was actually far less outlandish than it might seem at first sight, to the extent that scholarship should modify its understanding of the Peace of Constance. Moreover, rather than a self-contained eccentric academic exercise, Odofredus' account engaged with the *Negotium Lombardie*, to the extent that it can be considered a forgotten Lombard response to the ruling by Frederick II and the German princes against the Peace of Constance as well as to the far more renowned *Liber Augustalis*, in which Frederick famously asserted the centrality and self-

277-308; M. Ryan, 'Bartulus of Sassoferrato and free cities', *Transactions of the Royal Historical Society*, 10 (2000), 67-89.

¹⁷ On recent trends: S. Menzinger and M. Vallerani, 'Giuristi e città: fiscalità, giustizia e cultura giuridica tra XII e XIII secolo. Ipotesi e percorsi di ricerca', in M. T. Caciorgna, S. Carrocci, and A. Zorzi, eds., *I comuni di Jean Maire Vigueur. Percorsi storiografici* (Rome, 2013), 202-34.

sufficiency of imperial/royal rule.¹⁸ In that respect, the attention Odofredus paid to the Peace of Constance belonged to a wider set of reactions from the schools of Bologna to the *Negotium Lombardie*, during which they shared the fortunes of their city. Yet of perhaps more profound and wider consequence will be the argument that the Peace of Constance directly informed seminal debates on princely rule (the emperor was considered the paradigmatic ruler) and popular sovereignty, to which the more eccentric features of Odofredus' account related. Indeed, that account and its legacy represent an overlooked but noteworthy window not only on to the political culture of Communal Italy regarding kingship and rulership as a whole, but also on the contribution from Communal Italy to wider and long-term European developments. For, albeit virtually forgotten now, Odofredus' account of the Peace of Constance became the standard one among the late medieval and early modern scholars mentioned above.

Odofredus' account vis-à-vis conventional ones

After the victory of the League at the Battle of Legnano of 1176, negotiations gained momentum at the end of a six-year truce stipulated at the Peace of Venice of 1177. A group of imperial representatives led by Bishop William of Asti reached a preliminary agreement with those of the League at Piacenza at the end of April 1183.¹⁹ On 1 May, and again at Piacenza, the members of the League pledged to keep firm the terms of the settlement and renewed their oath of association.²⁰ It was then the turn of the League to send envoys to the emperor, who received them at Constance and issued the settlement as a charter.²¹ That is where the account of the Peace of Constance found in secondary literature,

¹⁸ For the significance of the *Liber Augustalis*: K. Pennington, 'Law, legislative authority and theories of government, 1150–1300', in J.H. Burns, ed., *The Cambridge History of Medieval Political Thought, c.350–c.1450* (Cambridge, 1988), 441–2.

¹⁹ *Friderici I Diplomata. 1181–1190*, no. 844.

²⁰ E. Falconi, 'La documentazione della Pace di Costanza', in *Studi sulla Pace di Costanza* (Milan, 1984), 71–2.

²¹ *Friderici I Diplomata. 1181–1190*, no. 848.

which is based on what can be described as a canonically accepted body of documentary sources, conventionally end.²² Outside that body of documentary sources, the chronicles that covered the reign of Barbarossa generally mentioned the Peace of Constance, but only referring telegraphically to a ‘*pax*’, ‘*pactum*’, or ‘*privilegium*’ reached at Constance, and thus ignoring, for example, the above-mentioned preliminary negotiations of Piacenza and the renewals of the League.²³ The same applies to the numerous imperial charters and to the texts of the renewals of the League that referred to the Peace of Constance during the following half century. Yet it is worth noticing that the renewals of the League preferred to describe the Peace of Constance as a ‘*pactum*’, while emperors, and especially Frederick II, tended to describe it as a ‘*privilegium*’, which suggests that the League preferred to highlight its bilateral features and the emperors its hierarchical ones.²⁴ The main exception to this pattern was the historical work of the Placentine Codagnello (d. c.1230), who actually referred to the settlement between the League and Barbarossa by only mentioning the preliminary negotiations that took place in his town, while totally ignoring the events of Constance.²⁵ On the other hand, Codagnello mentioned the renewal of the League that took place at Milan in 1208, but not those that had taken place in his hometown around the time of the settlement, in 1183 and 1185, which, as we shall see, played a crucial role in Odofredus’ account.²⁶ Regarding juridical works before those of Odofredus,

²² For the latest edition of that conventional body of primary sources as a whole: Falconi, ‘La documentazione della Pace di Costanza’, 21–104.

²³ For a list of chronicles: O. Capitani, ‘La storiografia coeva sulla pace di Costanza’, in *La pace di Costanza 1183. Un difficile equilibrio di poteri fra società italiana ed impero* (Bologna, 1984), 99–118; G. Fasoli, ‘Note sulla pace di Costanza nella tradizione cronachistica e documentaria’, in *Studi sulla pace di Costanza*, 105–16.

²⁴ G. Raccagni, ‘Il diritto pubblico, la Pace di Costanza e i *libri iurium* dei comuni’, in *Gli inizi del diritto pubblico europeo, II*, 309–39.

²⁵ *Iohannis Codagnelli Annales Placentini*, ed. O Holder-Egger (MGH, *Scriptores in usum scholarum separatim editi*, 23; Hanover and Leipzig, 1901), 12.

²⁶ *Ibid.*, 34.

Azo of Bologna also left comments on the Peace of Constance, which will be considered towards the end of this article.

Odofredus' glosses on the Peace of Constance, which he produced between 1232 and 1250 (they described Frederick II as being alive and Odofredus is first attested as *legum professor* in 1232), are in line with the evidence mentioned above, and, in the light of the different attitudes of the League and of the Empire, they run with the hare and hunt with the hounds when they describe the settlement as an agreement as well as an imperial law. He glossed Barbarossa's statement that he had made the concessions to the cities '*pro bono pacis*' by stating that '*pax*' derived from '*pactio*' and thus denoted an agreement.²⁷ He then glossed the emperor's declaration that he wished to bestow the *regalia* to the cities by noticing how the Peace of Constance was an imperial law because what pleases the prince has the force of law.²⁸ Both arguments derived from Roman law.²⁹

The glosses, however, differ markedly from the narrative found in current secondary literature in the way they considered the Peace of Constance in conjunction with another document that appears to have nothing to do with it, that is, a renewal of the oath of association of the League. Indeed, the glosses embraced the two texts as if they were a single set. In the oath the members of the League swore to keep the terms of the peace, to help each other, and to follow the precepts of its rectors.³⁰ Odofredus commented upon that by stating that the emperor took the same oath himself by proxy, but

²⁷ Mss. Venezia, Bibl. Nazionale Marciana, Marc. Lat., V 119 (2307) (hereafter Marc. Lat.), f. 30 r.

For the manuscript tradition of Odofredus' glosses: Dolezalek, 'Der Friede', 277–308. The manuscript used here is from a copy of the *Libri Feurodum* and it has been chosen because it comes from the thirteenth century and, contrary to others, the glosses feature alongside the text of the peace and that of the oath of 1185. The relation between those texts plays a fundamental role in the analysis here presented.

²⁸ Marc. Lat., f. 29 v.

²⁹ Digest, 1.4.1 and 2.14.1.1–2.

³⁰ *Gli atti del Comune di Milano fino all'anno MCCXVI*, ed. C. Manaresi (Milan, 1919): no. 147.

then wondered: '*Sed quo modo possunt precepta iniungere principi, cum maior sit, et minor in maiorem non habeat imperium*'.³¹ We will consider how this question was answered shortly.

That joining of those two texts poses basic problems because the Peace of Constance displays the year 1183 while the renewal of the League attests that it took place at Piacenza on January 1185.³² It is no wonder that their combination has been considered an eccentric mistake for centuries. In the sixteenth century, for example, Charles Dumoulin ridiculed Baldus as a senile old man because of his acceptance of Odofredus' account.³³

Odofredus' lectures, however, which he delivered at some point before his death in 1265, offer a solution for that quandary by expanding on how imperial prerogatives were identified at Constance. That is found in two passages, the longest one recounting that, when Barbarossa lost the conflict with the League, he asked it to send ambassadors to him, resulting in a great assembly at Constance where the '*jurisdictio*' of the emperor was discussed. Negotiations, however, reached a standstill, which prompted the Lombards to express the wish to leave the assembly, to which Barbarossa replied stating that he wanted the whole world to know that they, and not him, were to blame for the failure of the negotiations. Whence, he declared that he was ready to submit himself to the jurisdiction of the rectors of the League, who would have been free to speak in his favour or against him. Thence the rectors decreed what the Lombard cities owed him, as it could be read in the Peace of Constance.³⁴ Elsewhere in the lectures Odofredus elucidated the reason for the above-mentioned standstill too. At Constance the parties agreed on everything apart from one issue: since the emperor was '*superior*' they wondered whether the deal should be done '*per modum pacis vel*

³¹ Marc. Lat., f. 33v

³² *Gli atti del Comune di Milano fino all'anno MCCXVI*, no. 147.

³³ Dolezalek, 'Der Friede', 277–308.

³⁴ Odofredo Denari, *Lectura super Digesto Veteri* (2 vols., Lugduni, 1550), ii. 41v: 'Unde dico quod paratus sum me subicere iurisdictioni rectorum societatis Lombardie; et ipsi dicant quicquid volunt pro me et contra me ... Ita imperator tunc subiecit se iurisdictioni rectorum societatis lombardie et ipsi ordinaverunt ita, et sepe iam legi in illam pacem'.

sententie'. The emperor himself picked the second option and submitted to the ruling of the rectors of the League.³⁵

In other words, Odofredus' lectures offer a rationale for the joining of the Peace of Constance with the oath of 1185: the content of the settlement was determined at Constance, but the solution that was agreed on what form the settlement should take, that is, Barbarossa's submission to the ruling of the rectors of the League, could not find application there, because the rectors were not present at Constance, but only their envoys (*'nuntii'*).³⁶ That implied that an additional passage was needed, which would explain the inclusion of the Placentine oath of 1185.

Glosses and lectures also share conceptual frameworks. When the glosses questioned how the precepts of the rectors of the League could bind the emperor the solution was found in a passage on the jurisdiction of judges from Justinian's *Codex*. According to this, if, during a litigation between the emperor and a private individual, they agreed to submit to a judge, the emperor was supposed to accept his ruling no matter the status of that judge.³⁷ Likewise, the above-mentioned accounts of the Peace of Constance from the lectures are examples used to discuss the jurisdiction of judges in Roman law, and especially how a *iudex* (the emperor being the highest) could submit to the jurisdiction of a *'minor vel equalis'*.

That was an imaginative interpretation. Justinian's *Corpus Iuris Civilis* certainly did not entertain the idea of a peace settlement between the emperor and his subjects following an armed conflict between them, and even less one in which at stake there was the prerogatives of the emperor himself. Odofredus squeezed the Peace of Constance into a scenario that was meant for much more

³⁵ Odofredo Denari, *Lectura super Infortiato, in novem posteriores libros* (Lugduni, 1570), 88 v: 'Et de omni eo concordaverunt nisi de uno. Vos estis superior, quomodo fiet istud, vel per modum pacis vel sententie, qui tulit eam dicit ipse volo me subicere societati rectorum lombardie ... Potest ne Imperator se subicere? certe sic, quia consul potest subicere se iurisdictioni pretoris'.

³⁶ *Friderici I Diplomata. 1181–1190*, no. 848.

³⁷ *Codex*, 3.13.1.

mundane quarrels, not to mention the further interpretative squeeze that, in his account of the Peace of Constance, the judges who issued the '*sententia*' were actually the representatives of the emperor's subjects who had risen against him in the first place.

Overall, Odofredus clearly overemphasised the role that the rectors of the League played during the peace process, and he added to it a further stage that took place at Piacenza in 1185, all of which he explained with, or used to illustrate passages from Roman law. However, it is clear that there was a rationale behind his interpretation, which, as discussed in the next section, was probably partly based on the fact that his account was actually not entirely off the mark.

Reconnecting the Placentine events of 1185 to the Peace of Constance

In the sixteenth century Charles Dumoulin's criticism of Odofredus' account flew in the face of the views of the majority, because the legal world generally accepted Odofredus' account and Baldus fully incorporated and acknowledged it in his own commentary, which came to feature in the printed editions of the *Corpus Iuris Civilis*.³⁸ Until the first half of the twentieth century modern historical scholarship also occasionally considered the oath of 1185 as the last stage of the Peace of Constance.³⁹ Bizarrely, that was not based on the testimony of those legal sources but on the pledge of the oath of 1185 to keep firm the peace, which alone does not prove much, given that it also featured in the renewals of the League of 1183, 1195, and 1208.⁴⁰ In any case, scholarship has long fully forgotten or rejected in passing that interpretation. The volumes that were published on the 800th anniversary of the Peace of Constance, which still largely represent the state of the research on the topic, are very good examples of that.⁴¹ Indeed, one of them featured an edition of what was deemed the body of documentary sources on the Peace of Constance, which included the Placentine preliminary

³⁸ Dolezalek, 'Der Friede', 277–308.

³⁹ O. Masnovo, 'Ancora l'ultimo atto della Pace di Costanza', *Archivio storico lombardo*, 52 (1925), 22–37.

⁴⁰ Raccagni, *The Lombard League*, 147–88.

⁴¹ They are the above-mentioned *La pace di Costanza 1183* and *Studi sulla pace di Costanza*.

negotiations of 1183 and even the renewal of the League of that year, but ignored the Placentine events of 1185.⁴²

However, various factors suggest that a link between the Peace of Constance and what happened at Piacenza in 1185 might have really existed. An unrelated piece of evidence shows that Barbarossa was at Piacenza at the time of the renewal of the League during his first visit to Italy after the end of the conflict.⁴³ That must have been a truly exceptional event, because he had never before been so geographically close to an assembly of the League. It would have been very surprising if they had not interacted on that occasion, because there is evidence of collaboration between them immediately after it.⁴⁴ It is also worth considering that the events of 1185 took place in the same town where the preliminary settlement had been reached, and one should not forget that the renewal of the League of 1185 mirrored the one that had been performed at Piacenza in the aftermath of that preliminary agreement. Therefore the suggestion that the Peace of Constance might have been confirmed at Piacenza in 1185, in a gathering that, formally or informally, closed the peace process on Lombard soil, in the same place where it had started, and for the first time in the presence of both the emperor and the rectors of the League, becomes far less implausible.

Including the events of Piacenza of 1185 in the peace process as suggested by Odofredus would significantly alter our understanding of it in ways that match and even bolster the contentiousness of the tale about Barbarossa's submission to the ruling of the rectors of the League. The choice of meeting places has always played an essential part in the symbolical meaning behind peacemaking. Meetings between equals usually took place in border areas, and those between superiors and inferiors within the territory of the superior or winning side.⁴⁵ As underlined by Odofredus himself, in the Peace of Constance one of the parties was superior to the other, and

⁴² Falconi, 'La documentazione della Pace di Costanza', 28–44.

⁴³ F. Oppl, *Das Itinerar Kaiser Friedrich Barbarossas (1152–1190)* (Vienna, 1978), 84, 224.

⁴⁴ Raccagni, *The Lombard League*, 147–70.

⁴⁵ J. Benham, *Peacemaking in the Middle Ages: Principles and Practice* (Manchester, 2011), 19–68, which, however, does not consider the Holy Roman Empire.

Constance was on German soil, but it was the inferior party who got the upper hand and the settlement took both the shape of an agreement and a charter. Ending the peace process at Piacenza in 1185 matches those features more closely than stopping with the pardon/charter granted at Constance, not to mention that Piacenza had been one of the favourite meeting places of the League and was the junior partner of Milan, which by then was the leader of the League.⁴⁶ In 1186 the spotlight moved to Milan itself, where the wedding and a ceremonial coronation of Barbarossa's son, Henry VI, took place in the presence of representatives of the League.⁴⁷

It is also worth considering the role of Piacenza in the light of the Diet of Roncaglia. The plain of Roncaglia was the favourite location for imperial diets in northern Italy, but it was a handful of kilometres from Piacenza and belonged to its *contado*.⁴⁸ The League played a fundamental role in the conceptual subordination of the *contadi* to their respective *civitates*, a trend that Barbarossa had tried to reverse.⁴⁹ Was the choice of Piacenza for the preliminary agreement and the ratification of the Peace of Constance a conscious symbolic mimicking of the Diet of Roncaglia as well as a symbolic reaffirmation of the urban dominance in northern Italy? That of 1158 was the last diet held at Roncaglia and the following ones were held in urban centres.

Therefore the evidence here examined suggests that Odofredus' account probably expanded upon genuine historical events, but there is also reason to believe that he accessed a distinctive memory of them that was available in his hometown. The Peace of Constance and the oath of 1185, in fact, are also found side by side in the Bolognese *liber iurium*, known as *Registro Grosso*, which was

⁴⁶ Raccagni, *The Lombard League*, 55–80.

⁴⁷ P. Majocchi, *Pavia città regia* (Rome, 2008), 98–116.

⁴⁸ A. Solmi, 'Le diete imperiali di Roncaglia e la navigazione fluviale del Po presso Piacenza', *Archivio storico delle provincie parmensi*, 10 (1910), 59–160.

⁴⁹ A. Degrandi, 'La riflessione teorica sul rapporto città-contado nello scontro tra Federico Barbarossa e i comuni italiani', *Bullettino dell'Istituto storico italiano per il medioevo*, 106 (2004), 139–69.

produced in the early 1220s, around a decade before Odofredus' works.⁵⁰ The oath of 1185, in particular, had no reason to circulate outside city archives. The copy of the Peace of Constance that features alongside Odofredus' glosses did not directly derive from those of the *libri iurium*, but no such analysis has been done on the oath of 1185.⁵¹ Before Odofredus, that oath was copied in the *libri iurium* of three cities, but in two different versions, one in that of Piacenza and the other in those of Bologna and Modena.⁵² Odofredus' version clearly matches most of the variants by which the Bolognese text differs from the others.⁵³ Odofredus might have searched the Bolognese archives, but the *libri iurium* were meant to be of public utility, to facilitate the conservation as well as the consultation of the documentation kept in the archives, and even to work as historical tools for future generations.⁵⁴ The location of the two texts within the *Registro Grosso* might have been accidental, but the *libri iurium* were deliberate and official selections and arrangements of archival material.⁵⁵ Thus the *Registro Grosso* did not include all the surviving records of the League involving Bologna, and the selection made by its compilers has been described as part of a drive towards the establishment of an official civic memory regarding the clashes with the empire in the build-up of the *Negotium Lombardie*.⁵⁶

⁵⁰ *I libri iurium del comune di Bologna*, ed. A.L. Trombetti Budriesi and T. Duranti (Bologna, 2010).

⁵¹ Falconi, 'La documentazione della Pace di Costanza', 28–44.

⁵² *Gli atti del Comune di Milano fino all'anno MCCXVI*, no. 147.

⁵³ *Ibid.*

⁵⁴ A. Rovere, 'Tipologie documentali nei *libri iurium* dell'Italia comunale', in W. Prevenier and T. de Hemptinne, eds., *La diplomatie urbaine en Europe au moyen age* (Leuven and Apeldorn, 2000), 417–36.

⁵⁵ *Ibid.*

⁵⁶ T. Duranti, 'L'adesione alla lega lombarda nel Registro Grosso del comune di Bologna: alcuni spunti di riflessione', in A.L. Trombetti Budriesi, ed., *Cultura cittadina e documentazione. Formazione e circolazione di modelli* (Bologna, 2009), 159–69.

Given the likely connections between the oath of 1185 and the Peace of Constance, and the Bolognese background of both the *Registro Grosso* and Odofredus's account, it is quite unlikely that their similarities, which have no parallel, were fortuitous. Indeed, while the Peace of Constance and the oath of 1185 involved the League, and the latter referred to the former, they were surrounded by material that had nothing to do with them. In other words, in the more than likely event that Odofredus accessed the *Registro Grosso*, he might have interpreted the Peace of Constance and the oath of 1185 as a single set, to which he added his own glosses.

Moreover, Odofredus and the compilers of the *Registro Grosso* came from a similar background that was closely connected to the Bolognese communal government. The latter officially entrusted the production of the *Registro Grosso* to a commission of notaries under the leadership of Ranieri da Perugia (1185–1245), a leading figure of the Bolognese notarial school, and Ranieri himself was responsible for the section featuring the Peace of Constance.⁵⁷ The relationship between the Bolognese commune, the notarial and the law schools in that period has been described as a symbiotic one.⁵⁸ A very good example that involved Odofredus himself comes from his inclusion as witness, together with Salatiele, a former student of his and a colleague of the recently deceased Ranieri, at the treaty of capitulation of Modena to Bologna, its neighbour and archenemy, in 1249.⁵⁹ There are various other examples of Odofredus' participation in local administrative life from the period in which he produced his comments on the Peace of Constance.⁶⁰

Odofredus' account and the *Negotium Lombardie*

⁵⁷ G. Tamba, 'Il notariato a Bologna nell'età di Federico II', in *Federico II e Bologna* (Bologna, 1996), 83–105.

⁵⁸ R. Greci, 'Bologna nel duecento', in Ovidio Capitani, ed., *Storia di Bologna*, II: *Bologna nel medioevo* (Bologna, 2007), 533.

⁵⁹ L. Savioli, *Annali Bolognesi* (3 vols., Bassano, 1784–95), III, pt. ii, 251.

⁶⁰ Spagnesi, 'Denari', 700–5.

Secondary literature on Odofredus' glosses has generally portrayed them as a mere self-contained eccentric academic exercise. True, they featured no direct reference to contemporary politics. However, Odofredus produced them during the *Negotium Lombardie*, in the course of which the Peace of Constance became the manifesto of the League and Frederick II's bane. Besides, Bologna was a leading member of the League, which brought heavy repercussions upon its schools.

The Peace of Constance was in the spotlight from the very beginning of the conflict. The Lombard cities justified the renewal of the League of 1226 by appealing to the clause of the Peace of Constance that allowed them to do so.⁶¹ Frederick replied with an imperial ban, a sentence that automatically suspended all grants enjoyed by the recipients, but on that occasion he mentioned the Peace of Constance expressly.⁶² Yet the emperor soon started to argue that he was not bound by the Peace of Constance because, as the princes of the empire had officially acknowledged too, that settlement was prejudicial to the honour and rights of the empire. He even placed the acceptance of its revocation by the Lombards as a prerequisite for any negotiation. Traces of those arguments can be found at least since the early 1230s, around the time when Odofredus became *legum professor*.⁶³ And Frederick continued to reject the Peace of Constance until his death. There is evidence suggesting that for a period the League came close to accepting its revocation after the defeat at Cortenuova of 1237.⁶⁴

The imperial ban of 1226 that mentioned the Peace of Constance also decreed the closure of their schools and threatened any who defied that measure with everlasting infamy.⁶⁵ In the following years Frederick and his supporters actively discouraged students and teachers from attending schools that belonged to members of the League, luring them to new pro-imperial centres such as Naples and

⁶¹ *Gli atti del comune di Milano nel secolo XIII*, I: 1217–1250, ed. M. F. Baroni (Milan, 1976), no. CLVIII.

⁶² *MGH, Leges IV, Constitutiones et acta publica imperatorum et regum*, II, ed. L. Weiland (Hannover, 1896), no. 107.

⁶³ *Ibid.*, no. 161-9, 194-5, 252.

⁶⁴ Raccagni, 'The teaching of rhetoric', 69.

⁶⁵ *MGH, Leges IV, Constitutiones*, no. 107.

Siena.⁶⁶ Bologna was particularly targeted because of its leading role in the League and because it was one of the main academic centres in Christendom. Its communal government took countermeasures to support its schools, applying a carrot-and-stick policy towards teachers and students.⁶⁷

Therefore, when Odofredus produced his account Frederick utterly rejected the Peace of Constance while the League took it as its manifesto. Not to mention that he lived in one of the cities that was a leading member of the League and taught in an academic institution that Frederick had outlawed. Odofredus' residence in Bologna and his collaborations with its government give us good clues about his position. Further confirmation of his inclinations comes from his above-mentioned inclusion as witness in the surrender of Modena to Bologna in 1249, which took the shape of an agreement aimed to preserve the '*bonum statum*' of the League.⁶⁸ Modena had been a keen imperial supporter, and its surrender followed the Bolognese victory of Fossalta, where the Bolognese also captured Frederick's son, Enzius, never to release him despite imperial threats.⁶⁹

In that context, despite their silence regarding contemporary politics, Odofredus' comments implicitly acquired a very loud political significance. Indeed, his glosses practically amounted to a political pamphlet, although the inclusion of the same arguments in his lectures suggest that those arguments were not just born out of political expediency, but belonged to Odofredus' mindset and cultural background. In those comments he did recognise how imperial bans called off imperial

⁶⁶ P. Nardi, 'Comune, impero e papato alle origini dell'insegnamento universitario di Siena', *Bollettino Senese di Storia Patria*, 90 (1983): 65–6; P. Oldfield, 'The Kingdom of Sicily and the early university movement', *Viator*, 40 (2009), 135–50.

⁶⁷ P. Nardi, 'Relations with authority', in H. de Ridder-Symoens, ed., *A History of the University in Europe*, I: *Universities in the Middle Ages* (Cambridge, 1992), 86–91.

⁶⁸ Savioli, *Annali*, iii, pt. ii, 251.

⁶⁹ V. Braidì, 'Modena: la nemica', in *Bologna re Enzo e il suo mito*, ed. A. I. Pini and A. L. Trombetti Budriesi (Bologna, 2001), 157–99.

grants.⁷⁰ Yet those bans were quite a common hazard for the Italian cities that came and went, and by the time Odofredus wrote his works at stake rather was the intrinsic lawfulness of the Peace of Constance. The very production of his comments and their silence regarding Frederick's rejection implied that Odofredus disregarded that rejection. Indeed, by contextualising the Peace of Constance in Roman law, he implicitly responded to imperial arguments too: if Roman law, as the Diet of Roncaglia had underlined, was one of the main sources of legitimacy for imperial authority, and the Peace of Constance fit into it, then how could it be prejudicial to the rights and honour of the empire? Moreover, the very tale of Frederick's grandfather's submission to the rectors of the League must have been particularly incendiary during the *Negotium Lombardie*. Finally, while the leading Bolognese jurists had endorsed the Diet of Roncaglia, the same did not apply to the Peace of Constance, in which no Bolognese jurist was directly involved. Thus one is left wondering whether, by producing his glosses, one of Odofredus' aims was to fill that gap.

In that respect, Odofredus' positions were remarkably similar to those of the Commune of Bologna and of the League, to both of which, as we have seen, he was close, but they could also be coupled to other reactions of the Bolognese learned community to the challenge posed by Frederick II. Around 1230 in his *Dictamina Rhetorica* (one of the most popular medieval collections of model epistles) Guido Faba included a verisimilar letter that suggested papal recognition of the Peace of Constance.⁷¹ In 1226 Boncompagno da Signa, mentioned the Peace of Constance in a section describing the relations between the emperor and the Italian cities of his *Rhetorica Antiqua*, by which he probably argued for the preservation of the status quo.⁷² References to the Peace of Constance can be found in the works of other jurists, all of which also ignored Frederick's rejection, including Azo (more on him later), and Accursius (in what became the *Glossa Ordinaria* to the *Corpus Iuris Civilis*) who in that occasion defied his strong tendency to avoid references to actual events in his works.⁷³

⁷⁰ Lat. Marc., f. 31 v.

⁷¹ Raccagni, 'The teaching of rhetoric', 64–72.

⁷² Ibid., 72–5.

⁷³ For Accursius' use of actual events: Bellomo, *The Common legal past of Europe*, 170–1.

Moreover, the function of Odofredus' comments on the Peace of Constance was comparable to that of a forged privilege of Emperor Theodosius, whose production has also been linked to the Bolognese schools at that time.⁷⁴ As that privilege was meant to support Bologna and its schools, Odofredus' glosses endorsed the legal foundation of the League and of Bologna's autonomy within the empire. Guido Faba also described his hometown as the recipient of a divine privilege corroborated by all the angels that made it an everlasting source of knowledge.⁷⁵

The Peace of Constance, kingship and popular sovereignty

Unfortunately Frederick II never explained why he thought that the Peace of Constance was prejudicial to the honour and rights of the empire, but suggestions can be made here.⁷⁶ To start with, as it was an example of a successful rebellion against imperial authority, the Peace of Constance inherently clashed with Frederick's views on kingship as displayed in his famous *Liber Augustalis* of 1231 (around the time of Odofredus' graduation), with its emphasis on the *lex regia* (by which the Roman people would have granted universal jurisdiction to the emperor), the sacrality of kingship, and with its portrayal of actions of lese-majesty as tantamount to sacrilege.⁷⁷ Although promulgated for the *Regnum Sicilie*, the *Liber Augustalis* stated general views on rulership and bore the ambiguity of a text that 'expressed the will of a man who was also emperor of the Holy Roman Empire', as Frederick

⁷⁴ On the charter: M. Giansante, 'Guido Fava, Boncompagno da Signa e il comune di Bologna. Cultura retorica e istituzioni nella prima metà del Duecento', in *Politica e "Studium": nuove prospettive e ricerche* (Bologna, 2005), 47–9.

⁷⁵ Raccagni, 'The teaching of rhetoric', 78.

⁷⁶ On the *honor imperii*: K. Görich, 'Ehre als Ordnungsfaktor. Anerkennung und Stabilisierung von Herrschaft unter Friedrich Barbarossa und Friedrich II.', in B. Schneidmüller and S. Weinfurter, ed., *Ordnungskonfigurationen im hohen Mittelalter* (Ostfildern, 2006), 59–92.

⁷⁷ David Abulafia, *Frederick II: A Medieval Emperor* (London, 1988), 202–12; Pennington, 'Law, legislative authority and theories of government', 441–2.

presented himself on that occasion.⁷⁸ Indeed, in the 1230s Frederick openly paralleled the League's resistance against him to heresy.⁷⁹

Indeed, Frederick probably did not feel bound to a settlement that severely limited his prerogatives and had been forced upon his grandfather by his own subjects. When he had restored control over his Sicilian Kingdom, for example, he had already revoked grants made by his predecessors there, claiming that they were prejudicial to the interests of the crown and had been made under the stress of circumstances.⁸⁰ In 1232 Frederick's representatives asked for the restitution of the *iura regalia* in Lombardy, but the League refused to change what had been decided at Constance.⁸¹

More specifically, the clause of the Peace of Constance that enabled renewals of the League probably played a leading role.⁸² After all, following the example of his predecessors since 1183, Frederick had not shown any particular problem in recognising the Peace of Constance before the renewal of the League of 1226, although the above-mentioned different interpretations of it by League and emperors (one describing it as a *pactum* and the others as a *privilegium*) suggest the existence of underlying tensions even before 1226.⁸³ Yet after the renewal of 1226, as Frederick rejected the Peace of Constance, he also categorically refused to name the League, which, at best, he called '*societas illicita*'.⁸⁴

⁷⁸ M. Bellomo, *The Common legal past of Europe, 1000–1800* (Washington, 1995), 94.

⁷⁹ G. Milani, *L'esclusione dal comune: conflitti e bandi politici a Bologna e in altre città italiane tra XII e XIV secolo* (Rome, 2003), 92.

⁸⁰ A. Cernigliaro, 'Edictum de resignandis privilegiis', in *Enciclopedia Federiciana* (Rome, 2005), 486–91.

⁸¹ *MGH, Leges IV, Constitutiones*, II, no. 151-3.

⁸² Raccagni, 'The teaching of rhetoric', 66.

⁸³ Id., 'Il diritto pubblico', 309–39.

⁸⁴ G. Chiodi, 'Istituzioni e attività della seconda Lega Lombarda (1226–1235)', in *Studi di storia del diritto* (Milan, 1996), 215–48.

The vision of imperial rule offered by Odofredus' account, on the other hand, sharply contrasted with the God-given and top-down form of lordship exposed by Frederick's court. If the Peace of Constance was the lawful outcome of a famed successful rebellion, and such an occasion could be dealt with by following procedures taken from Roman law that applied to any state official, what was left of the sacrality of kingship and the equation of rebellion to sacrilege?

Yet the tale of the emperor's submission to the rectors of the League also probably engaged with the groundbreaking debate that was taking place over the *lex regia* and popular sovereignty, a debate that had a remarkable and enduring impact on European political thought.⁸⁵ One of Odofredus' predecessors, Azo (d. c.1230), in particular, had already started to challenge the view according to which the people had alienated all authority to the emperor with the *lex regia*. Azo had rather argued that the consent of the people taken as a whole ('*populus sive universitas*') was necessary for the institution of *imperium* and *iurisdictio*, and, what is more, that the people had not abdicated its power completely, but could revoke that transfer as it had already done in the past, although Azo omitted to specify when.⁸⁶ The corollary was that the status of the emperor himself was that of an official.⁸⁷

Scholarship has acknowledged that the resistance of the Lombards to Barbarossa broadly helped to create an environment of weak imperial rule that generated the freedom to reconsider the *lex regia*, but it can be suggested here that the Peace of Constance informed that reconsideration directly.⁸⁸ Azo, for example, left comments on the Peace of Constance that have been overlooked by modern scholars but matched his argument about popular sovereignty. First of all, the Lombards were perceived as a *gens*, the League a pan-Lombard *universitas*, and the Peace of Constance a pan-

⁸⁵ Q. Skinner, *Visions of politics, II: Renaissance virtues* (Cambridge, 2002), 13–17.

⁸⁶ Azo Portius, *Lectura super Codicem* (Turin, 1966), 44, 671; Azo Portius, *Summa super Codicem* (Turin, 1966), 9.

⁸⁷ Skinner, *Visions of Politics*, 17.

⁸⁸ Ascheri, 'La "pace" di Costanza (1183)'; E. Cortese, *Il diritto nella storia medievale. II. Il Basso Medioevo* (Rome, 1995), 74.

Lombard charter.⁸⁹ In a *quaestio* tackling a series of legal powers exercised by city communes, Azo stated they were legally acceptable in ‘*totam Lombardiam*’ because of an imperial grant (clearly the Peace of Constance) that had replaced unwritten customs.⁹⁰ Then, while discussing royal donations in his lectures on Justinian’s *Codex*, Azo endorsed the seemingly questionable legality of the Peace of Constance by arguing that the emperor and the Lombards had reached it consensually and for the sake of peace.⁹¹ Azo, whose closeness to the Commune of Bologna was comparable to that of Odofredus, mostly lived before the *Negotium Lombardie*, but he also witnessed its very beginning.⁹² Indeed, the Peace of Constance is the main candidate for the unnamed historical example Azo had in mind when he stated that the *populus* had revoked the *lex regia* in the past, by which he probably also meant that it was renegotiated, because Azo did not deny the emperor still held authority in Italy. The Diet of Roncaglia had essentially reenacted the *lex regia* by stating that ‘*Omnis iurisdictio et omnis districtus apud principem est*’.⁹³ Yet during its rebellion the League not only annulled any progress that Barbarossa had made in implementing the programme of Roncaglia, but it also usurped imperial prerogatives.⁹⁴ Therefore the Peace of Constance constituted a very recent historical example of how subjects could challenge, revoke and renegotiate imperial prerogatives.

As mentioned above, Odofredus’s comments paid lip service to the *lex regia*, but in reality his tale of voluntary submission of the emperor, for the definitions of his own *iurisdictio*, to the ruling of the rectors of the League was a mockery of it. That tale rather followed the outline of Azo’s ideas on

⁸⁹ Dolezalek, ‘Der Friede’, 277–308; Raccagni, *The Lombard League*, 123–36.

⁹⁰ *Azonis quaestiones*, ed. E. Landsberg (Freiburg, 1888), 67–8.

⁹¹ Azo Portius, *Lectura super Codicem*, 406: ‘Nota quia cum dominus imperator contraxit, licet contra legem, obtinere debet vicem legis, et facit ad ea quae statuit imperator inter Lombardos pro bono pacis, licet enim esset cum ipse sic constituit, ex consensus subditorum videtur valere’.

⁹² P. Fiorelli, ‘Azzone’, in *Dizionario biografico degli italiani*, 4 (Rome, 1962), 774–81.

⁹³ V. Colorni, ‘Le tre leggi perdute di Roncaglia (1158) ritrovate in un manoscritto parigino (Bibl. Nat. Cod. Lat. 4677)’, in *Scritti in memoria di Antonino Giuffrè* (Milan, 1967), 128.

⁹⁴ Raccagni, *The Lombard League*, 81–146.

popular sovereignty, but anchored them much more emphatically to a famous and recent historical example. After all, the rectors were representatives of a *universitas* of the emperor's subjects, and Odofredus' justification for the emperor's submission, which he based on the above-mentioned passage of Justinian's *Codex* on the jurisdiction of judges, went in the same direction as Azo because, as Odofredus' lectures specified, the same principle applied to any magistrate.⁹⁵ Just like Azo, Odofredus argued that the Peace of Constance was achieved '*pro bono pacis*' and consensually between the emperor and his subjects.

The principles that Odofredus underlined in his comments were certainly far closer to those that underpinned political life in the city republics than to those of Frederick's court. The beginning of Odofredus' glosses amounts to a short *speculum principis*, where, commenting upon Barbarossa's wording, he praised virtues such as mildness, law abidance, and love of justice, the defence of which some Bolognese legal circles identified as the foundation of the lawfulness of the League.⁹⁶ Indeed, given its chronological and thematic coordinates, Odofredus' comments on the Peace of Constance could be considered a Lombard answer to Frederick's *Liber Augustalis*.

Conclusions

There is more than a kernel of forgotten but noteworthy truth in the apparent eccentricity of Odofredus' account, which makes it one of the most valuable sources on the Peace of Constance. While scholarship ends the peace process with the issue of the charter at Constance in 1183, Odofredus' inclusion of a further stage that took place at Piacenza in 1185 is corroborated by indirect evidence. While Barbarossa certainly did not take the oath of the League together with its members in 1185, in all probability the Placentine events of 1185 did ratify the Peace of Constance on Lombard soil as Odofredus stated. Odofredus then built the more unconventional aspects of his account on local memories that he probably sourced from the Bolognese *Registro Grosso*. Adding that additional stage to the peace process would better match the complex features of the Peace of Constance, but would

⁹⁵ Odofredus, *Lectura super Infortiato*, 88 v.

⁹⁶ Marc. Lat., f. 29 r; *Henrici cardinalis Hostiensis Summa Aurea* (Venice, 1570), 104.

also change our understanding of it, further emphasising the strength of the position of the League to the detriment of that of the emperor in a way that goes in the direction of the underlying themes of Odofredus' account.

Yet above all, Odofredus' account calls attention to how the great significance of the Peace of Constance rest not merely on its formalisation of the cities' autonomy but also, and in some contexts even more, on what it had to say about kingship and rulership in general. For scholarship does not seem to have fully appreciated the status that the Peace of Constance immediately reached as a prime example of a settlement between ruler and subjects, a status which was immediately well known across the empire, and which did not fade but rather expanded in time and space. The Peace of Constance mutually formalised the position of both warring parties, including the recognition of prerogatives embodying the enduring superiority of the emperor. In that respect it can be described as a mirror twin of the previous Diet of Roncaglia, for although it confirmed the conceptual framework set up at Roncaglia, it revised it and renegotiated its applications following a successful challenge to imperial authority that had reconfigured the balance of power between emperor and Lombard cities.

Indeed, the long legacy of the Peace of Constance constitutes a remarkable case of intermingling between the practice and conceptualisation of rulership. As we have seen, the references by Odofredus and his colleagues to the Peace of Constance challenged tendencies to avoid citing actual events in legal works. At the same time, perceptions of the Peace of Constance had a profound practical impact outside academia too, and that was especially the case during the *Negotium Lombardie*, which was fought in the second quarter of the thirteenth century. In turn, while the Peace of Constance was known and discussed at Bologna and more widely in Lombardy and the empire between 1183 and 1226, the *Negotium Lombardie* was in all probability one of the main reasons why the Peace of Constance attracted such an academic interest in the first place in thirteenth-century Bologna. Contrary to the previous conflict between Barbarossa and the League, no settlement was achieved during the *Negotium Lombardie*, which was still raging when Frederick II died in 1250. One of the reasons for that was probably Frederick's stubborn rejection, backed by the princes of the empire, of the very nature of the Peace of Constance, while the League took it as its manifesto. Thus the Peace of Constance itself contributed to undermining peacemaking during the *Negotium*

Lombardie, which is quite ironic given how both Barbarossa and Lombard lawyers highlighted that it was reached *pro bono pacis*.

Despite its grounding in pre-existing memories of the Peace of Constance and its silence regarding contemporary politics, Odofredus' account had an intrinsic political significance during the *Negotium Lombardie* and was meant to engage with it. It inherently supported the lawfulness of the Peace of Constance, which reflected the position of the League, but the most peculiar feature of the account, that is, the tale of Barbarossa's submission to the ruling of the rectors of the League, was even more caustic than the League's more passive resistance during the *Negotium Lombardie*. Odofredus was very close to the League through his Bolognese background. As his likely source of inspiration, the *Registro Grosso* was the product of the cooperation between the Bolognese political and intellectual elites, so the Bolognese commune and schools found themselves on the same side during the *Negotium Lombardie*. Odofredus' account can be contextualised in the reactions of the Bolognese schools and commune to the threat posed by Frederick II and his top-down views. In all probability Odofredus' glosses served to respond to Frederick's issue of the *Liber Augustalis* and to the refutation of the Peace of Constance by him and the German princes.

At the same time, Odofredus's account touched upon general themes that went well beyond the mere confines of the *Negotium Lombardie* in the imaginative and multifaceted way it tackled the very heart of rulership. Indeed, his inclusion of the same comments in his academic lectures suggests that they were deeply entrenched in his cultural mindset. Those comments implicitly validated the outcome of a rebellion against the emperor, which itself challenged sacral concepts of kingship such as those exemplified by the *Liber Augustalis*. He then killed several birds with one stone when he used the Peace of Constance as an example of the principle by which a higher judge could submit to the jurisdiction of a '*minor vel equalis*': he suggested a legal framework, based on Roman law, for the resolution of disputes between the emperor and his subjects; placed the emperor on a par with any state official; yet with the *minor* being a college of representatives of the emperor's subjects, and the purpose of its ruling being to define imperial prerogatives, Odofredus' account was practically a mockery of the *lex regia*. Such a position built on the outline of Azo's previous groundbreaking discussion on popular sovereignty, but Odofredus placed Azo's principles on a far more solid factual

ground. In fact, a comparison between their works has revealed that Azo himself made passing comments on the Peace of Constance that matched his doctrine on popular sovereignty, suggesting that the Peace of Constance may well have contributed to inspiring that doctrine in the first place.

Furthermore, Odofredus' account also broke through the confines of the *Negotium Lombardie* in time and space, becoming virtually the standard legal narrative in the surprisingly influential long-term legacy of the Peace of Constance. The reception of Odofredus' account needs to be explored further, but he, and the League, clearly won the contest over the Peace of Constance against Frederick II. The emperor's rejection was largely ignored and in later centuries utterly forgotten. The Peace of Constance, on the other hand, continued to be considered a working document, to be used and discussed in politics and in the legal world, where, in the shape that Odofredus had given to it, it became a classic text. The Peace of Constance and the oath of 1185, accompanied by Odofredus' glosses, were occasionally included in the *Libri Feudorum*, while Odofredus' lectures enjoyed an extraordinary success for centuries.⁹⁷ Odofredus' glosses then reached Baldus in the fourteenth century, who fully accepted and acknowledged Odofredus' account in his expanded commentary on the Peace of Constance. Baldus' commentary, in turn, was included alongside the Peace of Constance in the printed editions of the *Corpus Iuris Civilis*, which was the source of the many subsequent references to the Peace of Constance from across Europe. In the early seventeenth century, for example, Pierre Goudelin acknowledged that he had found the Peace of Constance and the Placentine oath of 1185 in the *Corpus Iuris Civilis* and that he was aware of Baldus' commentary.⁹⁸

Thus the *Corpus Iuris Civilis*, which itself was the product of a period of Roman history known as the Dominate, and a treasure trove for theorists across the Middle Ages and the early modern period, came to include a prime historical example of a successful rebellion against the emperor. Yet it also featured the Peace of Constance accompanied by a narrative which was even more unfavourable for the emperor than the text of the settlement alone, embodying strong notions of

⁹⁷ Spagnesi, 'Denari'.

⁹⁸ Lesaffer, 'An early treatise', 228.

popular sovereignty in the way it claimed that the emperor had submitted to rebelling subjects for the definitions of his own prerogatives.

GIANLUCA RACCAGNI, SCHOOL OF HISTORY, CLASSICS AND ARCHAEOLOGY, UNIVERSITY OF
EDINBURGH