

STANISŁAW WIELGUS

THE MEDIEVAL POLISH DOCTRINE
OF THE LAW OF NATIONS: *IUS GENTIUM**

1. POLITICAL ORIGINS OF THE POLISH DOCTRINE
OF *IUS GENTIUM*

Heraclitus once said that it was not peace, as Homer believed, but war which was the father and king of all things.¹ Generally considered, the veracity of that claim is obviously debatable. Its accuracy with reference to the origins of Polish medieval *ius gentium* cannot be questioned. The *Corpus iuris canonici* states unambiguously “*Ex facto ius oritur*”² (Law is born of facts) and that fact was the long drawn out, bloody and painful conflict between Poland and the Teutonic Knights. The Teutonic Knights had created a powerful military state in Prussia, in which the Church was one and certainly not the most important component. The aggressive actions of the Order could justify either missionary activities or the defense of Christianity against attack by non-believers. The ideologists of the Order, beginning with Hermann von Salza (d. 1239) developed a doctrine whereby the primary task of the Order was to be the conquest of barbarian nations in order to convert them to Christianity. The Knights made use of numerous privileges, factually or fraudulently given to them, as the legal basis for the Order’s exist-

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¹ John BURNET, *Early Greek Philosophy*, 4th ed., 1930, pp. 136–37, fragments 43, 44, 62. (Hermann Diels, ed., *Die Fragmente der Vorsokratiker. Griechisch und deutsch*, I-III, 4th ed. (Berlin: Weidmannsche Buchhandlung, 1922).

² Decretales Gregorii IX: c. De muliere, de sponsalibus, de simoniace, de simonia.

ence and its chosen plan of action. Frederick II's "Golden Bull" (1226) is undoubtedly authentic. Frederick befriended Hermann von Salza, who organized the Knights in Prussia after their expulsion from Transylvania by King Andrew II in 1225.³ On the basis of the "Golden Bull" the Emperor con-

³ The original name of the Teutonic Knights was the Order of Hospitallers of the Most Blessed Virgin Mary of the German Home in Jerusalem." The name "Krzyżacy" in Polish (Cross-Bearers) came from the black crosses which appeared on the white cloaks of the members of the Order. Germans most frequently referred to the group as the Deutscher Orden (German Order). The roots of the Order, in the form of a German hospital in Jerusalem, already existed at the start of the 12th century: the first traces can be found in 1127. With the capture of Jerusalem by Sultan Saladin in 1187, however, the German hospital there ceased to exist. During siege of Akko in 1189–90, the Order was reformed and renewed as a hospitaller order. It transformed itself into a knightly order in 1198. Its rule was based on the rules and organizational structure of the Knights Templars and the Joannites. The new order, supported by the princes of the German Reich, received wealth in Sicily was accepted by existing knightly orders, and received the approbation of the Pope. In the first years after its founding, the Knights did not really amount to much. Its activities only became visible during the reign of Hermann von Salza, the fourth Grand Master of the Order. Having good contacts with Emperor Frederick II and the papal court, Hermann gained support and new benefices for the Order in Germany, Italy, Austria, Alsace, Lotaringia, and the Czech lands. In the face of increasing Muslim pressures Hermann von Salza began the process of bringing the Knights back to Europe. In 1211 the Hungarian King Andrew II called on the Knights for help defending the southern border of Transylvania against the Polowce, a Turkish tribe (Transylvania, a territory that was part of Hungary until 1918 and now part of Rumania). Andrew gave them land on the Aluta River. Seeing, however, that the Knights were aiming at establishing their own country on his territory, Andrew sought to remove them from Hungary. After their lack of success in Hungary the Teutonic Knights readily took up an offer from the Polish prince Konrad Mazowiecki to give them the lands in the region of Chełmno in exchange for fighting the aggressive pagan Prussians (a tribe the Knights subsequently exterminated completely). Hermann Balk, their national Master, was responsible for the installation of the Knights on the territory put at their disposal. Hermann von Salza remained in Hungary and never was in Prussia (see *Polska Jana Długosza* [The Poland of Jan Długosz], ed. Henryk Samsonowicz (Warsaw: Państwowe Wydawnictwo Naukowe, 1984), p. 91, note 38). In the period years 1233–83 the Knights conquered Prussia, establishing their own state on that territory, forcibly imposing Christianity and subjugation on the Prussians. Already in 1237 the Knights joined with the Cavaliers of the Sword taking part in the *Inflanty*. Despite constant protests by Poland, legal actions undertaken in the papal courts, and other actions undertaken by Poland, the Teutonic Knights not only did not return the coastal regions to Poland but in 1308 conquered Gdańsk and slaughtered its citizens. By 1309 they had conquered the entire coastal region around Gdańsk, which inaugurated a long period of Polish–Knights warfare. In 1309 they transferred their own capital from Venice to Malbork and later, in 1457, to Königsberg. Carrying on constant aggression against Poland, the Knights occupied the Dobrzyński region in 1329 and the Kujawy region in 1332. The aggressive expansion of the Knights against Lithuania and the Samogitians, undertaken on the pretext of converting them to Christianity, threatened Poland, already divided by the Knights in 1308 with the seizure of Gdańsk, by cutting off the mouth of the Vistula. This was the primary reason for the Polish-Lithuanian Union. In this new situation Poland undertook the peaceful conversion of the Lithuanians, thereby depriving the Knights of a pretext for aggression against Lithuania as well as raising the question of the need for a German Order converting people to Christianity on

firmed Konrad Mazowiecki's donation of the Chełmno region to the Knights, throwing in at the same time the whole of Prussia. At the time the Emperor invoked his authority as "ruler of the world."⁴ Of more doubtful authenticity are papal privileges supposedly given to the Knights by Popes Alexander IV (d. 1261) and Clement III (d. 1271).⁵ After the conquest of Prussia by the Knights, Lithuania and Samogitia were threatened with destruction. Polish lands were also constantly under threat. The marriage of Jadwiga and Jagiełło and the peaceful manner of the conversion of the Lithuanians to Christianity would have questioned the sense for further existence of the Knights' state. In such a situation it was necessary to formulate the accusation of the insincere conversion of Jagiełło and the sham Christianization of the Lithuanians. The height of such propaganda, broadly disseminated in Western Europe, was John Falkenberg's famous *Satire*, written after the Battle of Grunwald on commission by the Knights.⁶ Thanks to the forceful efforts of the Polish delegation, the Council of Constance condemned it and, because of its aggressiveness and calumnies, even the Knights themselves had to separate themselves from it. Presenting themselves as defenders of Christianity against an aggressive Lithuanian-Samogitian paganism and a false Polish Christianity, proclaiming the conversion of Lithuania as *de facto*

the Baltic Sea. Feeling threatened, the Knights undertook a major war against Poland starting in 1409. Its outcome was decided at the Battle of Grunwald (also known as the Battle of Tannenberg, one of the greatest battles of medieval Europe), where the Knights suffered major defeat at the hands of the Polish Army, assisted by armies from Lithuania, Samogitians, Rus, Tatars, and Czechs. The Knights lost at that time their military and economic power, although not until after the Thirteen Year War (1454–66) did they become vassals of Poland, surrendering the coast to her. In 1525 the Grand Master of the Teutonic Knights, Albrecht, converted to Lutheranism and undertook the secularization of the Order. In place of a religious order's state there arose in Prussia a secular principality of Prussia, a vassal to Poland until 1657. That state subsequently became a militarily strong Prussia which, in the second half of the 18th century, together with Russia and Austria, partitioned Poland.

⁴ GÓRSKI, p. 13; RECHOWICZ, p. 129; BÉLCH, p. 56.

⁵ EHRLICH, *Paweł Włodkowiec i Stanisław ze Skarbimierza*, pp. 147–48.

⁶ Falkenberg's *Satire* has been twice published critically in recent years, each edition independent of the other. One version is Zofia Włodek's, "La Satire de Jean Falkenberg texte inedit avec introduction: in *Mediaevalia Philosophica Polonorum*, 28 (1973): 51–95. The other version is Harmut Bookmann's *Johannes Falkenberg, der Deutschen Orden und die polnische Politik. Mit einem Anhang: Die Satira des Johannes Falkenberg von Harmut Boockmann*, "Veröffentlichungen des Max-Planck-Instituts für Geschichte" series (Göttingen: Vandenhoeck et Ruprecht, 1975), pp. 312–53. Also worth noting is another publication of Włodek's, "Odnaleziona Satyra Falkenberga" [The Recovered Satire of Falkenberg], *Studia Historyczne*, 14 (1971), zeszyt 4. A forthcoming book by Jerzy Rebeta on Falkenberg's *Satire* will contain the author's judgments in light of a newly discovered anonymous tract from the pre-1424 period containing extended citations from *Satire* as well as information about Falkenberg.

invalid for having been accomplished by Poles for political reasons, the Knights gained both proponents and significant support not only from Western knights but also from distinguished Western intellectuals. It was, after all, no less a known French philosopher and theologian than Peter of Ailly (d. 1425) who passionately summoned the knights of Flanders and France to a crusade against Poland in defense of the endangered Teutonic Knights.⁷ While we have become accustomed to identifying the Teutonic Knights exclusively with the Germans, knights from many Western countries fought with the Teutonic Knights at the time of the Battle of Grunwald. Some historians have advanced the thesis that at the beginning of the fifteenth century Germans made up no more than approximately 15% of the Teutonic Knights. Górski questions that data, pointing out that it lacks adequate foundation in source materials.⁸ Whether or not it was so, Western public opinion taken generally was not inclined towards Poland. Following the Union of Poland and Lithuania, when the ideological and military aggressiveness of the Teutonic Knights began growing dangerously, Poland was forced to undertake preparations for war. This involved on the one hand preparations of a purely military character. On the other hand it involved an ideological counterattack, aimed at readying both Polish society as well as Western opinion for a general showdown between Poland and the Order. That counterattack needed on the one hand to unmask the calumnies cast by Knight propagandists against Jagiełło and the Lithuanians. On the other hand it needed to defend the position that the war Poland was waging with the Knights was just; that the Knights' aggression was lawless and criminal; that in opposing that aggression by arms, it was permissible to call for aid from the armies of non-believers; that pagans by the law of nature could possess their own country and other property; that no one was allowed to launch armed attack against pagans who were living peaceably; and, finally, that everybody including pagans had a right to self-defense if they were unjustly attacked. The expression of this Polish ideological counterattack took form in the sermon preached by Bishop Kurdwanowski to the Polish Army a few weeks before the Battle of Grunwald⁹ as well as Stanisław of Skarbimierz's sermon *De*

⁷ GÓRSKI, pp. 122–23.

⁸ GÓRSKI, p. 84.

⁹ We do not have Kurdwanowski's text and do not know if the sermon was ever written down. We know that it was delivered to a large gathering of the Polish Army from the account of Jan Długosz: see *Ioannis Długossi seu Longini Canonici Cracoviensis Opera omnia cum Alexander Przedziecki edita* (Kraków, 1863–87), vol. 4, p. 15. See also Kazimierz MORAWSKI, *Historia Uniwersytetu Jagiellońskiego. Średnie wieki i Odrodzenie ze wstępem o Uniwersytecie Kazi-*

bellis iustis. While that second sermon does not contain any explicit traces referring to contemporary Polish realities, there is no doubt that it originated amid those realities and constituted a scholarly lecture explaining the legal and moral side of the Polish-Knights conflict to anyone interested. The lack of concrete references in Stanisław's sermon confirms, it seems, the hypothesis that it was written and certainly delivered prior to the Battle of Grunwald as an element of moral preparation for it. The writings of Włodkowiec, on the other hand, emerge from the period after the Battle when Poland stood pilloried before public opinion—prepared by the Knights—as an aggressor which undertook war with Christians while being simultaneously supported in that effort by pagans and heretics. Such opinion had to be changed. It needed to be proven to the Christian world that Poland's actions were legitimate and just and that the real criminals, the aggressors who injured innocent nations, were the Teutonic Knights. This extraordinarily difficult task was entrusted to the Polish delegation and specifically to Paweł Włodkowiec. His writing emerged, therefore, in a concrete political context and had practical and carefully defined goals.¹⁰ In the process both Stanisław and Paweł, together with other Polish writers dealing with Poland's conflict with the Teutonic Knights, developed a complete and modern theory of the law of nations. It was a theory that went beyond both concrete political events and the times in which they occurred. That theory contained valuable propositions for resolving conflicts in international relations that remain valid today. They even go beyond the problem of such relations, providing a complete presentation of human rights which is so modern that it can be readily deemed obligatory even today.

mierza Wielkiego (Kraków: Munera Saecularia Universitatis Cracoviensis, 1900), vol. 1, p. 125; Ludwik EHRlich, *Paweł Włodkowiec i Stanisław ze Skarbimierza*, p. 52; and BELCH, p. 127.

¹⁰ The writings of subsequent contributors to the *ius gentium*, such as Francisco de Vitoria (d. 1546), Bartholemew de Las Casas (d. 1566) and Hugo Grotius (d. 1645) also had very similar political origins. Just as the works of the Polish scholars named above arose because of their opposition to aggression by the Teutonic Knights against innocent nations (supposedly justified by their right to conquer lands belonging to non-Christians), so the works of the two Spanish scholars—Vitoria and de las Casas—originated for similar reasons. Both came out in defense of the rights of the indigenous pagan peoples of the Americas, protesting the popular theory that Spain had a right to conquer those lands and enslave their peoples by reason of the barbarism of the tribal peoples of the Americas.

2. THE ORIGINALITY OF THE POLISH MEDIEVAL THEORY OF *IUS GENTIUM* AND ITS AUTHORS

Notwithstanding what has been said here about how original and innovative was the Polish theory of *ius gentium* long before Grotius (d. 1645)—something unambiguously admitted by medievalists—it is nevertheless Grotius who, in countless publications of the past centuries, has been unanimously called the father and author of the law of nations. They appeal to Grotius' famous works, *De iure belli ac pacis* and *De iure praedae*, in which he deals, always from the perspective of natural law, with the problems of just war, tolerance, respect and equal treatment for all nations, free access to the sea, observance of agreements (*pacta sunt servanda*), restitution for injuries, making of treaties, contraband international trade, family law, etc. The majority of authors to this day are of the opinion that Grotius marks the beginning of a new era in the development of international law.¹¹

To be fair, one must admit that there are historians who regard the much vaunted opinion of Grotius' innovative role as somewhat overstated. James Leslie Brierly, for example, holds this view. He says that Grotius' great fame, which he acquired as a well-known lawyer, historian, philosopher, poet, theologian and diplomat, resulted in whatever he wrote (and he was author of more than 90 works) being read with great interest as something wholly novel and original. This is also true of his works dealing with *ius gentium*, thanks to which he was recognized throughout Western Europe as the author of modern international law. Brierly also stresses that we cannot speak of Grotius as the only creator of modern international law while forgetting about his predecessors, who did not contribute less to that law than him.¹² In speaking of Grotius' predecessors in the modern concept of *ius gentium* Brierly, Nussbaum and numerous other contemporary historians have the following scholars in mind: Niccolo Machiavelli (d. 1527); Francisco de Vitoria (d. 1546); Bartholomeus de Las Casas (d. 1566); Pierino Belli (d. 1575); Balthasar Ayala (d. 1584); Jean Bodin (d. 1596); Francisco Suarez (d. 1617); and Alberico Gentili (d. 1608).¹³ Gentili made use of two of Francisco de Vitoria's theology lectures, "*On the Law of War*" and "*On the American Indians*," both of which are strikingly similar in content to the writings of Polish scholars living more than a hundred years earlier, Stani-

¹¹ NUSSBAUM, p. 126.

¹² See James Leslie BRIERLY, *The Law of Nations*, 5th ed. (Oxford: Clarendon Press, 1955), p. 28.

¹³ BRIERLY, p. 25 and elsewhere; NUSSBAUM, p. 84 and elsewhere.

sław of Skarbimierz and Paweł Włodkowic. Furthermore, Vitoria's writings are based on practically the same sources as those of the Cracovian masters.¹⁴

We would search in vain, however, in the majority of systematic works on Grotius for even a hint of those two Polish medieval authors. They were, however, at the time real creators of the Polish school of *ius gentium*, understood as the law of international relations. As Ehrlich notes, both Cracovian scholars—as especially Włodkowic—formulated their views in such a way that they were capable of being recognized by the Council as part of the law which obligated individuals, kings, and organized human societies.¹⁵ In any event they explicated the majority of principles of *ius gentium* decades before the precursors of Grotius named in Western literature on the subject, certainly before Grotius himself.¹⁶ Indeed, in Belch's view, Grotius' achievements in the area of international procedures are very undeveloped when compared with Włodkowic's achievements in the field of jurisprudence, although he lived two hundred years earlier.¹⁷ In light of the above there arises the question: why have the intellectual achievements of Polish scholars in the area of *ius gentium* been either wholly unknown for centuries (as in the case of Stanisław of Skarbimierz) or only rarely recalled (as in the case of Włodkowic, who is remembered primarily by foreign historians interested for various reasons in the Council of Constance¹⁸ or in the Teutonic Knights and their conflict with Poland¹⁹)? Such minor interest in those Poles

¹⁴ CZARTORYSKI, p. 144.

¹⁵ EHRLICH, *Paweł Włodkowic i Stanisław ze Skarbimierza*, p. 70.

¹⁶ BELCH, p. 23; REBETA, p. 55; RECHOWICZ, p. 130.

¹⁷ BELCH, p. 25.

¹⁸ See Emanuel SCHELSTRATE, *Acta Constantiensis Concilii ad expositionem decretorum...* (Antwerp: Apud Johannem Verdussen, 1683); Hermann von der HARDT, *Magnum Oecumenicum Constantiense Concilium*, 7 vols. (Francoforti et Lipsiae, Berolini: In Officina Christiani Genschii, 1696–1742); Dom Luigi TOSTI, *Storia del Concilio...* (Naples: Stabilimento Tipografico Poliorama, 1853); Jacques LENFANT, *Histoire du Concile de Constance*, new ed., 2 vols. (Amsterdam: Pierre Humbert, 1727), English version as LENFANT, James, *The History of the Council of Constance* (London, 1730); Hans BELLE, *Polen und die romische Kurie in den Jahren 1414-1424. Inaugural-Dissertation* (Berlin and Leipzig: Goschen, 1913); Paul NIEBOROWSKI, *Die preussische Botschaft beim Konstanzer Konzil bis Ende Februar 1416. Inaugural-Dissertation* (Breslau, 1910); Karl VOLKER, *Kirchengeschichte Polens* (Berlin and Leipzig: Walther de Gruyter, 1930); Frantisek Michalek BARTOS, "Z publicistiky velikeho schismatu a koncilu baskilejskeho" (On Publications from the Time of the Great Schism to the Council of Basel), *Vestník Ceske Akademie Ved a Umeni*, 53 (1944): 1–20.

¹⁹ Thomas Johann SCHREIBER, *Preussische Sammlung*, 3 vols. (Danzig: Hanov, Michael, Chph., 1747–49); Constantin von HÖFLER, "Der Streit der Polen und der Deutschen vor dem Konstanzer Conzil," *Abhandlungen aus dem Gebiet der slavischen Geschichte. Sitzungsberichten der Wiener Akademie, Philos. His. Klasse*, 95 (1879): 875–98; Edith LÜDICKE, "Der Rechtskampf

by the general literature dealing with international law, when compared with the interest in Francisco de Vitoria and Bartholomew de las Casas, not to mention the interest in Grotius, is incomprehensible when one takes into account certain facts. These facts include: that Stanisław and Paweł wrote in the then-international language, i.e., Latin; that they were representatives of a powerful country and of a university that was recognized throughout Europe; and that Włodkovic's opinions were presented in the most important international forum of that day, the Council of Constance, as well as before the most important courts of Pope and Emperor. Why, then, have their views been inadequately appreciated?

It seems that there are several basic reasons for this. Following the Council of Constance and especially after the Peace of Toruń of 1466, Europe lost interest in the Teutonic Knights. Although the Polish-Knights conflict was lively in its day and involved Western Europe, everything about it—including Włodkovic's writings—was also forgotten. No longer seeing a threat to Christianity in it, Western opinion ceased being interested in the conflict between Poland and the Order. The flood of Western Europe volunteers to the Teutonic Knights also dried up.²⁰

Apart from the fact that Western authors have almost universally treated the territory to the east of Germany as an intellectual wasteland, another seemingly essential reason for this amnesia lies in the fact that neither Stanisław's sermon *De bellis iustis* nor Włodkovic's writings were printed in their day. They did not stimulate adequate interest even in Poland during the second half of the fifteenth and sixteenth centuries. At the same time the writings of Spanish and other authors named above were published and relatively quickly disseminated, sometimes even during their authors' lifetimes. It is not irrelevant to note that Stanisław's *De bellis iustis* was first published only in the second half of the twentieth century. Some of Włodkovic's writings were first published in 1878 by Bobrzyński²¹ but the whole

des Deutschen Orden gegen den Bund der Preussischen Stände, 1440–1453," *Altpreussische Forschungen*, 12 (1935): 1–43, 173–217.

²⁰ GÓRSKI, p. 133.

²¹ Michał Bobrzyński (d. 1935) was a distinguished politician and Polish historian who first published (through the Polish Academy of Sciences and Letters) Paweł Włodkovic's *De potestate papae et imperatoris respectu infidelium*. Cf. *Starodawne prawa polskiego pomniki* (Ancient Monuments of Polish Law), V, and *Rerum publicarum scientiae quae in saeculo XV in Polonia viguit monumenta litteraria*, editionem curavit Michael Bobrzyński (Kraków, 1878, in folio edition).

of them, so important to the heritage of *ius gentium*, were first published by Belch in 1965.²²

Among historians there is no agreement about the range of influence of Stanisław's and Włodkowic's works just cited. In Zawadzki's view, mentioned above, there is no proof that anybody else made use of *De bellis iustis*.²³ Ehrlich states, on the other hand, that the theory formulated in that sermon found reflection in Włodkowic's writings and became the basis for a tradition subsequently continued in the works of Jakub Przyłuski (Jeżowity, d. 1554), Andrzej Frycz Modrzewski (d. 1572), Petrycy Sebastian of Pilzno (d. 1628), and other later Polish authors.²⁴ In Czartoryski's opinion, *De bellis iustis* was made use of in Kraków for several decades following its author's death. We know from the dating of extant manuscripts (as well as from non-extant manuscripts known to researchers from their descriptions) that the sermon was being copied until practically the end of the fifteenth century.²⁵

As has been mentioned above, the writings and opinions of Paweł Włodkowic on *ius gentium* have been the object of interest on the part of several Polish²⁶ as well as foreign²⁷ historians for several centuries.

The issue of fundamental significance is the originality of Stanisław's sermon *De bellis iustis* and the writings of Włodkowic. The twelfth century scholar Bernard of Chartres (d. 1124/30) once said, in a quotation later cited practically universally, that "We are dwarfs standing on the shoulders of giants. For that reason we see more and further than they do, not because our sight is more acute or our height better, but rather because they pick us up and raise us upon their gigantic heights."²⁸ That is how Stanisław of Skarbimierz and Paweł Włodkowic thought of themselves, even though they contributed something very significant on their own—a new understanding of the problem of the law of nations—to the "stature of their enormous predecessors." Both undoubtedly made abundant use of many different

²² See WIELGUS, "Średniowieczna filozofia," pp. 114–16.

²³ ZAWADZKI, p. 123.

²⁴ EHRLICH, *Polski wykład*, p. 79.

²⁵ EHRLICH, *Paweł Włodkowic i Stanisław ze Skarbimierza*, p. 193; CZARTORYSKI, p. 144.

²⁶ Marcin KROMER, *Polonia sive de origine et rebus gentis Polonorum libri XXX, Coloniae Agrippinae*, 1589, lib. XVIII, f. 289b; Szymon STAROWOLSKI, *Scriptores Polonicorum Hecatontas* (scriptum 1625), Vratislaviae, 1733. The latter work has also appeared in Polish translation as *Setnik pisarzy polskich albo pochwały i żywoty stu najznakomitszych pisarzy polskich*, trans. with commentary by Jerzy Starnawski (Kraków, 1970).

²⁷ See section 3.3.1.

²⁸ Jacques LE GOFF, *Inteligencja w wiekach średnich* [The Intelligentsia in the Middle Ages], trans. Eligia Bakowska (Warsaw: Czytelnik, 1966), p. 25.

sources, which they rather thoroughly cited, exploiting important scholarly materials developed over the course of centuries to serve the needs of nations in their times. Stanisław frequently cites the Decree of Gratian, the Decretals of Gregory IX, the *Liber Sextus*, the *Clementinae*, the *Summa* of Raymond of Penyafort, Guillelmus of Rennes' *Glosses*, the *Summa* of Thomas Aquinas, the famous *Apparatus* of Innocent IV, the *Margarita Decreti* of Martinus Polonus and the *Corpus iuris civilis*. From the contents of *De bellis iustis* it would also appear that Stanisław made use of the works of famous fourteenth century lawyers like Oldradus, Ioannes Andreae, Ioannes of Lignano and Hostiensis, although there are no explicit references to these works. Stanisław did, however, openly cite various books of the Old Testament. He took numerous Biblical references as well as references to the works of St. Augustine second-hand from the Decree of Gratian, the *Summa* of St. Thomas and the *Summa* of Raymond of Penyafort.²⁹

Włodkovic's contribution to the heritage of *ius gentium* is in comparably richer than Stanisław's. His source base, upon which he grounded his writings and justified his conclusions, was also incomparably richer. That base generally considered can be reduced to several different kinds of sources, the most important of which are: 1. the *Corpus iuris canonici*; 2. the *Corpus iuris civilis*; 3. the Old and New Testaments; 4. the writings of numerous Fathers of the Church, particularly St. Augustine, St. Ambrose, and St. Gregory the Great; 5. the works of distinguished philosophers and theologians, among whom he frequently cited Aristotle, Cicero, St. Thomas Aquinas, Nicolaus Lira, and Innocent IV; 6. the works of many newer, i.e., 14th and 15th century authors, especially lawyers like Ioannes Andreae, Oldradus, Antonius de Butrio, Petrus de Anachorano, Ioannes of Lignano, Hostiensis (with whom he engaged in polemics on numerous occasions), Baldus, Bartolus, Dominicus of St. Geminiano, Gerson and, of course, his master, Cardinal Franciscus Zabarella; 7. various forms and documents of positive law expressed in custom, legal decisions, treatises, agreements, collections of judicial procedures, court decisions, documents of donations, transcripts of court proceedings, written testimony of witnesses and expert opinions; 8. Chronicles (including the Chronicle of Kadłubek³⁰), diplomatic correspondence, ep-

²⁹ EHRlich, *Polski wykład*, pp. 15–37.

³⁰ Wincenty Kadłubek (ca 1150–1223). He studied in Paris and became Bishop of Kraków in 1207. He is author of the *Kronika Kadłubka* (the Chronicle of Kadłubek), a Latin work which contains the history of Poland from legendary times until 1202 (*Magistri Vincenti Chronica Polonorum*, according to the edition of A. Bielowski, Lwów, 1872). Filled with didactic material, the Chronicle has been used in Poland since the 15th century as a basic text in rhetoric. It is a

itaphs,³¹ folk songs, proverbs, maps and plans; 9. Włodkowiec also supported his conclusions by appealing to customs; daily conversations; etymologies of names; the fact of the existence of certain peoples, territories, and natural borders; the content and use of documents functioning in various territories; toponymy; political geography; ethnography; comparative linguistics; documentary criticism; etc.³²

The recognized and universally employed methodology of medieval scholars involved the use of as many sources as possible and the support of conclusions by innumerable citations taken either directly from primary works or indirectly together with fragments from secondary texts. Włodkowiec also used this method, which does not in the least diminish the originality of his works written this way. Fragments of texts from the works of others frequently served medieval scholars in the process of presenting their own original ideas. The references remind us of bricks with which builders build a house, using those bricks according to their own ideas. That is how Stanisław and Paweł worked. Despite the enormous number of references they used, the originality of their writings is not open to doubt. In speaking of Stanisław's sermon *De bellis iustis*, Czartoryski says that it constitutes the first and basic formulation of doctrines which would start being realized in international practice only in the middle of the 19th century.³³ In Ehrlich's view, that sermon is the earliest legal lecture in the field of public war in European literature. Measured against the development of research on the history of *ius gentium* the work of the two Poles—Stanisław and Paweł—120 years prior to the "lectures" of Vitoria are the first use of concepts which Vitoria embraced in the history of the science of international law. One can thus say wholly responsibly that, contrary to the universally accepted understanding, Grotius does not stand at the beginning of the first phase of the history of the modern law of nations but at its end. The first ones to employ that law in new ways were the Poles, clearly making use of an earlier, richer tradition.³⁴

source for understanding the knowledge in its author's day of the fields of law, literature, and natural science. It is the basic source for the political and cultural history of Poland in the twelfth century. The Chronicle exercised an enormous influence on Polish historiography even through the period of the Enlightenment.

³¹ Epitaphs were placed both on tombstones as well as on the walls of churches (beneath which the dead were buried through the 18th century. Burial beneath a church continues even today in the case of bishops as well as other very deserving persons).

³² BELCH, pp. 7, 8, 15–26.

³³ CZARTORYSKI, p. 144.

³⁴ EHRLICH, *Paweł Włodkowiec i Stanisław ze Skarbimierza*, p. 112.

Agosti has voiced reservations about the originality of Paweł Włodkowic's writings. He undertook an attempt to compare the writings of that scholar on the attitude of a Christian towards non-Christian nations with early collections of canon law and the writings of Italian canonists. Agosti stresses that Włodkowic had hired a large team of Italian canonists who worked for him, supplying him with the texts of various writers for his works.³⁵ Agosti especially stresses, as being significant in his opinion, the dependence of Włodkowic's tract "De potestate papae respectu infidelium" on Cardinal Franciscus Zabarella.³⁶ Wojciechowski affirmed Agosti's opinion.³⁷ Włodkowic's broad dependence on Italian canonists is a position rejected by both Górski and Rechowicz as well especially unambiguously by Belch.³⁸ It is obvious that Włodkowic made use of materials prepared for him by Italian canonists, but he treated those materials as tools in the formation of his own ideas. Belch points out that nowhere, for example, does Włodkowic come out in favor of the theory of conciliarism, which Zabarella certainly advocated. Neither did Włodkowic share Zabarella's great trust of the Emperor Sigismund. On the issue of the right of Christians to take over the land of non-believers, Zabarella followed Henry of Segusio (Hostiensis), whereas Włodkowic decisively rejected that view, coming out unambiguously for the position of Innocent IV which forbade such practices.³⁹ Just as the testimony of experts is necessary in a trial hearing where it might be useful, so the authorities cited in Włodkowic's writings perform a similar function. He very frequently deduces his own wholly independent conclusions from those numerous opinions. When presenting an opinion he arrived at without anyone else's help, Włodkowic in principle supplies no references.⁴⁰

Stanisław of Skarbimierz and Paweł Włodkowic left their writings behind them, on the basis of which we can recreate the 15th century Polish theory of *ius gentium*. That theory was not just an intellectual construct of the aforementioned scholars. It expressed views which were then universally held by Poles, especially by the royal court, the clergy, and the knighthood. Those views were also undoubtedly expressed by the entire distinguished

³⁵ Giorgio AGOSTI, "Bezpośrednie źródło 'Tractatus de potestate papae respectu infidelium Pawła Włodkowica'" [The Immediate Sources of Paweł Włodkowic's "Treatise on the Power of the Pope with Respect to Infidels"], *Roczniki Historyczne*, 12, z. 2 (1936): 300–17; BELCH, p. 12.

³⁶ BELCH, p. 12.

³⁷ Zygmunt WOJCIECHOWSKI, *Studia Historyczne* [Historical Studies] (Warsaw: Pax, 1955), p. 343.

³⁸ GÓRSKI, p. 132; RECHOWICZ, pp. 131–32; BELCH, p. 122.

³⁹ BELCH, pp. 122, 787–88.

⁴⁰ BELCH, p. 235.

delegation sent to represent Polish interests at the Council of Constance, headed by the Archbishop of Gniezno, Mikołaj Trąba (who endorsed negotiations with Emperor Sigismund of Luxembourg, a man who was unfavorably disposed towards Poland and supported the Teutonic Knights in their conflict with her. The negotiations of the Polish delegation with Sigismund played a very important role because Sigismund frequently served as an arbitrator in the conflict between Poland and the Teutonic Knights, even though in the final analysis his positions very often swayed and were unstable.) Paweł Włodkowic assumed the task of conducting the immediate diplomatic and doctrinal struggle with the Teutonic Knights, using the Polish *ius gentium* school as his basis. The delegation's secretary was the second representative of the University of Kraków, Piotr Wolfram. The balance of the delegation included: Andrzej Laskarz, the Bishop-Elect of Poznan; Jakub of Kokrzew Kurdwanowski, Bishop of Płock; Andrzej of Kokorzyn, another representative of the University; Canon Piotr Bolesta; Janusz of Tuliszków, Castellan of Kalisz; and Zawisza Czarny, a knight famous throughout Europe.⁴¹

The problem which both Stanisław and Paweł addressed had also been taken up on various occasions in Poland. Jan Długosz (d. 1480)⁴² noted that Bishop Jakub Kurdwanowski, a graduate of the University of Bologna, has preached a sermon on the subject of just war several weeks prior to the Battle of Grunwald. The sermon was delivered in Polish to a large assembly of the Polish Army, convincingly proving that the projected war by the King-

⁴¹ EHRLICH, *Paweł Włodkowic i Stanisław ze Skarbimierza*, pp. 139–40. Zawisza Czarny of Garbów (d. 1428) was a famous Polish knight. He had served Emperor Sigismund of Luxembourg during his youth. After returning to Poland he took part in the Battle of Grunwald (1410), for which he was decorated for extraordinary valor and strength. He served many times as the ambassador of the Polish King Władysław Jagiellonian (1348–1434) in negotiations with Emperor Sigismund. Zawisza Czarny was also a member of the Polish delegation to the Council of Constance in 1415. He took part in many wars and was undefeated in tournaments organized throughout Europe. He is a symbol of uprightness, truthfulness, and all knightly virtues. He died in 1428 near the fortress of Golubac, on the Danube in Serbia, during the course of an expedition organized against the Turks by Emperor Sigismund.

⁴² Jan Długosz (1415–1480), politician, diplomat, and Polish historian, who worked in the service of the Polish king Kazimierz Jagiellonian (1427–29). On numerous occasions by the king's authorization he served as royal ambassador, conducting negotiations with the Teutonic Knights, the Czechs and the Hungarians. He was the most distinguished medieval Polish historian. The author of many works, his most important include: *Annales seu cronicae inclyti Regni Poloniae* (a work containing the history of Poland to 1480), *Lites ac res gestae inter Polonos ordinemque Cruciferorum, Insignia seu clenodia Regni Poloniae, Liber benefidorum dioecesis Cracoviensis*, and others.

dom of Poland against the Teutonic Knights was appropriate and just. That fact testifies to the widespread problem of “just war” in Poland at the beginning of the 15th century.⁴³

The literature on the subject also frequently underscores the significant role played by Bishop Andrzej Łaskarz (Lascarius, d. 1426) in the formulation of the Polish school of *ius gentium*. Łaskarz, a colleague from Włodkowiec’s student days, was a distinguished lawyer who took part, along with Włodkowiec and Piotr Wolfram in the Polish-Teutonic Knights negotiations at Buda in 1414.⁴⁴ Łaskarz had been the first to raise the question during the Buda proceedings of the legal and theological justifications for the Knights’ aggression. In his opinion no one can forcibly convert another. The pagan is our neighbor towards whom we are obliged by Gospel charity.⁴⁵ Nor has anyone recalled, in the literature on the subject to date, that Benedykt Hesse (d. 1456)—one of the most distinguished Polish medieval philosophers and theologians—also took up the problem of just war. In his enormous *Lectura super Evangelium Matthaei* [Commentary on the Gospel of St. Matthew]

⁴³ Jan Długosz, *Jana Długosza Kanonika Krakówskiego Dziejów Polskich Ksiąg Dwanaście* [The Canon of Kraków Jan Długosz’s Polish History in Twelve Volumes], trans. Karol Mecherzyński in DŁUGOSZ, *Dziela wszystkie* [Complete Works] (Kraków: Wydane staraniem Alexandra Przeździeckiego w Drukarni “Czasu” W. Kirchmayera, 1863–87), vol. 5 (1869), p. 15. The precise quotation from Długosz reads (in English translation): “James, the Bishop of Płock, entices by his address the Polish Knighthood to battle. In the course of those three days during which Władysław, the King of Poland, together with Prince Alexander was on the bank of the Vistula River, the feast of the Visitation of the Most Blessed Mary, falling on Wednesday, they celebrated it together with their senior counsellors and knights at the Czerwińsk Monastery. James, the Bishop of Płock, as shepherd of his diocese, after celebrating a solemn liturgy, delivered a sermon in Polish to the entire Army, gathered together with a large crowd in the Church. As a learned and eloquent man he discoursed at length about just and unjust war, demonstrating by numerous and convincing proofs that the war against the Teutonic Knights intended by the King was right and just. That address, which touched the heart in a very special way, stimulated and enkindled the minds of all the knights to fight in defense of their homeland against its enemies.”

⁴⁴ EHRLICH, *Paweł Włodkowiec i Stanisław ze Skarbimierza*, p. 52; GÓRSKI, p. 131; CZARTORYSKI, p. 140; BÉLCH, p. 130; *Polski słownik biograficzny* [The Polish Biographical Dictionary] (Wrocław–Warszawa–Kraków: Zakład im. Ossolińskich, 1935–), vol. 1, pp. 103–105. Buda (a city lying on the right bank of the Danube River, joined in 1872 to its left bank counterpart Pest, to form the current Hungarian capital, Budapest) had been designated as the site for negotiations between Poland and the Teutonic Knights and which was connected with the next Polish-Teutonic Knights War, which lasted from 1414–22. Although the Battle of Grunwald had greatly weakened the Teutonic Knights it did not, however, result in the fall of their state. That, in turn, led to an extended period of warfare against Poland by the Knights.

⁴⁵ BÉLCH, p. 130; Janusz TAZBIR, “Tolerancja – wiek XV–XVI [Tolerance: The 15th/16th Centuries] in *Uniwersalizm i swoistość kultury polskiej* [The Universality and Uniqueness of Polish Culture] (Lublin: Redakcja Wydawnictw KUL, 1989), p. 136.

one finds a question entitled: “*Utrum iustum fuerit bellum inter Christum et diabolum*” [On whether a war between Christ and the devil would be just]. Replying to the question, Benedykt Hesse appeals to St. Augustine as well as to a further unspecified *Gloss*, saying *inter alia* that fulfillment of the following five conditions are necessary to the prosecution of a just war: (1) permission for the war by the public authority which, *nota bene*, is so important that if anybody lacking such permission “would reach for the sword, he should die by the sword;” (2) the goal of the war should be a return to justice and atonement for the injuries wrought by the opponent; (3) those who resort to war ought to be guided by pure intentions and not by a desire for revenge or domination, a thirst for savage warfare, plundering, or the acquisition of spoils; (4) there should be an uninterrupted continuity of incitement towards war which the belligerents might in legitimate ways build up in themselves; and (5) there must also be a hostile attitude on the part of the enemy initiating hostilities, since one is not allowed to strike a blow even against the Saracens or barbarian peoples if they do not violate our laws and leave us in peace.⁴⁶

We can, therefore, discover in Hesse’s notion of just war the reflections of a rich tradition, using the conditions for just war developed by St. Augustine, Isidore of Seville, Thomas Aquinas, Raymond of Penyafort and, most likely, Guillelmus of Rennes, to which Stanisław of Skarbimierz and Paweł Włodkowic both reached back. Hesse’s fifth condition, which proclaims the principle of coexistence with non-Christian nations as long as they live in peace with us and do not violate our laws, is particularly worthy of attention since it expresses the views advanced by Stanisław of Skarbimierz, Paweł Włodkowic, and the author of the note *Revocatur*.⁴⁷

⁴⁶ Benedykt HESSE, “Utrum iustum fuerit bellum inter eum [Christum] et diabolum” in his *Lectura super Evangelium Matthaei*, ed. W Bucichowski, *Textus et studia*, 13 (1982): 188: “Dicamus ergo, quod ut quis iustum bellum habeat procedendo contra alium, quinque requiruntur. Primo bellantis vel bellum praecipientis auctoritas, ita quod sit persona publica, secundum enim Augustinum omnis persona privata, quae praeter auctoritatem illius, qui publica auctoritate fiingitur, acceperit gladium, gladio peribit. Secundo causetur iustitiae aequitas, quia tunc secundum Augustinum iniuste agens vel civitas plectanda est per bellum, quoniam vel negligit corrigere, quod improbe a suis factum est, vel negligit reddere, quod per iniuriam ablatum est. Tertio bellantium puritas, quia non voluntate ulciscendi vel feritate rebellandi, nec libidine dominandi, nec pactione depraedandi bellatores bellare debent. Quarto excitationis continuitas, quia per bellum iuste bellatores se ad bellandum excitare possunt. Quinto hostium et inimicorum cupiditas, quia etiam contra Saracenos et barbaras gentes volentes nobiscum quiete agere et iura nostra non auferre, bellum committere non debemus, ut notat quaedam Glossa, 23, qu. 8.”

⁴⁷ Hesse’s *Commentary to the Gospel of St. Matthew*, from which the text dealing with the conditions for a just war derives, was unfortunately published uncritically. The publisher some-

Włodkowiec emphasized on numerous occasions the duty to treat nations (including non-Christian nations) living in peace well.⁴⁸ Establishing Hesse's dependence upon the writings of other Polish authors and/or other sources in the question of just war requires, however, more precise investigation.

In that same *Commentary to the Gospel of St. Matthew* Benedict Hesse included one other question connected with war. It begins "*Utrum bellare et piscari dominica die sit licitum*" [Whether making war and fishing on Sunday is lawful] and deals with limitations introduced by the Church on the times one could make war or catch fish. Hesse says, among other things, that one can make war even on Sunday provided it is a defensive war. He crowns his conclusion thusly: "*Dicitur, quod si urget necessitas pro defensione suae patriae in nullo tempore est bellum praeparationi parcendum*" [One should state that, in urgent need, there is no period in which it would be forbidden to undertake preparations for war in defense of one's country]. Hesse cites the *Corpus iuris canonici* as justification for his stance.⁴⁹

The next source for the Polish law of nations is the Note already discussed above, *Revocatur*. It constitutes a *consilium*, i.e., a legal opinion on the subject of whether the King of Poland has the right to make use of the aid of heretics in a just war prosecuted against Christians. The Note has the format of a typical medieval lecture. The Note's author, invoking the *Corpus iuris canonici* along with the opinions of famous canonists, provides an unambiguously affirmative reply to the question posed at its beginning. In comparison to Włodkowiec's tract *De potestate papae et imperatoris*, in which he affirms the permissibility of availing one's self in a just war of the help of heretics as well as pagans (Samogitians and Tartars), the anonymous author of *Revocatur* omits the second group. It is possible that the political situation in Poland at the time the Note was written was already different from when Włodkowiec was active. Krzyżanowski hypothesizes that the Note's author had the Czech Hussites who assisted Poland in 1432 in mind.⁵⁰

times provides an obviously erroneous reading of the text when, for example, he substitutes the word *deprecandi* for *depraedandi* on p. 188 (which, in context, makes no sense). Even more importantly, this edition lacks an historico-literary apparatus, i.e., the publisher did not indicate the sources of which Hesse made use. For these reasons there is need for additional research on the fragment of interest to us dealing with conditions for a just war.

⁴⁸ JASUDOWICZ, pp. 87, 153.

⁴⁹ HESSE, "Utrum bellare et piscari dominica die est licitum," in his *Lectura super Evangelium Matthaei*, ed. W. Bucichowski, *Textus et studia*, 21 (1986): 255–56.

⁵⁰ EHRLICH, *Paweł Włodkowiec i Stanisław ze Skarbimierza*, pp. 184–88; *Polski wykład prawa wojny XV wieku*, pp. 193, 196–97. The Czech Hussites had offered assistance to Poland in the impending war with the Teutonic Knights, which began in 1433. See also Polska Jana Długosza

The next distinguished representative of the Polish school of the law of nations, Jakub of Szadek (d. 1487), was active in the second half of the 15th century. He was a professor of law who represented the University of Krakow at the Council of Basel in 1441.⁵¹ After 1457 he was frequently employed in diplomatic missions, including negotiations with the Teutonic Knights and with Gdańsk.⁵² Jakub also exercised the role of royal advisor to the Polish King during negotiations in Toruń.⁵³ He is author of a work entitled *Oratio contra cruciferos*.⁵⁴ Van Gennap is of the opinion that Jakub of Szadek was the first lawyer to work out a systematic collection of principles of international diplomacy and, for that reason, regards him as a precursor of

[The Poland of Jan Długosz], ed. Henryk Samsonowicz (Warsaw: PWN, 1984), p. 318 (*Annales*, A.D. 1433).

⁵¹ The Council of Basel (1431–49) was called by Pope Martin V to undertake ecclesiastical reforms, come to an understanding with the Czech Hussites, and to defend Europe against the Turks. The Council primarily became a forum, however, in the struggle between the papacy and advocates of an extreme conciliarism which would have subordinated the Pope to the authority of a Council. The professors of the University of Kraków were, in the majority, in favor of conciliarism, convinced that only on the basis of such a theory could one undertake real Church reform. In connection with the above the delegates of the University of Kraków (including Jakub Szadek) took an active part in the Council's work. They had at their disposition conciliarist treatises authored by some of the most distinguished Polish professors of the University of Kraków such as Benedykt Hesse, Wawrzyniec of Racibórz, Jakub of Paradyż and Jan Elgot. Tomasz Strzemiński edited those treatises into one document, which was acknowledged at the Council as one of the best existing codifications of the principles of conciliarism at that time.

⁵² Jakub Szadek was negotiating with the Teutonic Order in the name of the Polish King for the purchase of Malbork from the hands of a mercenary Teutonic army. During these negotiations he worked closely with Gdańsk, which Poland had liberated from Teutonic rule in 1454 and which subsequently remained a Polish protectorate. Malbork's occupation was a consequence of the Polish-Teutonic Order's agreement following the Battle of Chojnice (1454), which Poland lost. On the basis of that agreement the Polish King Kazimierz Jagiellonian was obliged to pay Ulrich Czerwonka (the Teutonic commander of Czech ancestry) 437,000 florins, destined for the mercenary Teutonic army. In return the army was to surrender the fortress at Malbork into Polish hands. See Polska Jana Długosza [The Poland of Jan Długosz], p. 339 (a fragment of Długosz's *Annales* for A.D. 1456) and p. 344 (*Annales*, A.D. 1457).

⁵³ According to Jan Długosz, Jakub of Szadek presented Poland's case for its claims to the Pomorze region. The claims, presented in Toruń, were contained in 15 articles, built on historical, legal, and other premises. The presentation was made to delegates of the Teutonic Knights and the City of Lübeck. See Polska Jana Długosza [The Poland of Jan Długosz], pp. 353–54 (*Annales*, A.D. 1464).

⁵⁴ Historia nauki polskiej [The History of Polish Scholarship], ed. Bogdan Suchodolski (Wrocław: Zakład Narodowy im. Ossolińskich, 1974), vol. 6, pp. 256–57; Polski słownik biograficzny, X, 367–68; Jerzy Zathę, Biblioteka Jagiellońska w latach 1364–1492 [The Jagiellonian Library: 1364–1492], vol. 1, pp. 102–103 in Jerzy Zathę, Anna Lewicka-Kamińska, and Leszek Hajdukowski, Historia Biblioteki Jagiellońskiej [The History of the Jagiellonian Library] (Kraków: Nakładem Uniwersytetu Jagiellońskiego, 1966).

Grotius. In his *Sermo* Jakub of Szadek strongly pressed for Poland's annexation of the lands occupied by the Teutonic Knights, establishing their Polishness in a very modern fashion by using toponymic, linguistic, ethnic,⁵⁵ demographic, and geographical data. He also appealed to the natural boundaries of those lands and to the natural right of rebellion by peoples forcibly subjugated by invaders. Jakub of Szadek's arguments remind one very much of Paweł Włodkowic's manner of proving his point, whose works Jakub undoubtedly used.⁵⁶

Although they did not directly deal with the problem of *ius gentium*, such 15th century Polish scholars as Maciej of Łabiszyn, Mateusz of Kraków, and Stanisław of Zawada did ponder legal problems, including natural law, which constitutes the basis for the law of nations. Finally, one should take account of a currently known source from the period of Polish medieval *ius gentium* thought, previously mentioned in this text: an anonymous text cast in the form of a letter to an unnamed prince on the subject of the conditions for a just war. The author of the "Letter" includes four of the five conditions for a just war established by Raymond of Penyafort. The "Letter" was added to Jan of Łaski's collection, mentioned earlier, *Commune incliti Poloniae Regni privilegium*. Following A. Gál, Ehrlich gave that "Letter" the title *De iusto vel iniusto bello*.⁵⁷

3. THE MAIN PROBLEMS OF THE POLISH *IUS GENTIUM* SCHOOL

The problems addressed in the works of the authors of the Polish doctrine of *ius gentium* are so rich that one is tempted to provide only a very broad sketch of them here, based on the existing and already thorough literature on the subject, particularly the works of Ehrlich, Bełch, and Jasudowicz. In this presentation of the subject, the author will expound only on those subjects

⁵⁵ One can find appeals to the principle of nationality/ethnicity in Polish literature already in Wincenty Kadłubek's *Kronika* at the beginning of the thirteenth century. These appeals are significant because they provide evidence of a very early awakening of national consciousness by the Poles inhabiting those territories, a consequence of the bloody confrontations with the Teutonic Knights, who were identified as Germans.

⁵⁶ Arnold VAN GENNAP, *Traite comparatif des nationalites* (Paris: Payot, 1922), vol. 1, p. 36; BELCH, p. 92.

⁵⁷ EHRLICH, *Polski wykład*, p. 81.

that are particularly important to the uniqueness of the Polish *ius gentium* school, giving special attention to human rights issues.

3.1 THE STATE AND ITS RULERS: ITS GENESIS AND DUTIES, THREATS TO THE STATE, ITS COMPETENCE AND LIMITATIONS

The state arises as an effect of the consent of its inhabitants; otherwise, we would be dealing with a tyranny. The state thus emerges on the basis of a human right. It is similar to a natural organism and functions like that organism.⁵⁸ Like a natural organism the state, too, is subject to maladies and to various dangers. It too must be cured, sometimes drastically, even through the amputation of sick and gangrenous members.⁵⁹

The fundamental condition for the legitimate functioning of the state is responsible laws. Laws should be rational, obvious, serve the common good, be just and noble, i.e., foster exalted and patriotic deeds, even sacrifice on behalf of the state. Such laws are more worthwhile, says Stanisław of Skarbimierz, than a well-armed military. In his opinion, the primary cement of a state is the equality of its citizens before the law and the preservation of universal justice. According to Seńko, the motif of equality before the law can be found in many other Cracovian masters of the 15th century, including Włodkowiec, Łukasz of Wielki Koźmin (d. 1413/14), Jakub of Paradyż (d. 1464), and Jan of Ludzisko (d. before 1460). According to Stanisław of Skarbimierz, participation of a state's members in its government is the condition for a healthy state: only then will they treat it with love and responsibility.⁶⁰ Włodkowiec adds that the state on its part is bound to respect the religion, morality, good customs, and consciences of its citizens. The state should also assure its citizens of the execution of obligatory laws, tolerance, the observance of agreements, and restitution for unjustly lost property.⁶¹ Legitimate rule arises from the Will of God and through the consent of the

⁵⁸ SEŃKO, pp. 37–38; BĘŁCH, p. 277; JASUDOWICZ, pp. 71–72.

⁵⁹ STANISŁAW OF SKARBIMIERZ, “Sermo, quod sapientia sit armis bellicis praeponenda,” pp. 74–82; see also his “Sermo de diligendo bono communi,” ed. Bożena Chmielowska, *Textus et studia*, 4 (1979)/2: 275–86 and his “Consilia” de Stanislas de Scarbimiria contre l’astrologue Henri Bohemus,” ed. Stanisław Wielgus, in *Studia Mediewistyczne* [Medieval Studies], 25 (1988)/1: 168–69, 172.

⁶⁰ STANISŁAW OF SKARBIMIERZ, “Sermo, quod sapientia sit armis bellicis praeponenda,” pp. 74–76. [SEŃKO (pp. 38–40) addresses this question, which he cited under the title of “De republican; idem, “Sermo de diligendo bono communi,” pp. 276–79, 283; see also BĘŁCH, p. 277.

⁶¹ JASUDOWICZ, pp. 43–44.

citizens.⁶² Very serious duties thus rest upon rulers, including: good administration of the state; respect and protection for private property; care for maintaining the state's goods, especially the integrity of its territory; watchfulness over the legal order in the state; and protection of non-Christians living in the state, especially Jews and Saracens, to the degree that they are good and peaceable citizens.⁶³ Despite the large range of rights envisioned for citizens in a state, the rulers of a state ought to be strong if they are to be legitimate and having the rule of law. Citizens owe them obedience and respect. They owe their country allegiance and a spirit of sacrifice. If, however, the rulers of a given state are illegitimate, if they function lawlessly or call for unjust war, plundering or crimes or the like, the citizens of that state have a right and even a duty in conscience to deny obedience to those rulers.⁶⁴ Włodkowiec proves that the right to a state of their own belongs not only to faithful Christians but to non-believing nations as well as to pagans and heretics. They have such a right on the basis of natural law, i.e., because they are persons who in their humanity are equal to Christians. Depriving them of their state or of any of their property is therefore not allowed. That would not only be contrary to the natural law but also the Divine Law in both the Old (Decalogue) and New (the Gospel law of love) Testaments. The theory that pagans forfeited the right to their own state and property after the coming of Christ is false and not in agreement with the Gospel, says Włodkowiec. Neither pope nor emperor has a right to deprive innocent non-believers who are living peacefully of their countries or property. Nor may one make war against them. Such activities would violate the natural law and the Law of God, to which both pope and emperor are subject. Nonbelievers therefore have no obligation of obedience to the emperor. As for the Pope, all he possesses over them is a pastoral authority, based on Christ's command to "feed my sheep!" That authority does not, however, empower the Pope to punish them if they do not violate the natural law. Non-believers are not subject to canon law. As universal pastor the Pope has an obligation to care for them and defend them against injustice. He also does have, however, a special obligation of concern for Christians living in the countries of non-Christians. He should strive to assure them of freedom and of the right to proclaim those Gospel in those territories. Włodkowiec recognizes an important distinction between papal and imperial authority. Imperial authority,

⁶² Ibid., p. 71.

⁶³ Ibid., pp. 75–79.

⁶⁴ JASUDOWICZ, pp. 79–83.

in his opinion, derives only from human conferral. Papal authority comes directly from God: hence, only the Pope is ruler of the world, having the power of the two swords. The emperor is only a minister in the temporal arena, receiving his authority from the Pope by virtue of positive law. Both jurisdictions—temporal and spiritual—belong therefore in the final analysis to the Pope. The Emperor ought only to be a papal tool.⁶⁵ From the preceding it would result that, in the dispute over the primacy of authority Włodkowiec would unambiguously hold for the papal option that had previously been advanced by Thomas Aquinas and subsequently by Aegidius the Roman and Augustine of Ancona.

3.2 LAW: ITS GENESIS AND TYPES

All medieval scholars who addressed the question of state and law stressed that law was indispensable in social life. They did not, however, treat law homogeneously. One should remember that various systems of law existed in Europe at that time, mutually interpenetrating each other. In Poland four legal systems functioned simultaneously: Polish law, German law, canon law and Roman law. The first two had particular spheres of authority. The last two were universal in compass, affecting the whole of Christianity. The obligatory nature of all law was justified on philosophical and theological grounds. It was, however, natural and divine law which played key roles for the Polish authors of *ius gentium* theory. Both Stanisław of Skarbimierz and Paweł Włodkowiec connected natural law with *ratio recta* much more strongly than other European lawyers of those times. Consequently, in their views the source of all legal norms was not nature (understood as the Stoic cosmos) but the nature of man, pointing to the principles and norms of behavior which are inborn in all peoples. The force of natural law, according to the Cracovian masters, flows from God, the Creator of the entire cosmos and of human nature. The fundamental commands of human natural law, “Do not do unto others what you would not want done unto yourself” and “Do unto others what you would have them do unto you” are in agreement with the Ten Commandments. That is why the law of nature binds all peoples, regardless of religion, race, etc. Social phenomena are therefore based, above all, on the rational activities of man, since human rationality is the basis of natural law. From these rational activities derive the equality and freedom of all peoples. *Ius naturae* is thus not a cosmic force but the nature of man. The

⁶⁵ JASUDOWICZ, pp. 72–75, 83–88.

fullest expression of the human law of nature is the *ius gentium*, the law of nations. This conclusion is obvious since human rationality is most fully expressed in society. Following Aristotle, the Cracovian masters repeat: “man is a social being.” “If you are not a social being you are either God or an animal”⁶⁶ they say, continuing the same thought, following various thirteenth century Aristotelians: “*si non es civis, non es homo.*” Man can realize all his natural possibilities only in a society of persons equal by nature. State, authority, human equality—all these derive, in Włodkowiec’s and Stanisław of Skarbimierz’s view, from the natural law of nations.⁶⁷

Along with all the foregoing, the so-called “human dimension of law” is also characteristic for Włodkowiec. In his view, man stands at the center of the law’s activities. The Divine Law, the Ten Commandments and the Gospel were all established for him. Natural law and the law of nations are also human in their essence because natural human reason lies at the basis of both. Nor can positive law be deprived of this anthropocentric character because, like the law of nations, it must be subordinate to the natural as well as the Divine laws, regardless of whom legislated it. It also depends on the peoples’ consent, without which the law does not oblige and the rulers of a state are illegal. As Jasudowicz says, Paweł Włodkowiec’s vision gives birth to the vision of law of which Pope John Paul II spoke when he appealed to the United Nations and UNESCO to undertake every effort so that all laws be “of man, by man and for man.”⁶⁸

3.3 THE CONCEPT OF MAN

It is obvious that the authors of the Polish school of the law of nations fully accepted the Christian vision of man as created by God in His Image and Likeness and, therefore, a rational and free being with dignity and purpose. God endowed man with everything that was essential to his attaining to perfection. He left that process, however, to man’s free will. This is how

⁶⁶ This motto comes from commentators on Aristotle who had the Aristotelian notion of god in mind. It should not be construed as a Christian commentary on the Divine nature.

⁶⁷ SEŃKO, pp. 30–33; EHRLICH, *Paweł Włodkowiec i Stanisław ze Skarbimierza*, pp. 141–42; SWIEŻAWSKI, pp. 143–48; BELCH, pp. 242ff, 267ff; JASUDOWICZ, pp. 49–67.

⁶⁸ POPE JOHN PAUL II, “Godność osoby ludzkiej fundamentem sprawiedliwości i pokoju. Przemówienie wygłoszone na XXXIV sesji Zgromadzenia Ogólnego Organizacji Narodów Zjednoczonych” [The Dignity of the Human Person is the Basis of Justice and Peace: The Address to the 34th Session of the General Assembly of the United Nations], Tuesday, October 2, 1979 in Pope John Paul II, *Nauczanie papieskie* [Papal Teaching] II, 1, 1979 (Poznań: Pallottinum, 1990), p. 260.

Włodkowic sees man.⁶⁹ From various responses on different occasions one can conclude that Włodkowic favored an anthropology formulated in the spirit of thirteenth century Augustinianism, particularly that of Alexander of Hales, who exercised an enormous influence on the fifteenth century Cracovian theologians and whose *Summa theologica* Włodkowic studied. Thus, in Włodkowic's opinion, man constitutes a union of soul and body. The soul is one. It is a rational soul, having in itself sensitive and vegetative functions. The domination of the body by the soul is also explicit. Włodkowic says that "the soul rules over the body like a master over a slave, inasmuch as the primary agent is more perfect than that which functions instrumentally, just as a woodcutter is more perfect than an axe."⁷⁰ That primacy of the soul over the body has consequences for all human activities. That is what separates the liberal arts (*artes liberales*), which deal with the soul, from servile work (*opera servilia*) which is the domain of the body. But while explicitly emphasizing the greater perfection of the soul over the body and of spiritual matters over corporeal ones, Włodkowic does not in the least minimize temporality. "Without temporal goods human life would not last long," he says in one of his writings.⁷¹ On various occasions Włodkowic stresses the different attributes of man which stem from his being "the image of God." Man is, therefore, first of all a rational being, capable of understanding the natural order of things and his place in them as well as the moral norms which derive from the rational order God created. Next, man is a being who is by his nature free, possessing freedom of choice which is a great but also very difficult gift, entailing enormous responsibility (as the sin of our first parents exemplifies). "Natural human reason" is his guide and in its own way his compass, not allowing man to err and cooperating with "will" and "conscience." Man has been endowed with a great dignity, constituting a reflection of God Himself. He is the only such being in his species, the most perfect on earth. He is a child of God. As a consequence of that dignity God gave man authority over the whole earth and all of its creatures. Along with this comes a great responsibility, both for himself and for the world entrusted to his care. Finally, man is a purposeful being. He is anchored in God and he tends towards God. His life is a constant pilgrimage towards God. Making a travesty of Heidegger's famous phrase, Włodkowic would certainly say that human life is nothing else but "*Sein zum Gott*" (being towards God).

⁶⁹ JASUDOWICZ, p. 22.

⁷⁰ JASUDOWICZ, p. 23.

⁷¹ JASUDOWICZ, pp. 23–24.

That pilgrimage towards God occurs through the self-realization of man which takes place when he carries out the Will of God contained in the Decalogue and the Gospel. The norms which God gave man are straightforward, clear, and easy to recognize. Ignorance of them, therefore, accuses rather than acquits. Anyone who errs in these matters is a heretic and, if he persists in error, he persists in evil and cannot receive forgiveness. One cannot tolerate such a culpable and obstinate persistence in evil. It is necessary to oppose it. One should also oppose everything which aids in persistence in evil, e.g., taking part in an unjust war undertaken by someone obstinate in evil. Włodkowiec obviously here has in mind everyone who gave help to the Teutonic Knights.

Man is by his nature good and destined to realize that which is good. One should do the good, however, intelligently and deliberately. "It is not enough to do something good. In addition, one should do it well" said Włodkowiec. Neither then should one do something evil to attain good ends, for the end does not justify the means. If, then, one does evil he should be punished if he does not want to repent. The latter, too, applies to the Teutonic Knights.

Every man is created by God for love because He Himself is Love and the essence of His religion is love. That is why the Christian has a duty to love every man, even the pagan and the sinner (which does not mean he should love the sin). Attack, murder, and the plunder of innocent people, regardless of whom they are, are always crimes calling to heaven for vengeance. No intention or end, even the most noble, justifies those crimes. On the contrary, crimes perpetrated in the name of the Christian religion are a disgrace for those who profess it and the greatest insult to God.⁷²

Everybody, regardless of whether or not he is a Christian, is the subject of laws. Laws are not, however, ends in themselves but merely means to the self-realization of man, both personally as well as socially, depending on cooperation with one's neighbor in the realization of the good and aspiration towards moral perfection. For this reason, says Włodkowiec, man must be conscious of the fact that law does not simply serve him but that duties also devolve upon him. The first of these obligations is towards one's self, resting on the holistic (especially moral) development of one's personality which excludes acceptance of the errors and imperfections which one notices in himself. The next set of obligations is towards the neighbor, i.e., towards all peoples, since they all share in the same human nature, finding particular

⁷² JASUDOWICZ, pp. 25–32, 37–39.

expression in the commandment of love of neighbor. Finally, there are obligations towards the national as well as international communities.⁷³

3.4 WAR, PEACE, MILITARISM, GENOCIDE, THE PRUSSIAN HERESY, *CIVITAS MAXIMA* AND THE INTERNATIONAL TRIBUNAL

Generally considered, the achievement of the Cracovian masters of the Polish school of *ius gentium* lay in advancing and defending the thesis that war does not follow in any way from the principles of the Christian faith; that war cannot serve the propagation of Christianity; and that those who regard other nations with contempt and try to subjugate them should be opposed. Appealing to earlier authorities like Augustine, Isidore of Seville, Thomas Aquinas, Raymond of Penyafort et al., Stanisław of Skarbimierz, Paweł Włodkowic and Benedykt Hesse defined the notion of a just war, specified the conditions that war must meet, established the manner in which it could be fought, indicated the purposes it should serve, etc. All medieval Polish scholars who addressed the problem of war regarded it as a necessary evil, which was allowed only when all other means of reestablishing justice or resisting unjust aggression had failed.

Both Stanisław of Skarbimierz and Paweł Włodkowic agree with the five conditions for a just war established by Raymond of Penyafort, i.e., (1) only lay persons may take part in war; (2) it can be prosecuted only to recover wrongfully seized property or in defense of one's country; (3) it must be a necessary means for restoring the peace; (4) it cannot be motivated by hatred, vengeance or greed but by zeal for the law of God, love, and a sense of justice; (5) it must be supported by the authority of the Church, especially when it is fought on behalf of the faith.

Włodkowic adds that for a war to be just, knowledge of its causes and a legitimate declaration of them must precede it. In this regard, proof from law or fact is required. Anyone undertaking preparations for war or authorizing it, including Pope and emperor, should reckon with this. Thus Włodkowic adds two additional conditions for a just war to those he borrowed from Raymond of Penyafort and Thomas Aquinas (proper understanding of the causes of war; a legitimate declaration of those causes; and right intention). They are (1) preceding resort to war by recourse to judicial proceedings;⁷⁴

⁷³ JASUDOWICZ, pp. 34, 39, 41–43; BELCH, pp. 240–42.

⁷⁴ Arbitration tribunals are among the oldest institutions in the history of human civilization. They existed among the Sumerians over four thousand years ago and were also found among the Egyptians, Babylonians, and others. Arbitration tribunals invoked ancient laws and customs as

and (2) an appeal to justice to be included among the declared causes for the war.⁷⁵ As previously mentioned, Benedykt Hesse formulated the conditions for a just war somewhat differently. He left out Raymond of Penyafort's first and third conditions (only lay participation; war as a necessary means for restoring peace) and substituted two of his own instead: (1) an uninterrupted continuity in the incitement to war and (2) a permanent attitude of enmity on the part of one's opponent.

The Cracovian scholars repeatedly stressed that international relations regulated by *ius gentium* should be based upon the good faith of the parties, their honest attitude, good will, and pure intentions.⁷⁶ Hence they prohibited the prosecution of war in unworthy and villainous ways.⁷⁷ In affording complete human rights to non-Christians, they emphasized that non-Christians were free to possess all types of property—including their own countries—

well as religious beliefs, since in the course of their operations they recognized the oaths which the opposing parties made to the honor of the gods as well as the animal sacrifices they offered to them. Arbitration tribunals functioned in ancient Greece, which also recognized the making of oaths by the disputing parties and also permitted a representative from a third party not engaged in the conflict to serve as arbiter. The function of arbiter was most frequently carried out by three or more judges designated by the city-state to which responsibility for resolving the conflict was entrusted. The institution of arbitration tribunals, which had an international character, developed greatly in the Middle Ages, when arbitration between disputant states was most often entrusted to the Holy See, which appointed appropriate arbiters in such situations. Arbitration was carried out according to the principles of canon law as well as procedures developed in ecclesiastical tribunals. Such processes were characterized by four traits: (1) accusation (someone had to come forward with charges); (2) Spoken and public (the process was initiated before both parties and began with the reading of charges filed by the plaintiff-complainant, preceded by his oath that the charges he being made are not made lightly); (3) Formal (involving rigorous adherence to established formulae, gestures, and symbols); and (4) having the nature of a controversy. The trial took place as a dispute between the two sides. The task of the court was to keep watch, assuring that the controversy was prosecuted appropriately, listening to the arguments of the opposing parties so that, in the end, a decision could be made as to which party had the law on its side. Trial procedures employed the following types of evidence: oaths (which had a self-condemning character, if one swore falsely); witnesses; various kinds of documents, both written and unwritten; and sometimes even trial by ordeal, called "divine judgments" which the Church in principle never accepted and whose use was prohibited by the Fourth Lateran Council (1215). See Nussbaum, pp. 2, 8, 9, 21, 27, 28; Katarzyna SÓJKA-ZIELIŃSKA, *Historia prawa*, 4th ed. (Warsaw: Państwowe Wydawnictwo Naukowe, 1993), pp. 188–93.

⁷⁵ STANISŁAW OF SKARBIMIERZ, "De bellis iustis," par. 4–8; EHRLICH, *Polski wykład*, pp. 95–96; EHRLICH, *Paweł Włodkowic i Stanisław ze Skarbimierza*, pp. 26, 32–40, 143, 177; BELCH, pp. 23, 235, 770; SWIEŻAWSKI, p. 247; JASUDOWICZ, pp. 156–58.

⁷⁶ STANISŁAW OF SKARBIMIERZ, "De bellis iustis," par. 15, 20, 34, 43, 44; EHRLICH, *Polski wykład*, p. 255; SWIEŻAWSKI, p. 257; JASUDOWICZ, pp. 156–60.

⁷⁷ STANISŁAW OF SKARBIMIERZ, "De bellis iustis," par. 16; EHRLICH, *Polski wykład*, p. 255; BELCH, pp. 651ff.

as well as to defend them against aggression.⁷⁸ They ruled out the prosecution of war for conversion to Christianity as well as for profits, plunder, power, etc.⁷⁹ They rejected the Emperor's pretensions to power over the whole Christian world (and even more so to power over the non-Christian) as well as the right of the Pope to conduct unjust aggression against pagans.⁸⁰ They frequently and emphatically expressed the conviction that those prosecuting a just war, even one against Christians, have the right to avail themselves of the help of pagans and heretics.⁸¹

Peace is the natural state of things and desirable from all viewpoints, say the Cracovian scholars. They were fully aware of how great an evil was war. They were aware that it originated in men's minds; thus, aggressive thoughts had to be uprooted from men's minds. Following Augustine, Stanisław of Skarbimierz stressed that the goal of every war should be the establishment of a permanent peace, which is possible only when justice is restored.⁸² According to Włodkowiec, people naturally desire to live in peace and wish the same for others. This is in accord with the basic natural commandment: "Do unto others what you would have done unto you." Peace is thus a necessary condition for the normal human life and development. War destroys and depraves. Peace also has its profound justification in the Law of God. Christ is the Prince of Peace. It was He who said: "Peace I leave you, my peace I give you" (John 14:27). Peace thus belongs among the greatest of goods and should be protected in every way possible. War is an evil in itself. It sometimes cannot be avoided, but it always has to be treated as a last resort. Thus, before one resorts to war one must prove that it is just. A mere presumption of its justice is insufficient. From the preceding it follows that for the Krakow masters, peace was both a value as well as a goal.⁸³

The Polish medieval scholars, especially Włodkowiec, emphatically condemned the militarism and genocide carried out by the Teutonic Knights, which they branded as the "Prussian heresy" (*haeresis Prussiana*). The ide-

⁷⁸ STANISŁAW OF SKARBIMIERZ, "De bellis iustis," par. 12, 31, 32, 39, 40; EHRLICH, *Polski wykład*, p. 256; EHRLICH, *Paweł Włodkowiec i Stanisław ze Skarbimierza*, pp. 6–7, 177; BELCH, p. 25; JASUDOWICZ, pp. 149–50.

⁷⁹ JASUDOWICZ, p. 157.

⁸⁰ STANISŁAW OF SKARBIMIERZ, "De bellis iustis," par. 38, 40; EHRLICH, *Paweł Włodkowiec i Stanisław ze Skarbimierza*, pp. 144–45; JASUDOWICZ, p. 150.

⁸¹ STANISŁAW OF SKARBIMIERZ, "De bellis iustis," par. 29, 47; *Revocatur*, par. 19; EHRLICH, *Paweł Włodkowiec i Stanisław ze Skarbimierza*, p. 28; JASUDOWICZ, pp. 149, 159.

⁸² STANISŁAW OF SKARBIMIERZ, "De bellis iustis," par. 29, 48; EHRLICH, *Polski wykład*, p. 54; JASUDOWICZ, pp. 153–54.

⁸³ BELCH, p. 18; JASUDOWICZ, pp. 154–56.

ology of the Knights justified crime, genocide and the extermination of entire nations in the name of the purportedly noble end of converting pagans to Christianity. Włodkowiec regarded that heresy as opposed to every kind of law: Divine, nature, canonical, and civil. His task was to destroy any writings which promoted it as utterly inimical to the Christian faith and leading to cruel crimes. Włodkowiec cannot find the words, in his polemic with John of Bamberg and John Falkenberg (who not only justified the Knights' crimes but in fact appealed to the whole Christian world to help them) to condemn sufficiently the Knights' depravity and hypocrisy. He demonstrated what inhuman a character the "Prussian heresy" had. He called for the investigation and punishment of genocide on the level of international law, something which Jasudowicz points out was only formulated as an international convention days before the Universal Declaration of Human Rights was approved in 1948.⁸⁴ The precursive character of Włodkowiec's role in these matters is indisputable. He had no doubts that the Knights' ideology was heretical. Włodkowiec, with total candor, says in one of his presentations that the Order was not founded for the perfection of love but for godlessness and cruelty. It was not founded to help the neighbor but to injure him, contrary to the Commandment of Love for God and neighbor. The Order primarily exists for the extermination of Christians and the theft of their goods, built upon wanton murder, theft, robbery and brigandage.⁸⁵

The painful experience of the Knights' crimes perpetrated upon innocent nations as well as his reflections upon them led Włodkowiec to the idea of a *civitas maxima*. The *civitas maxima* would have at its disposal, in the mind of its author, a universal authority entrusted to one person of great moral and spiritual authority. It would be outfitted with appropriate legal jurisdiction to which all secular authorities would eventually be subordinated. In Włodkowiec's opinion this universal spiritual superior should be the Pope, who would head an international tribunal composed of representatives from all countries, included non-Christian ones. The emperor would eventually be the primary universal secular leader, the guardian of law and order, subordinate only to the spiritual power of the Pope. The Pope would carry out his task of ruler in the *civitas maxima* with the help of the Roman Curia, which itself ought to be thoroughly reformed. Włodkowiec presented the proposal just de-

⁸⁴ On December 5, 1948 the United Nations General Assembly approved the proposed Convention on the Prevention and Punishment of the Crime of Genocide. The Universal Declaration of Human Rights was adopted by the UN in Paris December 10, 1948. The Convention against genocide entered into force January 12, 1951.

⁸⁵ BELCH, pp. 24–25, 689, 706–707, 1055; JASUDOWICZ, pp. 160–65.

scribed before the Council of Constance, suggested the establishment of new principles for international relations which would assure the security of all countries (including non-Christian ones) and allow for the exclusion of unjust wars and the conversion of pagans to Christianity by military means. The existence of an international tribunal would not in the least exclude the sovereignty of individual nations, Christian or non-Christian. They would form a type of federation of sovereigns and the Tribunal would issue laws and decisions which obliged all of them in international relations. It would eliminate aggression by one country against another and decide to whom to assign disputed territory in cases of conflict. In uncertain matters the Tribunal would have to summon experts and specialists and hear witnesses. An international codex upon which the Tribunal might rest ought to be built upon fundamental principles of natural law: "Do not do unto others as you would have them do unto you" and "Do unto others as you would have them do unto you."⁸⁶

3.5 THE RIGHTS OF MAN DERIVING FROM *IUS GENTIUM*

Jasudowicz claims that even today we lack a complete and carefully defined collection of principles, recognized by everybody, which would contain the whole of international law dealing with the rights of man. Furthermore, at a time when natural law itself is questioned, it would not be easy to find a common grounding for these rights. Włodkowiec stands on the basis of supernatural principles, the objective and universal character of human rights. The final causal and axiological justifications for these rights also had great significance for him. That justification had to be found, in his opinion, not only on the level of law but on the level of morality, where the fundamental role of the Gospel Commandment of Love in individual and social life is emphasized. The principles of the equality of all peoples and of tolerance, particularly religious tolerance, follow from the general premises Włodkowiec accepted. Those principles, in turn, receive prominence in his treatment.⁸⁷ In his valuable work often cited here, Jasudowicz concentrated on presenting Włodkowiec's views on the basic rights of man, among which he included the right to life and its protection, the right to freedom, to property, and to just process.

⁸⁶ BEŁCH, pp. 23–26, 235, 262–67; SWIEŻAWSKI, p. 240; JASUDOWICZ, pp. 69–70.

⁸⁷ JASUDOWICZ, pp. 47–48.

3.5.1 THE RIGHT TO LIFE AND ITS PROTECTION

Włodkovic expressed the conviction that at its basis all law must recognize life as the fundamental value which demands respect and protection. He invoked the general demands of the natural law, the Ten Commandments, and the obligatory Christian law of love to defend that position. He thus totally abrogated any laws, privileges, and entitlements which would authorize the killing of the innocent. In speaking about the right to life Włodkovic did not have only a prohibition against killing in mind. He was also thinking of prohibitions against the use of force, against rape, plunder, and cruelty. With regard to life he spoke out not only negatively—accenting what one cannot do against life—but also positively, what should be done to protect it. Here he has in mind assuring men of security and of proper means for life. He accepted the death penalty but only on the basis of a scrupulously conducted trial before a just judge which leaves no doubts about the criminal's guilt.⁸⁸

3.5.2 THE RIGHT TO FREEDOM

Freedom, as used by Włodkovic, is a primordial category, i.e., it belongs to man from the very beginning of his existence. It is not an historical category as is, in his opinion, property. Slavery and subjugation are therefore not natural. They are artificial, caused by man. Freedom belongs to every man, including pagans. Freedom does, however, entail responsibility for one's self and for others. To be truly free is hence not easy.

Human nature is rational and free and hence man is capable of understanding the metaphysical order as well as his place in it. He is also capable of understanding his own nature and the moral norms flowing from it. Man has freedom at his disposal both in the external sphere of his life as well as, above all, in the internal sphere, where he possesses a freedom of thought with which no one is permitted to interfere. Włodkovic accepts the principle *cogitationis poenam nemo patitur*. Man's conscience, which can sometimes be in error, is strictly bound up with his consciousness. In the case of a Christian, obliged to know God's Law, an erroneous conscience does not justify: *ignorantia iuris non exculpate*, says the Kraków master. Nothing, therefore, justifies either the Teutonic Knights or those Christians aiding them in their crimes. Standing thus on the grounds of the Christian faith while not in the least equating Christianity with other religions, Włodkovic

⁸⁸ JASUDOWICZ, pp. 89–96.

comes out unambiguously in favor of freedom of religion. Like Thomas Aquinas, however, he does not justify apostasy from the Catholic religion, which does not mean that he demands any sort of public sanctions against apostates. He does not praise paganism or other faiths, but he decidedly opposes the use of force to convert people to Catholicism. He thus regards the practices of the Teutonic Knights as crimes against the Gospel. Conversion should be accomplished, in Włodkovic's opinion, by word, prayer, and particularly by good example, not by fire and sword. One should accept the Catholic religion freely or not at all. In Belch's opinion, Włodkovic worked out the basis of the Church's missionary practice, which expresses respect for the dignity of the converted, an understanding of their mentality and living conditions, patience and balance in action, and all of it impartiality, sincerity, readiness to help and, above all, love.

Włodkovic accepted the Jewish religions but condemned those Jews who within Judaism spawned new apostasies and heresies. Włodkovic is open to the interests of other religions, particularly Judaism. He praises friendly co-existence between Catholics and non-Catholics on both the individual and social levels.

Man's freedom, according to Włodkovic, also finds expression in freedom of speech, which carries with it great responsibility because the Christian must always bear in mind the Eighth Commandment: "Thou shalt not bear false witness against thy neighbor." For Włodkovic the classic example of abuse of freedom of speech and violation of the Eighth Commandment was Falkenberg's *Satyr*, directed libelously against the Polish King and people. Another abuse of that freedom and violation of the principles of the Decalogue was, in his opinion, the letters of the Emperor and supposedly of the Pope which allowed the Teutonic Knights to perpetrate crimes against innocent nations.

In speaking about freedom of speech, Włodkovic himself bravely made use of it. He spoke truths that were painful and unpopular to many of the elite of his world. Because of this he was brutally accused and attacked by the Teutonic Knights for sacrilege and blasphemy, for collaborating with pagans against the faith. He never resigned, however, from speaking the truth. One should remember that he did not speak that truth in some small group, in a sermon or even a university lecture. He spoke it in the largest forum of his times, an ecumenical council in which the most important contemporary spiritual and temporal leaders took part.

Włodkovic was also a defender of everyone's freedom to move and to choose his places of residence regardless of his religion or national alle-

giance. He was decidedly opposed to the persecution of national and religious minorities—foreigners, Jews, Saracens—whom rulers expelled from their territories. He also opposed the confiscation of their property on the basis of ideological or religious motivations. All peoples, says Włodkovic, are our neighbors. To injure any of them is a crime.

Man also has a right, in Włodkovic's view, to association. This is true of both natural (nation, city village) and artificial communities created by men (e.g., religious orders, charitable associations, craft unions, etc.). The first type of association, natural ones, arises on the basis of natural law, says Włodkovic. The second arises on the basis of positive law and only on the condition that the positive law accepted such an association. A community created by people that betrays the principles lying at its foundation should be liquidated. That remark was aimed directly at the Teutonic Knights. Established, says Włodkovic, to cure the sick and to care for the poor, the Order now occupied itself with military crimes and plunder. Every man and every natural or legal artificial association also has the right to undertake obligations and make agreements. Agreements made with illegal and perfidious communities, like the Teutonic Knights, are violations of the law, illegal, and by their nature invalid.⁸⁹

3.5.3 THE RIGHT TO PROPERTY

As mentioned above, property was an historical category in Włodkovic's opinion. It was formed as a result of human experience over many centuries but, despite that, it has a universal and basic character. It also has confirmation in the Law of God. Everything belongs to God but He shares authority over created things with us, commanding us to have dominion over the earth while simultaneously obliging us—at the very least in the parables of the talents (Matthew 25:14–30)—to be good stewards of the goods entrusted to us. God gave everything originally to the whole of humanity for its common use. Unfortunately, as a consequence of the original sin which affects human nature, common property began generating disagreements. This led to a division of goods which took place on the basis of the law of nations. God obviously accepts private property, which is why He included the commandment “Thou shalt not steal” in the Decalogue. Every man and every people have a right to possess things. He says this even against the false theory which claimed that after Christ's Coming pagans were deprived of all property.

⁸⁹ BELCH, pp. 23–25, 175, 195, 233, 256; JASUDOWICZ, pp. 97–123.

People's property, whether belonging to Christians or non-Christians, is sanctioned by natural and divine law. No one—not even Emperor or Pope—can therefore issue any decree calling that into question.

To the extent that freedom is an inalienable right, property can be alienated, sold, given away or inherited. The king, who administers the property of the whole nation, cannot give it away, sell it or otherwise dispose of it. Even were he to act in such a way his decision would be illegal and invalid. The duty of a king is to protect, defend and guarantee human property. Sanctioned by the natural and divine laws, property cannot be taken away from anybody—including pagans—by force, guile or deceit. Such unjust acquisitions are invalid and sinful, demanding restitution. Everyone who comes into possession of illegally gotten goods is bound to return them, even if he came into their possession in good faith. The duty of restitution does not express and does not admit of inculpable ignorance. The only person competent to dispose of property is its lawful owner, acting deliberately and freely.⁹⁰

3.5.4 THE RIGHT TO JUST PROCESS

Włodkovic identified law with justice and morality. In his view every person and nation had a right to self-defense, both militarily as well as legally. No authority can dispense from the obligation of coming to know a case and acting according to the rule of law. Every kind of case can and should be subject to legal procedure, including the decision to resort to war. In cases of conflict both sides must be tried by an impartial judge, since *nemo est index in causa sua* (no one is a judge in his own case). A judge's impartiality, however, does not rest upon neutrality in the face of crimes, force and lawlessness. A judge must furthermore be the proper judge, i.e., one who has appropriate jurisdiction. He should also be a judge who is actively engaged in the case, i.e., one who uncovers the truth and punishes evil. He must be, above all, a just judge. He must resolve a case according to the obligatory law, not his own wishes. A decision made by a proper judge acting according to the law must be accepted: it can neither be ignored nor subject to negotiation. "There is no place for bargaining after judgment," says Włodkovic. A presumption of innocence, applicable to all regardless of nationality of religion, should prevail in court. Charges must be made and proven.⁹¹

Translated by John M. Grondelski

⁹⁰ JASUDOWICZ, pp. 125–39.

⁹¹ BELCH, pp. 231–32, 264 and elsewhere; JASUDOWICZ, pp. 143–49.

POLITICAL ORIGINS OF THE POLISH DOCTRINE OF *IUS GENTIUM*

Summary

In attempting to summarize in a few sentences the achievements of the medieval scholars of the Polish school of *ius gentium*, we must emphasize that by employing the inherited legal and philosophico-theological tradition and intellectual achievements of the University of Kraków, coupling it with their own genius, they managed to create a coherent and universal system of international law. It was a system so modern, wise, tolerant and universal that it was able to be applied not only in solving the painful problem stemming from the lengthy conflict between Poland and the Teutonic Knights but was also used in resolving global problems of the contemporary Christian's world conflict with the non-Christian one. That legal system, based upon the eternal principles of Divine and natural law, taking account of the Gospel Law of Love and inseparably connecting law with morality and justice with truth, remains valid even today.

Keywords: *ius gentium*; natural law; Paweł Włodkowiec; Stanisław of Skarbimierz.

POLITYCZNA GENEZA POLSKIEJ DOKTRYNY *IUS GENTIUM*

Streszczenie

Zbierając w kilku zdaniach osiągnięcia średniowiecznych twórców polskiej szkoły *prawa narodów*, należy podkreślić, że wykorzystując zastaną tradycję prawniczą i filozoficzno-teologiczną, a także intelektualne zaplecze Krakowskiego Uniwersytetu oraz własny geniusz, potrafili oni stworzyć spójny i wszechstronny system prawa międzynarodowego. System tak nowoczesny, mądry, tolerancyjny i uniwersalny, że nadawał się do zastosowania nie tylko przy rozwiązywaniu bolesnych problemów, zrodzonych wskutek długotrwałego sporu polsko-krzyżackiego, ale także globalnych problemów ówczesnego chrześcijańskiego świata, konfrontowanego ze światem niechrześcijańskim. Co więcej, system ten, bazujący na odwiecznych zasadach prawa Bożego i naturalnego, uwzględniający ewangeliczne prawo miłości, wiążący nierozłącznie prawo z moralnością i sprawiedliwość z prawdą, jest aktualny także dziś, i nadawałby się z pewnością do rozwiązywania ogromnych problemów współczesnego świata.

Słowa kluczowe: *ius gentium*; prawo naturalne; Paweł Włodkowiec; Stanisław ze Skarbimierza.