

# The reception of Roman tax law

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## 1. The origins of tax law

The ancient origins of the law on the European continent are hardly part of some Dan Brown-like, deep mystery. Anyone studying a civil law tenet will probably find much of it is rooted in received Roman law, the so-called *ius commune*. The Roman law, based on the *Corpus Iuris Civilis* created under the emperor Justinian (482-565), has been rediscovered, interpreted and systematised in Europe since the Middle Ages. Not until the codifications of civil law in the nineteenth century was the *ius commune* abolished as an official source of law. In the Netherlands no less than three times, because Dutch legal professionals stubbornly kept invoking the old law.<sup>1</sup> Despite the official abolition of Roman law, many of the legal rules from codified civil law have been based on the *ius commune*.

The body of work on the reception of Roman law in European legal history and its influence on current law is vast and it invariably focuses on private law. The *Corpus Iuris Civilis* nevertheless contains many tax texts as well.<sup>2</sup> Roman law has undeniably strongly influenced private law, justifying the hypothesis that Roman law has likewise affected the development of tax law. And yet, one would be hard pressed to find research in this field. Dutch tax companions describing the development of positive law rarely hark back further than the early nineteenth century, when the Netherlands had its first nationwide tax system,<sup>3</sup> and legal history books on taxation are scarce and usually concentrate on specific subjects.<sup>4</sup> Internationally, the findings are equally sparse. General and economic historiography has ample material on taxation in Roman times and the Middle Ages, but it usually concerns historical research on taxation as a social phenomenon<sup>5</sup> or as part of public finances - a different perspective from the legal one.

A legal historian researches the origins of rules and how they have developed and the social or economic perspectives on taxation are not at the heart of such research. Instead, the focus is on how taxation rules and principles have evolved through the ages,<sup>6</sup> an evolution shrouded in mystery. One example is the ability-to-pay principle, widely accepted across the world as the guiding principle for direct taxation. Although this principle has clearly been around for a long time, the origins of its development are unknown.<sup>7</sup> The origins of other principles of

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<sup>1</sup> The last time this occurred was in the Act of 16 May 1829, *Staatsblad* 1829, 33 .

<sup>2</sup> Most of them can be found in books 10-12 of the *Codex* and book 50 of the *Digests*.

<sup>3</sup> The authors Adriani and Van Hoorn are the ones who most extensively discuss tax law history, although they mostly refer to historical taxes and hardly discuss the development of the law itself: Adriani and Van Hoorn 1954.

<sup>4</sup> As quite recently, in two books on taxation in the war years: Essers 2013 and Koster 2019. Ydema's dissertation on the power of the government to levy taxes covers a larger period: Ydema 1997. Grapperhaus's books are more general, but they provide a rather fragmentary account of tax history. See Grapperhaus 1989 and Grapperhaus 1993.

<sup>5</sup> Taxes have historically quite often instigated revolt and war, for an overview see: Burg 2004.

<sup>6</sup> For some examples of this approach, see Drielsma 1976 and Kooiman 2016, section 3.4.4.

<sup>7</sup> Wijtvlit 2021 and Grapperhaus 2009.

modern tax law are equally opaque. The crux of the legal nature of taxation is that tax is not simply collected. Instead, tax debts are first established, after which taxpayers have the opportunity to defend themselves. Since when have there been such guarantees of legal protection? And when have the underpinning principles of international tax law - the residence principle, the situs principle and the nationality principle - come to fruition?

One explanation for the unfamiliarity with the origins of tax law is the underestimation of how old tax law actually is. I think this is due to three reasons:

1. The development of tax law is linked to the creation of the nation state. The Netherlands, e.g., has only existed as a political entity since the early nineteenth century, when it first began to levy its own taxes. So, for many this is the starting point for any research into the origins of rules. Previously, taxes had been levied at the regional level, decidedly muddying the picture.
2. The development of tax law is linked to the emergence of the economic sciences. With their thoughts on taxation, economists such as Adam Smith are said to have laid the foundations for modern tax systems. A typically legal perspective on taxation alongside these economic thoughts only seems to have emerged in the course of the nineteenth century.<sup>8</sup>
3. The development of tax law is linked to the emergence of specific taxes. As the origins of the major direct taxes - income tax and corporate income tax - in most countries date back to the nineteenth century, there is little reason to look back any further. What's more, the emergence of the current tax mix, with high and often progressive rates, is a typically twentieth century phenomenon.

On their own these ideas carry a grain of truth and indeed, the developments mentioned have strongly influenced tax law design. Besides, when discussing the details of today's law there is little relevance in going back centuries, as it's rather hard to imagine Roman dignitaries grappling with issues like *base erosion and profit shifting*, or a medieval single mum being entitled to tax relief because of her arduous situation.<sup>9</sup> However, this picture changes if we consider the principles underlying our tax law. They turn out to be much older than the above three reasons would suggest.

## 2. 'Contemporary' taxation in 1608

Caspar Klock (1583-1653) graduated from the University of Basel in the year 1608, with a thesis on contemporary taxation in Germany (*de contributionibus hodie ut plurimum in Germania usitatis*).<sup>10</sup> As his dissertation contains a systematic treatise on the levy of direct taxes, called *contributio* or *collecta*, i.e., a tax on wealth, it's no surprise that it is regarded as

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<sup>8</sup> Cf. Gribnau 2015, p. 187-196.

<sup>9</sup> In such a situation, in the Netherlands people are entitled to the income-related combination tax credit (see art. 8.14a Wet IB 2001). Nevertheless, in the Middle Ages anyone with at least twelve children was entitled to a tax exemption; on that topic see, e.g., Monti 2003.

<sup>10</sup> Klock 1608.

the starting point of German tax theory.<sup>11</sup> Apart from numerous indirect taxes this direct tax was the only one regularly levied before the emergence of income tax, generally at the municipal or provincial level. The thesis shows direct taxation to meet the following preconditions:

- The *collecta* was a tax levied on the value of the wealth, for which the person owning the wealth was taxed. The tax could only be levied if it was necessary and in the public interest.<sup>12</sup>
- The levying of the *collecta* required the emperor, province or city to have jurisdiction, so that there were subjects who could be taxed.<sup>13</sup> Subjects were defined as having their domicile in a particular place, with which the factual situation prevailed.<sup>14</sup> If the domicile changed, the new domicile was used unless the change was made to avoid taxation.<sup>15</sup> Persons domiciled in two places were liable to tax in both places, unless they were frequent residents of one of those places and their family was domiciled there as well.<sup>16</sup>
- Residents (those with domicile) not only paid the *collecta* on the goods located in the place of their domicile, but also on the goods located in other territories. This would change if the goods were also taxed in those other territories, in which case the country of residence would back down because it had no jurisdiction in those other territories. Double taxation was thus avoided.<sup>17</sup>
- The *collecta* was paid on all goods, both movable and immovable, including receivables and after deducting debts. An exception applied to unproductive goods, such as jewellery and showpieces.<sup>18</sup> The *collecta* was owed by the person who enjoyed the fruits, even if they were not (or not yet) the legal owner. This likewise applied to the usufructuary, although part of the *collecta* paid had to be borne by the bare owner.<sup>19</sup>
- The *collecta* was levied by special officials, who recorded the taxpayers and their wealth in a register (also called *estimo*), which was leading for the taxation. Anyone wrongly missing from the register could not be taxed, while those who were wrongly listed and fail to object were taxed.<sup>20</sup> The tax due was determined by apportioning the required tax revenues according to the size of the registered wealth.<sup>21</sup>
- Collection of the legally levied tax was separated from the levy<sup>22</sup> and was postponed pending any appeals.

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<sup>11</sup> In his book on the development of tax law in the Holy Roman Empire, Schwennicke considers this thesis to be one of the oldest German monographs on tax law: Schwennicke 1996, p. 114-115.

<sup>12</sup> Par. V and XLVI.

<sup>13</sup> Par. XV. Klock refers to D.50.4.6.5 and to Bartolus' commentary to C.10.42.9, D.50.4.6.1 and C.10.64.

<sup>14</sup> Par. XVI, with reference to D.50.1.20.

<sup>15</sup> Klock refers to D. 50.1.34, D. 50.1.38.4 and D. 50.2.1.

<sup>16</sup> Klock refers to D.50.1.27.2.

<sup>17</sup> Par. XVII, with reference to D. 50.4.6.5, D.50.4.18 and C. 10.64.1.

<sup>18</sup> Par. XIX and XX, with reference to D.50.15.4.pr. and C.10.25.2. The traders' merchandise may be disputed, but Klock believes it is subject to tax, based on D.50.1.22.7; D.50.4.18; D.50.15.3.5 and C.10.25.2 (par. XXI).

<sup>19</sup> Par. XXII, with reference to C.4.49.13, C.4.47.3, D.7.1.27.3 and D.7.1.7.2.

<sup>20</sup> Here, Klock refers to C.7.62.4 and D.49.4.1.1.

<sup>21</sup> Paragraphs XX, LI and LII.

<sup>22</sup> Par. LX, with reference to C.10.19.7, C.3.12.4, C.7.65.4 and N.17.8.

- Under the *collecta* foreigners were not subject to tax because they fell outside the jurisdiction and, hence, could not be required to register their wealth. Although, unlike residents, they did not enjoy the benefits of being a resident<sup>23</sup>, they did pay taxes on their real estate because they benefited from the government's defence of the country's borders just as much as residents did.<sup>24</sup>

This list evidently features many of the principles of contemporary tax law: the place of residence as a starting point for taxation, the source state's right to tax assets in place, the avoidance of double taxation, the ability-to-pay principle, and the possibility of appealing against unlawful taxation. Long before the birth of the nation state and economic sciences, Klock outlines a blueprint for a wealth tax that could be introduced worldwide even today. Yet Klock's analysis of tax law is by no means original. The concepts of *collecta* and *estimo* are first used in the taxation of Italian city states from the end of the twelfth century onwards. What's more, Klock largely expands on texts from the *ius commune* and on the interpretations given by medieval jurists, notably Bartolus de Saxoferrato (1313-1357) and Baldus de Ubaldis (1327-1400).

So rather than the start of a development, Klock's dissertation is a link in a long tradition in which the *ius commune*, the received Roman law, has had a great influence on the content of tax law. This influence can be seen in the mere fact of the Italian city states applying the exact same principles to levy *collecta* as those listed above for the German states' taxation in 1608<sup>25</sup> and medieval jurists using the same *ius commune* texts as a basis for this taxation.<sup>26</sup> Considering this paper's scope, it would be taking things far to discuss this centuries-long development in great detail. I will therefore limit myself to the question when this development started. How did medieval Italy come to follow in the tracks of Roman tax law and why did the interpretation of this law become a decisive aspect of taxation? Or, on a more thrilling though less precisely formulated note: where lie the origins of tax law as Klock describes it and as it essentially still applies today?

### 3. Taxation by the emperor

Who owns the world? The Hohenstaufen dynasty's emperor Frederick I (1122-1190) wondered about this question. Because whoever owns the world, owns its treasures and is free to levy taxes. For the emperor that was the key issue. Rich and fertile Italy, in particular, was considered a welcome source of income. Legend has it that it was during a horse-riding trip with Martinus and Bulgarus, two jurists from Bologna, that the emperor asked them whether it was true that he was the lord of the world. Bulgarus was the first to speak, weighing his words carefully. While known for his strict interpretation of the law, he also wanted to

<sup>23</sup> Par. XXVI, with reference to D.50.4.6.5, D.50.4.18.25, D.50.1.18.13 and C.10.40.4.

<sup>24</sup> Par. XXIX, with reference to C.11.48.4 and C.1.2.7.

<sup>25</sup> For the wealth tax in Pisa see the *Breve Consulium Pisanae Civitatis* of 1162, included in: *Statuti inediti della città di Pisa dal XII al XIV*, ed. F. Bonaini, Volume 1, Florence: G.P. Vieusseux 1854, p. 5. For Siena see the city statutes of 1262: *Il costituito del Comune di Siena dell' anno 1262*, ed. L. Zdekauer, Milan: Hoepli 1897, p. 129-141. For Ferrara see the city statutes of 1287: *Statuta Ferrariae. Anno MCCLXXXVII*, ed. W. Montorsi, Ferrara: Cassa di Risparmio di Ferrara 1955, p. 123-128.

<sup>26</sup> See e.g. Bartolus de Saxoferrato, *In tres Codicis Libros*, commentary on C.10.1.7, C.10.16.2, C.10.19.1 and C.10.64.1, and Baldus de Ubaldis, *Lectura super tribus libris Codicis*, commentary on C.10.64.1, paras 12-18. See also the sites mentioned in note 118.

stay on the emperor's friendly side: the latter's support was indispensable for the development of the Bologna law school. To save himself from this awkward situation Bulgarus needed to live up to the moniker 'the golden tongue', given to him by his tutor Irnerius in honour of his verbal qualities.<sup>27</sup> He came up with a diplomatic answer, replying that the emperor obviously was the lord of the world, only not in the actual sense of ownership of the world. His answer was simply a repetition of what was laid down in Roman law: the prerogatives of the sovereign do not affect the property of his subjects.<sup>28</sup>

It was not the answer the emperor was looking for and expectantly he turned to Martinus. Martinus primarily viewed the law from the perspective of equity. Not being quite so strict allowed him to curry his lord the emperor's favour. He had more time to think about the emperor's question and understood its rhetorical nature. With a resounding yes and without reservation Martinus confirmed the emperor's stature as the lord of the world, giving the desired answer. The emperor immediately dismounted and gave Martinus his horse, leaving Bulgarus astounded. Using a Latin play on words Bulgarus exclaimed: '*Amisi equum, quia dixi equum, quod non fuit equum*' (I lost an equine, because I upheld equity, which was not equitable; the Latin words for 'horse', 'fair' and 'honest' are the same).

An Italian historian<sup>29</sup> recorded this anecdote in the 13th century and it should probably be relegated to the realm of fantasy. Emperor Frederick, nicknamed 'Barbarossa' (red beard), spoke a South German dialect and had himself assisted by interpreters. Given his limited knowledge of Latin, Bulgarus's pun would have eluded him.<sup>30</sup> But despite the story's dramatic tone, it does accurately depict the relationships in twelfth-century Italy. It was by no means a clear-cut issue that the emperor would have the power to tax the population, because although he may have ruled the vast Holy Roman Empire in name, he held a shaky position. Unlike the kings of England and France, he had no fixed capital in which to reside. Unity in the empire was hard to come by and the emperor only held authority in a few areas. Large swathes of the empire were divided into countless kingdoms, duchies and counties, on whose ruling noblemen Frederick depended for his power.

The situation in Italy was particularly worrying. Ever since Charlemagne defeated the Lombards in 776, Italy's north and centre were ruled by the Frankish, and later the German, monarchs, whose hold on power was in flux. Frederick, having himself crowned King of Italy in Pavia in 1155, marked the first visit of a German king to Italy in eighteen years. Even more than in the rest of the empire, the Pope's influence made itself felt here. Like the emperor, the Pope laid claim to world domination. The challenges between Pope and emperor divided Italy into two parties: the Ghibellines and the Guelphs. The Ghibellines - named after the battle cry of the Hohenstaufen dynasty - were loyal to the emperor. The Guelphs - named after the Bavarian dynasty that fought the Hohenstaufens - sought refuge with the Pope. The real winners were the Italian city states, as they used the power vacuum to increase their influence. More than once both the Pope and the emperor were being played to gain more autonomy and secure their own interests.

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<sup>27</sup> Haskins 1927, p. 200-201.

<sup>28</sup> E.g. based on D.14.2.9, see extensively: Pennington 1993, p. 17-37.

<sup>29</sup> Otto Morena, p. 59, l. 16-26 .

<sup>30</sup> Godman 2010, p. 203.

Frederick's predecessors had increasingly lost their grip on the Italian territories and in the spirit of Charlemagne, the ambitious emperor was determined to restore order. His wish to once again unite the empire, as it had been under Otto I (912-973), the first German emperor,<sup>31</sup> made him return to Italy to carry out reforms in 1158, three years after his coronation. Frederick realised the empire was too big to maintain by force alone. His need for a legitimate power base prompted the emperor's plan to appoint officials throughout Italy, who would be made responsible for the administration of justice and government. He wanted to impose direct taxes, thus making the population pay for the cost involved.

It was an ambitious plan on all counts. Not only was it diametrically opposed to Italy's desire for greater autonomy, a tax in this form was non-existent. Taxing subjects directly required clear state authority, something very hard to find after the fall of the Western Roman Empire. Under Roman administration it had been possible to register residents and issue tax assessments from England all the way to Judea, but the decline of the former empire had triggered the collapse of the tax system. The Frankish kings had been using the surviving Roman tax registers<sup>32</sup> for a while, but imposing direct taxes on the population had gradually become a very rare phenomenon indeed. Rising feudalism had further eroded the already limited power of kings and emperors in favour of local power structures and taxation had been integrated into this system. Vassals would cede part of their harvest to their liege lords in exchange for protection and the right to cultivate the land. Similarly, rulers at the top of the feudal pyramid could impose burdens directly on their vassals: the dukes, bishops and other high-ranking officials. Directly taxing the people was unheard of.<sup>33</sup>

Italy, too, had such a graduated system of taxation. When the emperor visited the country, he could pass on his retinue's cost of living to his vassals by levying the so-called *fodrum*,<sup>34</sup> a tax the emperor could impose on the cities and nobles through whose territory he passed. In turn, they would recoup these costs from their subjects.<sup>35</sup> The Italian cities had different ways of doing this. Ravenna levied the same per capita amount, while Pistoia and Matelica apportioned the cost per fireplace. The latter was a slightly more precise system because the larger a person's home, the more fireplaces there were bound to be. There were, however, no fixed rules for levying the *fodrum*, or for monitoring the levy process. It was impossible to check whether lower rulers or cities demanded more from their population than what they owed the emperor, so arbitrary practices were quite likely.<sup>36</sup> No centrally regulated tax system had been implemented, let alone rules on protecting residents against unfair taxation.

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<sup>31</sup> Rahewin, iii. 29, and John of Salisbury, i. 65, epist. 5. See further Koeppler 1939, p. 577-579 .

<sup>32</sup> Grapperhaus 1989, p. 38, and Ydema 1997, p. 35-36.

<sup>33</sup> The papal taxes only became fashionable in the late thirteenth century. In 1199 and 1215, an occasional income tax was levied to finance the crusades, but only from the clergy, see Lunt 1934, p. 71-73.

<sup>34</sup> Etymologically, *fodrum* originates from the German *Futter*, food, which shows the link with the emperor's livelihood. Originally the tax was paid in kind, but by the twelfth century it was almost universally in cash. See Brühl 1968, p. 541-542 and 556-558, and Post 1880, p. 4.

<sup>35</sup> Brühl 1968, p. 551-552, and Post 1880, p. 15-16 and 43-44.

<sup>36</sup> Post 1880, p. 46-49. Brühl aptly observes that 'alle menschliche und fiskalische Erfahrung spricht dafür, dass sie bestrebt gewesen sein werden, bei dieser Gelegenheit auch etwas in die eigene Tasche zu wirtschaften', i.e., experience shows they would seize the opportunity to carve out a piece of the proverbial cake for themselves, Brühl 1968, p. 556.

The *fodrum* was levied only occasionally. For their regular income, princes and their vassals would rely on collecting market fees and levying toll (*teloneum*) at city gates and major mountain passes and waterways. Tolls had the advantage of being easy to collect, but if just any city and lower ruler were allowed to introduce a toll, this would hamper trade. This major drawback is why tolls were not allowed to be levied just like that. As early as 805, Charlemagne had laid down rules to prevent the proliferation of tolls. Under his Act of Thionville tolls were only permitted if would they actually help merchants, e.g., if they were given access to ports, markets or bridges. Since passing through open fields or under bridges would not benefit travelers, tolls were prohibited in these situations.<sup>37</sup> In Italy, toll stations had been set up at mountain passes, ports and alongside rivers.<sup>38</sup> Crossing northern Italy from west to east and giving access to the Adriatic Sea, the Po river was one of the most important trade routes. Cities like Modena and Mantua, which had no direct access to the Po, needed access via tributaries, i.e., the Panaro river and the Mincio river, respectively. The Roman built roads were also still being used. With most of these roads running southbound across the Alps, towards Rome, the Alpine passes were major toll points as well.

In addition to introducing a direct tax, emperor Frederick wanted to get hold of the Italian toll rights, something the German emperors had failed to do since the eleventh century. More than just a major source of income, the emperor could also use tolls to maintain order, as tolls were the Italian city states' favourite tool to frustrate rival cities. Like the small town of Lodi, which exploited its strategic location along the Lambro river to levy toll on Milanese ships on their way to the Po, making it Milan's sworn enemy. The Milanese ended up utterly destroying the town.<sup>39</sup> Apart from tolls, the Italian city states derived income from other indirect taxes, such as an additional tax on the import and sale of salt, while some cities also levied a commercial duty on merchants wanting to engage in trade within the city walls.<sup>40</sup>

#### **4. Renovation of the Roman Empire**

The decline of the Roman tax system had been due to a practical problem too: with barely enough to live on, what is there to be taxed? In the five hundred years since the fall of the Western Roman Empire, the European economy had been shrinking structurally. In Italy, the per capita income was estimated to have halved compared to the time of emperor Augustus.<sup>41</sup> The many wars and the administrative instability had reduced trade and virtually wiped out the monetary economy. Most of Europe had transformed into an agrarian society so it could be self-sufficient. Only Italy still had Roman era cities, although the urban population had dwindled there, too, and world trade had been wiped out. This changed in the twelfth century, when Pisa, Genoa and Venice used their fleets to take over a large part of the trade in the Mediterranean. These port cities were the gateways for exclusive products from the East, which were traded in the rest of Europe. Guilds emerged and each city gained its own speciality: silk from Lucca, dyed cloth from Florence, silver coinage from Venice. The

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<sup>37</sup> *Monumentae Germaniae Historica, Legum I*, Hanover 1835, p. 134, item 13.

<sup>38</sup> For the toll under Emperor Frederick, which served as a starting point for the description below, see: Haverkamp 1971, p. 615-668.

<sup>39</sup> This provides a definitive, albeit very rigorous, solution to the toll problem, as the new Lodi was rebuilt ten kilometres away on the Adda river: Haverkamp 1971, p. 617.

<sup>40</sup> Mainoni 2003, p. 21-22.

<sup>41</sup> Maddison 2007, p. 59.

decline in Italy had been less severe than in the rest of Western Europe and once the European economy started to grow, Italy was the first to benefit.<sup>42</sup> It was no more than logical for Frederick to want to levy taxes there.<sup>43</sup>

And yet the attraction of Italian riches were not the only motive for Frederick to gain control of Italy. Ever since Charlemagne, restoring the fallen Roman empire to its former glory had been the mission of the Frankish and German emperors.<sup>44</sup> This desire to renovate the old empire had everything to do with medieval thinking. Whereas progressive thinking is the central tenet of modern times, medieval society regarded itself to be in decline. Its glory days were long gone and the best they could expect from a new golden age was to restore what had been lost. Although this sounds rather pessimistic to our ears, it did reflect reality. Compared to Roman times, Europe had become a primitive corner of the world, surrounded by the much more developed Arab and Byzantine empires.<sup>45</sup>

The concept of renovation permeated culture and science. It's why the Romanesque architectural style was copied all across Europe, inspired by classical architecture. It's why Latin was the official language and why it was taught through the classic works of Livy and Virgil and it's why, instead of delving into the unknown to acquire new knowledge, science was about discovering the truth by analysing and discussing the authoritative writings of antiquity: the Bible, Roman law and the texts of the great Greek and Roman scholars such as Aristotle, Ptolemy and Euclid. Renewal and improvement would not be achieved by looking forward, but by looking back and reviving the legacy of antiquity.

The concept of renovation focused on Rome. Medieval people could not stop talking about the eternal city in superlatives and there is little doubt they viewed it as the capital of the world. In his hymn to the city one of them, Hildebert of Lavardin (1056-1134), the archbishop of Tours, wrote: 'nothing compares to thee, Rome, although you are almost all ruins. Through brokenness you can show your splendour gone by.'<sup>46</sup> The fate of the world was also directly linked to the fate of Rome. According to a twelfth century text, Rome's ruins are proof of all goods on earth decaying over time, especially when Rome, the crowning piece of all worldly goods, weakens and reels day by day.<sup>47</sup> Rome's decline is synonymous with the decline of the Roman Empire.

The opposite holds true as well: restoring the former empire would require restoring Rome. The reason why Frederick was crowned emperor in Rome was more than just symbolic. Rome found itself in the middle of a political struggle, as the Byzantine emperor likewise presented himself as 'emperor of the Romans', although his subjects only spoke Greek. He showed himself to be a formidable opponent of Frederick, for example by supporting the rebellious

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<sup>42</sup> Duby 2010, p. 15-16, 123 and 192-193; Frankopan 2015, p. 140-145; Jones 1974, p. 1555-1810.

<sup>43</sup> Cf. Munz 1969, p. 146-148.

<sup>44</sup> Schramm 1929, p. 42-43.

<sup>45</sup> The French historian Duby expressed the state of the Western world around the year 1000 as follows: 'Rough and rural compared to Byzantium, to Cordoba, very poor and very needy. A savage world. A world under constant threat of hunger.' See Duby 2010, p. 11.

<sup>46</sup> 'Par tibi, Roma, nichil, cum sis prope tota ruina: fracta docere potes integra quanta fores', Hildebert of Lavardin, *De Roma*, 1-2, recorded in Rushforth 1919, p. 45.

<sup>47</sup> A description of the miracles of the city of Rome, attributed to Master Gregory. Text included in: Rushforth 1919, p. 45-58.

Milan,<sup>48</sup> although Rome's distance prevented a genuine coup. As the Pope had his seat in Rome, distance was of no concern to him and he, too, viewed himself as the legitimate legal successor to the Roman emperor. He invoked a forged document that supposedly claimed that Constantine the Great, the first Christian emperor, had transferred his secular power to the Pope. Finally, through rebellion the Roman people were able to thwart the aspirations of the emperor and the Pope at times.<sup>49</sup>

With Frederick crowned Roman emperor, he could now invoke Roman law, which was not yet as widespread in Frederick's time as in later centuries. Although German emperors based their rights on their own Germanic customary law, the importance of Roman law was undisputed. As early as 1076, the Margrave of Tuscany decided a case with reference to a text from Roman law. Forty years later, when the Pope and the emperor went head to head in the struggle for investiture - the struggle for the appointment of high-ranking clergymen with secular powers - both sides even invoked the laws of Justinian.<sup>50</sup> In the twelfth century, when the famous glossators, Bologna's legal experts, devoted themselves to making the ancient texts accessible,<sup>51</sup> the study of Roman law flourished. This was no walk in the park because instead of a neatly arranged book of law, Justinian's law encompassed thousands of pages of handwritten legal texts created over a period of several centuries, which often made them contradictory.<sup>52</sup>

Initially, the glossators turned their attention to the sections of Roman law that could best be applied in practice, especially private law. In the course of the twelfth century, however, some glossators also showed an interest in studying the last three books of the *Codex*, which all discuss tax law and other public law. Especially Jacobus (who died in 1178) and Rogerio (who died in 1162) produced glossa - explanatory notes in the margin of a text - for these so-called *Tres Libri*.<sup>53</sup> Placentinus (who died in 1192<sup>54</sup>) is one of the next generation of glossators to distinguish himself through a special interest in this part of the law. He produced numerous glossa and was the first jurist to start with a complete commentary on the *Tres Libri*, a work that his pupil Pillius continued after his death.<sup>55</sup> Placentinus's commentaries on Roman tax law are generally marked by a concise and clinical style, explaining concepts and referring to other texts discussing similar problems.<sup>56</sup> Unlike Bartolus and Klock in later times, he did not derive principles from Roman law to which taxation would need to conform. His pioneering

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<sup>48</sup> This is evident, for example, from *Questiones dominorum Bononiensium*, question 131.

<sup>49</sup> Schramm 1929, p. 9-21.

<sup>50</sup> Fried 1974, p. 46-49.

<sup>51</sup> The jurists would thus apply Roman law in their own day and age, even though the Roman laws were not written for that era. Their treatment of Roman law can be compared to how medieval theologians interpreted the Holy Scriptures. Instead of studying these laws from a historical perspective, they would regard them as authoritative sources, directly applicable in their time, similar to jurists interpreting laws nowadays (no matter how old).

<sup>52</sup> Haskins notes that in no other period since Roman times had so much intellectual labour been devoted to the study of law: Haskins 1927, p. 194.

<sup>53</sup> Birocchi/Cortese/Mattone/Miletti 2013, p. 1104 and 1716-1717. For an overview of the oldest glossa to the *Tres Libri*, see: Conte 1990.

<sup>54</sup> Gouron believes that Placentinus died in 1182: Gouron 1993.

<sup>55</sup> Birocchi/Cortese/Mattone/Miletti 2013, p. 1588.

<sup>56</sup> See for example his commentary on C.10.1 (Placentinus, *Summa Trium Librorum*), a title on the rights of the Treasury. He notes that other texts bestow special rights on the Treasury (e.g. C.7.73), but that this title has a general character and not only bestows rights on the Treasury, but also restricts their actions.

work was nevertheless of great value, because it opened up the *Tres Libri* to legal practice. Tax texts thus also became part of the *ius commune* and remained relevant on the European continent until the 19th century.<sup>57</sup>

## 5. Diet of Roncaglia

Considering the above, it is no wonder why Frederick would want his tax reform to be based on Roman law, as this was the law of the empire that the emperor wanted to restore.<sup>58</sup> On 11 November 1158, he convened bishops, dukes, marquises and the consuls of fourteen represented cities for a Diet near Roncaglia, a little town in the vicinity of Piacenza. The Diet was an annual event at which the state of the empire was discussed, legal cases were submitted to the emperor, and new laws were enacted by the emperor. Friend and foe alike agreed that the emperor derived this legislative power from the so-called *Lex Regia*, or the King's Law.<sup>59</sup> According to this ancient Roman law, the Roman people transferred their power (the *imperium*) to the emperor one day. In Roman times, this was an origin myth to be able to trace the emperors' absolute monarchy back to the will of the people. One could compare this to the concept of the social contract, with which philosophers such as Locke and Rousseau tried to legitimise the authority of the state in later times. Most medieval legal experts took the *Lex Regia* very literally, interpreting the law such that in historical terms the transfer of power from the people to the Roman emperor actually took place and that the people had thus definitely relegated their power to introduce or abolish laws.<sup>60</sup> Nowadays, as Irnerius summarised it, only the emperor is entitled to do this.<sup>61</sup>

Still, Frederick did not approach his vassals as an absolute monarch, but wanted to make clear that his claims had a legal basis. In a speech at the opening of the Diet and attributed to him, he said he would rather exercise his power legitimately and give everyone his due than rule according to the motto 'to be king is to do everything with impunity'.<sup>62</sup> Naturally, one could argue about what these legitimate claims entail. When after a long siege the rebellious Milan surrendered to the emperor earlier that year, one of the peace conditions stated that the city could no longer exercise the rights vested in the emperor, but the exact nature of these rights was left vague.<sup>63</sup> The long absence of a central authority had led the Italian city states to appropriate rights for themselves, of which no-one knew the origins anymore. The emperor wanted to clarify this point and record his rights as a sovereign in writing.

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<sup>57</sup> A nice illustration is one of the oldest legal writings in the Netherlands, a treatise by Philips van Leyden (1325-1382), specifically focusing on a number of texts from the *Tres Libri*.

<sup>58</sup> See e.g. Schramm 1929, p. 279-289, and Koschaker 1947, p. 40-56.

<sup>59</sup> The *Lex Regia* is mentioned in D.1.4.1 and C.1.17.1.7. Medieval jurists regard the emperor as the *princeps* under Roman law.

<sup>60</sup> Even jurists averse to imperial politics, such as Placentinus (see below), support this proposition, cf: Lee 2016, p. 27-35.

<sup>61</sup> Glosse Irnerius at C.1.3.32, reproduced in Von Savigny 1826, p. 387.

<sup>62</sup> 'Omnia impune facere, hoc est regem esse', see Rahewin, iv. 4.

<sup>63</sup> The listing of imperial rights, *regalia*, ends with 'et alia similia si qua sunt', *Constitutiones*, i. 243, c. 9. The lack of clarity about the *regalia* in the peace terms with Milan may have prompted Frederick to have a list of *regalia* drawn up in Roncaglia, see Koepler 1939, p. 586.

The emperor wanted to rely on Roman law,<sup>64</sup> so he enlisted the help of the most authoritative people in this field, the four doctors of Bologna: Hugo and the already mentioned Bulgarus, Martinus and Jacobus. The cooperation with the Bologna jurists is not new. Irnerius, their tutor, had previously assisted emperor Henry V in the struggle for investiture and was excommunicated when that did not end well, as was the emperor.<sup>65</sup> Emperor Frederick wanted the four doctors to draw up a list of the privileges that accrued to him and of the taxes he could levy. The doctors, feeling reluctant to answer the emperor's question on their own authority, asked whether two legal experts for each of the fourteen represented cities could be added to the emperor's committee.<sup>66</sup> The 32-member committee came up with a list of so-called *regalia*: rights accruing to the highest authority, i.e., the emperor.<sup>67</sup> Today we would consider these rights to be rights of the state, such as the right to rivers, ports and mineral resources, the right to mint coins, the administration of justice, the income from fines, and the right to the property of those who have to forfeit it due to banishment or conviction. In terms of taxes, this concerns the *fodrum* and the toll. The *regalia* provided the emperor with the income to ensure security and justice, his main duties.

Once the list had been drawn up, the cities solemnly renounced the rights they had apparently unjustly exercised up to that point.<sup>68</sup> They would only be permitted to exercise the *regalia* if the emperor would grant them that right, usually against payment of a sum of money. The list of *regalia* was intended to increase Frederick's power, but at the same time it showed that his power was not unbridled. The emperor may have been lord of the world, he could not simply take anything he wanted.

Although the *regalia* were drafted by experts in Roman law, they mainly reflect the rights that under Germanic customary law accrue to the sovereign.<sup>69</sup> Some of these rights were even non-existent in Roman law, such as the right to services and fees of the so-called *arimanni*, a name for free landowners residing in the outlying areas of the Kingdom of Italy. Under Longobardic feudal law, they were obliged to perform certain services and pay taxes in exchange for protection. We have already seen that the *fodrum*, too, has Germanic origins and tolls as such are not part of Roman law either. On the face of it, the list of *regalia* is no more than a memory of the existing feudal relationships. This may be a possible explanation for why, unlike the siege and fall of Milan shortly before it, the Diet of Roncaglia rarely features in Italian chronicles of the time. By now, people in Italy were used to the fact that a German king would claim his privileges every once in a while.

Yet Roncaglia was the site of something innovative, perhaps even revolutionary. Rather than describing the *regalia* in the same terms familiar in Germanic law, and which had been part of many peace treaties dating from before 1158, to the extent possible the jurists used

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<sup>64</sup> Frederick obviously did not come up with all of this himself. His chancellor, Reinald of Dassel, had a particularly great influence on his Italy policy.

<sup>65</sup> Fried 1974, p. 46-49, and Koeppler 1939, p. 586-587.

<sup>66</sup> Otto Morena, p. 59-60.

<sup>67</sup> See the description of Sixtinus, *Tractatus de regalibus*, p. 15: 'regalia esse iura ei, qui superiorem non recognoscit'.

<sup>68</sup> Finsterwalder compares it to the French Revolution: just like all feudal rights and privileges were abolished on 4 August 1789, all feudal rights were now returned to the highest authority, i.e., the emperor: Finsterwalder 1931, p. 6.

<sup>69</sup> See, among others, Finsterwalder 1931, p. 64-68, and Koeppler 1939, p. 580-581.

descriptions derived from Roman law. The tolls claimed by the emperor, known as *telonia*, are called *vectigalia*, the Roman name for taxes on the purchase, transfer or import of goods.<sup>70</sup> The Romans were not familiar with the *fodrum*, but even here the jurists came up with a description from Roman law, i.e., '*extraordinaria collatio ad felicissimam regalis numinis expeditionem*', the extraordinary contribution for the - military - expedition of the emperor.<sup>71</sup> This terminological innovation clearly shows the hand of the four doctors of Bologna. Being able to make such connections requires great knowledge of Roman law.

The reference to Roman law is not just a play on words or a political ploy by Frederick to impose his will on the Italian city states. As became clear earlier, aside from opportunism the emperor also had idealistic motives for implementing the law of his illustrious predecessors. Because his rights were drafted using Roman law terms, these *regalia* were henceforth also interpreted on the basis of Roman law. From 1200 onwards they are even considered to be an integral part of the *ius commune*<sup>72</sup> and unsurprisingly so, since the law with *regalia* was enacted by Frederick who, in his capacity of Roman emperor, is the only source of law.<sup>73</sup> No-one will have anticipated it in 1158, but the Diet of Roncaglia heralds the dawn of a development in which Roman law is the decisive factor in determining which taxes may be levied. Undoubtedly this marks a sea change. Not unwritten Germanic customary law, but written Roman law sets limits to taxation. Thirteenth and fourteenth century jurists would crystallise which limits, exactly.

Initially, the *regalia* discussed the rights that the German emperor could assert in his empire. Because the *regalia* became part of the *ius commune*, their relevance significantly increased over time. In one of the earliest commentaries, Andreas of Isernia (who died in 1316) no longer regarded the *regalia* as the German emperor's specific privileges, but as the rights belonging to any sovereign or any republic that did not tolerate any higher authority.<sup>74</sup> Whether it was the king of France, the king of Sicily or the city state of Venice, within their territory they all lay claim to the *regalia*. Klock likewise refers to the *regalia* when discussing the question of who has the right to levy the *collecta*.<sup>75</sup> With the emergence of the modern state and the abolition of Roman law, the *regalia* have disappeared from view; this certainly does not apply to the idea that the highest state authority is limited by law.

## 6. The levy of the *tributum*

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<sup>70</sup> Under Roman law, the tolls were also called *portoria*, see Günther 2008, p. 17.

<sup>71</sup> The description is taken from C.1.2.11. Incidentally, this term for the *fodrum* was not entirely new, see Brühl 1968, p. 662. For an example, see the charter about the payment of the *fodrum* by the Umbrian city of Gubbio, officially imposed because of Frederick's military expedition to the Norman kingdom in southern Italy and Sicily ('ad felicem nostram expeditionem in Apuliam'), although the *fodrum* was an annual levy: *Die Urkunden der Deutschen Könige und Kaiser. Die Urkunden Friedrichs I. 1158-1167*, band 10, part 2, ed. H. Appelt, Hanover: Hahnsche Buchhandlung 1979, p. 292-293.

<sup>72</sup> It was added to the *ius commune* as part of feudal law, see *Libri Feudorum*, 2.56.

<sup>73</sup> See the commentary by Andreas of Isernia, who notes that Frederick's coronation as emperor also gave him the power to determine the *regalia* (Andreas of Isernia, *Super feudis*, commentary on 2.56).

<sup>74</sup> Andreas of Isernia, *Super feudis*, commentary on 2.56.

<sup>75</sup> Klock, par. VI. This likewise applies to numerous other tax treatises, see for example Philips van Leyden, casus XLI, point 4, Sixtinus, *Tractatus de regalibus*, and Schwennicke 1996, p. 29-30, who mentions several sixteenth-century German treatises.

Who owns the world? The main public roads, the rivers and the ports clearly belong to the emperor. They are considered part of the *regalia* and, hence, this is where the emperor may also levy tolls. In the years following the Diet of Roncaglia, he also immediately set about occupying the most important toll points along the Po, the main roads and the Alpine passes.<sup>76</sup> It is quite logical for such major infrastructural works to be controlled by the highest authority. Even today's trade would be severely hampered if the decision-making were to take place at the local level. But the emperor's tax ambitions went beyond that. In his opinion, he also held sway over Italian land and so he wanted to tax this, too. In designing this new tax the emperor took his inspiration from the Roman direct tax, the *tributum*.

The *tributum* was a tax that the Romans imposed on the territories they had conquered, allowing themselves to be exempt from direct taxation.<sup>77</sup> Landowners were taxed for their fields: they either had to hand over part of their harvest or pay a similar amount in cash.<sup>78</sup> What's more, each resident of the provinces paid a fixed amount of tax, the so-called poll tax.<sup>79</sup> The levy of the *tributum* required registration of all land holdings and all residents of the provinces, a paragon of the Roman Empire's high level of organisation.<sup>80</sup> At the Diet of Roncaglia, the emperor had the four doctors of Bologna<sup>81</sup> briefly describe the contents of the *tributum* and how it was levied.<sup>82</sup> While the *tributum* was not mentioned in the enumeration of *regalia*, the description used for the *fodrum* refers to the taxes directly owed to the emperor.<sup>83</sup> The point is clear: like the Roman emperors before him who were allowed to levy the *tributum*, so too could Frederick, in his capacity of Roman emperor, directly tax the residents of Italy.<sup>84</sup>

An actual reintroduction of the *tributum* never materialized, as it was impossible for the emperor to set up a tax system that was just as well-organised as that of the Roman Empire. In response, the emperor sought to copy the existing ways in which Italian cities passed on

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<sup>76</sup> Controlling the mountain passes also mattered to the emperor for military purposes. Crossing the Alps with a large army made it practical to be able to use several of these narrow mountain passes. For an overview of the toll points, see Haverkamp 1971, map IV.

<sup>77</sup> Günther 2008, p. 16-17. After the other peoples of the Italian peninsula became part of Roman citizenship, they also shared in the tax exemption. The colonies that had been granted Italian law were also exempt from the *tributum*, see D.50.15.

<sup>78</sup> Placentinus deduces from Roman law that the amount of the *tributum* was 2 percent of the wheat, 2.5 percent of the barley and 5 percent of the wine and bacon (C.10.72.9.1), or an equivalent amount in gold, silver or bronze (C.10.78, C.10.29.1 and C.10.72.5). See Placentinus, *Summa Trium Librorum*, C.10.16 .

<sup>79</sup> Around the beginning of the era, the poll tax was one denarius, roughly equivalent to a daily wage. According to Placentinus (*Summa Trium Librorum*, C.10.16), the poll tax was no less than one aureus (25 denarii) per man and half that per woman. One explanation for the large difference in amounts may be the enormous inflation that occurred in the Roman Empire from the beginning of the era. In later times, the ratio between the payment per man and the payment per woman seems to have changed as well (C.11.48.10).

<sup>80</sup> Exemplary is the world-famous census under Emperor Augustus, mentioned in Luke 2:1-5, forcing Joseph and Mary to travel to Bethlehem to be registered.

<sup>81</sup> Possibly the other 28 legal experts appointed by Frederick were also involved, although the content is only attributed to the four Bologna jurists. See below for Placentinus's criticism of them.

<sup>82</sup> Because it was not a real law, the writing soon fell into oblivion, only to be rediscovered in the 1960s by the Italian historian Vittore Colorni: Colorni 1966.

<sup>83</sup> The term is borrowed from C.1.2.11. It was no coincidence for one of the first jurists to deal with Roman public law, Rogerio, to discuss the different types of taxes in precisely his commentary on title C.1.2 (Rogerio, *Summa Codicis*, at C.1.2).

<sup>84</sup> In his enumeration of the *regalia* Rahewin even explicitly describes the *tributum*: Rahewin, iv. 7.

the *fodrum* to their citizens. In the years following Roncaglia, he succeeded in introducing a direct tax in parts of Italy, with land ownership and a family's size as the most important reference points.<sup>85</sup> And he introduced a change in that instead of levying the *fodrum* incidentally it would now be levied annually. So there is little real difference between this renewed *fodrum* and the *tributum* and charters from that time use both terms interchangeably.<sup>86</sup>

But the question is whether the emperor actually has the right to levy direct taxes in Italy. The four doctors may base his claims on Roman law, their interpretation was disputed by a fellow jurists, the aforementioned Placentinus. Indeed, Placentinus was harsh when discussing this issue in his commentary: 'Wretched are they, those Bolognese jurists! Sinful it is, indeed a huge mistake and, perhaps even worse, against their own conscience, as they have acted.' Nowhere did a twelfth-century jurist write so fiercely and so committedly as here.<sup>87</sup> This is because Placentinus believes that the Bolognese doctors have manipulated the law. He agrees with them that Frederick, as emperor, can invoke Roman law, but in his opinion they wrongly deduce from this law that the emperor may tax the land and the people of Italy. On the contrary, Roman law shows that all of Italy is exempt from the *tributum*.<sup>88</sup> As specialist in this field, Placentinus shows how the various legal texts were taken out of context to conclude that the emperor may levy taxes.<sup>89</sup> In doing so, Placentinus is not afraid of using rhetoric. He felt that using a text from the *Codex* to prove that the Italic land may be taxed was unreliable since it had been the emperor Julian, called 'the Apostate' because he returned to paganism later in life, who had enacted the law.<sup>90</sup>

Placentinus's reasoning may be convincing, it cannot be denied that Roman law leaves room for multiple interpretations on this point.<sup>91</sup> Emotions running so high is undoubtedly because Placentinus comes from Piacenza, a different political biotope than where most legal eagles came from.<sup>92</sup> Whereas Bologna, the birthplace of most jurists, favours the emperor, Piacenza

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<sup>85</sup> Haverkamp 1971, p. 674-691.

<sup>86</sup> Haverkamp 1964, p. 123-124 and 147-148.

<sup>87</sup> Especially if one considers that Placentinus wrote his commentary on the *Tres Libri* at the end of his career, when the cities had long pushed back the emperor's power.

<sup>88</sup> D.50.15. In addition, Placentinus refers to C.1.3.3, where one can read the restriction that only the land in the provinces may be taxed.

<sup>89</sup> According to Placentinus, the four Bologna doctors rely on an incorrect reading of Inst.2.1.40, which text does not distinguish between provincial lands and lands in Italy. Still, given the context it cannot be understood otherwise than that it concerns the disposal of the lands rather than the tax liability for the *tributum*.

<sup>90</sup> C.4.47.3. Placentinus goes on to argue that although this text states that all must pay the customary contributions for the land they own, this is a way of saying that all who must pay are liable to pay what is customarily due. In his view, this text does not answer the question of which lands are taxed.

<sup>91</sup> This is no surprise when one considers the collection of legal texts contained in Roman law covers a period of four hundred years. The newer texts on taxation even date from a period when Italy had long been overrun by the Germanic tribes and was no longer part of the empire. The tax exemption for Italy was largely abolished at the end of the third century under emperor Diocletian, see Conte 2006, p. 18.

<sup>92</sup> Placentinus is the only jurist who gives brief autobiographical information, e.g., about his origin and name: 'civitas Placentia, unde mihi origo est, nomenque accepi', Placentinus, *Summa Codicis*, at C.7.48. On his life, see further: Kantorowicz 1938, p. 23-26; De Tourtoulon 1896 and Bircocchi/Cortese/Mattone/Miletti 2013, 1568-1571.

is a city of Guelphs.<sup>93</sup> When Frederick restored his power in Italy in 1158, Placentinus even moved to Montpellier, seven hundred kilometres to the west. While their political preferences may have differed, both the Bolognese and Placentinus jurists oddly enough relied on the *ius commune* to support their positions. The discussion about the legal validity of the *tributum* shows how Roman law forms the framework from which the legitimacy of taxation is judged.

How this Roman law is subsequently interpreted is very deeply linked to the view of what is justice, especially in tax disputes. In the speech attributed to Frederick at the opening of the Diet in Roncaglia, he expressed his desire to give everyone his due, thus adhering to the classic definition of justice: justice is giving everyone their due. Emperor Justinian had included this definition at the beginning of the *Digest* and the *Institutes*, and it can be found in Ulpianus and Cicero, the two best-known Roman legal experts.<sup>94</sup> In a way this conception of the law is meaningless, because who is entitled to what? Such a conception of the law quickly turns into an excuse to maintain the status quo or hide behind the law to corroborate the position of the powerful. If everyone is to get their due, there is no reason to soon change existing relations.

This explains the four doctors' attitude. They use the law to legitimise the emperor's wishes. If everyone is entitled to what is due, then the emperor, who is the highest, is also due the most. Their interpretation of the *tributum* is typical in that they refer to the word of Jesus in Matthew 22: give the emperor his due. Although detached from the context in which this text appears,<sup>95</sup> Jesus indeed talks about the payment of the poll tax and the emphasis seems to lie entirely on the sacred duty to give the emperor his due, or rather, to return to him what is his. In his extensive commentary on the *Tres Libri*, Rolando da Lucca (1195-1234) likewise puts this biblical text first. Unsurprisingly Rolando, too, favours the emperor and endorses his right to the *tributum*.<sup>96</sup>

Placentinus, on the other hand, rejects the right of the strongest. He argues the opposite: justice lies in giving the most to those who have the least, as he defines it in one of his commentaries.<sup>97</sup> With this conception of the law, he deviates from the prevailing view and harks back to the Greek philosophers Plato and Sokrates.<sup>98</sup> The law protects the weak, helps those who have no helper and alleviates the fate of the unfortunate.<sup>99</sup> Placentinus regards the law not as a means to maintain existing relations, but to combat inequality. This is why he

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<sup>93</sup> See his glosse at C.1.1.3 where Placentinus says that the Pope surpasses the emperor: 'quod papa maior est quam imperator'.

<sup>94</sup> D.1.1.10 and *De Natura Deorum*, iii. 38.

<sup>95</sup> In Matthew 22:15-22, it is a comparison: just like paying the emperor his poll tax because his image is on the denarius (the money is his), so you must give your life to God because you are created in His image (you are His).

<sup>96</sup> Rolando da Lucca, *Summa Trium Librorum*, introduction and commentary to C.10.16. Rolando also refers to Cicero's view that a land tax must be accepted in times of need: Cicero, *De Officiis* 2.21.74.

<sup>97</sup> Placentinus, *Summa Institutis*, Inst. 1.1: 'Iustitia est virtus que plurimum prodest his qui minimum possunt'.

<sup>98</sup> Kuttner 1980, p. 96-98. He had probably become acquainted with the works of the Greek philosophers in Montpellier: Kantorowicz 1938, p. 34.

<sup>99</sup> These, too, are fully biblical notions (see e.g. Psalm 72:4, Psalm 146:7-9, James 5:1-6). Since Placentinus also had a theological education, he must have been familiar with this, as well as with Augustine's description 'nunc autem quod agit iustitia in subveniendo miseris', cf. Kuttner 1980, p. 95.

opposes the taxation with which the emperor tries to suppress the Italian city states. In one of his lectures, Placentinus refers to Roman law texts that forbid extortion of taxpayers and when referring to the Bible, he quotes 1 Timothy 6, verse 10: the root of all evil is greed.<sup>100</sup>

## 7. Epilogue

According to his chronicler, Rahewin, the tax reform earned the emperor about thirty thousand talents a year.<sup>101</sup> The emperor thus amassed a wealth comparable to that of the French and English kings.<sup>102</sup> Since in the rest of his empire most subjects still paid their taxes in kind, the coinage served the emperor well.<sup>103</sup> The city states did not allow themselves to be used as provinces though. The taxpayers saw no difference in the name or the ancient origin of the tax. They felt that the emperor had imposed a new tax on them,<sup>104</sup> which also clashed with the desired autonomy. Nobody should subject Italy to the *tributum*, unless the Italians themselves are so unwise as to do so, writes Boncompagno da Signa, professor of rhetoric at the University of Bologna.<sup>105</sup> The message is clear: Italy is in charge of its own taxes.

After 1158, the Italian policy of the emperor met with growing resistance. The combination of the high tax burden and how Frederick handled the allocation of the *regalia* created bad blood. Some cities were allowed to continue levying tolls themselves in exchange for payment of a fixed sum of money or a share of the proceeds. For the cities this was more lucrative, while the emperor could thus recruit allies. While powerful Piacenza lost all its *regalia* and even had to tolerate the proceeds of the market tax flowing into the imperial coffers,<sup>106</sup> Cremona's loyalty earned it far-reaching tax privileges.<sup>107</sup> The emperor-appointed city officials were at least as big a problem.<sup>108</sup> These *podestas*, literally: rulers, were involved in the administration of justice and maintaining order. As he distrusted the local population, Frederick mainly appointed German-born *podestas*, who regarded their Italian adventure as an opportunity to enrich themselves and complaints about bribery, extortion, excessive taxation, forced labour and even assaults on the local population were plentiful.<sup>109</sup>

Supported by Pope Alexander III, a large number of northern Italian city states formed the Lombard League in 1167, a military alliance intended to throw off the emperor's yoke.<sup>110</sup> This was not a national uprising at all, as 19th century nationalists would later frame it. The League represented only the north of Italy and even there not all cities opposed the emperor. As Frederick had set up toll stations all along the Po river, particularly the northern cities suffered financially, while Tuscany remained out of harm's way. A decade of military setbacks later, the most famous of which was the Battle of Legnano of 29 May 1176, the emperor was forced

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<sup>100</sup> C.1.27.1.16 and N.8.pr.1. For the text of this lecture see: Kantorowicz 1938, p. 36-41.

<sup>101</sup> Rahewin, iv. 8.

<sup>102</sup> Haverkamp 1971, p. 714.

<sup>103</sup> Munz 1969, p. 154-155.

<sup>104</sup> Finsterwalder 1931, p. 11.

<sup>105</sup> 'Nam oppinio me in hanc trahit sententiam, ut non credam Italiam posse fieri tributariam alicui, nisi ex Italicorum malitia procederet ac livore', Boncompagno da Signa, p. 15-16.

<sup>106</sup> See on the imperial toll policy: Haverkamp 1971, p. 615-668.

<sup>107</sup> Freed 2016, p. 40. See also Munz 1969, p. 171-175.

<sup>108</sup> Other cities were granted the privilege of choosing their own consuls subject to the emperor agreeing to these appointments, see Finsterwalder 1931, p. 33-52.

<sup>109</sup> Munz 1969, p. 272-276, and Freed 2016, p. 317-318.

<sup>110</sup> Munz 1969, p. 284-285.

to acknowledge the superiority of the Lombard League and an armistice was concluded in Venice on 22 July 1177. The negotiations for ultimate peace failed because the emperor had no intention to relinquish his *regalia* for the time being.<sup>111</sup> This changed six years later when, on 25 June 1183, the emperor ultimately concluded a peace agreement with the Lombard cities. Henceforth, the city states would be entitled to the *regalia* within their own territories, without having to pay the emperor a share of the proceeds or a fixed sum.<sup>112</sup> Hence, from now on the cities were exempt from the imperial tolls and the *fodrum*.<sup>113</sup>

Who owns the world? Some one hundred years later, the French jurist Jacques de Revigny (1230-1296) wrote that the French king was owner of the whole of his kingdom. As evidence for this proposition, he argues that French subjects, without exception, must pay taxes to the king on their land holdings. However, this reasoning, says De Revigny, does not apply to Italy, where no *tributum* may be levied and the residents therefore own their land.<sup>114</sup> This is precisely what the situation was after the Peace of Constance: all of Europe belongs to kings and emperors, except Italy, which belongs to its own people. The fame of the Treasury had collapsed and all consuls were leaving, writes the chronicler Godfrey of Viterbo about the loss of Frederick's tax rights and the loss of his administrative power (*fisci pompa ruit, consul ubique fuit*).<sup>115</sup>

The city states were allowed to levy their own taxes to meet their expenses, without interference from the emperor.<sup>116</sup> They introduced a direct tax on all wealth, called *collecta*, levied through registration of the wealth, the *estimo*.<sup>117</sup> This wealth tax is based on Roman law, which states that cities (*municipia*) may impose obligations on their residents to meet public expenses according to the size of their wealth.<sup>118</sup> From this it is deduced that direct taxation must be levied according to how much wealth the residents and the citizens of the city own. Privileges are out of the question; even the nobility cannot escape taxation.<sup>119</sup> Double taxation is also being considered in the twelfth century. Jacobus, one of the four doctors, discussed the case where Ferrara levied a *collecta* on all wealth of its citizens, with

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<sup>111</sup> Freed 2016, p. 392-413.

<sup>112</sup> *Libri Feudorum*, appendix 7. However, the Italian towns did pay the emperor a substantial peace fee: Freed 2016, p. 426-427.

<sup>113</sup> After the Peace of Constance, imperial tolls therefore shifted to Piedmont and central Italy. Piedmont was particularly important because of the routes over there, running from Italy in the direction of Burgundy and the annual fair in Champagne. See Haverkamp 1971, p. 661.

<sup>114</sup> Cited by Conte 2006, p. 18.

<sup>115</sup> Godfrey of Viterbo, p. 51.

<sup>116</sup> See also the explanation of Baldus de Ubaldis: Baldus de Ubaldis, *Lectura super Usibus feudorum*, commentary on the Peace of Constance under *munitione civitatis*.

<sup>117</sup> See note 25 for the reference to some city statutes.

<sup>118</sup> In the oldest commentaries, the *collecta* is based on C.10.42, as in Rolando da Lucca, *Summa Trium Librorum*, commentary on C.10.42, points 48 and 49: 'Sunt partimonialia munera ut collecte impositio pro mittendis militibus ad exercitum, pontium, viarum, portuum, aqueductum, murorum civitatis refectio et reparatio, et collatio ad hoc facienda (...). Et circa predicta patrimonalia munera ita dico: quod omnibus imponuntur habitantibus per ordinem, et quod nullus relevetur, sed omnibus originaris, incolis et civibus fiat collecta huiusmodi munerum, pro rebus quas ibi habent'. See in the same sense: Odofredus, *Lectura super codice*, commentary on C.10.42, although Odofredus assumes taxation of the entire property and Rolando of the property held in the place (Jacobus also seems to assume this, see note 120).

<sup>119</sup> See comments mentioned in note 118 and Azo, *Summa Codicis*, comment on C.8.11. It was different for the clergy, because they were not under the jurisdiction of the city, but under that of the church, see Accursius, *Glossa ordinaria*, at D.50.4.6.5.

one of those citizens also owning assets in Bologna. In that case, he could not be forced to pay tax on these assets as well, but only paid according to the amount of wealth he owned in Ferrara.<sup>120</sup>

## 8. Conclusion

Where does our tax law come from? There is no all-encompassing answer to this question. Still, if we look at the underlying principles of tax law, it must be concluded that they go back much further than the birth of the nation state, the economic sciences, or the specific taxes levied today. Taxation according to ability to pay and without privilege, the distribution of taxing rights between countries to avoid double taxation, and safeguards to ensure fair taxation and collection of taxes, they are all examples of principles that were already part of the *ius commune* in the Middle Ages and were also found in the laws of the Italian city states at that time. This paper focuses on the dawn of this development: the rediscovery of Roman tax law in the twelfth century.

At the Diet of Roncaglia in 1158, emperor Frederick I, aided by the jurists of Bologna, based his princely claims, the *regalia*, on Roman law instead of on the unwritten Germanic customary law. He thus stands at the beginning of a legal revolution. Frederick's appeal to Roman law can be understood from his mission to restore the old Roman Empire. The *regalia* included the rights of the emperor to levy direct and indirect taxes. In the twelfth century, direct taxes were levied only occasionally and were mostly based on feudal relationships. A new legal framework was created by grafting the right to direct taxation onto Roman law, consisting of the tax texts found in the *Corpus Iuris Civilis*, especially in the last three books of the *Codex*. Precisely in the same period, Placentinus and some other jurists had made these tax texts accessible for legal practice. Arguably, the emperor had stretched Roman law too far by deducing from it that he was entitled to introduce a direct taxation of land and residents in Italy, a *tributum* like the Romans had levied in their provinces. Nevertheless, the legal debate generated by the emperor's tax reform shows that the interpretation of Roman law was relevant to the legitimacy of taxation.

The development outlined in this paper continued from the end of the twelfth century, after the Italian city states had gained tax autonomy through the revolt against Frederick. An interesting subject for further research would involve a closer look at the city states' tax system and how Roman law influenced it.

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<sup>120</sup> *Quaestiones dominorum Bononiensium*, Q. 82.

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