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Plurality of diplomatic agents in premodern literature on the ambassador

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1 Medieval roots

Italian jurists began to consider the question of embassy and the figure of the ambassador in the late 12th century. The literature of the period reveals their interest in various aspects of this topic, the lexicons, regulation and practices of which were far from homogenous and quite impossible to systematize.¹ The Roman law texts collected in the *Corpus iuris civilis* offered few clues, since these laws rarely dealt with the topic: the *de legationibus* sections in the *Digesta* and the *Codex* mainly referred to the *legatus* understood not as an ambassador, but as a domestic agent whose task it was to serve as a link between the empire’s cities and provinces and its centre.² Yet, networks of diplomatic relations in northern and central Italy had multiplied during the course of the century, significantly influencing the political and institutional development of communes.³ It was within this context that the *ius commune* jurists, who were often themselves directly involved in diplomatic missions, began to develop rules and principles in order to define the status of the ambassador and establish a regulatory framework for his activities, even before the communes themselves tackled the question in their legislation.⁴ The earliest record of this conceptual engagement appears at the end of the 12th century in the *Summae Trium Librorum* by Pillius de Medicina and Rolandus de Lucca;⁵ these ideas were then developed in the doctrine of the 13th and 14th centuries, while canon lawyers—on the

¹ For a recent synthesis on medieval diplomatic practice, see J.-M. Moeglin and S. Péquignot, *Diplomatie et “relations internationales” au Moyen Âge (IX^e-XV^e siècle)* (Paris: 2017), 345-493.

² See W. Eck, “Diplomacy as Part of the Administrative Process in the Roman Empire,” in: C. Eilers ed., *Diplomats and Diplomacy in the Roman World* (Leiden: 2009), 193-207, and F. Hurlet, “Les ambassadeurs dans l’Empire romain. Les légats des cités et l’idéal civique de l’ambassade sous le Haut-Empire,” in: A. Becker and N. Drocourt eds., *Ambassadeurs et ambassades au cœur des relations diplomatiques. Rome – Occident Médiéval – Byzance (VIII^e s. avant J.-C. – XII^e s. après J.-C.)* (Metz: 2012), 101-126. Exceptions can be found, for instance, in *Dig.* 50.7.18(17), concerning diplomatic immunities granted to “legat[i] hostium,” and in *Cod.* 4.61.8, concerning “legat[i] gentium.”

³ See M. Vallerani, “I rapporti intercittadini nella regione lombarda tra XII e XIII secolo,” in: G. Rossetti ed., *Legislazione e prassi istituzionale nell’Europa medievale. Tradizioni normative, ordinamenti, circolazione mercantile (secoli XI-XV)* (Naples: 2001), 221-290.

⁴ On the communal statutes, see P. Gilli, “Ambassades et ambassadeurs dans la législation statutaire italienne (XIII^e-XIV^e siècle),” in: S. Andretta, S. Péquignot and J.-C. Waquet eds., *De l’ambassadeur. Les écrits relatifs à l’ambassadeur et à l’art de négocier du Moyen Âge au début du XIX^e siècle* (Rome: 2015), 57-86.

⁵ See E. Conte and S. Menzinger, *La Summa trium librorum di Rolando da Lucca (1195-1234). Fisco, politica, scientia iuris* (Rome: 2012), 234-243.

basis of the works of Henricus de Segusio and Gulielmus Durandus in particular—laid the foundations of the doctrine on papal legates.⁶

One of the main questions of interest to jurists was the public role of the ambassador (*legatus*), referred to by the terms *officium* and *munus publicum*. The latter in particular, rooted in the Roman system of the *munera*—public services which Roman citizens had to perform for the *municipium*⁷—showed the obligatory nature of the role, which (with certain exceptions) had to be carried out by the person appointed for as long as had been stipulated. The definition of the ambassador's status was, moreover, linked to that of the cities themselves, for whether they were private or public entities was to become a widely discussed question: Rolandus de Lucca's assertion, at the end of the 12th century, that cities had a public nature and the ambassador was the agent nominated to accept a public office, would prove pioneering.⁸

This view came to typify late-medieval juridical opinion on the ambassador, and the assumption of the role's public nature would become profoundly influential—for example with regard to the right to send an ambassador: as Accursius' *Glossa ordinaria* informs us, the term *legatus* was meant to be used only for envoys sent by a *civitas*, a *provincia*, or an *ecclesia*, or by the emperor or the pope, while someone sent by a private individual was a *nuncius* or *missus*—and not a *legatus*.⁹ Similarly, only someone whose mission was on behalf of a city or other public subject could enjoy the privilege of being considered “absent on public business” (*absens rei publicae causa*), and thereby benefit from the *restitutio in integrum* upon his return to his country (entailing the annulment of any legal case against him during his absence). The legal status of the *legatus* was then determined by the laws regulating his appointment, usually devolved to the communal councils, as were any questions of ineligibility or incompatibility with other *officia*. Another sensitive issue was that of conflicts of interest, such as the ease with which an ambassador could appropriate any official gifts he received, rather than delivering them to his principal at the end of a mission, but also including the question of whether or not an ambassador, while on a mission, could simultaneously engage in his own business—or that of a third party—and enter into contracts or solicit prebends or favours. The attitude of the *ius commune* jurists in this respect was relatively relaxed: they did not prohibit ambassadors from involvement in private business matters, as long as their activities in no way hindered or delayed the mission upon which they had been sent. Another question, very much linked to the public nature of the mission, was that of the ambassador's right either to reimbursement of his expenditures or to a salary calculated on the basis of the duration of that mission, as well as the right to compensation for any damages suffered. He was, moreover, given legal protection, which included

⁶ On the latter, see R.C. Figueira, “‘Legatus apostolicae sedis,’ the Pope's ‘alter ego’ according to thirteenth-century Canon Law,” *Studi Medievali* 27 (1986), 527–574.

⁷ See N. Lewis, *The compulsory public services of Roman Egypt* (Florence: 1997).

⁸ On the discussion about the public nature of the cities, see E. Conte, “Respublica. Il modello antico, la politica e il diritto nel XII secolo,” in E. Conte and V. Colli eds., *Iuris historia. Liber Amicorum Gero Dolezalek* (Berkeley: 2008), 193-212.

⁹ See Ordinary gloss to *Cod.* 10.65(63), rubrica, ad v. *de legationibus*.

inviolability, both civil and criminal immunity with regard to contracts entered into and crimes committed before the start of his mission, and immunity from reprisals for himself, his retinue and his property.¹⁰

We know, of course, that the diplomatic practice of the time was by no means entirely governed by the principles established by this wealth of doctrine, which, far from merely reflecting the current state of affairs, endeavoured to direct and frame it within a predominantly public legal system. The wide range of actors involved in late-medieval diplomacy—certainly not limited to those operating in a strictly official capacity—clearly demonstrates how diverse and complex its practice was. Priests and mendicant friars were actively involved in political life, from at least the 13th century on. The anonymity lent by their habits enabled them to avoid notice, and their habitual itineracy as well as the connections between monasteries, convents, and churches across Christendom further facilitated their missions.¹¹ There were also special agents at the Roman Curia, who worked for kings, princes, municipalities, archbishoprics, and religious orders: known as *procuratores*, they played a crucial role, both through the intelligence they gathered and through the various favours they could obtain from the pope. Their semi-permanent mandates and the fact that they enjoyed the privileges accorded to an ambassador under *ius gentium*, even led in the past to their being considered the progenitors of the permanent ambassador.¹² Alongside these persons, the cardinal protectors, although not strictly diplomatic figures, worked in the interests of kings, princes, and religious orders, especially during papal conclaves.¹³

In the 14th and 15th centuries, particularly in central Europe, an important diplomatic role was also played by the herald, who carried messages, letters, and notes of safe passage and facilitated the negotiations when truces were being agreed, fortresses handed back, or hostages and prisoners exchanged.¹⁴ In Italy and Aragon, however, merchants were most frequently employed for this type of work: their knowledge of trading routes, experience in foreign lands, language skills, and vast networks made them ideal spies or informal negotiators.¹⁵ Since the late 11th century, in the wake of the crusades, these networks had spread rapidly across the eastern shores of the Mediterranean, where they led to the creation of representative bodies tasked with looking

¹⁰ On all this, see D. Fedele, *Naissance de la diplomatie moderne (XIII^e-XVII^e siècles). L'ambassadeur au croisement du droit, de l'éthique et de la politique* (Baden-Baden: 2017), 83-174.

¹¹ See Moeglin and Péquignot, *Diplomatie*, 396-397.

¹² See E.H. Kantorowicz, *The King's Two Bodies* (Princeton: 1957), 290. On the *procuratores* see A. Sohn, "Les procureurs à la curie romaine. Pour une enquête internationale," *Mélanges de l'École française de Rome. Moyen Âge*, 114 (2002), 371-389, and S. Domínguez Sánchez, *Los procuradores de los reinos hispanos ante la curia romana en el siglo XIII* (León: 2007).

¹³ See R. de Maulde-La Clavière, *La diplomatie au temps de Machiavel*, vol. 1 (Paris: 1892), 327, and O. Poncet, "Les cardinaux protecteurs des couronnes en cour de Rome dans la première moitié du XVII^e siècle: l'exemple de la France," in: G. Signorotto and M. A. Visceglia, *La Corte di Roma tra Cinque e Seicento. "Teatro della politica europea"* (Rome: 1998), 461-480.

¹⁴ See Maulde-La Clavière, *La diplomatie*, 428-438, and Moeglin and Péquignot, *Diplomatie*, 407-408.

¹⁵ See I. Lazzarini, "I circuiti mercantili della diplomazia italiana nel Quattrocento," in: L. Tanzini and S. Tognetti eds., *Il governo dell'economia. Italia e Penisola Iberica nel basso Medioevo* (Rome: 2014), 155-177.

after the administrative and security needs of the merchant communities. Amongst the first to do this were the communities of Venice, Genoa, and Pisa, which in Constantinople obtained the privilege of keeping a consul endowed with the power of surveillance and jurisdiction over them.¹⁶ Since he was appointed by the authorities of his country of origin and in possession of a *lettre de provision*, the consul soon became more than just the legal authority of his colony, and gradually even gained enough power to be able to establish diplomatic relations between the authorities of his country and his host nation. Venice provides a perfect example of this: the Republic's permanent diplomatic agent in Constantinople was for many years not an actual ambassador, but the *bailo*.¹⁷

In Italy embassies sent by a commune but actually working in the interests of a private individual were also common: they were usually sought by merchants who requested public support for trials held outside the city, priests looking for advancement at the Roman Curia, or citizens who wanted to negotiate the release of prisoners. These embassies were so important that in the *Statuto del Podestà* approved in Florence in 1325 the rules pertaining to the concession of embassies to citizens intent on furthering private ends actually precede those on missions conducted in the interests of the commune. Venice, Perugia, Pisa, Padua, and Forlì had to deal with the same problem, and as early as the 13th century their statutes included restrictions on such embassies, particularly with regard to the expenses for their undertaking.¹⁸

Finally, the agents of some 15-century Italian *signorie* should be mentioned. In fact, political actors of dubious legitimacy sought, and obtained, political legitimation through diplomatic recognition of external powers. This process involved the creation of networks of trusted men operating outside the “official” diplomatic system. There are two well-known examples of this dynamic. In the 1450s, in Milan, Francesco Sforza set about creating a new diplomatic structure parallel to the “official” one and operated by agents called *famuli equitantes* (literally “riding servants”), who were paid a salary at his discretion and subject to his direct control.¹⁹ The other case is that of Florence, where, under the Medici, a system of personal diplomacy based on a network of agents directly controlled by the channels of the Medici bank developed alongside the “official” diplomatic channels—which had, in fact, already been brought under the direct control of the executive under the Albizzi.²⁰

A picture thus emerges of, on the one hand, a late-medieval juridical attempt to give diplomatic practice some legitimacy through legal circumscription—trying to make

¹⁶ See J. Ulbert, “La fonction consulaire à l’époque moderne: définition, état des connaissances et perspectives de recherche,” in: J. Ulbert and G. Le Bouëdec eds., *La fonction consulaire à l’époque moderne. L’affirmation d’une institution économique et politique (1500-1800)* (Rennes: 2006), 9-12.

¹⁷ See Maulde-La Clavière, *La diplomatie*, 323-324, and D.E. Queller, *The Office of Ambassador in the Middle Ages* (Princeton: 1967), 80-82.

¹⁸ See R. Fubini, “Diplomazia e governo in Firenze all’avvento dei reggimenti oligarchici,” in: idem, *Quattrocento fiorentino. Politica, diplomazia, cultura* (Pisa: 1996), 26, 36 and 46, and Gilli, “Ambassades”, 67-69.

¹⁹ See F. Senatore, “*Uno mundo de carta*”. *Forme e strutture della diplomazia sforzesca* (Naples: 1998), 25-83.

²⁰ See Fubini, “Diplomazia”, 81-92.

it a public prerogative, with the *legatus* (or *ambasciator*) its principal agent²¹—while on the other hand the diplomatic geography clearly remains diverse and complex, extremely fluid, and populated by a plurality of agents.

2 The literature on the ambassador in the Early Modern Period

This dialectic between law and practice also appears in the treatises which, from the 15th century on, and with increasing frequency from the mid-16th century, tackled the nature of embassy and the status of the ambassador. In contrast to the discussion generated by late medieval jurists, this literature—which rapidly spread throughout Europe—includes structured monographs, which began by defining the ambassador and then concentrated on his functions, duties, necessary qualities and knowledge, and on the procedures that regulated his missions. Here, too, we find a focus on the ambassador as an official envoy, enjoying the protections granted by the *ius gentium* and the privileges usually accorded by diplomatic protocol. Early Modern writers do, however, also consider other figures, the frequent use of whom seemed to necessitate their investigation, particularly in relation to their functions and legal status.

But before moving on to these aspects, it seems important to note that the figure of the ambassador himself as described in the premodern literature differed greatly from our modern concept. In the first place, at that time the right to send and receive ambassadors was not reserved to sovereign states²². Although, according to Bodin, “declaring war or making peace” is a “prerogative of sovereignty,”²³ and although occasionally we find in the writings on the ambassador declarations of principles that reserve the right to send and receive ambassadors to “sovereigns,”²⁴ all serious considerations of the question in the early modern period allowed the political structures of the time to emerge in all their complexity, unfettered by any strict concept of sovereignty. Alberico Gentili, for instance, recognized that even princes and cities subject to another power could enjoy this right; he refers explicitly to Genoa, then under Spanish sovereignty.²⁵ The religious civil wars stimulated debate amongst jurists like Gentili, François and Jean Hotman, Pierre Ayrault and, later, Hugo Grotius on the right of rebels to send ambassadors to their own, or other, rulers.²⁶ And throughout the 17th century, the right of the princes and cities of the Empire to send and receive ambassadors was a hotly

²¹ The term *ambasciator* is attested in northern Italy from at least the end of the 12th century, appearing, for example, in Accursius’ gloss *a legatis ad Cod.* 4.61.8 (which states: “idest Ambasciatoribus”); however, its use in the juridical texts is much less frequent than that of the term *legatus*.

²² See for example P. Volpini ed., “Ambasciatori ‘minori’ nella Spagna di età moderna. Uno sguardo europeo,” *Dimensioni e Problemi della ricerca storica* 1 (2014), 5-189.

²³ See J. Bodin, *On Sovereignty*, ed. and trans. J.H. Franklin (Cambridge: 1992), lib. I, c. 10, 57.

²⁴ Until the mid-17th century this term was rarely used. It is found only once in Carolus Paschalius, *Legatus*, 2nd ed. (Paris 1612), c. 11, 41; J. Hotman, who seems to have been the only author of the period who explicitly reserved the right to send and receive ambassadors to sovereigns, uses it somewhat more frequently: see J. Hotman, “De la charge et dignité de l’ambassadeur,” 4th ed., in: *Opuscules françoises des Hotmans* (Paris: 1616), 453-640: 464, 466, 549, 567, 572, 582 and 589.

²⁵ See A. Gentilis, *De legationibus libri tres* (London: 1585), lib. I, c. 4, 7.

²⁶ See D. Fedele, “The Renewal of Early-modern Scholarship on the Ambassador. Pierre Ayrault on Diplomatic Immunity,” *Journal of the History of International Law* 18 (2016), 465-467.

debated topic, extensively discussed by German authors like Hermann Kirchner, Hermann Conring and Gottfried W. Leibniz, as well as in the famous treatise by the Dutch diplomat Abraham de Wicquefort, *L'ambassadeur et ses fonctions* (1680-1681).²⁷ The sovereign state would in fact only be defined as the sole legitimate actor in international affairs after the second half of the 18th century, as can be seen in Emer de Vattel's *Le droit des gens* (1758).²⁸

Secondly, we must remember the close connection between politics and patronage in the early modern period, with the consequent multiplication of the tasks assumed by ambassadors in their official capacity. Numerous studies have been done on 16th- and 17th-century European diplomacy, in particular with regard to the ambassadors sent by the various states to the Roman Curia.²⁹ The general picture appears to be one of diplomats driven by personal interest and by the demands of their families, friends, clients, and sometimes their own rulers, to request a whole array of favours: church positions, prebends, money, marriage dispensations—favours which could well conflict with the official goals of their mission and involve ambassadors in corrupt activities or even treason. It is telling that Philip IV's future ambassador, Juan Antonio de Vera y Zúñiga, in his *El Enbaxador* (1620), having exhorted the ambassador to devote himself entirely to the interests of his ruler, nevertheless feels obliged to confront the issue of the numerous demands made of the ambassador in Rome. Vera's proposed solution appears to be a compromise between political pragmatism and moral aspiration: the ambassador should divide the affairs entrusted to him into three categories and make a different person responsible for each category. The orders of the king should be carried out by the ambassador himself; attention to the demands made by *particulares* should be delegated to a member of his staff; lastly, his personal affairs should be entrusted to one of the Spanish cardinals resident in Rome, in order that the ambassador not be directly involved, or even implicated, in any embarrassing situations.³⁰ This commingling of public affairs and personal interests, moreover, was not an issue only in dynastic monarchies like Spain, but also in mercantile republics like the United Provinces, where even in the first half of the 18th century the combining of diplomatic and mercantile functions was so common that Cornelius van Bijnkershoek devoted an entire chapter of his *De foro legatorum* (1721) to the immunity of the *legatus mercator*. In this chapter, immediately after

²⁷ See Fedele, *Naissance*, 350-361.

²⁸ See E. Jouannet, *Emer de Vattel et l'émergence doctrinale du droit international classique* (Paris: 1998), and P. Haggemacher, "L'État souverain comme sujet du droit international, de Vitoria à Vattel," *Droits* 16 (1993), 11-20.

²⁹ See C. Giry-Deleison and R. Mettam eds., *Patronages et clientélismes 1550-1750 (France, Angleterre, Espagne, Italie)* (Villeneuve d'Ascq and London: 1995), T. Osborne, *Dynasty and diplomacy in the court of Savoy. Political culture and the thirty years' war* (Cambridge: 2002), and H. von Thiessen, *Diplomatie und Patronage. Die spanisch-römischen Beziehungen 1605-1621 in akteurszentriert Perspektive* (Epfendorf and Neckar: 2010).

³⁰ J.A. de Vera y Cúñiga, *El Enbaxador* (Sevilla: 1620), discurso quarto, f. 75r-75v, and, on de Vera, M.V. López-Cordón Cortezo, "Juan Antonio de Vera y Zúñiga (1583-1658). Modello di ambasciatori o specchio di trattatisti?," in Andretta, Péquignot and Waquet eds., *De l'ambassadeur*, 337-361, and M. Merluzzi, "Juan de Vera e l'Italia. Dall'ispirazione letteraria alla pratica diplomatica," *ibidem*, 363-377, with further references.

mentioning the *Digesta*'s prohibition on the interference of a *legatus*' personal interests with his diplomatic mission, Van Bijkershoek recalls that two and a half centuries earlier an Italian jurist, Johannes Bertachinus, had noted that this prohibition was "not observed" in practice, and concludes by accepting that an ambassador can carry out his own business, as long as he ensures that his official mission remains his priority.³¹

It is clear that, despite the numerous different attempts made to normalize the role of the ambassador, authors on the subject were well aware of the existence of a plurality of both actors and interests. It is equally evident that they were aware of the plurality of diplomatic agents. In this connection, it is important to point out that for many of those authors the only genuine, official diplomatic agent was the "extraordinary" ambassador, i.e. the ambassador sent on specific occasions, to deliver a message, participate in a ceremony, or negotiate a treaty. The "ordinary" (or "resident") ambassador, on the other hand, who from the 15th century onwards had been sent on missions for a longer, often indeterminate, period, was frequently regarded with suspicion both in diplomatic practice and in theory, and sometimes definitely considered a "spy," at least until the 17th century.³² But, in addition to the "extraordinary" and the "ordinary" ambassador, other kinds of envoys are considered in this literature. Of these, the most often discussed are the agents sent on secret missions (especially merchants) and the consuls. Of greatest concern is, on the one hand, the function assigned to such agents, and, on the other, their legal status and the question of whether they are protected under *ius gentium*. Let us consider some examples.

The importance of news and intelligence gleaned by merchants during their travels is emphasized by Alberico Gentili in a short passage in the first chapter of his *De iure belli* (1598). Gentili examines the question from an unusual perspective, since he considers such intelligence to be key to the understanding of *ius gentium*:

It is true that traders, ... busied as they are with their traffic, are careless about the truth and are in the habit of saying many things in a spirit of vainglory. Nevertheless, much that is true has been learned from them, and they surely did not disregard this subject of *ius gentium*, which was of the greatest importance both for merchants and for their traffic; for commerce is regulated by *ius gentium*. Thus, then, knowledge could be gained of all peoples, thus *ius gentium* could be defined, thus many other matters could be settled.³³

³¹ See C. van Bynkershoek, *De foro legatorum* (Leiden: 1721), c. 14, 99-100, with a quotation from *Dig.* 50.7.9.2 and reference to Johannes Bertachinus, s.v. "Ambasiator," *Repertorium juris. Pars prima*, ed. Jean Thierry (Lyons: 1552), f. 56vB. Bertachinus' *Repertorium* was written in the 1470s and published in 1481.

³² On the development of "resident" diplomacy, the emergence of the terms "extraordinary" and "ordinary" ambassador, and the suspicions raised by "ordinary" ambassadors, see D. Fedele, *Naissance*, 325-335. The first author to mention "residents" ambassadors was E. Barbaro, *De officio legati* (1489), in idem, *De coelibatu. De officio legati*, ed. V. Branca (Florence: 1969), p. 159: "Non habet praefinitum aliquod tempus huiusmodi legatio, sed apud nos anno fere concluditur." "Resident" ambassadors are considered as spies in H. Kirchnerus, *Legatus* (Lich: 1604), lib. I, chap. 2, 25-26, n. 19-22: "Verum hos [viz. Residentes Legatos] Legatorum in classe propria censere non possumus, cum non tam negotii quam relationis, ut vocant, gratia missi, neque legati potius, quam speculatores, neque ex legati Jure, sed ex pacto singulari utriusque partis missi, variis de causis, ut sint nonnumquam aut foederis inter potentes, tanquam obsides."

³³ See A. Gentili, *De iure belli* [1598], trans. J.C. Rolfe (slightly modified) (Oxford and London: 1933), lib. I, c. 1, 9.

If everyday political and commercial relations, as well as the legal sources, are considered valid bases for an investigation of *ius gentium*, the information that comes from merchant circles can be combined with the writings of the ancient and modern historians extensively cited by Gentili and make an important contribution to the debate.

Charles Paschal, an Italian—although naturalized French—diplomat who carried out various missions under Henry III (1574-1589), Henry IV (1589-1610), and the Regency subsequent to the murder of the latter, gives us a broader perspective.³⁴ In his *Legatus* (1598; second edition 1612), he makes extensive use of classical historical and literary sources in a discussion of the functions of the “bearers of a caduceus” (*caduceatores*) and the heralds (*praecones*), which were primarily to convey declarations of war, participate in the ceremonies related to the conclusion of treaties, carry messages, participate in the negotiation of truces, and announce the arrival of ambassadors. Paschal claims that these envoys were considered the equivalent of ambassadors (*legati*) and he maintains, on the basis of various ancient examples, that they should enjoy exactly the same legal protection.³⁵ Furthermore, this protection must also be extended to other, lower-ranking envoys, like the trumpet players and drummers, the couriers and military messengers, and the notaries who, given the sensitive nature of their functions, are protected by the right of war, even on enemy territory.³⁶ For Paschal, therefore, the term *legatus* had a wide range of meanings: although technically the designation for fully accredited ambassadors, it also included a multitude of minor envoys who did not enjoy the honours and rank of the former, but, as public envoys, could nonetheless be called *legati* and thus enjoy some of the benefits of their status.³⁷

Then there are those who were sent neither as *legati*, nor with any other public title, but were required to fulfil a diplomatic role anyway. These were the secret agents, “through whom public matters are settled in secret.”³⁸ While he mentions both exiles and prisoners,³⁹ Paschal considers merchants to be ideal for this role, since they are drawn to distant parts in their search for riches and “they do not fear arrest, and, if they are arrested, they do not blush.”⁴⁰ This remark seems to indicate that Paschal believes these agents not to have diplomatic status; yet, his assertion that they “are also counted as ambassadors”

³⁴ See F. Barcia, “La figura dell’ambasciatore nei trattati di Charles Paschal e Jean Hotman de Villiers,” *Trimestre* 36 (2003), 25-42.

³⁵ See Paschalius, *Legatus*, c. 4, 12, 15: “Caduceator sive praeco saepe dicitur legatus; ac revera talis est. ... Omnes caduceatores religiosa antiquitas vel inter medios armorum flictus praestitit inviolabiles respectu iuris gentium.”

³⁶ *Ibidem*, c. 5, 18: “qui [viz. Araldi] quoties violantur, eadem juri gentium vim fieri constat. ... Istis annunero tubicines, aeneatores, tympanistas, tabellarios, aliosque militares nuncios & libelliones, quos jura belli, vel ipsa inter hostium agmina tutos praestant.”

³⁷ *Ibidem*, 20: “E superioribus conficitur, late patere appellationem legati. Nam etsi proprie demonstrat illos, qui honestantur hoc tanto nomine, quique sunt circumfusi illo splendore qui legationis proprius est, tamen & illos quoque amplectitur, quos sola huius ministerij fidelitas commendat, cuiusmodi sunt feciales, caduceatores, tubicines, alijque publici nuntij, qui ... quodammodo dici possunt legati, sed me Hercule minores, multumque infra dignitatem illorum.”

³⁸ *Ibidem*, c. 7, 24.

³⁹ *Ibidem*, 25.

⁴⁰ *Ibidem*, 24: “Huic muneri mercatores existimantur idonei. Nam obtentu quaestus delati ad longinqua neque ne deprehendantur, timent, neque deprehensi erubescunt.”

suggests otherwise.⁴¹ Moreover, notwithstanding the numerous ancient examples that always accompany his arguments, a reference to the situation of the time explicitly criticizes the use of such agents in a Europe riven by religious warfare.⁴²

Jean Hotman—son of the famous jurist François, secretary to the Earl of Leicester and then a diplomat in the service of Henry IV—also mentions a plurality of diplomatic envoys in the second edition of his treatise on the ambassador (1604).⁴³ He begins by drawing a distinction between “ambassadors” and “agents,” pointing out that the latter are sent by “non-sovereign rulers, or those who are much inferior to monarchs and the great republics”: although they must be recognized as “public persons” and, as such, enjoy the protection of *ius gentium*, these agents are not accorded either the same honours, or the same powers, as ambassadors.⁴⁴ So, explains Hotman,

it seems that we can even include among the agents and ambassadors those who are sent to a State to negotiate secretly with certain of the highest counsellors, with the agreement, however, of the head of the corps and all its members, by whom they are recognized and admitted under the name, and in the capacity, of *pensionnaires*.⁴⁵

If they are formally admitted by the authorities of the host country, secret agents then enjoy at least partial protection. The circumstances that might justify the secrecy of such missions are not specified, but Hotman’s mention—writing in the early years of the 17th century—of the “religious differences” between the countries concerned and of “certain reasons of State” gives us some indication of his opinion.⁴⁶ He recalls that Venice was no stranger to the secret agents of Elizabeth I (1558-1603) and the German Protestant princes. And, more importantly, in a passage added to the third (1613) edition of his treatise, he recalls a famous case, from 80 years earlier and much discussed both in the literature on the ambassador and elsewhere: that of Giovanni Alberto Meraviglia—born in Milan but for more than 25 years in the service of the king of France—who, in 1532, was sent by Francis I (1515-1547) to Milan as a semi-official, semi-secret agent.⁴⁷ His

⁴¹ Ibidem, 24. In fact the passage by Paschal is not clear, and both opinions were attributed to him in the subsequent decades: see *infra*, notes 61 and 63.

⁴² Paschalius, *Legatus*, c. 7, 25: “Hasce quoque legationes non frequentius obeunt alij, quam immanes quidam lupi, qui cultu pastorum evertunt disiectantque haedilia, ut oves deglubant. Nam quo pertinent tot itiones ac reditiones, cursus & recursus, quibus negotium religionis aut pacis impie obtenditur? cum interim ob saevos horum laniatus Christiana Respublica iamdiu lacera aspiciatur ac deformata?”

⁴³ Four editions of Hotman’s treatise were published, in 1603, 1604, 1613, and 1616. An English translation of the first edition was published in 1603, and reprinted in 1609. Since some of the passages from which I quote were only added in the later editions, for the sake of coherence I have not used this translation of the passages that were already included in the first edition. On Hotman, see Barcia, “La figura,” and M. Garloff, *Irenik, Gelehrsamkeit und Politik. Jean Hotman und der europäische Religionskonflikt um 1600* (Göttingen: 2014).

⁴⁴ See S. de Villiers Hotman, *De la charge et dignité de l’ambassadeur*, 2nd ed. (Paris: 1604), f. 4r (the first edition does not contain this passage).

⁴⁵ Ibidem, f. 5r-5v.

⁴⁶ Ibidem, f. 5v.

⁴⁷ See J. Hotman, *De la charge et dignité de l’ambassadeur*, 3rd ed. (Düsseldorf: 1613), 11. The Venetian ambassador to the court of Francis I, although he mentioned the king’s letter to the Duke of Milan, maintained that Meraviglia had not been sent to Milan on official business: “il scudier over capitano Meraveia milanese gentilhomio di camera di questa Maestà è stà licentiato per andar a Milan non per negotio

presence put Francesco II Sforza (1515-1535) in an awkward position, and, under heavy pressure from the Emperor, the duke ordered that the agent be kept under surveillance. When, on 4 July 1533, following a dispute, some of Meraviglia's followers killed Giovanni Battista Castiglioni, the duke used the incident as a pretext for arresting and beheading Meraviglia. The French king immediately denounced the execution of his "resident ambassador," prompting Sforza to reply that Meraviglia had never presented his credentials at court and had therefore lived in Milan as a private gentleman; moreover, since the man was a criminal and a Milanese subject to boot, he, the duke, had every right to punish him. From the French came the retort that Meraviglia was accredited and enjoyed diplomatic status; Francis I even went so far as to say that he "intended to go to war," since this killing had "violated the *ius gentium*."⁴⁸ All that summer, this volley of accusations filled the missives and busied the chancelleries of Europe, but Francis I gained nothing by it. The case, however, resurfaced when hostilities again broke out between France and the Empire, first in 1536, and then in 1542.⁴⁹

The Meraviglia case owed its fame largely to a detailed account of it in the *Mémoires* of the Du Bellay brothers.⁵⁰ The French jurist Pierre Ayrault later referred to it in his *De l'ordre et instruction iudiciaire* (1576), in which, making the case for complete diplomatic immunity and formulating, for the first time, a fully elaborated doctrine of the

publico ma per soe facende, con lettere dil re a quel duca" (Marino Sanuto, *I Diarii*, vol. LVII, ed. G. Berchet, N. Barozzi and M. Allegri (Venice: 1902), col. 203, dispatch received in Venice on 6 November 1533). Meraviglia's letter of credentials, dated 9 October 1532, was published by Paul-Michel Perret, *Notes sur les actes de François I^{er} conservés dans les archives de Turin, Milan, Gênes, Florence, Modène et Mantoue* (Paris: 1888), 36, and reveals the ambiguity of the agent's status. On the one hand, he is described as one of the king's *gentilhommes de chambre* and charged with giving the Duke information about the king; on the other, his travels are declared to be for private matters, although still under the protection of Francis I: "Mon cousin. Allant presentement par delà Merveilles, gentilhomme de ma chambre, porteur de cestes pour aucunes ses affaires, je vous ay bien voullu escripre la presente par luy et luy donner charge de vous dire de mes nouvelles dont je vous prie le croire. Et si, au demourant, il a besongner de vostre bon aide et faveur en ses dictes affaires, vous me ferez très singulier plaisir de l'avoir pour recommander ..." According to Edoardo Rossetti, s.v. "Meraviglia, Giovanni Alberto", *Dizionario Biografico degli Italiani*, vol. 73 (Rome: 2009), http://www.treccani.it/enciclopedia/giovanni-alberto-meraviglia_%28Dizionario-Biografico%29/, Meraviglia's official task was to bring specialized wool workers to France, and to set up a trade in tapestries, valuable textiles and sumptuary goods; in fact, Meraviglia had been given unofficial instructions to keep an eye on the situation in Milan and nourish the hopes of the French faction, in order to facilitate any move the King might make to retake the Duchy—which had been under the protection of the Emperor Charles V since 1521—if Francesco II were to die without an heir.

⁴⁸ See F. Gaeta ed., *Nunziature di Venezia, volume primo (12 marzo 1533 – 14 agosto 1535)* (Rome: 1598), 107 (letter of the Papal Nuncio in Venice, Girolamo Aleandro, to Jacopo Salviati, dated 18-19 August 1533).

⁴⁹ As well as Rossetti's entry cited *supra*, note 47, see M. et G. Du Bellay, *Mémoires*, eds. V. Bourilly and F. Vindry, vol. 2 (Paris: 1910), 206-225, and V. Bourilly, "Les diplomates de François I^{er}. Maraviglia à Milan (1532-1533)," *Bulletin italien* 6 (1901), 133-146, who published some letters and documents from the archive. Among recent studies, see L. Frey and M. Frey, *The History of Diplomatic Immunity* (Columbus: 1999), 131-132, and S. Duc, "L'impuissance de l'outrance: entre Milan, la France et l'Espagne, l'affaire Meraviglia (1533)," in: E. Vivet ed., *Négociations d'hier, leçons pour aujourd'hui* (Bruxelles: 2014), 97-106.

⁵⁰ According to the Du Bellay brothers, Sforza, in fact, had asked Francis I to send him a diplomat and had suggested that, in order not to arouse the suspicions of Charles V, he be sent not as an ambassador, but as a private person travelling on his own business: Du Bellay, *Mémoires*, 208.

extraterritoriality of the ambassador, he cited the fate of the “equerry Meraviglia, whom [the duke of Milan], to please the Emperor Charles, ordered to be falsely accused and punished as a murderer.”⁵¹ The key issue was obviously the uncertain status of these envoys: it was unclear whether or not they could enjoy the immunity accorded to ambassadors. Meraviglia’s case was further complicated by the fact that he had been sent to the territory of his natural lord, which raised serious questions with regard to the right of ambassadors themselves to diplomatic immunity.⁵²

Jean Hotman mentions the case in his discussion of secret agents, where he states that Meraviglia “had been in the secret employ of King Francis I in Milan, but this fact was still known to the Duke.”⁵³ He also returns to it during his discussion of diplomatic immunity, where, citing it in conjunction with two other occasions upon which ambassadors had been sent to their natural lord, he comments that “it was an indiscretion on the part of these three princes to give such men those positions, and it was folly on the part of the men to accept them, since the consequences for all were bad.” Siding with the French, however, he hastens to add that Francis I was right to protest, “because once Sforza had admitted and received Meraviglia as the Ambassador of France, as the King clearly proved with a letter from Sforza himself, it was no longer possible to treat him as one of his own subjects”; Sforza had thus acted “contre la loy des gens.”⁵⁴

In addition to dealing with secret agents, Hotman also mentions the consuls⁵⁵. In the second edition of his treatise, he even affirms that his inclusion of the consuls among the agents and ambassadors is “courageous,” as if this opinion was eccentric and unique.⁵⁶ He then explains that it is based on the fact that

princes approve their nomination, and authorize and recommend them in their letters, and that, when there is no ambassador, they give advice and sometimes assume their duties, in some cases with considerable success, as has been seen, in some places, in these our times.

Giving us an interesting insight into the diplomacy of his time, Hotman notes in particular that

the Venetians maintain consuls in Cairo, Aleppo, Rashid, Alexandria and in other important towns and cities, which is greatly to their advantage, because as well as the knowledge that they gain periodically of the prices of goods, through the consuls they receive intelligence from all over the world, at which activity they exceed all other States and Republics.⁵⁷

⁵¹ See P. Ayrault, *De l'ordre et instruction iudiciaire* (Paris: 1576), f. 55r-55v, which actually quotes the *Mémoires* of the Du Bellay as its source. On the extraterritoriality of the ambassador in Ayrault, see Fedele, “The Renewal,” 449-468.

⁵² See Fedele, *Naissance*, 416-422.

⁵³ See Hotman, *De la charge*, 11.

⁵⁴ *Ibidem*, 205. This passage was also contained in the first edition, Sieur de Vill. H[otman], *L'ambassadeur* (s.l.: 1603), 99-100.

⁵⁵ Already in the first edition: see Sieur de Vill. H., *L'ambassadeur*, 6. Hotman seems to be the first author to deal with the consuls among the authors of treatises on the ambassador.

⁵⁶ See Hotman, *De la charge*, 2nd ed. (1604), f. 5v.

⁵⁷ *Ibidem*, f. 5v-6r.

Hotman therefore recognizes the consuls' diplomatic role, and the fact that they can be accredited by the authorities of their State leads him to maintain that they can enjoy a diplomatic status at least equal to that of the agents. It must be said, however, that such an opinion was indeed rather radical at the time, since, as we will see, its contrary would continue to prevail in subsequent decades and the consul was usually not considered to be a diplomatic agent.⁵⁸

The debate on the use of secret agents continued throughout the 17th century, without, however, unravelling the knotty issue framed by the authors we have so far considered. In his *Introduzione alla Politica, alla ragion di Stato et alla pratica del buon governo* (1614), the third book of which is entirely devoted to the ambassador, Pietro Andrea Canonieri explains that secret agents are dispatched when it is feared that an ambassador will not be received; such agents can prove useful as secret negotiators. Echoing Paschal, he recalls that merchants are considered most suitable for this task, since they can operate as agents while pretending to go about their own business, and are, moreover, often used in times of war to carry letters between rulers.⁵⁹ The German jurist Christoph Besold, in the first part of his *Spicilegia politico-juridica* (1624), on the subject of the ambassador, cites Paschal and Hotman, although he claims that the "Capuchins, Jesuits and other wandering monks" are even more suitable than merchants.⁶⁰ Besold's refusal to describe such agents as *legati*⁶¹ does not necessarily mean that he believes they should enjoy no protection. In fact, when he later discusses the Meraviglia case—citing not only the Du Bellay *Mémoires* and Hotman's treatise, but also Montaigne's *Essais*, Jacques Auguste de Thou's *Historiae sui temporis*, and the *Histoire des Guerres entre les deux Maisons de France et d'Espagne* by Pierre Victor Palma Cayet, thus demonstrating the impact that the case had made—Besold accepts that, although Meraviglia had been a "secret agent," he should have been inviolable, and that Sforza's punishment of him for supposedly having been implicated in a murder was carried out to please the Emperor, while Meraviglia should actually have been punished, if punishment were deserved, by the king who had sent him on his mission.⁶²

A contrasting, and quite rigid, approach to the question is adopted by Juan Antonio de Vera y Zuñiga in *El Enbaxador* (1620), where he reproves Paschal for having

⁵⁸ Hotman's opinion was however developed in a discourse given in 1618 by Pierre de Cormis, *avocat général* of the Provençal Parliament: see G. Poumarède, "Naissance d'une institution royale: les consuls de la nation française en Levant et en barbarie au XVI^e et XVII^e siècles," *Annuaire-Bulletin de la société de l'histoire de France* (2001), 95.

⁵⁹ See P.A. Canoniero, *Dell' introduzione alla politica, alla ragion di stato e alla pratica del buon governo libri diece* (Antwerp: 1614), lib. III, c. 2, 184, and, on Canonieri, S. D'Alessio, *Per un principe "medico pubblico."* *Il percorso di Pietro Andrea Canoniero* (Scandicci: 2013).

⁶⁰ See C. Besoldus, "De Legatis, eorumque Jure," in: idem, *Spicilegia politico-juridica* (Strasbourg: 1624), c. 2, § 7, 16, and, on Besold, L. Boehm, "Christoph Besold (1577-1638) und die universitäre Politikwissenschaft seiner Zeit. Zum Bildungs- und Erfahrungshorizont seiner Staatslehre," in: C. Besold, *Synopse der Politik*, C. Cosmann trans., L. Boehm ed. (Frankfurt am Main and Leipzig: 2000), 291-332.

⁶¹ Besoldus, "De Legatis," c. 2, § 7, 16: "Legati non sunt, qui secreto mittuntur, ut occulta negotia tractent." He attributes the same opinion to Paschal, *ibidem*, 17: "Eos Paschalius, *cap. 7. Legatos nullo nomine vocat.*"

⁶² *Ibidem*, § 27, 76-77.

accorded secret agents the status of *legati*. In Vera's opinion, such agents should never be used, nor should they enjoy any protection, since to claim otherwise would mean to negate "the basis, definition, and very nature of embassy."⁶³ An ambassador is a minister of peace, he declares himself openly and gives himself into the protection of the ruler to whom he has been sent, trusting in the public office that he is going to exercise. The secret agent, in contrast, is a "minister of deceit and division" and therefore if—upon realizing that he is being spied upon, and thus offended—a ruler punishes him, the latter cannot be accused of having violated the *ius gentium*.⁶⁴

Anastasio Germonio—a jurist and diplomat from Piedmont and author of *De Legatis Principum & Populorum*, a treatise published in 1627—might be said to sit on the fence: he considers that merchants employed as agents can only enjoy diplomatic status in the territory to which they have been sent if they have been accredited as ambassadors. However, they do enjoy such status in the territory of the ruler by whom they have been sent, thereby obtaining, for example, the right to be considered to be absent *rei publicae causa*, or to compensation for any damages suffered in the course of a mission. Moreover, although they must focus primarily on the goals of their mission, the prohibition on conducting private business while abroad in such a capacity does not apply to them, because if it did they would immediately be discovered and would therefore be of no use to the ruler by whom they had been sent.⁶⁵

The question of agents, it must be admitted, is not resolved in the literature on the ambassador, for all the reams of paper devoted to it. The thorny issue of their entitlement to inviolability and diplomatic immunity remains, since these benefits can only be guaranteed when an envoy has been officially accredited, and is thus recognized as exercising a public office.⁶⁶ Their usefulness, however, continues to be acknowledged, especially as secret negotiators, or in the preparatory stages of negotiations, the final stages of which are then handled by a fully accredited ambassador.⁶⁷ At the end of the

⁶³ See de Vera y Çuñaiga, *El Enbaxador*, discurso primero, f. 27r-27v: "Enpero, me maravillo que Pascualio en el cap. 7 diga, que el mercader que va a espiar, o a llevar cartas, o a disponer rebeliones, sea Legado en sustancia, sino en nonbre ...".

⁶⁴ *Ibidem*, f. 28v.

⁶⁵ See A. Germonius, *De Legatis Principum, & Populorum* (Rome: 1627), lib. I, c. 6, 32-35, and, on Germonio, A. Lupano, s.v. "Germonio, Anastasio," in: I. Birocchi et al., *Dizionario Biografico dei Giuristi Italiani* (Bologna: 2013), 972-973.

⁶⁶ See in particular the argument set out in A. de Wicquefort, *L'ambassadeur et ses fonctions* (The Hague: 1680-1681), lib. I, c. 11, 275-78 on the Meraviglia case (transl. Mr Digby, *The Ambassador and His Functions* (London: 1716), 84-85); a more general discussion of "ministres du second ordre" is found *ibidem*, lib. I, c. 5. On Wicquefort, see S. Externbrink, "Abraham de Wicquefort et ses traités sur l'ambassadeur (1676-1682). Bilan et perspectives de recherche," in Andretta, Péquignot and Waquet eds., *De l'ambassadeur*, 405-430.

⁶⁷ For example by P. de Béthune, *Le conseiller d'Etat, ou Recueil des plus generales considerations servant au maniment des Affaires publiques* (Paris: 1633), pars I, c. 49, 276-277. On secret agents, see A. Hugon, *Au service du Roi Catholique: "honorables ambassadeurs" et "divins espions". Représentation diplomatique et service secret dans les relations hispano-françaises de 1598 à 1635* (Madrid: 2004), pars 3, M. Haehl, *Les affaires étrangères au temps de Richelieu. Le secrétariat d'État, les agents diplomatiques (1624-1642)* (Bruxelles: 2006), 290-291, and L. Bély, *Espions et ambassadeurs au temps de Louis XIV* (Paris: 1992).

17th century, for instance, François de Callières returns to the question of secret agents in his *Manière de négocier* (1716), emphasizing the advantages (secrecy and a reduced need for ceremony) of using them rather than ambassadors, and pointing out that both the Peace of Munster and that of Rijswijk had been negotiated by secret envoys.⁶⁸

The 17th century debate on the consuls, on the other hand, reveals the inherent ambiguity of their role, divided as it was between the protection and administration of the merchant community and the safeguarding of the interests of their country of origin.⁶⁹ This lack of clarity as to whether they are to be classified as private agents or genuine diplomats is the nub of the issue debated by the various authors. Gregorio Leti, author of the monumental *Ceremoniale historico et politico* (1685), declares that a consul cannot be called a diplomat, since his charge is to serve the interests of the merchant community rather than those of his ruler.⁷⁰ Abraham de Wicquefort also denies the right of consuls to be considered “publick Ministers,” citing some examples of actual diplomatic practice and defining them simply as “Merchants” who enjoy “those Rights and Privileges which Custom has bestow’d on this kind of Employment.”⁷¹ François de Callières, however, although not considering them to be “ministers,” accepts that they can enjoy “certain privileges, and the public security which the Law of Nations allows to ministers.”⁷² And Louis Rousseau de Chamoy goes so far as to define them as “public persons” who, like the other agents sent by rulers to foreign courts, “must enjoy the privileges and protection of the law of nations.”⁷³ Various 18th- and 19th-century authors considered this question, including Bijkershoek, von Martens, and Vattel,⁷⁴ without definitely deciding it; and although the Vienna Convention of 1963 determined the privileges to which consuls are entitled, some ambiguities remain, even today, with regard to their functions.⁷⁵

We can thus conclude that, although premodern diplomatic theory was largely focused on questions regarding the official, fully accredited ambassador, jurists and political thinkers were also, at times, required to consider the status of other (semi-official or secret) figures, who were very often entrusted with essential tasks in diplomatic practice and whose employ inevitably raised a wide range of questions.

⁶⁸ See F. de Callières, “De la manière de négocier avec les souverains” [1716], in J.-C. Waquet, *L’art de négocier en France sous Louis XIV* (Paris: 2005), c. 22, 260-261. The text was written by Callières in 1697, while actually negotiating the peace of Rijswijk, but only published in 1716.

⁶⁹ See P. Volpini, “La trattatistica sulla figura del console nella prima età moderna. Spunti di ricerca,” in M. Aglietti et al. Eds., *Los cónsules de extranjeros en la Edad Moderna y a principios de la Edad Contemporánea* (Madrid: 2013), 43-44.

⁷⁰ See Gregorio Leti, *Il ceremoniale historico, e politico* (Amsterdam: 1685), pars I, lib. I, 283-286.

⁷¹ See Wicquefort, *L’ambassadeur*, lib. I, c. 5, 132-133, transl. *The Ambassador*, 40.

⁷² See Callières, “De la manière,” c. 6, 206, trans. M.A. Keens-Soper and K.W. Schweizer, *The Art of Diplomacy* (New York: 1983), 105.

⁷³ See L. Rousseau de Chamoy, *L’idée du parfait ambassadeur*, préface de Louis Delavaud (Paris: 1912), 13-14. This text, published only in 1912, was written in 1697.

⁷⁴ See G. Poumarède, “Le consul dans les dictionnaires et le droit des gens: émergence et affirmation d’une institution nouvelle (XVI^e-XVIII^e siècles),” in: Ulbert and Le Bouëdec, *La fonction consulaire*, 23-36, and the texts cited by M. Vec, “L’ambassade dans la science du droit des gens, 1750-1830,” in: Andretta, Péquignot and Waquet eds., *De l’ambassadeur*, 517.

⁷⁵ See M. Okano-Heijmans, “Consular Affairs,” in: A.F. Cooper, J. Heine and R. Thakur eds., *The Oxford Handbook of Modern Diplomacy* (Oxford: 2013), 473-492.

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