

Emperor Frederick II (1194–1250) and the political particularism of the German princes

Benjamin Arnold

Department of History, University of Reading, Whiteknights, PO Box 218, Reading, Berks RG6 6AA, UK

Abstract

Emperor Frederick II is generally regarded as having been a 'strong' ruler, yet the puzzle remains as to how he managed his governance of Germany without the benefit of the more centralized institutions with which he was familiar as king of Sicily. This article seeks to show that the emperor understood almost to perfection what could or could not be achieved as ruler of the Germans, and that the copious legislation of his reign can be analysed to show that his principles of governance for Germany demonstrated sound political sense. © 2000 Elsevier Science Ltd. All rights reserved.

Keywords: Emperor Frederick II; Medieval Germany; Governance

1.

Eight centuries ago the year 1194 witnessed a series of political and dynastic successes for the ruler of the western Roman Empire, Henry VI (1190–1197). In the spring he released from captivity King Richard of England (1189–1199) in return for a huge ransom and the submission of the English kingdom as a fief of the Empire. Early in the summer the emperor was in Italy with his army, and by autumn he had conquered the Norman kingdom of Sicily which he claimed as the inheritance of his spouse, the last surviving legitimate member of the Norman royal line. On Christmas Day he was crowned king of Sicily in Palermo Cathedral, and the very next day Empress Constance, who had stayed behind at Jesi in central Italy, gave birth to their heir, the future emperor Frederick II.¹

After an extremely perilous early career during which he survived the plots of several adventurers, politicians, and churchmen who took advantage of the fact that

BENJAMIN ARNOLD is Professor of Medieval History at the University of Reading. He is the author of four books and numerous articles on medieval German history.

¹ Theodor Toeche, *Kaiser Heinrich VI.* (Darmstadt, 1965) (reprint of *Jahrbücher der deutschen Geschichte* edition, Leipzig, 1867), 290–98, 331–346.

he had lost both parents by the age of four,² this child turned into one of the most admired and hated of all the powerful rulers in thirteenth-century Europe,³ whose political grasp of, and professional application to his rights, duties, and inheritances certainly matched the expertise of his contemporaries such as Louis IX of France (1226–1270), Ferdinand III of Castile (1217–1252), and Jaime I of Aragon (1213–1276).

By 1986 the German scholar Carl Willemsen had completed his catalogue of over 2,000 titles of books, articles, and other material mostly published since 1850 about Frederick II and his immediate descendants.⁴ So it may appear presumptuous to offer yet another paper on the subject of this ruler. The motive is to examine one aspect alone of Frederick II's energetic career which is under-represented in the literature; his political management of the German kingdom to which he was re-elected in 1211 and 1212, the kingdom which his family, the Staufen ducal dynasty from Swabia, had considered theirs by right ever since the demise of their imperial forbears, the Salians, in 1125.⁵

Modern historians generally regard Frederick II's father and grandfather, Henry VI and Frederick I Barbarossa (1152–1190) as successful rulers of Germany⁶ and we know that Frederick II specifically appealed to their example, legacy, and memory in his own political and administrative management of the German kingdom.⁷ Yet Frederick II's own reign is often regarded as the end of the road for the Staufen version of German royal governance because the kingdom collapsed under papal pressure into civil conflicts and rival royal elections in the 1240s: the Staufen dynasty lost the throne, its fisc, and most of its political support in the 1250s: and then it was virtually exterminated by Charles of Anjou, the new king of Sicily (1266–1285) in the 1260s.⁸ Why was it that so powerful a figure as Frederick II was eventually betrayed by his own princes and bequeathed little more than memories to Rudolf of Habsburg, who reigned in Germany from 1273 to 1291, and considered himself to be the political heir of his mentor Frederick II, of Staufen governance, and of the Staufen duchy of Swabia?⁹

There are at least three major problems which need to be considered in explaining

²David Abulafia, *Frederick II. A medieval Emperor* (London, 1988), 93.

³General guidance from Wilhelm Koch and Hans Martin Schaller, 'Friedrich II.' with bibliography in *Lexikon des Mittelalters*, ed. R.-H. Bautier etc., vol. 4 (Munich and Zurich, 1989), cols. 933–939.

⁴Carl A. Willemsen, *Bibliographie zur Geschichte Kaiser Friedrichs II. und der letzten Staufer*, Monumenta Germaniae Historica (hereafter MGH), Hilfsmittel vol. 8 (Munich, 1986).

⁵See Klaus Schreiner, 'Die Staufer als Herzöge von Schwaben', in: *Die Zeit der Staufer, Geschichte, Kunst, Kultur*, Katalog der Ausstellung im württembergischen Landesmuseum Stuttgart, vol. 3 (Stuttgart, 1977), 7–19.

⁶E.g. the assessment in Horst Fuhrmann, *Germany in the High Middle Ages c. 1050–1200*, transl. Timothy Reuter, Cambridge Medieval Textbooks (Cambridge, 1986), 135–86.

⁷E.g. in *Constitutiones et acta publica imperatorum et regum*, ed. Ludwig Weiland, MGH Legum iv, vol. 2 (Hanover, 1896), no. 71, p. 83 (1220), no. 196, p. 243, (1235), no. 204, p. 274 (1236), and no. 260, p. 357 (1245).

⁸Abulafia, *Frederick II*, 375–428.

⁹Oswald Redlich, *Rudolf von Habsburg. Das deutsche Reich nach dem Untergange des alten Kaisertums* (Aalen, 1965) (reprint of the Innsbruck, 1903 edn.), 127: Rudolf war nicht bloss Friedrichs II. treuer Vasall gewesen, sondern auch sein Schüler.

the achievements and limitations of Frederick II's rule over Germany. The first is raised by the fact that he was, after 1220, an absentee king. He arrived in Germany in 1212 to fight a civil war with Emperor Otto IV (1198–1214), who had seized control from the Staufen upon Philip of Swabia's assassination in 1208.¹⁰ He had established his claim by 1215 when he was re-crowned at Aachen as *rex Romanorum*, or King of the Romans, the official title of the German ruler since the late eleventh century.¹¹ He worked diligently to restore the prerogatives and possessions of the crown, as Wilhelm Stürner's fine new study of Frederick's early years adequately demonstrates from the sources.¹² But Frederick was more than a German king. Throughout his career he was convinced that God had called him to fulfil the duties and ambitions of his imperial progenitors:¹³ to rescue Jerusalem from the authority of the sultans of Egypt; to govern his Italian and Sicilian kingdoms as well as Germany and Burgundy; to assume the imperial crown and title as the leading ruler in Christendom; and in cherishing true religion and the Catholic Church, to offer the necessary counterweight to the new temporal ambitions of the papacy with its growing monarchical tendency in European affairs.¹⁴

In 1220 Frederick II therefore left for Rome and his imperial coronation, and thereafter regarded his rich Sicilian kingdom as the realistic basis for all his operations as crusader, emperor, and rival of the papal curia.¹⁵ As we shall see, the emperor revisited Germany twice between 1235 and 1237 when a new political settlement was worked out after the rebellion of his heir. It is easy to see why the emperor's complex aims turned him into an absentee ruler of Germany. Later we shall have to decide whether this was a genuine source of political weakness, given the peculiar structure of the German realm. It may be of value to draw a comparison here with the English kingdom. Until the best part of their Norman and Angevin dominions were lost to the king of France in 1204, the kings of England spent very much of their reigns absent from the island without perceptibly diminishing the authority of the crown and the expansion of its business.¹⁶ It is true that regal institutions in Germany and England were different, but the point is that English royal authority does not seem to have been enervated by absentee kings.

The second problem to be addressed is whether Frederick II, his advisers, and the regents to whom he delegated the powers of the German crown made specific mis-

¹⁰Bernd Ulrich Hucker, *Kaiser Otto IV.*, MGH Schriften, vol. 34 (Hanover, 1990), 291–357, on the downfall of Otto IV.

¹¹Abulafia, *Frederick II*, 120–122.

¹²Wilhelm Stürner, *Friedrich II.*, Teil I, *Die Königsherrschaft in Sizilien und Deutschland 1194–1220*, Gestalten des Mittelalters und der Renaissance (Darmstadt, 1992), 195–227.

¹³E.g. *Constitutiones* ed. Weiland, ii, no. 270, p. 378 (1248) has ...ex imperialis officii nostri debito, quod ex celesti dispensacione suscepimus... On Frederick II's conception of his office, see Hans Martin Schaller, 'Die Kaiseridee Friedrichs II.', in: *Probleme um Friedrich II.*, ed. Josef Fleckenstein, Vorträge und Forschungen, vol. 16 (Sigmaringen, 1974), 109–134.

¹⁴See Colin Morris, *The Papal Monarchy. The Western Church from 1050 to 1250*, Oxford History of the Christian Church (Oxford, 1989), 559–568.

¹⁵Abulafia, *Frederick II*, 132–63, 202–225, 321–74.

¹⁶See the remarks of John Le Patourel in 'The Plantagenet Dominions', *History*, 50 (1965), 295, note 14 and of W. L. Warren in *The Governance of Norman and Angevin England 1086–1272*, The Governance of England, vol. 2 (London, 1987), 80, 101.

takes in their handling of German politics. From 1212 right through to the late 1240s the German royal court issued a remarkable series of varied legislative acts, privileges, and *Landfrieden*, some in Frederick's name and some in the names of his sons.¹⁷ In the light of this rich body of material, we need to consider the proposal which has not died out of modern historiography: that these acts contained too many concessions of royal rights and prerogatives to the prelates of the German Church, to the secular princes whose local jurisdictions were in any case so powerful in Germany, and in some cases, to the more formidable German cities whose commerce and political strength were growing rapidly in the thirteenth century. In other words, it is possible that Frederick II was enmeshed by his inheritances, ambitions, and expectations in an international scheme of politics which meant that the German princes, bishops, and cities had to be steadied by material concessions while the absentee emperor fought or negotiated with sultans and Saracens, popes and cardinals, rebellious Sicilians and fractious Lombards. If the court ever did intend to buy German political support in that manner, then it was much too expensive. Excommunicated by Pope Gregory IX (1227–1241) in 1239, the emperor's German archbishops turned against him in 1241, and thereafter the kingdom knew no peace until the advent of Rudolf of Habsburg as king in 1273. But is it really the case that the body of *acta* issued by the court carry the stigma of political concession, or would that be a mistaken reading of their content and intention?

The third problem is perhaps even harder to elucidate. If Frederick II had attempted to introduce into Germany those organs of royal governance with which he was familiar in Sicily,¹⁸ then would he have moved the German kingdom onto that path towards royal centralization which historians like to detect in thirteenth-century England and France?¹⁹ If the emperor ever did entertain such schemes, then he would have had to reckon with the local powers and rights of the princes both lay and ecclesiastical, whose own jurisdictions had become much more entrenched in Germany on a territorial basis ever since the War of Investitures (1076–1122).²⁰ In other words, did Frederick II possess the rights and powers as king of the Romans, overlord of the imperial princes, and possessor of a rich fisc,²¹ to reverse German particularism, that is, the practical sharing of governing power between crown and princes

¹⁷Apart from direct access to the texts in *Constitutiones*, ed. Weiland, ii, pp. 54–449, see the commentary in the papers of Ernesto Sestan, Erich Klingelhöfer, Erich Schrader, and Ernst and Otto Schönbauer, edited by Gunther Wolf in *Stupor mundi. Zur Geschichte Friedrichs II. von Hohenstaufen*, Wege der Forschung vol. 101 (Darmstadt, 1966), 331–41, 396–454, as an introduction to the subject.

¹⁸See David Abulafia's excellent elucidation of Frederick II's register for 1239–1240 in his *Frederick II*, 321–339.

¹⁹See the extreme statement of Georges Duby in his *France in the Middle Ages 987–1460. From Hugh Capet to Joan of Arc*, transl. Juliet Vale (Oxford, and Cambridge, Mass, 1991), 298: 'I would argue that the various elements that constituted the political system in France until the end of the ancient régime were all in place at the death of Philip Augustus.'

²⁰Benjamin Arnold, *Princes and territories in medieval Germany* (Cambridge, 1991), 61–73, 152–233, for discussion of these problems.

²¹Ekkehard Kaufmann, 'König' and M., Merberger, 'Krongut', in: *Handwörterbuch zur deutschen Rechtsgeschichte*, vol. 2, eds. Adalbert Erler and Ekkehard Kaufmann (Berlin, 1978), cols. 999–1023, 1217–29.

which goes back to the refounding of the western Empire by Otto the Great (936–973) in 962?

The German magnates were so well equipped with economic, jurisdictional, and military resources and opportunities, all of which were phenomenally expanded during the twelfth and thirteenth centuries that such a reversal could never have been undertaken.²² Instead, Frederick II successfully enriched his fisc and took up the traditional political task of managing enough of the *principes imperii* into a party which would support his dynasty.²³ This worked well, perhaps as late as 1245 when Pope Innocent IV (1243–1254) took the revolutionary decision to crush the Staufen for good, and the German bishops, always unreliable, staged a new election in 1246.

So the easiest way to explain German political particularism in relation to Frederick II's reign is simply to accept that power sharing was a tradition founded in the ninth and tenth centuries, and that the local autarky of scores of bishops and secular princes could not be overturned by a king. As Wolfgang Petke has rightly asserted, 'On the basis of its actual ascendancy, the aristocracy had made good its pretensions to shared rule ever since Frankish times.'²⁴ Frederick II used the political loyalty and practical jurisdictions of such an aristocracy to support his kingly duty of imposing peace, order, and justice upon the German realm. This is shown clearly in the imperial *Landfriede* issued at Mainz in 1235, which explicitly enjoins the princes as loyal vassals to exercise their own jurisdictions in their own localities: '... that our princes and all others who hold juridical power directly from us will determine the cases tried before them according to the reasonable custom of their lands by just judgement, and that they will enjoy the same upon all judges who are under them and hold jurisdiction from them.'²⁵

Frederick II was a German king in the style of his father and grandfather in that the princes could be managed, but that their local jurisdictional authority could not be taken away from them. When Edward I of England (1272–1307) insisted upon the programme of *quo warranto*, then he was dealing with about a dozen earls.²⁶ How could Frederick II have brandished the same idea before scores of German dukes, margraves, and counts? In his Sicilian kingdom he might do so, but not in Germany. This still leaves unanswered the question of why rule by the Staufen dynasty, if Frederick II had done for Germany all that could be expected of him, collapsed in the 1240s and 1250s, the emperor's death in 1250 being given currency and with some justification as the end of an era in history books and university syllabuses. I believe two answers can be given.

²²Abulafia, *Frederick II*, 125.

²³See, for example, their impressive turnout for the election of Conrad IV in 1237: *Constitutiones*, ed. Weiland, ii, no. 329, p. 440.

²⁴Kanzlei, *Kapelle und Königliche Kurie unter Lothar III (1125–1137)*, *Forschungen zur Kaiser- und Papstgeschichte des Mittelalters*. Beihefte zu J. F. Böhmer, *Regesta Imperii*, vol. 5 (Cologne and Vienna, 1985), 100.

²⁵*Constitutiones*, ed. Weiland, ii, no. 196 (ch. 4), pp. 242f.

²⁶See K. B. McFarlane, *The Nobility of Later Medieval England. The Ford Lectures for 1953 and related studies*, (Oxford, 1973), 249–52 and Chris Given-Wilson, *The English nobility in the late middle ages, The fourteenth-century political community* (London and New York, 1987), 29–31. On the process, see Donald W. Sutherland, *Quo Warranto Proceedings in the Reign of Edward I 1278–1294* (Oxford, 1963).

The first is that the jurisdictional autarky of the princes was favoured by the crown itself in the twelfth and thirteenth centuries in the interests of order and local peace, but that the inevitable result was the territorial particularism of churchmen, lay princes, and interstitial cities which persisted until modern times. We have just seen that Frederick II enjoined juridical duties upon the princes and their own magistrates in 1235 under the aegis of the imperial *Landfriede*, and this simply underlined the edicts of 1231 and 1232 which confirmed that 'Each and every prince shall enjoy unmolested the liberties, jurisdictions, counties, and *Zentgerichte* (hundredal courts) freely owned by, or enfeoffed to him, according to the approved custom of his land.'²⁷ This testifies to the jurisdictional aspect of power sharing which crown and aristocracy took for granted, and continues the known policy of Frederick II's grandfather in this respect. Significant legislation against incendiarism during feuds was issued by Frederick Barbarossa at Nuremberg in 1186 or 1188 in which the dukes, margraves, counts palatine, landgraves and all lesser counts were specifically enjoined to sentence arsonists *iusticiae suae auctoritate*, by the power of their own jurisdiction, using either the testimony of seven witnesses or simply the notoriety of the accused, and to execute them forthwith.²⁸

In other words, the capital jurisdiction of the princes was well in place by the 1180s, and there are earlier texts such as the grant of the East Franconian *ducatus* to the bishops of Würzburg in 1168 which also confirm this right of *vindicta sanguinis*.²⁹ We also know that the practical effectiveness of princely jurisdiction made great strides under Frederick II's patronage. In a revealing chapter of King William of Holland's (*rex Romanorum*, 1247–1256) *Landfriede* confirmation of 1255, all the jurisdictions of the princes were confirmed so that the inhabitants of them should submit just as 'they and their progenitors have rightly been accustomed to do for the last thirty or forty or fifty years'.³⁰

The second answer arises from the fact that the political, diplomatic, and military potential of the papacy reached its zenith during the thirteenth century,³¹ and we should not underestimate the determination of Pope Innocent IV and his successors³² to do away with the Staufen as a ruling house.³³ The Salian emperors had survived sentences of excommunication and deposition at the hands of Pope Gregory VII (1073–1085) and his successors. King John of England (1199–1216) was prudent enough to submit to the demands of Pope Innocent III (1198–1216). But Emperor

²⁷*Constitutiones*, ed. Weiland, ii, no. 304, p. 419 (1231) and no. 171, p. 212 (1232).

²⁸*Constitutiones*, ed. Weiland, ii, no. 318 (chs. 2 & 13), 449–52. See E. Wadle, 'Der Nürnberger Friedebrief Kaiser Friedrich Barbarossas und das gelehrte Recht', in: *Wege europäische Rechtsgeschichte. Karl Kroeschell zum 60. Geburtstag*, ed. G. Köbler, Rechtshistorische Reihe, vol. 60 (Frankfurt am Main, 1987), 548–572.

²⁹*Die Urkunden Friedrichs I. 1168–1180*, ed. Heinrich Appelt et al. MGH Diplomata, vol. 10, part iii (Hanover, 1985), no. 546, pp. 3–7 (1168). See Arnold, *Princes*, 101 and note 66, pp. 104f. and notes 85 and the literature cited there.

³⁰*Constitutiones*, ed. Weiland, ii, no. 375, pp. 477f. On King William's important relation to the *Landfriede* See Heinz Angermeier, *Königtum und Landfriede im deutschen Spätmittelalter* (Munich, 1966), 33–53.

³¹Morris, *Papal Monarchy*, 568–582.

³²On them and their policies, see J. N. D. Kelly, *The Oxford Dictionary of Popes* (Oxford and New York, 1986), 192–197.

³³See D. J. A. Matthew, 'Reflections on the Medieval Roman Empire', *History*, 77 (1992), especially 381–389.

Otto IV (1198–1214, d. 1218) could not survive the withdrawal of the same pope's political and moral support, and the Staufens could not in the end survive the decree of irrevocable deposition adopted by the First Council of Lyons in 1245,³⁴ although it took more than twenty years effectively to eradicate the dynasty from Germany and Italy.

2.

Now we need to return to the problem of Frederick II as an absentee ruler from his German kingdom. The fact is that his predecessors as far back as Otto the Great in the tenth century generally passed a great deal of their time in Italy and Burgundy in the style of medieval peripatetic kingship.³⁵ Although he liked Apulia and built residential castles there,³⁶ Frederick II was no stay at home either. When he did reside in Germany between 1212 and 1220, the *iter* as an adjunct of the royal ruling method did not weaken his hand. Frederick II was already a prudent ruler under whom some of the administrative procedures beloved of constitutional historians were carried out effectively. The few surviving instruments have been taken to demonstrate this.³⁷ They include the writ appointing Gerhard of Sinzig, an imperial *ministerialis*, as procurator of some of the royal fisc on the Rhine and the Mosel in 1216.³⁸ Also of importance is the survey, usually dated 1214, of the imperial *officium* of Neuburg on the Danube as administered by the marshals of Kalden–Pappenheim.³⁹ There were also issued a number of privileges to protect the legal and economic status of towns situated upon the royal fisc. Notable examples were received by Goslar in Saxony and Nuremberg in Franconia, both dated 1219.⁴⁰ Another survival is the list of assets to be recovered for the imperial *officium* of Pfullendorf in Swabia.⁴¹ This process of rebuilding the fisc after the civil wars of 1198 to 1214 went on long after Frederick's departure for Italy in 1220. A recent remarkable study by a young German scholar, Andreas Christoph Schlunk,⁴² reveals that by 1240 the crown was almost as rich in fiscal resources, towns, castles, enfeoffed retinues, non-

³⁴See *Constitutiones*, ed. Weiland, ii, nos. 339–401, pp. 507–516.

³⁵There exists a long and interesting literature on the German royal *iter*. For a summary, see Arnold, *Princes*, 47–51, and the references cited there.

³⁶Carl A. Willemsen, 'Die Bauten Kaiser Friedrichs II. in Süditalien', in: *Die Zeit der Staufer* vol. 3, 143–163.

³⁷Stürner, *Friedrich II.*, 195–217.

³⁸*Constitutiones*, ed. Weiland, ii, no. 55, pp. 66f.

³⁹Wilhelm Kraft, *Das Urbar der Reichsmarschälle von Pappenheim*, Schriftenreihe zur bayerischen Landesgeschichte, vol. 3, new edn. (Aalen, 1974).

⁴⁰Bernhard Diestelkamp, 'Quellensammlung zur Frühgeschichte der deutschen Stadt', in: C. van der Kieft and J. F. Niermeijer, *Elenchus fontium historiae urbanae*, Acta collegii historiae urbanae societatis historicorum internationalis, vol. 1 (Leiden, 1967), nos. 121–24, pp. 190–98 (1218–19).

⁴¹Karl Schmid, *Graf Rudolf von Pfullendorf und Kaiser Friedrich I.*, Forschungen zur oberrheinische Landesgeschichte, vol. 1 (Freiburg im Breisgau, 1954), 297. The most accessible introduction to the problems raised by such texts is by Wolfgang Metz in his *Staufische Güterverzeichnisse. Untersuchungen zur Verfassungs- und Wirtschaftsgeschichte des 12. und 13. Jahrhunderts* (Berlin, 1964), esp. 77–97.

⁴²*Königsmacht und Krongut. Die Machtgrundlage des deutschen Königtums im 13. Jahrhundert — und eine neue historische Methode* (Stuttgart, 1988).

asteries, ecclesiastical advocacies, manors, tolls, and all other rights, revenues, and jurisdictions as it had ever been at any time since Frederick Barbarossa began a forceful new programme of enriching the crown in the 1160s.⁴³ So Frederick II's long absence from Germany after 1220 had not imperilled the ability of royal officials to restore to the fisc the assets lost during the war years of 1198 to 1214.

As Roman emperor, crusader, king of Sicily, and suzerain of Lombardy, Frederick II had good reason to absent himself to the south. At the time this was not considered at all abnormal. It was an extension of a traditional institution, the *iter* or royal perambulation, upon which German magnates would in any case visit him in Italy.⁴⁴ As the emperor pointed out in the Mainz *Landfriede* of 1235, he could not be expected to preside in person as the supreme magistrate of the royal court because 'the government of the Empire and the affairs of diverse lands and regions cause such cares as have always to be put right by our diligence'.⁴⁵ In other words, the ruler could not be everywhere at once, and this principle was repeated to the Styrians in 1248 when Frederick appointed a captain-general over the duchy: the imperial eye has to be cast over so many parts of the Empire that 'we are unable to stay continuously and in person in the duchy of Styria'.⁴⁶

The emperor's absence from the German kingdom was not good for his grip upon its affairs notwithstanding such remarks. In 1225 his regent, Archbishop Engelbert of Cologne, was assassinated during a feud with a member of his own kindred and the next regent, Duke Louis I of Bavaria (1183–1231), proved so unreliable that he had to be removed from office.⁴⁷ For reasons which remain obscure, the emperor's son and heir Henry VII (1220–1235, d. 1242) went into revolt in 1234 and was subsequently deposed.⁴⁸ At papal instigation the ecclesiastical princes eventually betrayed Frederick II in 1246 and elected as their king Henry Raspe, landgrave of Thuringia, the traitor evidently believing that 'we have raised shield and sword on behalf the people of Christ for the reverence of God and Holy Mother Church'.⁴⁹ The 'enemy of Christ', Frederick II, had been absent from Germany for less than eight years.

When Frederick II did come back to Germany (that is, on two visits between 1235 and 1237), then the cards fell easily into his hands. In 1235 he removed his ungrateful son. He celebrated a new marriage, with the king of England's sister Isabella (d. 1241).⁵⁰ The Welf heir, Otto the Child (1227–1252), who had prudently declined Pope Gregory IX's (1227–1241) offer of the German crown in 1229,⁵¹ was reconciled

⁴³Karl J. Leyser, 'Frederick Barbarossa and the Hohenstaufen Polity', *Viator*, 19 (1988), here 164–73.

⁴⁴E.g. *Constitutiones*, ed. Weiland, ii, no. 94, pp. 117f. (1223) at Capua or no. 187, pp. 228f. (1234) at Foggia.

⁴⁵*Constitutiones*, ed. Weiland, no. 196 (ch. 28), pp. 246f.

⁴⁶*Constitutiones*, ed. Weiland, no. 270, p. 378.

⁴⁷On their time in authority, see Thomas Curtis van Cleve, *The Emperor Frederick II of Hohenstaufen. Immortal mundi* (Oxford, 1972), 349–64.

⁴⁸Van Cleve, 365–76, and Abulafia, *Frederick II*, 229–42.

⁴⁹Dieter Hägermann and Jaap G. Kruisheer, *Die Urkunden Heinrich Raspes und Wilhelms von Holland*, MGH Diplomata, vol. 18, part i (Hanover, 1989), no. 1, p. 30.

⁵⁰Abulafia, *Frederick II*, 239–44.

⁵¹Hucker, *Kaiser Otto IV.*, 382f.

for good by the creation for him of the duchy of Brunswick and Lüneburg.⁵² In 1236 Austria and Styria were temporarily taken into the imperial fisc; their legal privileges were confirmed; and Vienna was declared an imperial city.⁵³ In 1237 the emperor's next surviving legitimate son, Conrad IV (1237–1254), was elected king of the Romans.⁵⁴ Frederick II's great legislative achievement as German king, the *Landfriede* of Mainz issued in 1235, was long remembered because it was also circulated in many vernacular versions.⁵⁵ As the Cologne Annalist remarked, 'the old laws were stabilized; new ones were established and written down on parchment; and they were published everywhere in German, *Teutonico sermone*.'⁵⁶

3.

The medieval king was both guardian and servant of established law, but legal historians have generally accepted that the revival of the study of Roman Law from the twelfth century encouraged at royal courts a more positive attitude amongst the kings' legal advisers to proclaim new ordinances, that is, to turn the king into a legislator or *legum conditor*, if not really in the style of Justinian the Great (527–565), then in an echo of his purpose. In 1182, when Frederick Barbarossa confirmed the privileges of the town of Speyer, his clerks deliberately included Justinianic phraseology.⁵⁷ Barbarossa's impressive legislative programme constituted another dynastic tradition which Frederick II was eager to follow. Like Alfonso X of Castile (1252–1284) and Edward I of England, Frederick II has commonly been regarded in modern historiography as a formidable legislator, his most notable exercise consisting of the *Liber Augustalis* or 'Constitutions of Melfi' promulgated for his Sicilian kingdom in 1231.⁵⁸ In his carefully crafted survey of German and imperial law-making entitled 'Gesetzgebung' (1970),⁵⁹ Hermann Krause considers that the era of Staufen legislation stretching from the Decrees of Roncaglia in 1158⁶⁰ to the Mainz *Landfriede* of 1235 witnessed something like a transition of the German ruler from

⁵²*Constitutiones*, ed. Weiland, ii, nos. 197–99: pp. 263–66 (1235).

⁵³Karl Lechner, *Die Babenberger. Markgrafen und Herzoge von Österreich 976–1246*, Veröffentlichungen des Instituts für österreichische Geschichtsforschung, vol. 23 (Vienna, Cologne, and Graz, 1976), 282f., and Peter Osendes, 'Die Stadtrechtsprivilegien Kaiser Friedrichs II. für Wien', *Deutsches Archiv*, 43 (1987), 110–134.

⁵⁴*Constitutiones*, ed. Weiland, ii, no. 329, pp. 439–41.

⁵⁵*Constitutiones*, ed. Weiland, ii, 196 & 196 A, pp. 241–63.

⁵⁶*Chronica regia Coloniensis. Annales maximi Colonienses*, ed. Georg Waitz, MGH Scriptores rerum Germanicarum in usum scholarum, vol. 18 (Hanover, 1880), 267.

⁵⁷Appelt, *Urkunden Friedrichs I.*, no. 827, p. 34.

⁵⁸Hermann Conrad, Thea von der Lieck-Buyken and Wolfgang Wagner, *Die Konstitutionen Friedrichs II. von Hohenstaufen für sein Königreich Sizilien*, Studien und Quellen zur Welt Kaiser Friedrichs II., vol. 2, (Cologne and Vienna, 1973) and the English translation by James M. Powell, *The Liber Augustalis or Constitutions of Melfi 1231* (Syracuse, NY, 1971). We are cautioned against exaggerating the systematic method and coherent presentation of the code by Donald Matthew in his *The Norman Kingdom of Sicily*, Cambridge Medieval Textbooks (Cambridge, 1992), 185f., 342–44, 353, and by Abulafia in *Frederick II*, 202–14.

⁵⁹*Handwörterbuch zur deutschen Rechtsgeschichte*, i, cols. 1606–20.

⁶⁰Appelt, *Urkunden Friedrichs I.*, nos. 237–42, pp. 27–36.

the defender of ancient right to a legislator, a *legum conditor* in the classical or modern senses. If Frederick Barbarossa, Henry VI, and Frederick II, were incipient *legum conditores*, then we need to ask whether the *acta* of Frederick II can credibly be interpreted as elaborate devices for purchasing the support of the German princes.

It is usually accepted that Frederick II was well educated, literate, and intelligent, an author of some insight, observation, and originality, perhaps outclassing in his treatise on falconry, the *De arte venandi cum avibus*,⁶¹ the abilities of other thirteenth-century royal authors, Jaime I of Aragon in his *Book of Deeds* and Alfonso X of Castile in his *Siete Partidas*.⁶² However, Frederick II's literacy and his reputed mastery of several languages does not mean that the *arengae* and content of his legislation were necessarily read by him or even read out to him. But it is hard to believe that in such a long reign the imperial chancery could consistently have concealed concessionary implications (had they existed) of the *acta* from the emperor's eye. In itself the language of the legislation claims the opposite.⁶³

We hold the monarchy with the title 'Roman' primarily of the Maker by whom kings reign and princes hold their principdoms, and who has set our throne above the peoples and kingdoms; and we are established in the wholeness of power. It therefore befits Our Imperial Majesty not only to guard and maintain in their ancient rights those by whom we obtained our supreme glory [i.e. the princes, who had elected him king in the first place] and those in whom it consists, for they were summoned with us to part of the care, and receive honour and glory from our supremacy: but also, so far as equity allows and reason permits, to adorn them honourably and fittingly with new and honourable gifts both of right and of grace.

Heinrich Fichtenau has taught us to take such harangues much more seriously than our distaste for such flowery expression might otherwise allow.⁶⁴

If we bear in mind that the imperial court had always accepted the division of jurisdictional power between crown, bishops, and secular princes, then such *arengae* make perfect sense, and actually fit those injunctions of Frederick Barbarossa in 1186/88, Frederick II in 1235, and William of Holland in 1255 already cited,⁶⁵ bid-

⁶¹Johannes Fried, 'Kaiser Friedrich II. als Jäger oder Ein zweites Falkenbuch Kaiser Friedrichs II.?', *Nachrichten der Akademie der Wissenschaften in Göttingen*, i, phil.-hist. Klasse, vol. 4 (Göttingen, 1996); *Intellectual Life at the Court of Frederick II Hohenstaufen*, ed. William Tronzo, Studies in the History of Art, vol. 44 (Washington, 1994).

⁶²See Felipe Fernández-Armesto, *Before Columbus. Exploration and Colonisation from the Mediterranean to the Atlantic 1229–1492*, Middle Ages Series (Philadelphia, 1987), 12, 15, 76f, and Jerry R. Craddock, 'The Legislative Works of Alfonso el Sabio', in: *Emperor of Culture. Alfonso X the Learned of Castile and his thirteenth-century Renaissance*, ed. Robert I. Burns, Middle Ages Series (Philadelphia, 1990), 182–197.

⁶³From Brian Pullan, *Sources for the History of medieval Europe from the mid-eighth to the mid-thirteenth century*, (Oxford, 1971), 213.

⁶⁴On the content and meaning of the harangues, see Fichtenau's *Arenga. Spätantike und Mittelalter im Spiegel von Urkundenformeln*, *Ergänzungsband der Mitteilungen des Instituts für österreichische Geschichtsforschung* 18 (Graz and Cologne, 1957), 30–88, and F. Merzbacher, 'Arenga', in: *Handwörterbuch zur deutschen Rechtsgeschichte*, i, cols. 217i.

⁶⁵See above, notes 25, 28, 30.

ding the princes to exercise their own jurisdictions and enjoining the subjects of the German kingdom to obey them.

In his short survey entitled 'Fürstenprivilegien Friedrichs II',⁶⁶ Werner Goetz holds that the legislation of the first half of the thirteenth century is not concessionary in content, tone, or intent, and cannot therefore have contributed to princely particularism in Germany. A number of scholars have been impressed that the imperial chancery was concerned instead to define the respective rights of the crown, the Church, and the princes in more modern thirteenth-century terms, and in the light of the great economic and jurisdictional advances made by all German landowners in the twelfth century. In other words, the *acta* concern the rights of the three parties in their proper relation to each other, not just the crown's rights. The details include the scope and limits of their law courts and the activities of their magistrates; the fiscal obligations and the corveés of their servile dependents; the proper control of their towns and the inhabitants; the status in law of tolls, mints, markets, roads, and fortifications; the protection of lords' ultimate proprietary rights over fiefs; and the correct exercise of ecclesiastical advocacies, rights of protection over the Church.⁶⁷ As crown officials gradually recovered the imperial fisc in the years after 1212, both Frederick II and Henry VII realized that their agents had often overstepped royal rights in the regions, much to the annoyance of secular princes and churchmen whose assets were thereby threatened. When such practices were forbidden in the legislation, then they could be read as concessions, but they are concessions from strength. Far from the princes encroaching upon the crown's rights, the opposite appears to have been the case on a large scale, as Henry VII admitted to Bishop Hermann of Würzburg in 1234. The king wrote at length to his officials ordering them to desist.⁶⁸ This echoes the tone of Frederick II's edict of Cividale in 1232, confirming Henry VII's own enactment of Worms in 1231, in which the court promised that royal officials would not abuse or exceed their powers.⁶⁹

If the legislation of Frederick II was not concessionary but cooperative, and even drawn up from a position of relative political strength, then it did seek to define the rights of the three parties in a comprehensive fashion. It sought to remove causes of just complaint against royal agents. It sought to confirm the rightful jurisdictions of the princes and the Church, powers which the crown intended to use, under the aegis of the *Landfriede* and in its capacity as overlord of the *principes imperii*, in the interests of justice and peace in Germany which was much too large to cover by itinerant royal assizes. The enactments sought, finally, to modernize the relation of royal and imperial authority to canon law in matters such as heresy prosecutions, ecclesiastical courts and appeals, the renunciation of *ius spolii*, and the proper conduct of episcopal elections.⁷⁰

⁶⁶*Handwörterbuch zur deutschen Rechtsgeschichte*, i, cols. 1358–61.

⁶⁷The actual content of these *acta* is examined comparatively in Arnold, *Princes and territories*, 205–09.

⁶⁸*Constitutiones*, ed. Weiland, ii, no. 324, p. 434.

⁶⁹*Constitutiones*, ed. Weiland, no. 304, pp. 418–20 (1231) and no. 171, pp. 211–13 (1232).

⁷⁰For these ecclesiastical matters see especially *Constitutiones*, ed. Weiland, ii, nos. 46–48, pp. 57–61 (1213) and 73, pp. 86–91 (1220). There was not much new in them that Pope Innocent III had not in any case agreed with Frederick II's predecessors. On *ius spolii*, see H.-J. Becker, 'Spolienrecht', in: *Handwörterbuch zur deutschen Rechtsgeschichte*, iv, cols. 1779–1780.

My argument that the crown deliberately underlined and encouraged autarkic princely jurisdiction as a practical solution towards the problem of the German kingdom's lawlessness can be verified in Frederick II's decisions about the duchy of Austria, which was temporarily acquired for the imperial fisc in 1236.⁷¹ Here was a real opportunity to abolish a strong, coherent, and autonomous princely jurisdiction founded in 1156 in favour of a new magistracy under the crown. But Frederick II was consistent in applying the opposite principle; the king was the guardian and guarantor of efficacious regional jurisdictions in all their variety. In 1237 he went to Austria and confirmed the local custom or *Landrecht* as the rightful form inherited from the time of Duke Leopold VI who had reigned from 1198 to 1230.⁷² This fitted exactly with the farsighted intentions expressed in 1232 and 1235:⁷³ that in order to function at all effectively, German jurisdiction (essentially *Landgerichte* by the beginning of the thirteenth century) had to be decentralized according to regional realities which actually went back to the Carolingian era.⁷⁴

4.

Writing about the scattered lands of the crown of Aragon in the thirteenth century, Felipe Fernández-Armesto has justly observed that it is 'a fallacy of modern historians to confuse centralisation with strength, institutional complexity with common purpose and "despotism" with statehood. No state, until quite recent times, could command obedience, especially in outlying lands, by force, without consent. Institutional minimalism ... could be as effective as more purposeful or more creative statecraft'.⁷⁵ This fits quite precisely Frederick II's own position as German king as well. He was a strong ruler, but not in possession of organs of centralized government; his purpose was to rule in concert with his princes in the traditional organological mode of imperial politics;⁷⁶ he was professionally a statesman without appearing despotic. For example, the deposition of Henry VII in 1235 (which must have been one of the least desired necessities of the emperor's entire career) and the consequent installation of Conrad IV as king-elect in 1237 were carefully prepared public events at well attended imperial courts (at Worms and Vienna respectively) where advice and consent were laboriously sought from the princes in the traditional manner.⁷⁷ When it suits modern historians, they carp at such consultative techniques as cynical methods by medieval despots eager to mask their real intentions, but the truth is that

⁷¹Lechner, *Die Babenberger*, 279–85.

⁷²See M. Weltin, 'Das österreichische Landrecht des 13. Jahrhunderts im Spiegel der Verfassungsentwicklung', in: *Recht und Schrift im Mittelalter*, ed. Peter Classen, Vorträge und Forschungen, vol. 23 (Sigmaringen, 1977), 381–424.

⁷³See notes 25, 27 above.

⁷⁴For an introduction to the *Landgericht*, see Arnold, *Princes and territories*, 187–95 and the extensive literature cited there.

⁷⁵Fernández-Armesto, *Before Columbus*, 41.

⁷⁶On this mode, see Tilman Struve, *Die Entwicklung der organologischen Staatsauffassung im Mittelalter*, Monographien zur Geschichte des Mittelalters, vol. 16 (Stuttgart, 1978).

⁷⁷Abulafia, *Frederick II*, 240, 300.

Frederick II must have known that the German princes were much too powerful and shrewd to be handled in that manner. The most cursory glance at the legislative material which we have already examined shows that the emperor knew better than to underestimate their adherence to tradition. It was a lesson which he had learned early in his career as German king. In 1216 it was expedient to reward the bishop of Regensburg in Bavaria for his support for the Staufan cause, and the two rich and ancient nunneries in the city were transferred to the bishop's authority. There was an outcry because the status of the abbesses was so exalted that their houses equalled that of principalities, *principatus*, which could never be alienated without consent.⁷⁸ Their case was heard at court; Frederick II accepted the ruling; the abbesses, although bereft of any real political or military means of their own, were confirmed in their rightful autonomy; and the bishop of Regensburg was awarded another property instead.

Apart from the mistake made in the case of the Regensburg nunneries, Frederick II was credited from the first with doing exactly what was expected of a German king. On arrival in Alsace in 1212, the local chronicler reported that 'he confirmed the peace, and the robbers he caught, he condemned impartially'.⁷⁹ Certainly it is fair to question the wisdom of his long absences from Germany (1220–1235, 1237–1250) as politically unsound, but since the governing power had to all intents and purposes been shared between the court, the Church, and the princes since the early days of the German kingdom⁸⁰ then the reality of German princely particularism cannot possibly be credited to the relatively few years of Frederick II's reign. Instead, the durable jurisdictional and territorial autarky of the princes is an inevitable implication of the crown's policy of delegating the work of law courts under the aegis of the *Landfriede*. As David Abulafia has pointed out with reference to the German kingdom: 'The theory of delegation left the emperor as overseer of German affairs, but not as a busybody king in the English or Sicilian mould.'⁸¹

Political particularism in thirteenth century Germany was one consequence of the crown's traditional approach to local jurisdiction, now updated by the *Landfrieden*, the scheme to be regulated by the emperor's role as overlord of the *principes imperii*. But the method was flawed because the long tradition of princely loyalty to the Staufan house restored in 1211 could not after all withstand the prestige of the papacy at the summit of its enthusiasm, proclaiming the emperor's excommunication in 1239 and his deposition in 1245. In this respect Frederick II's career resembled that of his predecessor Otto IV. So, the landgrave of Thuringia, whom Frederick had singled out in 1237 as one of the conscript fathers and leading luminaries of the Empire,⁸² permitted himself to be elected in 1246 against Frederick *inimicus Crucifixi*, the enemy of Christ⁸³, and the German kingdom to which the young king had been

⁷⁸Weiland, *Constitutiones*, ii, no. 57, pp. 70–72.

⁷⁹*Chronicon Ebersheimense* Ed. Ludwig Weiland, MGH Scriptores vol. 23 (Leipzig, 1925 reissue) ch. 36, p. 450.

⁸⁰See note²⁴ above.

⁸¹Abulafia, *Frederick II*, 125.

⁸²*Constitutiones* ed. Weiland, ii, no. 329, p. 440.

⁸³*Constitutiones* ed. Weiland, no. 350, p. 457.

convinced at his coronation at Aachen in 1215 that he had been called by God, collapsed once more into civil war. Within five years the emperor was dead, and an epitaph was proclaimed by the English chronicler, Matthew Paris of St Albans, who delighted in caustic remarks about the rulers of his time when he chose. Generously he cited Frederick as 'the greatest of the princes of the earth' (this was the contemporary of Ghingiz Khan and of St Louis, king of France), and in a singular phrase not without the usual hint of irony or criticism, *stupor mundi*, 'the wonder of the world'.⁸⁴

⁸⁴*Chronicles of Matthew Paris. Monastic life in the thirteenth century*, ed. Richard Vaughan (Gloucester and New York, 1986), 272.