



German History in Documents and Images

Volume 1. From the Reformation to the Thirty Years War, 1500-1648
The Catholic Triumph – The Edict of Restitution (March 6, 1629)

Published by Emperor Ferdinand II (r. 1619-37) on March 6, 1629, the Edict of Restitution crowned the military victories of Catholic forces (i.e., the Imperial and Catholic League armies) between 1618 and 1628. The emperor's purpose in issuing the edict was to enforce a Catholic reading of the Religious Peace of Augsburg of 1555. If enforceable, this policy would require the restoration to the Catholics of more than a dozen prince-bishoprics and some 500 monasteries and other ecclesiastical foundations that the Protestants had secularized from 1552 on. Based on Ferdinand's conception of his own authority and powers as emperor, the edict bypassed the Empire's usual legislative process – the Imperial Diet acting in the names of "emperor and estates," as the formula went. Its enforceability, therefore, rested chiefly on the possibility of converting Catholic military victories into stronger monarchical rule. Some properties were handed over, true, but German Protestant defeats and the specter of a more centralized and powerful Empire provoked the German invasions of anti-Habsburg powers, both Protestant (e.g., Sweden in 1531) and Catholic (France in 1534). These interventions assured the survival of the German confessional *convivencia* (co-existence) established at Augsburg in 1555. Favored by most of the German princes, Catholic and Protestant, and eventually accepted by the emperor, its principles were redefined by the Peace of Westphalia in 1648, which remained in force until 1803.

We, Ferdinand II, by God's grace elected Roman Emperor [. . .] announce the following to each and all electors, princes, [etc.] and also all others of Ours and the Empire's subjects and dependents of whatever dignity, status, and nature, Our friendship, grace, and all the best. Many of you will doubtless already know and recognize all too well in what injurious dissension and ruin Our dear fatherland of the German Nation has for a long time been living.

[Since resorts to the law brought no success, alliances were formed—some with foreign powers and even the Ottomans—for the purpose of overthrowing the Religious Peace. Meanwhile the emperor's purpose was to promote a compromise, employing the Religious Peace as a basis for the settlement of the conflicts. Upon that document was based the argument that the mediate¹ ecclesiastical foundations, monasteries, and prelatures—those not directly under the emperor—were also covered by the rules of 1555 and thus might not be confiscated by the territorial rulers. Upon this consideration the following is based.]

¹ Princes, nobles, urban regimes, monasteries, and other ecclesiastical foundations that stood directly under Imperial authority were said to be "immediate" to the Empire. Nobles, urban regimes, and ecclesiastical institutions that stood under the authority of a territorial prince or an Imperial city, and thus only indirectly under (mediated) Imperial authority, were said to be "mediate" to the Empire – trans.

The incontrovertible conclusion is that those mediate foundations and monasteries that were confiscated after the Treaty of Passau [1552] or after the Religious Peace [1555] were exempt [from confiscation], and that therefore estates of the Augsburg Confession² possessed no legal right to reform or confiscate them. Although this was not permitted, it was done to the detriment of the concerned parties' rights and of justice. [. . .]

It is true that the Religious Peace in § 15 guarantees that the estates of the Augsburg Confession shall be undisturbed in the faith, rites, and church ordinances that they established or may establish in their principalities, lands, and lordships. Some pretend, however, to conclude from that that they also possess the power to reform the monasteries in these lands. Yet, although these monasteries depend on the secular powers for the protection they are owed, in their establishments and spiritual affairs they have nothing to do with the lands and lordships. Rather, as already noted, they belong to God and the churches. For this reason they are exempt and free from secular jurisdictions and governance.

[The members of religious orders possess a similar legal protection.]

It is no less well known that, against the express letter of the Religious Peace in § 25, some Protestant estates have thought not only to retain their bishoprics, prelaties, and prebends after they rejected the Catholic religion, but also to acquire others (uncovered by the Religious Peace). They do this under the pretext that this paragraph, whose obvious meaning they controvert, is not part of the Religious Peace, because they never consented to it but on the contrary, often protested against it. For this reason, We have caused Ourselves to be diligently informed out of the Imperial archives about the actual statements of the paragraph that is called the "Ecclesiastical Reservation" (although the letter of the Religious Peace is sufficient for Us). Concerning the aforesaid contradiction and rejection by the Protestants, we find from this action that where the Religious Peace's contents have a sense contrary to theirs, it was made, decided, and completed with the advice and good will of all electors and estates of both religious parties. All estates approved its words bound by oath. And they promised to keep it inviolate in each and every point, clause, and article, and to do nothing at all against it. In Our election and coronation capitulation,³ We and Our ancestors are bound without exception or reservation to the Religious Peace and its concept and contents. The Holy Empire's electors would not have bound Us in this way, had the Religious Peace contained anything to the upholding of which We were not obliged.

[There follow further arguments for the Ecclesiastical Reservation as valid Imperial law. The Edict turns to the issue of the religious liberty of subjects and reinforces the principle of "whose the rule, his the religion"⁴ especially for Catholic territories. The point had been

² Adherents of the Confession of Augsburg = Lutherans – trans.

³ The capitulation was a document an emperor signed at his election, in which he swore to respect the Imperial estates' rights – trans.

⁴ "*Cuius regio, eius religio.*" Though often assumed to be taken from the Religious Peace, this Latin tag was in fact invented in 1612 by the Greifswald jurist Joachim Stephani (1544-1623) – trans.

debated in 1555, but the Catholics had opposed the subjects' right to change religion with the following argument.]

This would lead to obvious rebellion, disobedience, and indignation. And since the other estates do not prescribe how they should deal with their own subjects, it would be unfair that they should prescribe law and order for the Catholic estates. The latter intend to nourish their souls, just as the others do, and thus cannot tolerate that their subjects should be give space and liberty to adhere to a religion different from that of the estates.

[In response to the Protestants' argument for freedom of conscience, it is pointed out that the Religious Peace guarantees (§ 24) the right of emigration and general security (§ 23). For the Imperial nobility and the Imperial cities clear regulations were framed. The Peace in no way accords to subjects freedom of religion. Had it done so, they would hardly have had to petition for the vacation of the Religion Peace via a special decree and declaration. The validity of such a declaration is denied, as are other arguments for deriving a right to convert from the Peace's text.]

We have formulated three chief articles on the basis of all We have described in detail and of other recesses, Imperial negotiations, and judicial proceedings, which articles We accordingly approve and declare.

First, that the Protestant estates have no cause for complaint or grievance concerning the generals of the orders, abbots, prelates, and other ecclesiastical estates who are mediate to the Empire, since the latter have pursued the requisite suits concerning their confiscated foundations, properties, hospitals, and other pious foundations before our Imperial Chamber Court.⁵ They have reported to proceed to trial and judgment before the court. The Catholic estates have rightly and justly complained on behalf of the mediate clergy, that their monasteries and ecclesiastical property, plus rents and incomes, which they held at the time of the Treaty of Passau [in 1552] or at some subsequent time, have been confiscated contrary to the clear meaning of the Religious Peace. This was done as though they were not at all covered by the Religious Peace but could be deprived of all rights and claims for justice, as though the properties could be taken over against the intentions and wishes of their pious donors against the clear letter of the Religious Peace.

Second, We also declared that the adherents of the Confession of Augsburg have no grounds for complaint that their fellow religionists, who possess or desire to take over ecclesiastical foundations, bishoprics, and prelaties immediate to the Empire, are not recognized by the Catholic estates as bishops and prelates and so are neither accorded their seat and vote in the Imperial Diet nor awarded the regalia and fiefdoms. Against them the Catholic party, relying on the obvious interpretation of the "Ecclesiastical Reservation," have justly complained of these [alleged] "grievances," namely that such clergymen, bishops, and prelaties, who have apostatized from the Catholic religion, may nonetheless continue to enjoy their bishoprics and

⁵ The Imperial Chamber Court [*Reichskammergericht*] was one of the Empire's two supreme courts – trans.

prelacies with all the rights and privileges they had according to the Catholic religion. Further, on account of [their possession of these] bishoprics and prelacies, they should be regarded as Imperial estates. Further, that those who are not of the Catholic religion, and, further, not of the clerical estate, invaded and are still invading, intending to overthrow the entire Catholic clerical estates and also the Catholic religion, to the degree that it remains.

Third, We find entirely without merit a claim advanced by some Protestant estates, namely, that the Catholic estates should be forbidden to maintain the subjects in their lands to their own religion. Further, that the Catholic estates refuse to allow them to emigrate after paying a reasonable emigration fee and tax and forbid them to attend sermons and other religious services in alien places⁶ (which the rulers have every right to do). On the contrary, based on what has already been said, it is clear that the Catholics quite justly feel themselves aggrieved that the other side should set limits on their own religious reforms, should entice and persuade the subjects to defection and apostasy. This grievance among the Catholics is all the more severe, because, regarding such reforms, the adherents of the Confession of Augsburg allege that in this matter the Catholics are not covered by the law that covers themselves. They hold that they are permitted to exercise the right to reform among their own subjects and to expel resisters, but the Catholics do not possess the same right.

Herewith the chief and most pressing complaint, on which the general Peace principally depends, is explained, as noted above, more than fully and sufficiently from the clear text of the Religious Peace, Imperial statutes, and other public acts, which show what cause each party has, or does not have, for complaint. We therefore command our Imperial Chamber Court [. . .] that, based on this declaration, in the future it shall hear and pass judgment in such cases, as described in Our mandate, without further litigation. And because the seizures, plundering, and occupation of the foundations and prelacies, which violate the text of the Religious Peace, are in many places notorious and cannot be denied, and also because the law embodied in the text of the Religious Peace and other Imperial recesses is irrefutable, that henceforth in such cases no action is called for beyond the effective enforcement on behalf of the offended party and its subjects.

To assure an effective enforcement of both the Religious Peace and civil peace, We have therefore decided to order our Imperial commissioners forthwith into the Empire, where they shall demand that their current (illegal) possessors give up what they have taken (whether with or without force), namely archbishoprics, bishoprics, prelacies, monasteries, and other ecclesiastical properties, hospitals, and foundations, which the Catholics possessed at the time of the Treaty of Passau or thereafter, and of which were unjustly deprived. Such offices and foundations shall be given over to persons who are correctly qualified and appointed, so that each shall be accorded what belongs to him, and to which provisions of the much cited Religious Peace entitle him to recover without further ado or avoidable delay.

⁶ That is, in places under the rule of lords other than their own and (presumably) of the other confession – trans.

[In conclusion it is emphasized once more that the Religious Peace applies only to Catholics and to adherents of the Confession of Augsburg, not to other “offensive” doctrines and sects, and especially not to Calvinists.]

Accordingly, We command you, individually and collectively, by pain of punishment dictated by the Religious Peace and the Public Peace, that you do not oppose this, Our final settlement, but that you promote it without delay in your lands and districts and also aid Our commissioners when they ask for a helping hand. To those who are in possession of the aforesaid archbishoprics, bishoprics, prelacies, monasteries, hospitals, benefices, and other ecclesiastical properties, they shall immediately on the announcement of this, Our Imperial edict, make preparations to vacate and restore such bishoprics, prelacies, and other ecclesiastical properties—together with all of their belongings—immediately upon the Imperial commissioners’ orders. If they refuse or show reluctance to obey, not only shall they suffer on account of their notorious disobedience the punishment prescribed in the aforementioned Public Peace and Religious Peace—that is, the Imperial ban and greater ban, also loss of all privileges, rights, and liberties forthwith and without further condemnation and judgment, but We shall perforce proceed to effective enforcement.

[This edict shall be proclaimed in the Circles by their commanders.⁷]

This is Our will. Given in Our city of Vienna on March 6, 1629, the tenth year of Our reign over the Roman Empire, the eleventh over the Hungarian and twelfth over the Bohemian kingdom.

Source of original German text: Hans Schulz, *Der Dreißigjährige Krieg*. Tl. 1: *Bis zum Tod Gustav Adolfs*. Leipzig: Teubner, 1917, pp. 60-78. (Hauptquellen zur neueren Geschichte. H. 22); reprinted in Bernd Roeck, ed., *Gegenreformation und Dreißigjähriger Krieg 1555-1648*. Deutsche Geschichte in Quellen und Darstellung, edited by Rainer A. Müller, Volume 4. Stuttgart: P. Reclam, 1996, pp. 267-76.

English translation: Thomas Brady Jr.

⁷ Over each of the Circles stood one or several princes, the commanders, who called the Circle Diets together, presided over them, and administered the Circles’ financial and military affairs – trans.