

The Burgundian Wars and the trial of Peter von Hagenbach

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The second half of the fifteenth century was dominated, in the region of the Upper Rhine, by the ambitions of the Duke of Burgundy, Charles the Bold. The dukes of Burgundy ruled a composite state that stretched from the Low Countries to the Franche-Comté and sought to connect their northern and southern possessions by acquiring the territories in between: Lorraine and Alsace. In 1469, the Habsburg Duke Sigismund of Austria, in need of money, pledged his possessions in Alsace and the Breisgau to Charles the Bold for fifty thousand guilders by the Treaty of Saint-Omer.¹ Once again, a pledge by an indebted prince transferred rights of government, this time to a foreign power at the gates of Basel.

Charles appointed as his bailiff in the pledged territories Peter von Hagenbach, an Alsatian knight who ruled with harshness, raised taxes, interfered with the trade of the Upper Rhine cities and threatened their autonomy. The cities of the Upper Rhine, Basel, Strasbourg, Colmar and Sélestat, formed an alliance, the Lower Union, with the Swiss Confederates and with Duke Sigismund, who repaid the pledge sum with money advanced by the cities in 1474 and reclaimed his territories.² The redemption of a pledge with borrowed money, provided by the cities that feared the pledgee, is a characteristic operation of fifteenth-century politics, in which finance and war were closely intertwined.

Hagenbach was captured by an uprising in Breisach in 1474 and put on trial before a court composed of judges from the cities of the alliance and the Austrian territories. He was accused of murder, rape, perjury and other crimes committed during his administration. He defended himself by arguing that he had acted on the orders of his lord, the Duke of Burgundy. The court rejected the defence, condemned him and had him executed in May 1474.³ The trial of Hagenbach has been described by historians of international law as one of the first international war crimes trials, in

which judges from several jurisdictions tried an official of a foreign power for crimes against the population and rejected the defence of superior orders. Basel, which sent judges to the court, thus participated in an event that the history of international criminal law regards as a precedent for the tribunals of the twentieth century.

The principle that the Breisach judges applied, that an official who commits crimes against a population cannot excuse himself by invoking the orders of his superior, became a cornerstone of international criminal law five centuries later. It was affirmed in the Charter and the judgment of the International Military Tribunal at Nuremberg in 1945 and 1946, codified in the statutes of the international criminal tribunals for the former Yugoslavia and Rwanda and in the Rome Statute of the International Criminal Court of 1998, which Switzerland ratified in 2001.⁴ Since 2011, the Swiss Criminal Code contains provisions on genocide, crimes against humanity and war crimes. Swiss prosecutors can prosecute such crimes committed abroad when the suspect is present in Switzerland.⁵

These rules bear directly on the practice of a financial centre. Assets connected with international crimes, with corruption by foreign officials or with the financing of armed conflicts may be held in Swiss banks or through Swiss structures. Their identification, freezing and confiscation require the cooperation of banks, prosecutors and foreign authorities. The sanctions regimes that Switzerland applies, the anti-money laundering rules and the procedures for the restitution of illicit assets of politically exposed persons, which Part E examines, form a body of law whose purpose is to prevent the Swiss financial centre from becoming a refuge for the proceeds of the kind of abuses for which Hagenbach was tried. The Basel Institute on Governance, an independent non-profit organisation founded in Basel in 2003, has specialised in asset recovery and the fight against corruption. Its International Centre for Asset Recovery advises states on the tracing and recovery of stolen assets.⁶ Part F returns to it.

The Burgundian Wars that followed, from 1474 to 1477, ended with the defeat and death of Charles the Bold. The Confederates defeated him at Grandson and Murten in 1476, before he fell at Nancy in January 1477, fighting against the Duke of Lorraine and his Swiss allies. The Burgundian state collapsed, its northern parts passing to the Habsburgs through the marriage of Mary of Burgundy with Maximilian, the future Emperor. The Confederates captured enormous booty in the Burgundian camps, the *Burgunderbeute*: tapestries, jewels, weapons, silver and gold. Parts of this booty, among them tapestries, are preserved in the Historical Museum of Basel and in other Swiss museums.⁷

The Burgundian Wars had a financial dimension that shaped the Swiss economy for three centuries. The victories of the Confederates established their reputation as the best infantry in Europe. The princes of Europe, above all the King of France, competed for their services. The recruitment of Swiss mercenaries, organised by the cantons through agreements with foreign powers, became one of the principal sources of income of the Confederation. The foreign powers paid pensions to the cantons and to influential individuals, and salaries to the mercenaries. These payments brought considerable sums into the country. Part C examines how the mercenary trade contributed to the accumulation of capital in the Swiss cantons and to the formation of the Swiss elite, and how some of the fortunes it created were later invested in banking.

1 Notes

1. On the Treaty of Saint-Omer (1469) by which Duke Sigismund of Austria pledged the Upper Rhine possessions to Charles the Bold, see HLS, article "Burgunderkriege". Amount to be verified. ↩
2. On the Lower Union (Niedere Vereinigung) of 1474 between Basel, Strasbourg, Colmar, Sélestat and other cities, and its alliance with the Confederates and Duke Sigismund, and the redemption of the pledge, see HLS, articles "Niedere Vereinigung" and "Burgunderkriege". To be verified. ↩
3. On the trial of Peter von Hagenbach at Breisach (May 1474) before a tribunal of judges from the allied cities and territories, and its discussion in the literature on international criminal law as an early precedent rejecting the defence of superior orders, see HLS, article "Hagenbach, Peter von"; the literature on the history of international criminal law. To be verified. ↩
4. Rome Statute of the International Criminal Court of 17 July 1998 (SR 0.312.1), ratified by Switzerland on 12 October 2001; Art. 33 on superior orders. On the Nuremberg Charter (Art. 8), see the standard literature on international criminal law. To be verified. ↩
5. Art. 264 ff. of the Swiss Criminal Code (SR 311.0), in the version in force since 1 January 2011 (genocide, crimes against humanity, war crimes), and Art. 264m on jurisdiction over offences committed abroad. To be verified. ↩
6. On the Basel Institute on Governance (founded 2003, associated institute of the University of Basel) and its International Centre for Asset Recovery (ICAR, established 2006), see www.baselgovernance.org. Dates to be verified. ↩

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7. On the Burgunderbeute (Burgundian booty) and its preservation in Swiss museums, including the Historisches Museum Basel, see HLS, article "Burgunderbeute". To be verified. ↩

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