THIRTEENTH-CENTURY DIPLOMATIC ENVOYS: NUNCII AND PROCURATORES

By DONALD E. QUELLER

So much confusion has prevailed concerning the nature of medieval diplomatic envoys that a closer study of their character appears worth undertaking. Such a study ought to employ legal writings to elucidate the diplomatic documents and to use diplomatic documents to exercise a factual control upon the discussions by legal writers. An investigation of these sources reveals that previous studies of the types of medieval envoys err in two ways: they discuss kinds of emissaries, such as the ambassador and the legate, actually not widely employed,1 and they confuse those types which were commonly used.

Practically all secular diplomatic agents of the thirteenth century were either nuncii or procuratores. Nuncii had been in use for centuries,2 but procuratores appeared only in the thirteenth century (or a little earlier).3 The latter supplemented, but did not supplant, the earlier type of envoy. Recent writers on medieval diplomacy, such as G. P. Cuttino, Henry S. Lucas, Gaines Post,6 François Ganushof, Pierre Chapulis, and Garrett Mattingly, discuss the nunciature and the procurator very briefly, and — except for Mattingly — somewhat incorrectly or unclearly.4 Criticism of the conclusions of justly renowned scholars ought not to be undertaken lightly or in a capsious manner; let us, therefore, summarize the views of each, before proceeding to an examination of the evidence.

Cuttino, whose description of the rise of the nuncius as an English specialist in French affairs is of great importance and interest, exhibits some confusion in discussing the types of envoys. A legate or an ambassador, he maintains, was the most exalted diplomatic envoy, but rarely used in secular diplomacy. He correctly finds the nuncius to be a more messenger. Less correctly (ignoring the procurator negotiorum), he declares the procurator to be originally and basically a legal representative. The nuncius, he believes, spoke in his master’s name, but the procurator spoke in his own name on behalf of his master. In the use of an envoy named both procurator and nuncius he sees an effort to combine the “agent and representative.”5 In all this Cuttino is closely paraphrasing Behrens’ “Treatises on the Ambassador Written in the Fifteenth and Early Sixteenth Centuries” (italics mine).6

Lucas, in The English Government at Work, 1327-1336, fails to distinguish between procurator and nuncius, which is incorrect, although many diplomatic documents seem to justify it. He also applies the term “letters of credence,” which are the letters naming a nuncio, to documents granting full powers (plena potestas) or a special mandate and containing a ratification clause. All of these are, in fact, characteristic of the mandate of a procurator.7

Gaines Post, also, despite his great knowledge of the procurator and of plena potestas, is not clear on the distinction between nuncii and procuratores. He, too, has been misled by the careless use of these terms in the documents, such as the description of Vilichardouin as a message (French: for nuncius), although he bore a procurator containing full powers. Post also calls “nunci or procuratores” some simple nunci appointed by King John of England, although he is well aware that their letters were “hardly Roman (i.e., procuratorial) in character.” Furthermore, he represents the continued use of fides or letters of credence as a reaction, whereas the use of procuratores and the older nunci continued side by side for different types of missions.8

Ganushof does not find a clear distinction of the kinds of envoys until the papal court regulated diplomatic status in the fifteenth century. At that period, he says, nuncii had a tendency to be employed for envoys having a message to deliver, rather than for those with power to negotiate.9 Such, indeed, was always

1 It is probable that the modern office of ambassador was developing in Italy as early as the thirteenth century (François L. Ganushof, La Moyen Age, I: Histoire des relations internationales, Pierre Renouvin, ed. (Paris, 1925), p. 298; Garrett Mattingly, Renaissance Diplomacy (Boston, 1935), p. 20). The word had been in use for centuries, but not in a specifically diplomatic sense. No study exists, as far as I know, of the status of the early ambassadors. The fifteenth- and sixteenth-century ambassador was defined as “any person sent by any other.” However, it was conceded that a private person could not send an ambassador and that an ambassador required adequate credentials. The prescribed credentials suggest that he combined the characteristics of the earlier nuncio and procurator, for he was furnished with letters of credence, which were formerly used to introduce the nuncio, and a procuratorial mandate, granting the agent authority to resign his see.

2 Occasionally a specific document will refer to a legate of the Holy See, but a general statement is that a legate was not a diplomatic envoy, but rather a pontifical representative of the Church in secular matters. The term was used more commonly of the papal legates to the states of the Church in Italy. It was also used in a more general sense, referring to the legates of the Holy See in the Western world, and even to the patriarchs of the Oriental Church. See Henry S. Lucas, English Diplomatic Relations during the Reign of Edward III, 1327-1377 (London, 1904), pp. 64-65.

3 Gaines Post, Relations internationales, p. 41.


5 Strictly speaking, Professor Post should not be included among writers on medieval diplomacy, but the article on “Plena Potestas and Consent in Medieval Assemblies” includes a section on the diplomatic use of plena potestas.
the character of the nuncius. In the procurator Ganshof, like Cattino, finds a representative at law, used in diplomacy only because some missions combine a judicial and a political character. On the other hand, he does very clearly distinguish between letters of credence and full powers.

Pierre Chauplys, in an undocumented paragraph, declares that in the making of a thirteenth century treaty the same envoy received precatory and letters of credence. For special purposes this may have occurred, but we have not found it typical in the thirteenth century.

The reader has every right to be confused by these statements. Garrett Mattingly, however, in his Renaissance Diplomacy, states that nuncius and procurator had specific and distinct meanings. A nuncius was a mere messenger or ceremonial representative of his principal, having no authority to negotiate anything. A procurator lacked the symbolic, representative function, but he did possess powers to negotiate within the limits of the business committed to him. Mattingly's description, while brief, is clear and correct. He does, however, relegate nuncius and procurator to "the minor business of the great princes and for all the business of other persons or corporations."

This is appropriate for the period with which Mattingly deals, but their functions in the thirteenth century were much more exalted.

It is my purpose to provide an analysis of these two types of envoys in the thirteenth century, resting my case upon medieval law books and upon Flemish diplomatic documents.

The nuncius was -- and is in modern civil law -- merely a messenger. As Azo phrased it: "A nuncius is he who takes the place of a letter; he is just like a magpie and the voice of the principal sending him ... and he repeats the words of the principal."

The Digest uses nuncius and epistola as near equivalents. Just as in the case of a written letter, one could make a legally effective declaration of will by means of a nuncius. If such a juristic act was performed, however, the principal was conceived to have performed it, the nuncius being only an instrument.

Nuncius could be the simplest sort of message-bearers, like those dispatched by Count Guy of Flanders to Edward I to request the return of John of Brabant to his duchy. These envoys were called "porta docent" signifying their very circumscribed function. Nuncius could also provide the means of obtaining information. Countess Margaret of Flanders sent nuncius (called legati by Jacques de Guyse) to seek information concerning her sons captured by the King of the Romans, William II of Holland, at the battle of Westkapelle. Since the envoys had no authority to treat concerning the release of the princes, the simple message-bearing character of the nuncius was all that the mission required.


2 Corpus juris civilis, ed. Paul Kramer and Theodor Mommsen, 2 v. (Berlin, 1862-80), D. 18, 1, 2 and D. 20, 5, 25, 4. (All references to the Digest, Corpus, Institute will be to the modern edition, which does not include the glosses.) Michele Carabini called the nuncius " ... uno semplice portatore di volonta' uno strumento di dichiarazione esplicidale ad una lettera parola ... " ("Sui Concetti di "Nuncius," Scritti giuridici dedicati a Giangiotto Chironi [Milan, Turin, Rome, 1928], pp. 47-48).

3 D. 18, 1, 2. See also C. Guyse, Breugelme esterlingen en heeren, 2 v. (Antwerp, 1679), 1, 3, 4 (autors). Professor Ganshof cites letters of Edward II to Clement IV in 1309, which request the pope to have the words of the king through the speech of his nuncius (Relations internationales, p. 276).

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6 Sohn, The Institute, p. 45, p. 219.

7 John, son-in-law of the English king, was residing in England when his father, John of Brabant, died in 1295. The new duke's presence was required in Brabant to break up the intrigues of the pro-French party. The document is in Ernest van Brussel, ed., "Liste analytique des documents concernant l'histoire de la Belgique qui sont conservés au Record Office," Bulletin de la Commission Royale d'Histoire, 6e série, 1 (1897), 111. Permanent messengers, called nuncii resipi, were maintained in the household of the English king in the early thirteenth century, and were supplemented in the middle of the century by a group of foot-messengers of lesser rank, called colivizi or comissari (Mary C. Hill, "King's Messengers and Administrative Developments in the Thirteenth and Fourteenth Centuries," E.R.R. LVI (1846), 318-321). The same messengers seem to have been used for domestic and foreign affairs.

8 Jacques de Guyse, Annales de Hainaut, ed. and trans. Fortis d'Urbain, 23 v. (Paris, 1829-39), xx, 354. As foundation for my identification of legati vicarii, see Guillaume Dumas in Hainaut, De legatis et legationibus, p. 32; "Legatus est ... quacumque aliquo modo missus est ... , dixit principem, vel a popo ad nuncius, quos apud nos hostes mittunt, legati dictorum."

9 Legatus is equated with the nuncius of a private person in Du Cange, iv, 62. Ganshof (Relations internationales, p. 206) equates them.


12 Ibid., p. 125. The author is incorrect in asserting (pp. 275-276) that full powers only take the form of a private law procuration in cases more juridical than political.

13 Pierre Chauplys, "The Making of the Treaty of Paris and the Royal Style," E.R.R. LXVI (1929), 237. Ambassadors of the thirteenth century did receive both letters of credence and precatory. See, for example, Joyce Anne Dickson, The Congress of Arras, 1215 (Oxford, 1955), pp. 16-17, who adds: "Such letters (of credence) might be the only documents required, if an ambassador was simply delivering a message or undertaking some straightforward mission for which a detailed procuration would not be needed."

14 I questioned Mr Chauplys on this point, and he replied (letter of 14 April 1948) that for an embassy sent to negotiate a peace treaty "all the documents I mention could be issued, but not necessarily." I agree. Mr Chauplys provided a full treatment of diplomatic envoys in his forthcoming volume on English Medieval Diplomacy.

15 Mattingly, Renaissance Diplomacy, p. 30. In this article I ignore the question with which Mattingly is primarily concerned: the origin of resident ambassadors. The permanent procurators of the thirteenth century are among those whom various authors have named as predecessors of the resident ambassadors identified by Mattingly no earlier than 1341. Mattingly considers these claims judiciously and rejects them: " ... the diplomatic procurators were not resident, and the resident ones were not diplomats." (p. 67). He admits, however, that the resident legal representatives were incidentally useful to their masters in diplomatic affairs. The issue, like so many questions of the origins of institutions, may well be more semantic than historical.

Flemish documents have been used for the examples because I had the opportunity, thanks to a grant from the National Endowment for the Humanities and the Archives and libraries of Belgium and France, on the subject of Flemish diplomacy and its administration. I have consulted enough diplomatic credentials issued by other western European powers, however, to know that the same types were current among them.
Payment of a debt could also be claimed by means of *nuncius*: a letter of credence given by Countess Margaret in 1345 requests the King of England to believe without doubt what her *nuncius* will convey orally to him and to pay the arrears of her money-fief to them. In a similar case, when Count Guy in 1320 received from his son-in-law, the count of Guelders, a money-fief owed by the French crown, he sent a "porteur de ces lettres" to report this transaction to Philip IV and to receive payment. According to Roman law it was equally possible for a *nuncius* to fulfill an obligation or pay a debt for his principal. Although the character as a chivalric through which the principal could act, the *nuncius* could both take and receive oaths in place of another. In taking an oath, he would swear "on the soul" of his principal. Furthermore, just as a principal could create an obligation via an oath taken by a *nuncius*, he could renounce his obligations by the same means, as when Guy of Flanders sent his defiance to Philip IV in January 1297 by the hands — and words — of *nuncius*. Despite his "magpie" nature, a *nuncius* could also find employment in negotiation of truces and treaties. Although a *nuncius* could not bind his principal by an act of his own will, as a procurator could, the principal could commit himself legally through a *nuncius*, as through a letter. If a binding covenant was to be consummated on the spot, the *nuncius* could not hold the discretionary powers which might be granted to a procurator. He could only be used as an instrument of communication, a speaking letter, by which the principals could express their wills. Jacques de Gusepe provides a detailed account of another mission undertaken by *nuncii* (called *legati*) sent by Countess Margaret to the King of the Romans to discover his terms for releasing her sons. William answered them disdainfully, demanding that the countess purify herself of infidelity and contumacy before he would discuss conditions. After a lapse of some time, however, the same emissaries returned as *legati* of the French king and all the towns of Flanders, and this second attempt elicited the terms upon which William would agree to free the captives. In similar manner, Flanders dispatched messages, or *nuncii*, to seek a truce from Edward I in 1274. A *nuncius*, moreover, could even be endowed with freedom to negotiate terms to be referred to his principal for consideration and possible acceptance. Negotiations concerning the mutual raiding of English and Flemish merchant ships occasioned the appointment of a series of *nuncii* to the English court. In 1296 two *nuncii* of the Countess Jeanne explained to Henry III the grievances of the Flemish and obtained from the king his promise of restitution to the offended merchants. In 1271 Henry accorded a safe-conduct to a *nuncius* dispatched to him by Countess Margaret to treat concerning an end to the sale of merchants' goods. In neither of these cases, unfortunately, is the letter of appointment extant, so the possibility exists that the English reply of 1236 and the safe-conduct of 1271 incorrectly employ the word *nuncius*. If further evidence is needed, however, that *nuncii* could participate in the giving-and-take of negotiations — subject, of course, to subsequent approval by the principal, it is provided by Guy's appointment of three envoys to Edward III in 1293. They were to deal with a dispute over a bloody battle between English and Flemish merchants, which threatened a general disruption of commerce. Their document of appointment is clearly a letter of credence, characteristic of the *nuncius*. Note, however, that none of the above emissaries appear to have authority to obligate their masters. Although the "act tradiendum nuncius" of Henry’s safe-conduct of 1271 imports considerably more than the conveying of information or a request, it does not indicate authority to conclude negotiations. A *nuncius* could only commit his principal upon terms known to the latter and accepted by him. He could not both treat and conclude without reference to the principal, although he could do one or the other.

The dissolution of obligations by agreement of the parties could also be achieved through *nuncii*, as evidenced by Count Guy's attempt to annul an arbitral agreement with the count of Hainaut through *nuncii* provided with power and special mandate for that purpose.

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3 Ibid., i, 507.
4 Ibid., i, 469.
5 "Bac est quod magistratus Jacobus de Aquis, legem professorum, clericum de nostro consilio, Petrum de Wolet de Brugia, et Wilhelmum de Spela de Dan, episcopos nostrum dilectos, ad vestra monasticae constitutionis clausulas, seu legum regulas regulas redactas..." (ibid., i, 780).
6 Patrick Delamare, "Recueil des documents inédits relatifs aux relations du Hainaut et de la France de 1809 à 1867," *Bulletin de la Commission Royale d'Histoire*, xcv (1925), 44–49. Despite their "special mandate," their status as *nuncii* is indicated by the repeated use of this term, a
The letters used to constitute a *nuncius* were called letters of credence, the heart of which was a clause of suppliance requesting the addressee to believe what the *nuncius* would say on behalf of the sender. *Nuncii* could be appointed, however, without the clause requesting credence. In 1696 Guy of Flavigny simply named "nos especiens messages et vrais procureurs pour soufreir a ne vous Jehan de Avennes, conte de Haynau, le fourme et le maniere de le lettre et ke ce contenu est en ced lettre dont li teneurs sensent par ces nos." Indeed, according to Aegidius de Puscararii, a *nuncius* could be appointed without any letters at all.21

In summary, the *nuncius*, normally appointed by letters of credence, was essentially a messenger, an instrument for sending or obtaining information. Since the principal, however, could make an legally effective a declaration of will via a *nuncius* as via a letter, a *nuncius* could be used for paying debts or receiving payments, for taking or receiving onths, or for concluding a truce or a treaty the terms of which had already been approved by his principal. In short, anything which could be accomplished by a letter, could also be done through a *nuncius*. Even preliminary negotiation of a treaty could be conducted by a *nuncius*, but he could not bind his principal to anything by which the principal had not personally consented.

II

In spite of the many documents which seem to use *nuncius* and *procureur* as synonyms, the proctor actually was quite different. The basic definition is Ulpinian's, D. 2, 3, 1: "A proctor is one who administers another's affairs by the mandate of the principal." His function was to do those things that the principal

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reference to the credentials as letters of credence, and the close restrictions placed upon them. *Mandatum*, of course, has a broad and nontechnical meaning, as well as its specific legal sense. Nonetheless, it is possible that they bore a proctorial mandate, as well as their letters of credence.


22 Nord, B1635, f.3708. Notice the use here of "messages et vrais procureurs" for envos who obviously do nothing more than bear a letter (infra, pp. 211-212). In another letter of appointment, Jeanne of Flavigny merely places Wago, bailiff of Douri, in her place for receiving the castle of Douri, and this seems to constitute Wago a nuncius, though that word is not used (Loggete du Tresor des Chartes, ed. Alexandre Toulet and Joseph de Laboile, 8 vols. [Paris, 1866-1869], n. 384, f.383v).


1 I am indebted to Professor Gaines Post for many legal references to the proctor. My study of *mandatum* has been of necessity more purely empirical (i.e., based upon actual diplomatic documents, rather than upon analytical sources) than that of the proctor, which follows; the legal sources contain much information on the proctor, little on *mandatum*.

2 The English word "proctor" will generally be used hereafter for *procurator*.

3 Some students of the classical pre-Justinian law argue that "mandatum dominii" is an interpolation whereby the compilers confused several institutions. The act regulating the relation between *dominium* and procurator, according to Servius (following Alberto and Frese) was the *actio nequitiae generorum*,

...
be expressed, expresses that will, and thereby concludes a juristic act for another, which has the same effect as if it had been concluded personally by the principal. In distinguishing between the nuncius as a representative and the procurator as an agent, therefore, Cattino, following Behrens, unduly restricts the concept of representation. They err, moreover, in holding (Cattino quoting Behrens): "... the procurator spoke in his own name on behalf of his master, but the nuncius spoke in his master's name, and was like a magpie or a musical instrument..." Mattingly and Ganahl, on the other hand, correctly note that a procurator speaks in his lord's name, but in his own person, while a nuncius speaks in the person of his principal. The distinction that ought to be made, I think, is between the procurator, who uses his discretion and exercises his will to act for another, and the nuncius, who merely expresses the will of his master.

The representative character of the procurator was based upon his procuration or mandate, which derived its force from the consent of the controlling parties. Acts performed by a supposed procurator lacking a mandate were not binding upon the principal. The true procurator bearing a mandate was bound diligently to observe its limitations, and any acts exceeding those limitations were invalid. Countess Margaret of Flanders, for example, protested that even if her sister of Ghent had reached an agreement with the count of Holland concerning tolls on the lower Scheldt, this would have been beyond his mandate, and she, therefore, could not be bound. The true role of the procurator was "to observe the mandate enjoined to him with exact faithfulness."

In classical law the procurator was a general administrator of the affairs of the represented. The procurator litis, or legal procurator, developed later, and eventually representation at law became the primary use, while the administrative procurator became distinguished as the procurator negotiorum. Since diplomatic activity is not normally judicial in character, it is the procurator negotiorum with which we are mostly concerned, although on occasion a procurator litis might fulfill a role which could be classified as diplomatic, as we shall see. A procurator could be appointed ad causas et negotia to perform both functions, as witness the forms given in legal and notarial writings and an exemplar given in the First Charter of Flanders, as well as actual procurations. The distinction between the procurator litis and the procurator negotiorum is similar to the distinction in Anglo-American law between an attorney-at-law and an attorney-in-fact.

The post-classical Roman law also distinguished between special and general procurators. A procurator who was appointed "to a given day or to a given task" was a special procurator, while one appointed "in all causes or in one cause generally" was a general procurator. Again, in modern Anglo-American law a similar distinction is recognized between a special agent and a general agent. Many things could not be accomplished by a simple general procuration. William of Drokeda, declaring that the office of a procurator is to do those things which the true dominus could do if he were present, adds this qualification: "nisi prohibeat a procuratore..."

11 "Quid aliis et alim officiis, Mandatum situm in intellectum excretis diligentia servare... et ut item exspectaret diligenter, utique in finem." (Hortinissan, App. I, 4, De procuratoribus, §11). Also, Elbstellungen, 11, 645-647.
12 Sereno, p. 47 (following Press). Buckland found it difficult to accept the view of Press that the procurator at Urreta did not exist in classical law (A Textbook of Roman Law, p. 708, n. 10).
14 Post, "Pleas of Potestas," Tractat., 1, 890, summarizing Rodinumia Passagerii, Summa continens actas notarum (Venice, 1754), 1, 244-252.
15 Procuration in the Roman corpus "sed impetrandum pro me et ad procuratorum me negotia in vestra cura sustinetur" (Nord, 1892, 105).
18 Mattingly, Renaissance Diplomacy, pp. 66-67, appreciates this distinction between "legal procurators" and "diplomatic procurators."
19 Sereno, Il passaggio, p. 11.
20 Magister Anulphus, Summa Minorum, 1, in Warnhain, 1, ii, 70-75. In a very rigorously technical sense, mandatus refers only to a special mandate (Berger, Epitome Diplomatica Roman Law, p. 654). It is customarily used much more broadly.
Some of the other powers denied to a general proctor include making a peace or a pact, and the taking or receiving of an oath. A general proctor, however, was not absolutely denied the powers which a special proctor could exercise, since he could also be given a special mandate to supplement the broader, though less conclusive powers, based upon his general procuration. By a more sweeping grant of powers, the general proctor could possess the freedom and flexibility characteristic of his status along with the more conclusive authority of the special proctor. This was accomplished by the grant of *libera administratio* or *plena potestas*, which gave a proctor authority to do all things that his principal could do. This held that the proctor with *plena potestas* could even commit his principal beyond the limitations of his letters. Most diplomatic activity required either a special mandate or a general procuration with *libera administratio* or *plena potestas*. Without one or the other an envoy had no freedom to negotiate, and as his talks developed he would have to refer constantly to his principal to obtain an expression of the latter's will, just like a *nuneci*. As Sir Harold Nicholson points out in *The Evolution of Diplomatic Method*, this was a severe handicap under which diplomacy labored before the use of procurations.

Although the procurator negotiator was more commonly employed in diplomatic affairs, there were tasks which bordered, at least, upon diplomacy, which called for the use of a *procurator litis*. For example, a *procurator litis* represented the count of Flanders before *negoctues* of Philip IV investigating infractions of a truce arranged by the king between Flanders and Hainaut. On another occasion, Count Guy appointed a special *procurator litis* to present before arbitrators his arguments in a dispute with the bishop of Liége. The same count named *procuratores liti et negotiatorum* in 1292 "in all causes, complaints and affairs... in court and out..." to oppose Guy of Hainaut's attempt to obtain the bishopric of Tournai in a contested election against his own candidate. The use of the *procurator litis* in diplomacy, however, was confined to such quasi-judicial matters. The *procurator negotiator* was much more commonly employed.

Oddly enough, a few envoys who are called special proctors appear to have been nothing more than messengers to deliver or receive documents. Perhaps loose terminology has simply confused them with *nuneci*. It may be noted, however, that in the cases mentioned the documents to be transferred were not mere messages, but documents involving a proprietary interest, which may account somehow for the use of procurators.

In financial relations between princes, as between private parties, special procurors or those with *libera administratio* or *plena potestas* could accept payment of debts owed to their principals. Count Guy appointed a number of such procurors in his efforts to collect the Scottish dowry of his daughter, Margaret. The three extant procurations concerning the Scottish dowry also empower the procurors to pay to the king the sum owed by the count in connection with the marriage. This conforms to the civil law, which recognized that a proctor could pay debts for his principal, as well as accept payment. A proctor could also negotiate...
a loan. The First Charterly of Flanders includes a procuratorial model for borrowing money. A mandate giving an envoy power to borrow money in the principal’s name was given to Count Guy’s procurator to Rome in 1282. Armed with a special procuratorial, libera administratio or plena potestas, a procurator could also be empowered to settle by agreement a disputed claim. An account dated at Westminster in February 1286 is such an agreement between a procurator of the count of Flanders and procurators of English merchants who were despoiled by the Flemish.

We usually think of the diplomatic agent as the negotiator of treaties or alliances. A procurator could enter such conventions in the same manner as the procurator of a private person could form contracts, using his own judgment and expressing his own will, but acting in his principal’s name to bind the latter. An example of procuratorial treaty-making is furnished by the alliance of Flanders with England in early 1297 completed by Count Guy’s special procurators. If an alliance was to be cemented by a marriage, that also required a special mandate or libera administratio. The Treaty of Leris, which engaged Philipps, Guy’s daughter, to Edward, the English heir-apparent, states that the Flemish envoys had “a special mandate . . . for the said matter.”

Medieval princes sought to provide in their conventions sanctions against breach of faith by providing for an exchange of oaths. Taking an oath for his principal was another power denied to a general procurator, which could be granted by special procuration or by libera administratio. Authorization to swear “on the soul” of the principal was customarily quite explicit. Guy’s procurators who negotiated the Scottish marriage alliance and those who concluded the Treaty of Winendale-Ipswich swore such oaths. Countess Margaret ordered one representative to swear to uphold a treaty with William, king of the Romans and count of Holland, although she herself was present. The countess was assuming royal airs, for monarchs were not accustomed to swear in person.

Even oaths of homage and fealty, which were peculiarly personal according to strict feudal law, could be performed by proxy on occasion, as Margaret’s homage to Frederick II was. Renunciation of these obligations could be accomplished similarly. A procurator with plena potestas could even be authorized to substitute another procurator for himself. A procuration given by the count of Flanders in 1278 contained this authority. Somewhat analogous was the power granted by Guy to envoys sent in quest of the ill-mentioned Scottish dowry to name a receiver of the payments in the future.

All of these powers—to pay debts and to accept payment, to contract loans, to settle by agreement, to make treaties and marriage alliances, to guarantee these by the most solemn oaths, to substitute another procurator, and many others—could be given to a procurator by a specific grant in the form of a special mandate. Alternatively, a general procurator receiving libera administratio or plena potestas could be appointed. Such a procurator would use his own discretion within the limitations of the mandate to bind his principal.

A necessary element in a procuration was the ratihabito clause, in which the principal ratified in advance the acts of his procurator. Beaunuoire declares its importance: “Nunc procurations ne vaunt riens, se cil qui le fuit ne s’oblige a tenir ferme et estable che qui sera fet ou dit par son procurateur. Serro states that it is solely by virtue of the ratihabito that the acts of the procurator pass into the jurisdiction of the principal.” The Digest contains a statement: “Ratihabito is equivalent to a mandate.” This originally referred to a subsequent ratification of the acts of one lacking the authority of an agent. It seems also to be true, however, of the previous ratification given in a procuration, the ratihabito being the clause in such letters authorizing conclusive action. Furthermore, as Pouteau points out, Francesco Tigrini in the fourteenth century held that the ratihabito

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48 (Item) ad consilium certarum et certarum receptarum extensio dotis pro se et nomine suo in futuro . . .” (Reiffenberg, Monumenta, 229-234). See also D. S. 3, 35.

49 O. C. A., Charte 105, fol. 70. For an example of the actual use of this power, see G. P. Cattino, “The Process of Aguo,” Speculum, XIX (1944), 106.

50 “Item, ad consilium certarum et certarum receptarum extensio dotis pro se et nomine suo in futuro . . .” (Reiffenberg, Monumenta, 229-234). See also D. S. 3, 35.”

51 “Item, ad consilium certarum et certarum receptarum extensio dotis pro se et nomine suo in futuro . . .” (Reiffenberg, Monumenta, 229-234). See also D. S. 3, 35.”

52 O. C. A., Charte 105, fol. 76. For an example of the actual use of this power, see G. P. Cattino, “The Process of Aguo,” Speculum, XIX (1944), 106.

53 “Item, ad consilium certarum et certarum receptarum extensio dotis pro se et nomine suo in futuro . . .” (Reiffenberg, Monumenta, 229-234). See also D. S. 3, 35.”

54 O. C. A., Charte 105, fol. 76. For an example of the actual use of this power, see G. P. Cattino, “The Process of Aguo,” Speculum, XIX (1944), 106.
juridical distinction between the ambassador and the agent in private law or between the treaty and the private law contract, and I do not believe that subsequent ratification was necessary. It was customary, as Lucas says, to ratify even the acts of ambassadors armed with plena potestas or a special mandate, if the mission were an important one. Subsequent ratification lent publicity to an accord and the express acceptance of the agent's acts lent added moral sanction, but I am unable to support Miss Dickinson's assertion of the formal necessity of a later ratification of that which had already been ratified in advance. The ratification clause is a ratification and, sufficed to bind the principal. The advantages for diplomatic affairs in the flexibility of a procurator armed with a special mandate or with full powers are obvious and great. Within the limits of his mandate, the procurator possessed great discretionary powers, whereas the nuncius could do little more than bear the messages of his master. Procuratorial powers were especially useful in an age of slow communications. There were, of course, attendant risks of being bound to an unacceptable accord, but the advantages in the use of trusted procurators seem to outweigh them.

III

Oddly enough, credentials of diplomatic representatives often included both terms, procurator and nunciatus. Professor Cuttino expresses the tentative belief that this was true because the envoy was to be both agent and representative, i.e., was to be empowered to speak in his own name and in his master's name. I fear resolutions, discretionary thereafter. It is obvious that a far clearer distinction than existed between public and private law in the thirteenth (or the twelfth) century. Jones stresses (p. 10) that as late as the end of the eighteenth century a treaty was regarded as a personal compact, a diplomatic envoy as an agent, and full powers as powers of attorney.

Lucas, English Government and the Church, 1, 1930. Mutually, dealing with a somewhat later period than Lucas, shares this view that ratification was not necessary when the ambassador was armed with special or full powers, "like a power of attorney, executed in due form" (Renaissance Diplomacy, pp. 41-42). Such powers are powers of attorney. Incidentally, when medieval treaties were ratified, as they usually were, this could also be accomplished by a procurator (Franco-French-British, "Addition au Codex Diplomatique Francais," Bulletin de l'École des Chartes, 118 [1888], 377; J. J. Saunders, "The Treaty of Peace of Paris [1509]," P.R.H., 13 [1833], 44, no. 6).

In a famous instance, the mission of Villachoud and his five colleagues resulting in the Treaty of Vienna, the envoys negotiated the treaty, swore in the name of their principals to uphold it, and promptly dispatched a missive to Rome to obtain papal confirmation of it. Confirmation could hardly be sought for a treaty that did not yet exist, lacking ratification by the principals. Yet papal confirmation was immediately sought, so I conclude that the act of the procurators sufficed to bring the treaty into juridical existence. See La compagne de Constantinople, edited and translated by Edward Faré (Paris, 1899), pp. 51, 52. It is true that Villachoud was intended to swear to uphold the treaty. See Villachoud's oath, ibid., i, 418. But there is no evidence that he did so.

Cuttino, English Diplomatic Administration, pp. 80-87. I have already commented upon this statement (supra, p. 204). I agree with Mennel that in the early use of procuratorial powers deliberate contamination of the words was practiced, though this ceased to be customary after a time (Mennel, Deutsches Grundtatsachenbuch im Mittelalter, pp. 16-17).
that this is one of those cases where the historian is imposing the rationality that he would like to find where only irrationality exists. Actually, the two terms, nuncius and procurator (or their equivalents) are found in juxtaposition, not only in diplomatic credentials, but also in letters appointing attorneys-at-law who were clearly procurators. Moreover, this inexact usage was sanctioned by ex-

emplars of credentials contained in the legal and notarial manuals. Legal discussions of procuratores and nunci are add to the confusion. Lo Cadi, a work of the mid-
twelfth century, says of a procurator, "id est nuncium sum." The civilian Augustinus com-

pounds confusion, declaring that "albeit in the broad meaning any

nuncius is a procurator, not every procurator is a nuncius." This statement can be true only if procurator is used non-technically, as Augustinus himself indicates. The canonist William Durand follows Augustinus almost verbatim. Yet the Digest itself expressly distinguishes the two offices, denying the title of procurator to a mere carrier of a thing, a letter or a message. Aegidius de Fuscannaris, whose Odo Judicarius dates from the early 1600's, explains the confusion. He writes: "So in this document, which says: 'his nuncius and procurator,' there seems to be a contradiction, for there is a difference between a nuncius and a procurator because the nuncius ought to form his words in the person of his principal, but not in his own person.... But the procurator ought to speak in his own person...." This inconsistency of putting into the mandate "nuncius and procurator," according to Aegidius, "is tolerated by custom." Therefore, in his estimation, and in mine, the legal distinction of the two offices was clear, but the words were used carelessly as synonyms. It did not make any difference what the envoy was called, if only the intention of the principal was clear. This view that the procurator and nuncius were quite distinct in office, though often confused in language, is supported by all the evidence that I have seen.

In the procurator, therefore, the thirteenth century added a new type of envoy to the accustomed nuncius. The older emissary remained in use for delivering messages, for ceremonial missions, and even for quite important tasks when it was not desirable to commit discretionary powers to the envoy. He was, in truth, like a living letter or a magpie. Whereas the nuncius was volitionally passive, the procurator was volitionally active. I like to think of the word "attorney" as a synonym for "proctor" (procurator) — not because it is true that proctors were used in diplomacy only when there was a semblance of judicial character to the mission — but because of the close resemblance between the attorney-in-fact and the procurator negotiorum, on the one hand, and the attorney-at-law and the procurator litis, on the other. Usually, though not invariably, as I have pointed out, diplomatic affairs called for the procurator negotiorum. Like the attorney-in-fact of a private person, the diplomatic procurator negotiorum, if given a suitable mandate, could employ his own discretion to act in the name of his principal — by the exercise of his own will he could bind his principal. He possessed at the same time freedom to negotiate and authority to irrevocably commit, limited only by the terms of his mandate. It would be unthinkable to delegate such great powers to envoys of a modern depersonalized state, and especially of a constitutional one wherein the chief of state lacks sole jurisdiction over foreign affairs. But thirteenth-century princes, who entered into treaties as if they were private contracts, and who could select from among their advisors or bureaucrats thoroughly trusted agents, employed procuratores, as well as nunci, in their diplomacy to great advantage.

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